

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 742

24 JUNE 2016



**ARMS PROCUREMENT
COMMISSION**

Transparency, Accountability and the Rule of Law

**COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD,
CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE
STRATEGIC DEFENCE PROCUREMENT PACKAGE**

(ARMS PROCUREMENT COMMISSION)

REPORT

Volume 1

DECEMBER 2015

**TO HIS EXCELLENCY MR JACOB GEDLEYIHLEKISA ZUMA, THE
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

We are honoured to submit to you, in accordance with paragraph 4 of the Commission's Terms of Reference that were published in *Government Gazette No 34731* on 4 November 2011, the Commission's final report on all its activities from 1 January 2012 to 30 June 2015. The report is divided into three volumes, each with its own table of contents, made up as follows:

- Volume 1: Chapters 1 (Introduction); 2 (Evidence and information gathering) and 3 (Debevoise & Plimpton Report)
- Volume 2: Chapter 4 (Summary of evidence)
- Volume 3: Chapter 5 (Findings and recommendations).

There is also an Executive Summary that stands alone and is herewith presented as a separate document.

This report concludes the inquiry of the Commission.

.....
Justice LW Seriti, JA

Chairperson: Arms Procurement Commission

.....
Judge HMT Musi, retired Judge President

Commissioner: Arms Procurement Commission

DECEMBER 2015

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ABBREVIATIONS/ACRONYMS FREQUENTLY USED

AAC	Armament Acquisition Council
AASB	Armament Acquisition Steering Board
ALFA	Advanced Light Fighter Aircraft
Arm Scor	Armament Corporation of South Africa SOC Ltd
COD	Council of Defence
DIP	Defence Industrial Participation
DOD	Department of Defence
DPCI	Directorate of Priority Crime Investigation
DTI	Department of Trade and Industry
GFC	German Frigate Consortium
GSC	German Submarine Consortium
IMC	Inter-Ministerial Committee
IONT	International Offers Negotiating Team
IPCC	Industrial Participation Control Committee
IPT	Integrated Project Team
JIT	Joint Investigating Team
LIFT	Lead-in Fighter Trainer
LUH	Light Utility Helicopter
MLA	Mutual Legal Assistance
MOD	Minister/Ministry of Defence
MODAC	Ministry of Defence Acquisition (Work Group)
NIP	National Industrial Participation (non-defence)
RFI	Request for Information
RFO	Request for Offer
SCOPA	Standing Committee on Public Accounts
SDPP	Strategic Defence Procurement Package
SOFCOM	Strategic Offers Committee

CHAPTER 1

INTRODUCTION

A. ESTABLISHMENT OF THE COMMISSION

[1] On 15 September 2011, the President of the Republic of South Africa (the President) announced that he would appoint a commission of inquiry into the Strategic Defence Procurement Package (SDPP). This decision was impelled by the incessant allegations of venality in connection with the armaments acquisition process and, in particular, by the legal proceedings instituted by Mr Terry Crawford-Browne in the Constitutional Court in 2010, in which the latter sought an order compelling the President to appoint a commission of inquiry. The President believed that it was in the public interest to establish definitively whether there was substance in the allegations of malfeasance that had been in the public domain for quite some time.

[2] On 24 October 2011, the President followed up by announcing that he had formally appointed, in terms of section 84(2)(f) of the Constitution, the Commission of Inquiry into the Allegations of Fraud, Corruption, Impropropriety or Irregularity in the SDPP (the Armaments Procurement Commission or the Commission). The Commission would be chaired by Justice Legoabe Willie Seriti, with Judge Hendrick Mmolli Thekiso Musi, the Judge President of the Free State High Court (as he then was), and Judge Francis Malesela Legodi of the North Gauteng High Court as his co-commissioners. The latter member of the Commission resigned on 2 August 2013. In the wake of Judge Legodi's resignation, the President decided that the Commission would comprise of the two remaining members only.

[3] The Terms of Reference delineating the scope of the Commission's inquiry were published in Government Notice R926, *Government Gazette* No

34731 of 4 November 2011. Subsequently, the President promulgated the Regulations governing the conduct of the Commission's proceedings by means of Proclamation R4, which was published in *Government Gazette* No 35023 of 8 February 2012. Acting pursuant to section 1(1)(a) and (b) of the Commissions Act 8 of 1947, read in conjunction with paragraphs 3 and 5 of the Regulations, the President declared that the Commissions Act would apply to the Commission.

B. OBJECTS OF THE COMMISSION

[4] The objects of the Commission are defined as follows in its Terms of Reference:

'1. The Commission shall inquire into, make findings, report on, and make recommendations concerning the following, taking into consideration the Constitution, relevant legislation, policies and guidelines:

- 1.1 The rationale for the SDPP.*
- 1.2 Whether the arms and the equipment acquired in terms of the SDPP are underutilised or not utilised at all.*
- 1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all:*
 - 1.3.1 if they have, the extent to which they have materialised; and*
 - 1.3.2 if they have not, the steps that ought to be taken to realise them.*
- 1.4 Whether the off-sets anticipated to flow from the SDPP have materialised at all and:*
 - 1.4.1 if they have, the extent to which they have materialised; and*
 - 1.4.2 if they have not, the steps that ought to be taken to realise them.*
- 1.5 Whether any person(s), within and/or outside the Government of South Africa, improperly influenced the*

award or conclusion of any of the contracts awarded or concluded in the SDPP procurement process and, if so:

1.5.1 Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and

1.5.2 Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.

1.6 Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.'

C. DURATION OF THE INQUIRY

[5] The Commission was initially appointed for a period of two years from 4 November 2011, being the date of promulgation of the Proclamation establishing it. However, due to the enormity of the work and at the request of the Commission, the President extended its lifespan up to 30 November 2014, with the addition of a further six months within which it had to write and submit its report to the President. This effectively extended the Commission's duration to 30 May 2015. On 30 April 2015, and again at the request of the Commission, the President granted a further extension to 30 June 2015, with the proviso that the Commission write its report and submit same to the President within six months of the latter date, which means that the Commission had to complete its work by 31 December 2015. The latter extension was intended to afford interested parties the opportunity to submit written and oral arguments to the Commission. The 29th of June 2015 marked the end of the penultimate phase of the Commission's work, namely, the public hearings. This date also signified the beginning of the arduous task of preparing this report that had to be finalised and submitted to the President on or before 31 December 2015.

D. POWERS OF THE COMMISSION

[6] The Commission had the power in terms of the Commissions Act and the Regulations to summon witnesses, to requisition information, to conduct search and seizure operations, to administer an oath or affirmation, and to appoint people with expertise or knowledge in respect of matters requiring expertise or specialised knowledge. However, it did not have extra-territorial jurisdiction and could only exercise its statutory powers in the Republic of South Africa. In its endeavour to access information in the possession of foreign-based entities, it invoked the provisions of the International Cooperation in Criminal Matters Act 75 of 1996.

[7] The laws of the Republic of South Africa—specifically section 4(1) of the Protection of Information Act 84 of 1982 and section 41(1) and (2) of the Promotion of Access to Information Act 2 of 2000—protect from disclosure information relating to armaments; the defence of the Republic; military matters; security matters; or information that could cause prejudice to the defence or security of the Republic, including information relating to military exercises or operations, quantity; characteristics, and capabilities and vulnerabilities of weapons. It is precisely the type of information protected by the strictures of these laws that the Commission needed access to in order to discharge its mandate effectively. In conformity with these laws, the Commission's Regulations made it obligatory for persons in the employ of the Commission to sign an oath of secrecy before assuming duty at the Commission and proscribed the dissemination of any document submitted to the Commission without first obtaining approval from the Chairperson of the Commission.

[8] To ensure compliance with the prescripts issued by or applicable to the Commission, the Regulations, read in conjunction with the Commissions Act, made it an offence to disregard the non-disclosure provisions in the Regulations; not to honour summons issued by the Commission; to make vituperative comments about members of the Commission; to prejudice the inquiry, its proceedings or findings, and to withhold or give false evidence.

E. EXPERTISE

[9] In order to carry out their mandate, the commissioners were assisted by a variety of experts in various fields. The administration of the Commission was headed by the Secretary for the Commission, Ms PN Luphondo. There was an internal legal team, headed by Advocate MF Mdumbe. The Commission was also assisted by an independent forensic auditor, Mr J Mahlangu.

[10] The Commission also engaged the services of forensic and consulting legal researchers, namely, Professor R Palmer, Dr Z Hlophe, Advocate N Melville, and Messrs C Gevers and J Wessels.

[11] The Commission engaged ten evidence leaders, namely Advocates TN Aboobaker SC, BL Skinner SC, CS Sibiya from the Durban Bar, Advocate SH Zondi from the Pietermaritzburg Bar, senior Pretoria attorney M Ramagaga, Advocates SM Lebala SC, M Mphaga SC, P Ngobese, all from the Pretoria Bar, and Advocates LT Sibeko SC and M Sello from the Johannesburg Bar. Three of the evidence leaders, namely, Advocates Aboobaker SC, Skinner SC and Sibiya resigned before the Commission could conclude the public hearings.

[12] The letter of resignation of Advocates Skinner SC and Sibiya is in the public domain. Some of its contents will be dealt with later in the report.

[13] The abovementioned experts contributed significantly to the work of the Commission. It must also be recorded that some of the parties who participated in this Commission were represented by legal representatives who contributed immensely to work of the Commission. We are indebted to the legal representatives who assisted us in the Commission.

[14] The factual findings and conclusions contained in this report are those of the Commissioners.

F. APPROACH OF THE COMMISSION

[15] The Commission executed its mandate in four distinct phases. The first phase commenced in early January 2012 and was solely dedicated to

preparatory work that entailed setting up an office, the recruitment of personnel and drawing up foundational documents such as the Commission's 'road map', media policy directives and practice guidelines. During this phase a notice was issued inviting interested parties to make submissions to the Commission on any of its terms of reference while the practice guidelines were also gazetted. All this work was carried out from April to June 2012 at the temporary premises of the Commission at Salvokop. Towards the end of June 2012, the Commission relocated to Isivuno House in the Tshwane city centre. The latter offices were ideal for their close proximity to the Sammy Marks Council Chamber where the public hearings would be held.

[16] The second phase entailed trawling for information pertinent to the Commission's Terms of Reference, conducting private investigations and interacting with entities and persons with intimate knowledge of the SDPP, both inside and outside the country. This phase also saw the Commission collecting a substantial body of documentation from various sources, including government departments, Armscor, the Cabinet Secretary, Parliament, the South African Police Service, the National Prosecuting Authority and other entities. The documents were perused, analysed and archived.

[17] The penultimate phase of the Commission's work, the public hearings, commenced on 19 of August 2013 and concluded on 29 June 2015. During this phase, 54 witnesses with knowledge of the SDPP process gave evidence before the Commission. Among them were the former President of the Republic of South Africa, a former Minister of Defence, a former Deputy Minister of Defence, a former Minister of Trade and Industry, a former Minister of Finance, the Chief of the South African National Defence Force, representatives of global defence companies that were ultimately awarded contracts to supply the military equipment that constituted the SDPP and one of their consultants, as well as former and current officials of government departments and the end-users of the armoury purchased, namely, naval and air force personnel. Critics and other

witnesses not affiliated to the government also testified. Witnesses gave evidence under oath or solemn affirmation. Legal representation and cross-examination were allowed.

[18] The fourth and final phase entailed the preparation of this report, which, according to the Commission's Terms of Reference as amended, had to be finalised and submitted to the President on or before 31 December 2015.

G. HISTORICAL BACKGROUND TO THE INVESTIGATION

[19] The acquisition of the SDPP was preceded by a complete overhaul of the policies applicable to the acquisition by the Department of Defence (DOD) of so-called Category 1 Defence Matériel—that is, military equipment not commercially available. The review was initiated by the Minister of Defence in August 1994 when he issued an instruction that the management, execution and structure of acquisition in the DOD be investigated. The outcome of this investigation was the establishment of new acquisition procedures and approval forums. The newly created forums, namely the Armament Acquisition Control Board (AACB), the Armament Acquisition Steering Board (AASB) and the Armament Acquisition Council (AAC), replaced forums in place hitherto. A new industrial participation policy was also formulated in terms of which all major procurement contracts had to contain counter-trade agreements. Armscor was retained as the State tender board. These policy changes were approved between February 1995 and May 1996. On the heels of these changes followed the White Paper on Defence and the Defence Review that were approved by Parliament in May 1996 and April 1998 respectively.

[20] The SDPP was executed in accordance with the new policies. On 18 November 1998, the South African Government announced the preferred bidders from whom certain equipment would be acquired, and on 15 September 1999 it approved the acquisition of 24 Lead-in Fighter Trainer ('LIFT') aircraft (Hawk 100); 28 Advanced Light Fighter aircraft ('ALFA'—Gripen JAS 39); four patrol corvettes (MEKO A200); three submarines (Class 209) and 30 Light Utility Helicopters ('LUH'—A109) for a total price of

R29,992 billion. On 3 December 1999, the Government, through the DOD and its arms acquisition arm, Armscor, effectuated its decision by signing contracts with the global defence companies chosen to provide the armoury.

[21] Less than a week before the announcement of the decision to purchase the military equipment, the SDPP became the subject of a heated debate in Parliament. On 9 September 1999, a member of Parliament cast aspersions on the integrity of certain individuals who were involved in the procurement process; questioning the wisdom of the decision and making serious allegations of venality against certain individuals and entities while calling for an investigation into the SDPP.

[22] The rumblings of discontent, controversy and allegations of malfeasance in connection with the SDPP prompted wide-ranging investigations by three entities in the Republic of South Africa. The maiden investigation was an audit of the SDPP for the period ended March 2000, conducted by the Office of the Auditor-General. On 15 September 2000, the Auditor-General issued a report titled 'Special Review by the Auditor-General of the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the DOD', in which he found that

'... material deviations from generally accepted procurement practice were discovered. The explanation provided by DoD for this material deviation does not appear to be satisfactory. Based on the review performed at prime contractor level there were no other material findings other than those mentioned in paragraph 3.3-3.9.

The review focused mainly on the awarding of contracts to prime contractors. Many allegations regarding possible irregularities in contracts awarded to subcontractors exist, of which the findings in paragraph 3.6.1 is an example. I recommend that a forensic audit of or special investigation into these areas be initiated.

Furthermore, I am concerned that the guarantees for national industrial participation may not be sufficient.'

[23] The Auditor-General submitted the above-mentioned report to Parliament, which in turn submitted it to the Standing Committee on Public Accounts ('SCOPA'). SCOPA, after considering the report and large amounts of unsolicited evidence from a number of different sources, and having heard evidence, recommended in its 14th Report, dated 30 October 2000, an independent and expert forensic investigation to prove or disprove once and for all the allegations of corruption relating to the procurement process. SCOPA felt that the investigation would be best served by combining a number of areas of investigative expertise and legal competence and authority. It recommended an exploratory meeting with the Auditor-General, the Heath Special Investigating Unit, the Public Protector and the Investigating Directorate of Serious Economic Offences so that the best combination of skills could be found for such an investigation. The National Assembly adopted this report on 3 November 2000.

[24] The four above-mentioned agencies met on 13 November 2000 with a view to establishing a Joint Investigation Team (JIT). Three of the agencies formed the JIT, namely the Office of the Public Protector, the Office of the Auditor-General and the Investigating Directorate of Serious Economic Offences. The Auditor-General was designated as the coordinator of this investigation. The JIT focused on alleged irregularities; cost to the State of the Gripen and the Hawk aircraft; selection of prime contractors for the LIFT programme; selection of all subcontractors for all the programmes; review of Armscor and the DOD procurement procedures and regulations; the review of all final contracts; and the independence of role-players.

[25] The JIT report was tabled in Parliament on 14 November 2001 and subsequently referred to SCOPA and to the committees on Defence, Ethics, Finance, Justice, Public Service and Administration, and Trade and Industry. The JIT concluded, amongst others, that –

'[n]o evidence was found of any improper or unlawful conduct by the government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and

cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Minister's Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position is flawed.'

[26] In December 2001, following the JIT investigation, SCOPA submitted recommendations to Parliament as part of its 15th Report for adoption by the House. SCOPA committed to interact on an ongoing basis with the relevant departments and parastatals to monitor the proper implementation of the recommendations of the JIT report. Among other things, SCOPA committed to monitor ongoing investigative work conducted by the relevant agencies that would report to Parliament in terms of their legal mandates and through their normal channels of accountability.

[27] Meanwhile, and already on 31 October 2000, the Auditor-General had referred his report on the selection process of the SDPP and the 14th Report of SCOPA to the Investigating Directorate of Serious Economic Offences (IDSEO), as it was known prior to its incorporation into the Directorate of Special Operations (DSO, also known as 'the Scorpions'). On 6 November 2000, as part of the JIT investigation and in terms of section 28(13) of the National Prosecuting Authority Act 32 of 1998 ('the NPA Act'), the Investigating Director of IDSEO instituted a preparatory investigation into allegations of fraud and corruption in connection with the SDPP. Section 28(13) empowers the Investigating Director to hold a preparatory investigation in order to determine whether there are reasonable grounds to conduct an investigation in terms of section 28(1)(a) of the NPA Act. On 24 August 2001, the Investigating Director instituted an investigation, as opposed to a preparatory investigation, into the suspected commission of offences of fraud and/or corruption arising out of the acquisition of the SDPP. Although the JIT finalised and published its report in November 2001, the DSO investigation into possible commission of criminal offences continued.

[28] The DSO investigation into the SDPP had various legs. It appears from an internal memorandum of the DSO, dated 2 December 2008, which was intended as a response to a letter of 1 December 2008 from SCOPA to Advocate M Mpshe SC about the status of the investigations, that in respect of some of the investigations a decision was taken not to prosecute anybody due to insufficient evidence (the DASA leg). In relation to the German Frigate Consortium (GFC) leg, which had its genesis in newspaper reports, the team was of the view that no meaningful progress would be made until information in the possession of the German authorities was obtained. The BAE leg was proceeding satisfactorily as the investigating team was cooperating informally with the Serious Fraud Office (SFO) of the UK and had received information spontaneously from the Swiss authorities. The Conlog leg became stagnant after the resignation of officials assigned to it in 2003. The investigation that the team had focused on since 2001 and that proceeded furthest was the Shaik/Nkobi/Zuma/Thint leg. The team had this to say about this leg of the investigation:

'As will be seen below, this investigation and prosecution ultimately included offences that were entirely unrelated to the Arms Deal. It has thus become a misnomer to regard the Shaik/Nkobi/Zuma/Thint leg as an "Arms Deal" prosecution, when in fact it is not.'

[29] The aforementioned investigation was extended on 22 October 2002, on 8 August 2005 and again on 1 December 2006. The essence of the additional offence, according to the investigating team, was that the current President *'had fraudulently failed to disclose the payments he had received from Mr Shaik and his companies to Parliament, the Cabinet and SARS.'* This assertion bolsters the earlier statement that this investigation did not form part of the so-called 'Arms Deal' investigation.

[30] On 6 July 2009, the Directorate for Priority Crime Investigation (DPCI) was launched as an independent directorate within the South African Police Service in terms of section 17C of the South African Police Service Act 68 of 1995. Its mandate is to prevent, combat and investigate priority crimes. The

DPCI inherited all investigations relating to the SDPP from the DSO, namely 'GFC: Brooklyn CAS 914/11/2009' and 'BAE: Brooklyn CAS 916/11/2009'. Although reference is also made to 'GSC: Brooklyn CAS 915', it would appear that no investigation was carried out in respect of the acquisition of the submarines. Similarly, no investigation was ever instituted in respect of the Light Utility Helicopter (LUH) programme. The internal memoranda of the DPCI, dealt with in more detail below, recommended the closure of SDPP investigations related to BAE and GFC only.

[31] On 16 September 2010, Colonel Johan du Plooy, the investigator assigned to the SDPP investigations, recommended to Major General Meiring, the Head of the Commercial Crime Component in the DPCI, that Project BAE: Brooklyn 916/11/2009 and Project GFC: Brooklyn 914/11/2009 be closed. General Meiring, in turn, recommended to the Head of the DPCI, Lt General Anwar Dramat, that the abovementioned investigations be discontinued. The recommendation was approved. Among the reasons cited, were the following:

- Several companies involved in this matter no longer existed, which would impact on obtaining evidence
- Bank and company records are only kept for five years in terms of the legal provisions
- There was no prima facie case against any person
- Some of the main suspects had passed on and to institute a successful investigation against the secondary suspects would be a major challenge
- Approximately 460 boxes of documents and 4,7 million pages of documents—not evidence—would need to be perused and analysed
- Evidence sought has become stale and it would be difficult to collect and collate it
- Many witnesses reside abroad and would require to be interviewed to determine whether they could provide information that could substantiate the allegations

- They would need cooperation of agencies in foreign countries, such as the SFO in the United Kingdom and German authorities, most of which had closed the investigations into the SDPP.

[32] To avoid confusion, it is apt to digress and provide an overview of how the IDSEO, DSO and DPCI came about. The IDSEO was formerly known as the Office for Serious Economic Offences (OSEO) and was established by the Investigation of Serious Economic Offences Act 117 of 1991. This Act was repealed and its provisions were substantially incorporated into the NPA Act of 1998 that was enacted as national legislation to give effect to section 179 of the Constitution. Section 7 of the NPA Act provides for the establishment of Investigating Directorates. In terms of section 43(7)(a) of the NPA Act, the OSEO became the IDSEO and was deemed to have been established by the President in terms of section 7 of the NPA Act. The IDSEO was vested with authority to investigate, *inter alia*, offences of fraud and corruption in terms of the Corruption Act 94 of 1992. In order to prioritise particular serious criminal or unlawful conduct committed in an organised fashion, the DSO was established by section 7(1) of the NPA Act after its amendment by the NPA Act Amendment Act 61 of 2000. In terms of section 20 of the latter Act all former Investigating Directorates, including the IDSEO, ceased to exist as from 12 January 2001, on which date they became part of the DSO. As stated above, the DSO was superseded by the DPCI in July 2009.

H. OVERHAUL OF ACQUISITION AND NIP POLICIES

1. DEPARTMENT OF DEFENCE

[33] The Joint Investigation Team (JIT) made certain recommendations for implementation by the DOD and Armscor. The DOD incorporated the JIT recommendations into the 'Department of Defence Instruction ('DODI') ACQ/00005/2003 Policy and Procedure for the Acquisition of Armaments – DAP 1000 (Edition 1)'. This 'DODI' was promulgated in November 2003. However, as it did not comply with the DOD's prescripts, it was approved on condition that it was resubmitted in the prescribed format to include, for example, a Ministerial Directive, the 'DODI', and a Joint Defence Publication.

Edition 2 of the policy was approved on 20 October 2004. In May 2010, the prescribed format for DOD policies changed again and the updated policy was promulgated as 'DODI/ACQ/00005/2003 (Edition 3) Policy, Process and Procedure for the Acquisition of Armaments in the DOD – DAP1000'.

[34] Other changes introduced by the DOD related to the approval forums. In 2007, the Minister of Defence ruled that the Staff Targets for non-cardinal projects should be approved at AASB and not at AAC level. This amendment was included in the policy referred to above. Furthermore, the Minister of Defence and Military Veterans ruled in June 2011 that all milestone documentation for cardinal projects must first be recommended by the Chief of the SANDF before submission to the AAC for final approval. These changes would formally be promulgated as amendments to existing acquisition policy.

[35] The review of acquisition policy in the DOD is an ongoing process. Over the previous two years the DOD team, led by Captain Jordaan, has been reviewing the DOD's Acquisition Policy and Process. It has prepared a Ministry of Defence Directive, an Acquisition Policy and an Acquisition Manual. The Directive was due to be presented to the Defence Secretariat Council. Should the Secretariat Council be satisfied with the directive it would be presented to the Minister for approval. The Acquisition Manual has been distributed within the DOD for final comment by the end of August 2015.

2. DEPARTMENT OF TRADE AND INDUSTRY

[36] A former Minister of Trade and Industry, Mr Alec Erwin, testified that many lessons were learnt from the SDPP process, which prompted adjustment to the National Industrial Participation (NIP) policy. He said that adjustments were made and incorporated in subsequent policy initiatives in both the DTI and the Department of Public Enterprises. This process has been ongoing. In December 2012, Cabinet approved a revised NIP policy. The revised NIP policy, together with other procurement policy instruments, is designed to support the production sectors of the economy, with special emphasis on the value-adding and tradable manufacturing sectors. The

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revised NIP policy is based on lessons learned through implementation of the NIP, and has been the subject of extensive research and significant and ongoing engagement with the private sector. The Revised National Industrial Participation Guidelines of 2013 provide practical effect to Cabinet's decision and are designed to update and strengthen the NIP and align it with the suite of other procurement instruments as well as maintain its core principles and objectives.

CHAPTER 2

EVIDENCE AND INFORMATION GATHERING AND ANALYSIS

A. INFORMATION AND EVIDENCE TENDERED BY ORGANS OF STATE AND OTHER PUBLIC AND PRIVATE INSTITUTIONS IN THE REPUBLIC OF SOUTH AFRICA

[1] The prominence of the Strategic Defence Procurement Package (SDPP) in the South African public discourse for almost two decades, resulted in a vast amount of information on the subject—mostly in the form of newspaper articles, books and information on websites dedicated to the SDPP—being readily available. However, to establish authoritatively, amongst others, what prompted the new democratic South African Government to embark upon an acquisition of such unprecedented scale; what regulatory framework was used; who the role players were; the quantities of equipment purchased; and what prompted this and other investigations into the SDPP, the Commission invoked its powers of compulsion stipulated in section 3(1) of the Commissions Act 8 of 1947 to requisition information from State departments, Chapter 9 institutions and statutory bodies. The information and evidence obtained by the Commission pursuant to this process and the challenges it confronted are set out hereunder.

1. PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

[2] Parliament played a crucial role in the processes preceding and following the SDPP mainly through the Standing Committee on Public Accounts (SCOPA). Unsurprisingly, therefore, it was the second institution the Commission turned to for information shortly after its inception. (The first was the South African Constitutional Court, which provided the Commission with the record of the matter between *Crawford-Browne and the President of the Republic of South Africa* CCT 103/10.) At this incipient stage of the investigation the Commission's request for information, directed to the

Speaker of the National Assembly, was couched in broad terms and sought all the information pertaining to the SDPP generated by or submitted to Parliament or any of its committees.

[3] In response to this request, under cover of a letter dated 14 June 2012, the Speaker of the National Assembly provided the Commission with the following documents together with a detailed index:

Annexure A

- i. Minutes of meetings of the Joint Standing Committee on Defence, the Portfolio Committee on Defence and SCOPA
- ii. Applications for and approvals of trips of the committees
- iii. Submissions to the public hearings on the Defence Review
- iv. Reports of the various portfolio committees on the 'Joint Investigation Report into the Strategic Defence Procurement Packages'
- v. SCOPA's investigation into the Arms Procurement Package
- vi. Minutes of the National Assembly relating to the arms procurement
- vii. Publications produced by the National Assembly Table titled 'Procedural Developments in the National Assembly'.

Annexure B

- i. Confidential documents submitted to Parliament by the Ministry of Defence
- ii. Confidential documents submitted to Parliament by the Armaments Corporation of South Africa SOC (Armcor).

[4] The confidential documents received from the DOD (as it then was) and Armcor included Cabinet presentations, the Special Ministerial Briefing, minutes of the Inter-Ministerial Committee (IMC) meetings, Cabinet decisions; contract data packs; a document entitled 'Affordability of the Defence Strategic Armaments Packages: An assessment of their Economic, Fiscal and Financial Impacts, August 1999' (the Affordability Study Report); and the umbrella agreements.

2. THE PRESIDENCY AND CABINET

[5] Although a number of approval forums and teams participated in the SDPP process, it was ultimately the IMC—also referred to as the Cabinet Sub-committee or Ministers' Committee—and Cabinet that played a central and decisive role in the procurement of the armaments. The IMC was chaired by Mr Thabo Mbeki, Deputy President at the time and later President of the Republic of South Africa. The committee was further composed of the Ministers of Defence, Trade and Industry, Finance and Public Enterprises. It provided executive oversight and policy guidance to the procurement process and reported to Cabinet as ultimate decision-making structure. Cabinet approved the suppliers of each of the equipment types under the SDPP. As a result, the deliberations of these two structures, the documents and presentations that formed the bedrock of the deliberations and the decisions they took, were deemed crucial to the work of the Commission. To gain access to these documents, the Commission requested Cabinet and the Presidency, through the Secretary of Cabinet and the Director-General in the Presidency, Dr Cassius Lubisi, for all Cabinet minutes, the minutes of the IMC and all other ancillary documents. It is worth noting that the interaction with the Secretary of Cabinet, as with all the institutions dealt with in this part of the report, was not a single event but continued throughout the Commission's inquiry.

[6] Following the request, the Secretary of Cabinet made available to the Chairperson of the Commission, under cover of a letter of 11 April 2013, all Cabinet minutes relating to the SDPP. Initially, due to the nature and sensitivity of the information contained in the documents, the Secretary of Cabinet implored the Commission to take precautionary measures to ensure that the documents were secured at all times and to seek approval from the Secretary of Cabinet before disseminating any of the minutes to third parties. However, on 19 April 2014 and after engaging with the Commission on the matter, the Secretary of Cabinet informed the Commission that he had declassified all the Cabinet minutes relating to the SDPP, in effect lifting all the strictures mentioned above.

[7] The Secretary of Cabinet also facilitated, at the request of the Commission, the declassification of the Affordability Study Report, the National Industrial Participation Programme (National Industrial Participation Policy of 1997) and the SDPP umbrella agreements (or SDPP contracts).

[8] With regard to the SDPP contracts, the Commission observed that clause 18.5 of the Corvette Agreement; clause 19.5 of the Submarine Agreement; clause 19.5 of the Hawk/Gripen Agreement; and clause 17.5 of the Light Utility Helicopter Agreement vested the discretion to disclose the contents thereof in the Government of the Republic of South Africa. These clauses are worded similarly and provide:

‘The South African Government shall not be precluded from disclosing any information it deems to be in the public interest, save that it shall not be entitled to disclose any information of a commercial or technical nature and which is confidential, without the written agreement of the Seller.’

[9] On the basis of these clauses, the Commission urged the Government, through the Office of the Secretary of Cabinet, to exercise its discretion and disclose the SDPP contracts. Alternatively, it prevailed on Government to instruct Armscor to redact commercial and technical clauses in the contracts so that they could be dealt with openly during the public hearings. On 7 April 2014, the Cabinet Secretary informed the Commission that in accordance with clauses 1.2 and 1.3 of the Minimum Information Security Standards (MISS)—approved by the Cabinet on 4 December 1996 as the national information security policy—he had referred the matter to the DOD to obtain consent to declassify the documents as required in terms of the MISS. This process culminated in the Commission receiving unredacted versions of the SDPP contracts for its own use, and redacted versions, which were distributed to some of the interested parties. This meant that witnesses could be directed to the relevant clauses in these contracts and asked to comment thereon.

3. THE DEPARTMENT OF DEFENCE AND ARMSCOR

[10] While the acquisition that is the subject of this inquiry was embarked upon to procure armoury for the DOD, Armscor became involved in the process as the long-standing acquisition agency of the DOD. In May 2012, the Commission requisitioned virtually all information relating to the SDPP in the custody of both the DOD and Armscor, including minutes of meetings; bid documents; policy documents; evaluation reports; details of subcontractors; and contracts entered into between the South African Government and the winning bidders. These requests for information were not one-off but spanned the entire duration of the inquiry.

[11] Pursuant to the Commission's request, Armscor and the DOD conducted a search and generated an inventory containing information on the five projects at the heart of the SDPP, namely *Project Ukhozi* (ALFA), *Project Winchester* (LIFT), *Project Flange* (LUH), *Project Sitron* (corvettes) and *Project Wills* (submarines). The DOD advised that the documentation was so extensive it could fill a '6x6 store room'. This process resulted in the Commission receiving copies of the documents listed hereunder, most of which were classified as confidential, secret or top secret:

PROGRAMME	FILE PREFIX	DOCUMENTS	PAGES	FOLDER SIZE (bytes)
<i>Aircraft</i>	SDPA	1 486	23 761	4 019 946 171
<i>Corvettes</i>	SDPS	1 341	13 416	1 762 590 992
<i>Industrial Participation</i>	SDPD	273	5 631	1 653 348 632
<i>Military</i>	SDPM	1 756 (17)	21 4853	2 870 657 990
<i>Submarine</i>	SDPN	344	14 848	4 133 416 420
<i>Procurement</i>	SDPP	128	2 901	501 123 777
TOTAL		5 328	82 140	14 941 083 982

[12] The documents were painstakingly studied by the Commission and those deemed relevant to the terms of reference of the Commission were forwarded to the evidence leaders.

[13] In addition to these documents and following the Commission's query of 18 July 2012 about the rationale for the acquisition and whether the equipment was being utilised, the Chief of the SANDF on 31 October 2012 forwarded to the Commission the responses from the Chief of the SA Air Force and the Chief of the SA Navy. The letter from the Chief of the SANDF indicated that the information on the actual sea-days achieved by the submarines and the corvettes between 2005 and 2012 financial years; the ratio of force preparation versus force employment of the Hawk, the Gripen and the Light Utility Helicopter fleet; and the operating cost of the hours flown by these capabilities was extremely sensitive.

[14] On 2 and 3 July 2013, and again on 1 August 2013, the DOD provided the Commission with more detailed information relating to the armament types acquired, such as the number in operation; date of commissioning; budgeted and actual flown hours in the case of the aircraft; planned and actual sea-days achieved per class of ship (and not per vessel) from date of commissioning.

[15] In August 2012, the Commission requested information relating to subcontractors with whom the prime or main contractors concluded agreements. Armscor provided a list to the Commission although it could not guarantee its completeness as it did not have any direct relationship with the subcontractors or control over whom the main contractors concluded agreements with. From the information provided by Armscor the Commission identified 94 South African entities relating to the first-tier subcontractors who supplied systems and/or equipment. This formed the basis of a request to the Companies and Intellectual Property Commission (CIPC) for detailed information in respect of these entities, including shareholding structure, names of board members, and companies in which these companies had shares, from date of incorporation to date, in the end relating to a total of 125 companies.

4. DENEL

[16] The Commission also requisitioned Denel's annual reports from 1999 to 2006. These were duly provided to the Commission in September 2012 by Denel's Chairman.

5. THE DEPARTMENT OF TRADE AND INDUSTRY AND THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

5.1. NIP obligations

[17] In 2012, the Commission sought from the Department of Trade and Industry (the DTI) information that would provide a broad overview of the role played by the DTI in the SDPP process. It received the following as a result of its preliminary engagement with the DTI:

- NIP Programme annual reports for the years 2002 to 2009
- Consolidated Summary of NIP Programme Obligations (2012)
- NIP Programme Implementation – Parliamentary Committee Report (2012)
- NIP Programme Presentation to the Portfolio Committee on Trade and Industry (2012).

[18] Most importantly, the DTI explained that its main involvement in the SDPP was that of providing input and recommendations on the business plans for projects submitted by the prime contractors as part of their offset obligation requirements. The DTI was not involved in dealings with the subcontractors on any matter. It also provided details of all projects undertaken by the prime contractors in fulfilment of their offset obligations.

[19] In July 2013, a few weeks before the public hearings were due to commence and whilst the officials designated by the DTI were consulting with the Commission's evidence leaders, more information pertinent to the involvement of the DTI in the SDPP was made available to the Commission, including:

- the project files of the various obligors
- the review minutes and progress report
- IPCC Minutes 1997-2012

- the 'National Industrial Policy of the Republic of South Africa: final version', dated 18 February 1997
- the DTI brochure on the NIPP
- the DTI 'Revised NIPP Guidelines, 2008'
- a report by Mosaka Economic Consultants titled 'Macro-Economic Impact Assessment of the National Industrial Participation Programme', dated 11 February 2010.

[20] The DTI also sourced the draft final report on the impact assessment undertaken at Denel SAAB Aerostructures relating to an aerospace project. These documents were analysed by the Commission's forensic auditor and were referred to extensively in the evidence of DTI officials.

[21] The DTI further advised that to the extent that the documents it submitted to the Commission related to its administration of the NIP obligors' obligations, their disclosure would be in the public interest. The DTI indicated it would not raise any objections if these documents were dealt with openly during the public hearings.

5.2. Company information

[22] Among the documents obtained by the Commission from South African organs of state through its power of compulsion, were two requests for mutual legal assistance (MLA) from the United Kingdom's Serious Fraud Office (SFO), addressed to competent authorities in South Africa and respectively dated 26 June 2006 and 16 October 2007. First, it appears from these requests for MLA that under its powers of compulsion in section 2 of the Criminal Justice Act 1987 (UK), the SFO obtained from Lloyds Bank account details of Red Diamond, a company owned by BAE. Moreover, the SFO averred that the analysis of these accounts showed that funds paid to BAE consultants were further dispersed to accounts belonging to persons and entities, some of which were located in South Africa.

[23] As regards companies, the Commission deemed it vital to establish, first and foremost, who owned the entities that received payments from BAE/SAAB consultants; who their directors were; when they were

incorporated; and in which financial institutions in the RSA they held banking accounts. To that end, in June and September 2012, the Commission sent letters of request to the CIPC requesting information relating to the nature of the business; names, surnames, identity numbers and contact details of directors; the status of directors; physical addresses; the appointed auditors and the banking details of approximately 55 entities. Later, on 26 September 2012, the Commission requested the CIPC to provide it with full personal and business profiles; auditors and bank account numbers of 144 directors of entities whose names were listed in the SFO documents.

[24] Subsequently, the Commission changed its *modus operandi* and issued summons, particularly in April and May 2013, requiring the CIPC to produce the CM forms of approximately 80 entities.

[25] The purpose of this exercise was to establish whether any of the persons who were involved in the decision-making processes relating to the SDPP were the beneficial owners, principals or ultimate beneficiaries of any of the entities listed in the requests referred to above. The information acquired pursuant to the aforementioned requests for information and summons was forwarded to the forensic auditor for analysis. No such *nexus* was found by the Commission's auditor.

6. THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

[26] The Commission directed a number of queries to the Department of Justice and Constitutional Development (now called the Department of Justice and Correctional Services), including some of its branches and units, such as International Legal Relations, the Office of the State Attorney and the Office of the Master of the High Court.

6.1. Requests for mutual legal assistance (MLA)

[27] The preliminary investigation of the Commission revealed that in about June 2006 and on 19 August 2007, the SFO in the United Kingdom and the German authorities submitted formal requests for MLA to the South African Government through the Office of the Director-General in the

Department of Justice, which in terms of the International Cooperation in Criminal Matters Act 75 of 1996 is the Central Authority in the Republic of South Africa.

[28] On 15 May 2012, the Commission requested the Director-General of Justice to provide it with copies of the requests for MLA. Following the request, the Commission received two copies of requests for MLA, dated 26 June 2006 and 16 October 2007 respectively, from the Director of the SFO, Mr Robert Wardle, containing names of various individuals and entities that the SFO, in partnership with the Ministry of Defence Police in the United Kingdom, were investigating.

[29] Despite a diligent and meticulous search, the MLA submitted by the German authorities could not be located.

6.2. Liquidation and distribution accounts

[30] On 15 May 2012, the Commission requisitioned the liquidation and distribution accounts of the estate of the late Minister of Defence, Mr Johannes 'Joe' Modise. Pursuant to this request, it received the first and final liquidation and distribution account and the redistribution agreement in the estate of the late Minister. In these documents the Commission found no information that was material to any of the issues it was seized with.

7. COURT RECORDS

7.1. The Constitutional Court of South Africa

[31] The very first set of documents to be requisitioned by the Commission in 2012 was a complete record of the Constitutional Court matter between *Terry Crawford-Browne and The President of the Republic of South Africa* CCT 103/10. The record was first provided in soft-copy format, and in November 2012 the Court gave the Commission a hard copy of the record. It comprised a myriad of documents, including the affidavits of Mr Gary Murphy, the Principal Investigator of the SFO, and Colonel Johan du Plooy of the Directorate of Priority Crime Investigations; copies of the loan agreement between the South African Government and Barclays Bank;

affidavits of Dr R Young, Dr G Woods and Mr Andrew Feinstein; the JIT report and miscellaneous other documents.

7.2. The Supreme Court of Appeal

[32] In addition to the court records referred to above, on 22 February 2013 the Commission received a complete record of the matter between *SA Fakie No and CCII Systems Pty Ltd*, SCA Case 653/2004, from the Supreme Court of Appeal.

7.3. The Specialised Commercial Crimes Court and High Courts

[33] The Commission also approached the Specialised Commercial Crimes Court which was seized with matters between the *State and Ian Pearce* (11 December 2002) and the *State v Michael Woerfel*, and requested court records relating to these cases. The Commission was informed telephonically that all efforts to locate the records in these matters were unsuccessful and that they were probably destroyed by an inferno that engulfed the court's offsite storage facility.

[34] The Commission also requisitioned and obtained court records from the Western Cape and the North Gauteng High Courts in matters instituted by Dr Richard Young and Mr Crawford-Browne in connection with the SDPP.

8. THE NATIONAL TREASURY

[35] The Department of Finance (now the National Treasury) was one of the four national government departments that were represented in the IMC by the then Minister of Finance, Mr Trevor Manuel. As a result of its involvement in the procurement process, it amassed a large volume of documentation on the SDPP, which, depending on the nature of the documents, are divided up amongst its Legal Services, Public Finance and Asset and Liability Management Divisions and the Office of the Accountant-General. The information in the custody of the National Treasury relates primarily to the financing of the SDPP, the formulation of the budget and the manner in which the expenditure was reflected in the Defence budget. It includes the following documents which the National Treasury provided to the Commission:

- The arms procurement loan agreements that were entered into and signed off on 25 January 2000 between the Department of Finance as the borrower and four international banks as the lenders:
 - Barclays Bank PLC
 - AKA Commerzbank
 - French Buyer Credit Agreement (Société Générale)
 - Mediocredito Centrale SpA
- The document entitled 'Affordability of the Defence Strategic Armaments Packages: An assessment of their economic, fiscal and financial impacts' (August 1999).

[36] The Commission enquired from the National Treasury how it should handle and deal with confidential documents provided to the Commission. The National Treasury pointed out that the documents were given to the investigators of the Commission for their exclusive use and to assist the Commission in its work and not for public distribution. It pointed out that the documents were privileged and that this privilege was recognised by a full bench of the Cape High Court in the case of *ECAAR South Africa v President of the RSA and others* (case no 5129/2002 of 26 March 2003). It stated that only the Commission had a right to have sight of and to ask questions on these documents. Given the privileged nature of the documents, the National Treasury requested that any hearings pertaining to the documents be held *in camera*. In the event it was not necessary for the Commission to go *in camera* in relation to those documents.

9. THE AUDITOR-GENERAL OF SOUTH AFRICA

[37] The Office of the Auditor-General conducted the maiden investigation into the SDPP between September 1999 and September 2000, culminating in the Auditor-General's 'Special Review Report of the Selection Process of the SDP for the Acquisition of Armaments' in September 2000. This report and the Joint Investigation Team (JIT) report were submitted to the Commission by the Speaker of the National Assembly. The Commission

found these reports valuable to its investigations due to the extensive work done by the Auditor-General and the JIT.

[38] At the beginning of July 2012, the Commission's legal team met with the Auditor-General, Mr Terence Nombembe. At this meeting the Auditor-General provided a preliminary outline of the documents in the custody of the Auditor-General's Office and the process that resulted in the final report. The Auditor-General also arranged a meeting between the Commission and the former Auditor-General, Mr S Fakie.

[39] The Commission identified two sets of documents in the possession of the Auditor-General's Office that could be of assistance to it. The one set was the draft reports prepared individually by the Office of the Public Protector, the National Prosecuting Authority and the Office of the Auditor-General before they were consolidated into a single JIT report. The other was the transcripts of so-called 'Section 28' interviews conducted *in camera* during the JIT investigation. The draft reports of the JIT were particularly significant as allegations about inconsistencies between the draft report and the final JIT report were brought to the attention of the Commission. It was alleged that many substantial and pertinent facts regarding key moments of impropriety appeared in draft versions but not in the final version of the JIT Report, and that the material that was excluded from the final JIT report pointed to sustained irregularity in the conduct of the acquisition. It is for these reasons that the Commission insisted on being provided with the drafts of the JIT reports, which were duly provided by the Office of the Auditor-General in September 2012. The transcripts of the Section 28 interviews were also provided to the Commission.

[40] In acceding to the Commission's request for the draft reports, the Auditor-General added that he was doing so with due cognisance of the statutory obligation to guard against improper disclosure of secret or classified information obtained during the course of an audit, investigation or any other activity performed within the Auditor-General's mandate. With this in mind, he requested that access to these documents be granted only to

persons with security clearance and who had signed a non-disclosure agreement with the Commission.

[41] In respect of Section 28 interview transcripts, the Commission requested the National Director of Public Prosecutions, Mr Mxolisi Nxasana, to grant it permission to refer to them in the public hearings, a request he National Director acceded to.

10. THE INVESTIGATING DIRECTORATE: SERIOUS ECONOMIC OFFENCES (IDSEO), THE DIRECTORATE OF SPECIAL OPERATIONS (DSO) AND THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI)

[42] As stated in Chapter 1, the investigation into alleged criminal conduct in connection with the SDPP commenced in November 2000 and was carried out by the IDSEO, DSO and finally by the DPCI.

[43] During the investigations, the teams assigned to various legs of the SDPP investigations interacted extensively—formally and informally—with the United Kingdom SFO; the Office of the Public Prosecutor in Liechtenstein, the *Landeskriminalamt* of Nordrhein-Westfalen in Germany, the Office of the Attorney-General in Switzerland, and authorities in France. Furthermore, the team assigned to the BAE investigation conducted a search and seizure operation in 2008 on a number of premises linked to BAE and its consultants.

[44] The teams also interviewed a number of people. The entities mentioned in the previous paragraph amassed a considerable amount of information and evidence relating to the SDPP. It would have been remiss of the Commission and a dereliction of duty if it had ignored the evidence and information accumulated by the IDSEO, DSO and DPCI during their investigations. On 15 May 2012, it directed a letter to Lieutenant General Anwar Dramat, the Head of the DPCI and Deputy National Commissioner: South African Police Service: Priority Crime Investigation, wherein it requested:

- Dockets of the three investigations that the DPCI inherited from the DSO, namely CAS914/112009 pertaining to the German Frigate Consortium; CAS 915/11/2009 pertaining to the German Submarine Consortium and CAS 916/11/2009 relating to British Aerospace.
- Correspondence between the IDSEO/DSO/DPCI officials and investigative bodies in other jurisdictions.
- Contact details of officials who were involved in these investigations.
- The names and contact details of institutions or persons, locally and abroad, who could assist the Commission in discharging its mandate.

[45] On 21 May 2012, the Head of the DPCI advised the Commission that due to the extraordinary volume of documents in its possession, a practical process needed to be devised to ensure that all relevant information is provided to the Commission. On 13 July 2012, the Commission conducted an on-site inspection at the DPCI offices in Silverton and was shown information relating to all the legs of the SDPP investigation. This included documents garnered in preparation for court proceedings; bank statements; forensic reports; requests for MLA directed to various countries; and transcripts of interviews conducted in terms of section 28 of the NPA Act. All the information was contained in three proverbial Maersk-sized containers and ran into millions of pages. On this day, the DPCI formally handed over the documentation to the Commission. However, due to the limited storage facilities at the Commission's offices, the Commission could not take physical possession of the documentation. On 1 June 2012, the Commission requested an inventory of all the documentation contained in the ship containers and a briefing by officials who were involved in the investigations. On 26 June 2012, the Commission was informed by Major General JW Meiring that the DPCI did not have a complete inventory of all the documents in its possession and that the majority of files had been scanned and could be loaded on an external hard drive for the Commission.

[46] The Commission's inspection at the DPCI offices was preceded by a meeting between the Commissioners, the Commission's legal team and representatives of the DPCI, namely Colonel Johan du Plooy, Major General Hans Meiring and Brigadier Nicholas van Graan. At the meeting various issues were discussed, including the history of the arms procurement investigation, interactions between South African authorities and foreign-based agencies and the outcome of those interactions. The Commission was told that without the cooperation of international agencies it would be difficult to prove the allegations and that none of these investigative bodies had actually completed their investigations.

[47] It was considered imperative to arrange a briefing for the evidence leaders as well. This briefing took place over two days, on 11 and 12 August 2012. The briefing focused on the investigations into the SDPP conducted by the DSO and the documents and evidence under the control of Colonel du Plooy. At the conclusion of the briefing, Colonel du Plooy handed over to the Commission an external hard drive containing approximately 1,3 million pages of scanned documents relating to all the legs of the investigation referred to above. This information constituted one third of the documents in the containers and was deemed to be the only information that was relevant to Commission's investigation.

[48] It came to the attention of the Commission that on 28 October 2009, Dr Wallner, the Chief State Prosecutor in Liechtenstein, directed a request to the National Director of Public Prosecutions for the takeover of a case of money laundering involving a South African citizen. Attached to the request were certified copies of items contained in the criminal file at the Court of Justice in Liechtenstein. In November 2009, the take-over request, together with a box containing about 800 pages of documents, was received by the NPA.

[49] Subsequently, on 3 December 2009, a meeting was held between NPA and DPCI officials to determine how to deal with this information. Eventually, the information was handed over to Major General Meiring of the

DPCI after the NPA had ceased to have investigative powers following the disbandment of the DSO. On 7 September 2012, the Commission requisitioned this docket from the DPCI. The information was handed over to the Commission for further investigation.

[50] On 13 February 2014, the Commission requested from the DPCI, through Colonel du Plooy, the transcripts of all Section 28 interviews conducted during the JIT investigation. These were duly provided. The NPA Act provides that such interviews take place *in camera* and in terms of section 30 no person may without the permission of the Investigating Director disclose to any person the record of any information given at such an inquiry. It then became necessary to obtain the requisite permission and on 30 January 2014, the Commission requested the necessary approval to use the documents from the National Director of Public Prosecutions, Mr Mxolisi Nxasana. Approval was duly granted on 04 June 2014. The Commission used this material during consultations with witnesses and during the public hearings.

[51] In May 2015, the Commission enquired from Colonel du Plooy whether the DSO ever conducted an investigation into entities or persons in Turkey. Colonel du Plooy stated in his response of 22 May 2015 that when he joined the investigation in 2001, Turkey was one of the countries in which they wanted to conduct searches. However, Advocate Ferreira informed him that the Turkish authorities did not cooperate and the matter was not pursued any further.

11. BRIEFING BY CURRENT AND FORMER DSO/NPA OFFICIALS

[52] As mentioned above, the Commission secured and reviewed a large volume of documents submitted to it by the DPCI. Included were banking documentation; correspondence between investigators and foreign investigative agencies; transcripts of interviews conducted by the SFO; agent reports and supporting documents handed over to the DSO by the SFO' status reports and documents seized during search operations; and a myriad of miscellaneous documents. To enable it to decipher these

documents and to form a complete picture of the amount of work done and areas it needed to focus on, the Commission invited prosecutors and auditors who were assigned to this investigation to a briefing session in Pretoria on 10 November 2012. The session was attended by the Commissioners, the Commission's legal team and researchers. The briefing, which focused on all the investigations conducted by the DSO into the SDPP, was conducted in a closed session by the following current and former officials of the DSO/NPA:

- Advocate Gerda Ferreira, who was in charge of the SDPP investigation until 2003 when she left to join the private sector
- Advocate William Downer SC, Deputy Director of Public Prosecutions in Cape Town. He was the head of the investigation team on the corvette combat suite and the BAE investigations
- Advocate Elize le Roux, a prosecutor assigned to the BAE investigation
- Advocate Anne-Marie Friedman, assigned to the Conlog leg of the investigation before her promotion to DDPP
- Mr Dawood Seedat, an internal auditor on the corvette combat suite leg of the investigation. He is currently in the private sector
- Advocate Anthea van der Byl, who is still in the employ of the NPA and who assisted Advocate Ferreira by analysing bank statements to check for suspicious transactions, preparing summonses for bank accounts and summonses for some individuals for interviews in terms of section 28
- Mr Lucas Venter, an analyst at the DSO.

[53] The abovementioned former and current officials were keen to assist the Commission as they were duly designated in terms of section 28(2) of the NPA of 1998 to conduct the preparatory investigation and subsequently an investigation proper into the allegations of fraud, corruption, racketeering and money laundering in connection with the arms procurement. Since this was done subject to the preservation of secrecy provided for in section 40(1) of the NPA Act of 1998, they were concerned that disclosing the details of

the investigations they were involved in could amount to a contravention of the latter provision and thus the commission of an offence. Accordingly, permission was requested from the acting National Director of Public Prosecution for them to brief the Commission, which permission was granted.

[54] An undertaking of non-disclosure or non-publication of the information given to the Commission was made. However, on 12 November 2012, the deliberations between the investigators, prosecutors, the accountant, the auditors and the Commission made newspaper headlines. We did not know how and by whom the information was leaked to the media. It has to be emphasised that the information provided during the briefing was used purely for assisting the Commission in its investigations.

12. THE NATIONAL PROSECUTING AUTHORITY (NPA)

[55] In May 2012, the Commission requisitioned all documents in the possession of the NPA pertaining to the SDPP, including information generated or considered by it during the JIT investigation; information relating to the preservation order issued by the North Gauteng High Court relating to the freezing of assets belonging to a South African citizen in Liechtenstein; and information submitted to or exchanged between the NPA and foreign institutions and/or functionaries relating to the SDPP.

[56] On 18 May 2012, Advocate Jiba informed the Commission that the investigation relating to the SDPP was conducted by the DSO, which had since been disbanded. She undertook to assist the Commission in obtaining access the requested information.

[57] On 17 July 2012, the Commission reverted to the acting NDPP and informed her that at a meeting with the DPCI on 13 July 2012, the Commission was informed that dockets relating to some of the investigations into the arms acquisition were submitted to the NPA for consideration, and that legal representatives of some of the parties suspected of wrongdoing made representations to the NDPP. The Commission requested this information.

[58] On 20 July 2012, the Commission received 16 arch-lever files from the NPA containing, amongst others, founding affidavits of prosecutors and annexures; the affidavit of Mr Gary Murphy and its annexures; letters of request for MLA to Jersey, the SFO (United Kingdom), Switzerland and Liechtenstein; an application for a search warrant; and the JIT report with all its annexures.

13. THE SPECIAL INVESTIGATING UNIT

[59] It was alleged in documents in the possession of the Commission and in numerous books written on the subject-matter of this inquiry, that evidence and/or information gathered by Ms Patricia de Lille and Mr Terry Crawford-Browne relating to impropriety and criminal wrongdoing in the SDPP was handed over to former Judge Willem Heath for further investigation by the Special Investigating Unit. The Commission assumed that the information and/or evidence amassed by the Heath Special Investigation Unit would be entrusted to the new SIU and its head, Mr W Hofmeyr, after it was established in July 2001.

[60] On 5 April 2013, the Commission wrote a letter to Mr Hofmeyr requesting this information. The SIU, in its response of 2 May 2013, acknowledged that it had received and was in possession of documents and information gathered by Ms De Lille and Mr Crawford-Browne. However, since it was not mandated to investigate any of the allegations, all documents and/or information in its possession were subsequently handed to the agencies involved in the joint investigation, namely the DSO, the Public Protector and the Auditor-General. As recorded in the preceding paragraphs, the Commission sourced information from these entities. Accordingly, the matter was not pursued further with the SIU.

14. THE DEPARTMENT OF STATE SECURITY

[61] In 2008, it was widely reported in the media that the National Intelligence Agency (NIA) had an anti-corruption unit and that the unit had conducted a probe into the arms procurement package. The Commission requested the Department of State Security to confirm whether it has or had such a graft-fighting unit and whether it conducted an investigation into the

SDPP. If it did, the Commission implored the Department of State Security to make available to it any reports compiled by the NIA in this regard. The Department of State Security informed the Commission that it had no information in its possession that was relevant to the Commission's mandate. It confirmed receiving rumours, the majority of which were reports that could not be verified.

15. THE PUBLIC PROTECTOR

[62] In May 2012, the Commission requested the Office of the Public Protector to furnish it with its draft report of the JIT report. However, the Office of the Public Protector could not locate such a document.

16. FINANCIAL INSTITUTIONS

16.1. The South African Reserve Bank

[63] On 29 January 2013, the Commission requested the South African Reserve Bank to submit to it reports of the inflow and outflow of funds, namely the Balance of Payment (BOP) or Cross Border Foreign Exchange (CFE) reports relating to the international banking transactions made in respect of banking accounts of approximately 87 entities and persons. In its reply of 8 February 2013, the Bank drew the Commission's attention to section 33 of the South African Reserve Bank Act 90 of 1989, which prohibits disclosure of information. On 5 April 2014, the Commission issued summons to the Governor of the South African Reserve Bank in terms of section 3(1) of the Commissions Act requiring her to produce the aforesaid reports. The summons was duly served on 29 April 2013.

[64] In its response to the Commission, in which it acknowledged being served with summons on 29 April 2013, the South African Reserve Bank requested further information or clarification in respect of the list of entities or individuals to enable it to extract the relevant information from the database. It further indicated that the search parameter of 1998 to 2012 was too large. Due to its size, the information was provided to the Commission in electronic spreadsheet format. The information covered transactions involving the buying or selling of foreign currency, facilitated by authorised dealers in

foreign exchange, during the period 1 January 1998 to 30 June 2012. The information was provided in Forms A and E, BOP and CFE systems.

[65] The Commission was also informed that authorised dealers are required to retain underlying documents for five years. As a result, documents pertaining to transactions effected prior to May 2008, for example, may not be available. Owing to the size of its database, and the fact that certain searches returned vague and ambiguous results, the Reserve Bank requested more information for each individual/entity to ensure that it could provide accurate information. However, it was able to provide the Commission with positive search results concerning a number of individuals and entities. These results were subsequently forwarded to the forensic auditor for analysis.

16.2. ABSA

[66] On 7 June 2012, the Commission requested from ABSA in terms of section 3(1) of the Commissions Act all banking transactions made since 1997 in five specified accounts. It further required complete details of the signatories to the aforesaid accounts. Later, on 5 September 2012, the Commission requisitioned copies of banking transactions of 11 entities, including paid cheques; credit vouchers; telegraphic transfers; records of inter-account transfers; swift transfers; records of payments; safety deposit details as well as the names, surnames, identity document numbers and contact details of the directors and signatories to the accounts in question.

[67] On 25 January 2013, ABSA provided the Commission with bank statements of the accounts. It advised the Commission that the documents were private and confidential and that neither they nor their content should be disclosed to any person other than the Commission. On 10 April 2013, a further request for banking information of 21 account holders was submitted to ABSA Legal Group Litigation. Pursuant to these requests, ABSA provided the Commission with the requested information.

16.3. First National Bank

[68] On 20 August 2012, the Commission directed a request to First National Bank (FNB) for all banking transactions in respect of one entity owned by the late Richard Charter, including bank statements and details of directors and signatories to the aforementioned account. Further to this request and a subsequent discussion held with the legal division, on 5 September 2012 a further request was made of banking transactions of eight entities, dating back to 1997. On 21 September 2012, the Commission received a disc containing information relating to the abovementioned requests. On 16 November 2012, FNB provided to the Commission further information related to its request of 20 August 2012. On the same day FNB also provided the Commission, pursuant to its request of 5 September 2012, with seven computer discs containing the requested information. However, despite diligent search at its off-site record storage facilities, it could not locate the mandate files of two accounts. On 14 December 2012, another request was submitted to FNB relating to the two accounts. On 13 January 2013, the Commission received one disc containing the requested information. However, FNB could not locate the account opening documentation, deposit slips and cheque images.

16.4. Nedbank of South Africa

[69] On 7 June 2012, requests similar to the ones referred to above were directed to the CEO of Nedbank in respect of four accounts. On 20 June 2012, the Commission received from the Chief Risk Officer of Nedbank a file containing statements of one of the accounts and additional information relating to the other accounts that the Commission was not aware of. On 20 August 2012, a further request was made, this time for banking information of two accounts. On 5 September 2012, an additional 15 account numbers were provided to Nedbank.

[70] On 10 September 2012, the Commission received six files from Nedbank containing client details; opening-account documentation; FICA documentation; statements for the period 1996 to 2012; internet payments; copies of cheques; and swift messages with regard to Outward Telegraphic

Transfers and Inward Telegraphic Transfers. Nedbank provided the Commission with additional information on 17 September 2012. It also pointed out that some of the information could not be retrieved as the compact discs containing the information were found to be corrupted.

[71] On 5 October 2012, more client details, statements, directors' details and BOP reports were forwarded to the Commission. After analysing this information, a follow-up request was submitted on 14 December 2012. On 11 January 2013, more information was provided to the Commission, and, again on 20 February 2013. A further request for information of some 18 accounts was submitted to Nedbank on 10 April 2013. Nedbank once again responded promptly on 30 April 2013.

16.5. Standard Bank

[72] On 20 August 2012, the Commission submitted requests to Standard Bank for information relating to five entities and two individuals. On 5 September 2012 another request for information of 12 entities was submitted. In its response of 10 September 2012, the Bank informed the Commission that efforts were being made to execute the request expeditiously; however, the bank only keeps records for a maximum period of five years. The requested information would have to be retrieved from the archives. On 10 October 2012, the Bank provided information to the Commission in respect of seven entities. On 10 April 2013, the Commission requested legible copies of 28 statements pertaining to one entity.

B. INTERACTION WITH FOREIGN ENTITIES

1. UNITED KINGDOM

1.1. Serious Fraud Office (SFO)

[73] The investigation conducted by the Commission revealed that the SFO in the United Kingdom instituted an investigation into the conduct of BAE. The investigation included the sale of the Hawk and the Gripen Aircraft to the South African Government in 1999. The SFO also established a rapport and mutual cooperation with the NPA and had submitted requests for MLA to Liechtenstein and the People's Republic of China, among others. The Commission thus made an effort to meet with the SFO, and in particular

with the principal investigator, Mr Gary Murphy, and Ms Lydia Jonson, who was a barrister in the case.

[74] On 19 June 2012, Mr Raymond Emson and Mr Murphy agreed to meet with the Commission for an informal discussion to get a sense of what the Commission would require by way of assistance. This meeting took place at the SFO offices in London. Messrs Emson and Murphy undertook to ascertain from the Director of the SFO whether they could in principle assist the Commission.

[75] On 19 August 2012, the SFO informed the Commission that the Director had agreed in principle that the SFO should assist to the extent that it could. It further informed the Commission that in terms of UK domestic law it would be required to notify persons from whom documents were acquired of its intention to disclose them to third parties (such as the Commission).

[76] Before this, on 14 August 2012, the Commission had submitted a formal request for assistance to the Director of the SFO, Mr David Green CB QC. The Commission requested:

- Copies of Mr Murphy's affidavits, including annexures, which he submitted to the South African authorities
- Copies of all the interviews conducted by the SFO pertaining to the South African leg of the investigation, which according to the available information were conducted by Mr Murphy under caution
- Requests for MLA to South Africa and other countries and responses thereto, including evidence provided by South African authorities to the SFO
- Evidence and information submitted to or gathered by the SFO, including contact details and addresses of directors and banking documentation relating to offshore accounts held by BAE's covert advisers
- Bank statements indicating payments made by BAE to Red Diamond Trading
- Copies of agreements between BAE and all its advisers

- Copies of all reports obtained by the SFO from BAE, justifying payments made to advisers.

[77] The Commission further sought confirmation from the SFO whether it offered assistance to the Office of the Public Prosecutor in Düsseldorf in 2007 in connection with the latter's investigation into the affairs of Thyssen Rheinstahl Technik, by executing a search warrant in the United Kingdom at the request of the aforementioned German authorities. Lastly, the Commission inquired whether the SFO had ever conducted an investigation into the affairs of an entity called Merian Ltd.

[78] In its response of 11 September 2012, the SFO informed the Commission that its statutory power to send confidential information obtained during an investigation was circumscribed by certain restrictions such as the duty to notify the persons from whom the information was obtained; to provide them with the opportunity to challenge the SFO decision to provide the information, including resorting to the courts for this purpose and obtaining formal consent from other jurisdictions to forward the information to the Commission. All this could give rise to delays. It therefore implored the Commission to use its powers of compulsion in South Africa to obtain information currently in South Africa, such as Mr Murphy's affidavits. It further requested confirmation from the Commission that nothing received from the SFO would be referred to in the Commission report without prior written consent from it. The Commission submitted a revised request on 10 December 2012 in which it was more specific about the information that was being requested from the SFO.

[79] On 14 December 2012, the SFO advised the Commission to locate Mr Murphy's criminal affidavit—it would appear there was another one for civil proceedings—as it set out comprehensively the fruits of the SFO's investigation into BAE's activities in the RSA. It further advised that the affidavit also contained some of the information obtained from other jurisdictions that provided consent to the SFO to disseminate the information to authorities in South Africa. It added that it was highly unlikely that it would

obtain consent to provide information to the Commission from those who did not give their consent then.

[80] The Commission again met with the SFO in London. At this meeting, the SFO informed the Commission that:

- A number of letters of request were submitted to other jurisdictions and that a number of these were never complied with
- The letter of request for assistance from the German authorities was executed but the SFO did not keep any of the documents that it found in the offices of Alandis and Mallar Inc, both of which are companies belonging to Mr Tony Georgiadis. It recommended that the Commission should liaise directly with the German Prosecutors Martin Fischer and Lioba Borowski of the *Landeskriminalamt* of Nordrhein Westfalen in this regard.
- Although the Swiss authorities gave the SFO permission to share the transcript of an interview that Mr Murphy conducted with Mr Alexander Roberts in Switzerland, this information could not be provided to the Commission as it would appear that the Commission's mandate and objectives were different. The Commission was advised to source the transcript from the Swiss authorities.
- The SFO did not conduct an investigation into the affairs of Merian Ltd.
- During the investigation of BAE, the SFO never found any evidence of untoward payments to officials of the South African government.
- The SFO has no information beyond what is contained in Mr Murphy's affidavit.

1.2. Financial Reporting Council/Accountancy and Actuarial Discipline Board

[81] On 2 September 2014, Dr Gavin Woods informed the Commission during his oral evidence that the Accountancy and Actuarial Discipline Board was investigating KPMG (UK), which advised BAE Systems on offshore

companies that were used to pay commissions to influence the award of contracts in the South African defence procurement package. To corroborate this assertion, he attached to his statement a newspaper article titled 'UK audit firm launches new arms deal probe' that he got from Dr Richard Young.

[82] The Commission deemed it vitally important to establish whether such an investigation was indeed conducted and what its scope and outcome was. To that end, the Commission met with Mr Gareth Rees QC and Ms Paige Rumble of the Financial Reporting Council (FRC) in London. The following information was shared with the Commission:

- The investigation focused on the audits by KPMG between 1997 and 2007 of British Aerospace/BAE Systems PLC. The audits were in relation to the commissions paid by BAE, through any route, to subsidiaries, agents and any connected companies. It included any other professional advice, consultancy or tax work that KPMG provided to BAE between those dates in respect of (a) commission payments made by BAE and (b) the status, operation or disclosability of Red Diamond Trading Ltd, Poseidon Trading Investments Ltd and Novelmight Ltd.
- This investigation was done under the Accountancy Scheme which was the responsibility of the Accountancy and Actuarial Discipline Board until 2012 when the AADB ceased to operate and its responsibilities under the scheme were transferred to the FRC.
- Subsequent investigations showed that a proper assessment of KPMG's conduct would require consideration of work undertaken in earlier years. Because there was no realistic prospect that a tribunal would make an adverse finding in respect of a complaint relating to work done so long ago it was concluded that it was not in the public interest to extend the investigation to the years preceding 1997. Therefore the investigation was closed in 2013 with no further action.

[83] The FRC stated that it had no information that could be of assistance to the Commission and did not believe that any further review of the information in its possession would identify any such information.

1.3. Campaign Against Arms Trade (CAAT)

[84] A preliminary investigation by the Commission revealed that between February and April 2010, the Campaign Against Arms Trade and The Corner House challenged the BAE plea bargain. The Commission thus made an effort, without success, to meet with the CAAT during its trip to the United Kingdom. However, in its email of 26 June 2012 to the Commission, the CAAT stated that it doubted whether it had any documentation on the South African deal that the Commission did not already have. It stated that most of its information either came from Mr Crawford-Browne or from the *Mail & Guardian* or other South African media. It referred the Commission to Mr Feinstein whom it believed had more information about this. It referred the Commission to a website link that contains all the key judicial documents the CAAT had regarding BAE corruption allegations.

2. SWEDEN

2.1. National Anti-Corruption Unit (NACU)

[85] Shortly after its inception and while reviewing information in the public domain, the Commission found reports that Mr Christer van der Kwast, the Director of the NACU in Sweden, launched an investigation into whether there had been corruption in BAE and SAAB's joint marketing of the Gripen aircraft. It was further brought to the attention of the Commission that SAAB had commissioned a review of the contract and financial transactions of SANIP (Pty) Ltd and uncovered that money was paid from BAE Systems to SANIP. These payments, it was alleged, were transferred to a South African consultant shortly thereafter. The Commission also noted that information and evidence gathered during this investigation had been handed over to the NACU on SAAB's behalf.

[86] In May 2012, the Commission requested this information and evidence from the Swedish Prosecuting Authority. On 8 June 2012, it received a response from the Swedish Prosecuting Authority that its request

for information and a meeting had been forwarded to Mr Gunnar Stetler, the new Director of the NACU.

[87] On 11 June 2012, Mr Stetler personally responded to the Commission on behalf of the NACU and the Swedish Prosecuting Authority. He informed the Commission that the investigation was confidential and that the Commission would require an MLA to access such information. He stressed that it is normally prosecutors, courts and similar authorities that are given access to information via an MLA. He was a little uncertain of the status of the Commission in this regard. He stated that they did not have much information about the South African deal in their files. Most of the investigation about this matter was conducted by the SFO in the UK and was handed over to the NACU with restrictions. To share that information with the Commission they would need permission from the SFO. He informed the Commission that SAAB had indicated that it would hand over the information relating to SANIP to the Commission.

[88] Subsequently, the Commission met with Mr Stetler in Stockholm, Sweden. Mr Stetler confirmed that the investigation was initiated by his predecessor, Mr van der Kwast, and that the focus at first was the Czech Republic and Hungary. Even though allegations of bribery relating to South Africa were also looked into, the investigation was structured in such a way that the SFO did the majority of the investigation and merely asked Sweden to assist. A minor investigation was done in Sweden and the SFO handed over the matter to them with restrictions. The Swedish investigation, including its South African leg, was closed in June 2009 and the SFO closed its investigation in 2010.

[89] In respect of the SANIP matter, Mr Stetler confirmed that he had received documentation from SAAB and that the Hawks had wanted to meet with him in October 2011. Mr Stetler indicated that he would need an MLA but added that he did not think the information he had would be of any value to the Commission. He stated that with regard to bribes, the investigation must be conducted in South Africa. He informed the Commission delegation

that Messrs Feinstein, Holden and Crawford-Browne had attempted to get information from him. He further stated that it would be difficult to prove bribery as there was not enough evidence to prove guilt beyond reasonable doubt. He concluded by saying he did not feel the information he had would take the matter further.

[90] On the basis of this interaction, the Commission deemed it unnecessary to continue pursuing the matter.

3. SWITZERLAND

[91] The preliminary investigation conducted by the Commission in 2012 revealed that the Swiss authorities had conducted an investigation into allegations of money laundering after information was provided by HSBC Private Bank to the Swiss Money Laundering Report Office. The information related to an adviser of BAE who also happened to be a South African citizen. This information was shared with the South African authorities. Furthermore, it was alleged that BAE had an unmanned storage facility in Geneva where it kept all covert contractual agreements with its advisers. On the strength of this information, the Commission by letter requested a meeting and more information from the Attorney General of Switzerland, Mr Michael Lauber, and the Swiss Money Laundering Report Office. On 2 July 2012, a similarly worded letter was sent to the Federal Prosecutor in the Office of the Attorney General, Ms Maria Schnebli.

[92] On 16 August 2012, the Attorney General of Switzerland acceded to the Commission's request for a meeting and frankly informed the Commission that without a formal request for MLA, access to the relevant case files, the investigation and the MLA proceedings that had in the meantime been discontinued and completed, would be limited. On 5 November 2014, Ms Schnebli informed the Commission that the Office of the Attorney General would be pleased to welcome a delegation of the Commission but added that the Office would not be able to share any evidence as it needed to establish first whether MLA could be granted to the Commission. The meeting did take place and was attended on behalf of the Office of the Attorney General by Ms Schnebli, the Chief Federal Prosecutor,

and Mr Nicolas Bottinelli, a federal prosecutor. They informed the Commission that the request for MLA was withdrawn after partial evidence had been transmitted to South Africa. This withdrawal led to the end of the MLA. Should the Commission wish to have copies of information it should lodge a formal request in a criminal matter before the Swiss Federal Office of Justice in Bern, which is the Swiss Central Authority for the purposes of article 46 par 13 of the United Nations Convention Against Corruption. They cautioned that if accepted, the execution of the MLA could take some months, as the persons affected could appeal against the decision granting MLA.

[93] No information of interest was given to the Commission delegation.

4. LIECHTENSTEIN

[94] The Commission found documents among those received from the DPCI confirming a conversation between South African and Liechtenstein authorities. On the strength of this information, the Commission requested a meeting with Judge Martin Nigg of the Court of Justice in Liechtenstein and Dr Robert Wallner, the Prosecutor General of Liechtenstein. The purpose of the meeting was to gather more information in respect of criminal proceedings in the Court of Liechtenstein with regard to money-laundering charges against a South African citizen.

[95] On 31 May 2012, Judge Nigg inquired whether the Commission was conducting criminal proceedings; if so, against whom and in respect of what offences; and whether there was an international agreement between Liechtenstein and South Africa to exchange this type of information.

[96] On 5 June 2012, Dr Wallner informed the Commission that the law of Liechtenstein did not make provision for the exchange of information gathered in domestic criminal proceedings with foreign parliamentary commissions. On 6 June 2012, he informed the Chairperson of the Commission that he would seek approval from his government to meet with the Commission. On 28 June 2012, Judge Nigg informed the Commission

that a meeting would not be possible and that the Commission had not complied with the requirements for MLA.

[97] In August 2012, Dr Wallner acceded to the Commission's request for a meeting but he indicated that a formal request for MLA would be required. He added that the question whether the Commission qualified to be given such assistance would have to be determined. The meeting took place in Vaduz, Liechtenstein and was attended by officials of the Office of the Public Prosecutor and the Department of Justice in Liechtenstein. Dr Wallner confirmed that there was interaction between Liechtenstein and South African authorities in 2008 and 2009. However, they later received communication from the South African authorities that it was no longer pursuing the matter. Liechtenstein authorities decided to terminate their investigation.

[98] The Commission found out from the documents it had received from the NPA that on 28 October 2009, Dr Wallner had directed a request for the takeover of the case in question to the NDPP. On 17 November 2009, the Office of the NDPP advised that it had received a box with documents from Liechtenstein. A meeting was held on 3 December 2009 to decide who would take custody of the approximately 800 pages of documents in view of the fact that the NPA had ceased to have investigative powers following the disbandment of the Scorpions. The documents were given to General Meiring. The Commission requisitioned these documents. They were given to the forensic auditor for further analysis. This obviated the need to submit a formal MLA to the Liechtenstein authorities.

5. UNITED STATES OF AMERICA

5.1. Fraud Section, Criminal Division: US Department of Justice

[99] In their submission of January 2013, Messrs Feinstein and Holden drew the Commission's attention to an investigation allegedly conducted by the US Department of Justice into BAE's affairs between 2007 and 2010. They alleged, amongst others, that in 2010 and 2011 BAE Systems entered into two plea agreements with the US Department of Justice and the US

State Department respectively. In the plea agreements ‘numerous admissions on the part of BAE in relation to its business conduct—most of which were related to its use of ‘marketing advisers’ around the world, especially in Saudi Arabia, the Czech Republic, Hungary, Tanzania and South Africa’ featured (Feinstein and Holden Joint Submission at page 129). While South Africa was not explicitly mentioned in the plea bargain documents with the US, it was certainly implicit in the settlement as relayed to Feinstein by an officer of a US government agency involved in the investigation.

[100] In its submission of 2012 to the Commission, BAE Systems proffered that none of the charges against it by the US Department of Justice related to its activities in South Africa. It submitted that it pleaded guilty to making false statements to the US Government and to certain export control violations and not to any offence of bribery or corruption.

[101] The Commission met with representatives of the US Department of Justice to verify the information and endeavour to gather the evidence that might have been found by or divulged to the US Department of Justice. The officials confirmed the assertions of BAE that it pleaded guilty to the offence of providing false, inaccurate and incomplete information to the US government for which it was fined \$400 000 000. The officials of the US Department of Justice were not aware of the 2011 plea agreement allegedly entered into by BAE and the US State Department. They were also unaware of any investigation relating to BAE’s activities in the SDPP. They further said that the plea agreement with the US Department of Justice had nothing to do with BAE’s activities in South Africa.

5.2. Bell Helicopter Textron

[102] Messrs Paul Holden, Andrew Feinstein and Terry Crawford-Browne alleged that Bell Helicopter withdrew from the process as it was not prepared to pay a bribe. They further maintained that a number of people attached to the Bell Helicopter bid indicated that not only were the scores manipulated to ensure that its competitor came out victorious but also that this was done by means of inducements offered by a competitor of Bell Helicopter.

[103] These were serious and damning allegations not to be shrugged off. The Commission invited Bell Helicopter through its President and Chief Executive Officer, Mr John Garrison, to make a submission to it in relation to its participation in the bidding process of the Light Utility Helicopter programme. Mr Garrison informed the Commission that he had asked Bell Helicopter's Deputy General Counsel for International and Commercial Business to find out whether Bell had any relevant records or employees who could have knowledge of this specific procurement.

[104] As no information was forthcoming and its duration was drawing to a close, the Commission arranged a meeting with representatives of Bell Helicopter in Fort Worth, Texas. At this meeting the Commission was informed that no record existed of Bell's withdrawal from the bidding process. The Commission's delegation was further informed that Bell Helicopter was not aware that any bribe had been requested from it.

6. GERMAN AUTHORITIES

[105] The preliminary investigation of the Commission revealed that the German authorities searched the offices of ThyssenKrupp and its sister companies in Düsseldorf, Essen and Cologne, and the MAN Ferrostaal offices in Essen. The Commission also learned that these investigations were conducted by the State Office of Criminal Investigation in Nordrhein-Westfalen, the Investigation Services into Suspected Tax Offences of Essen and the Office of the Public Prosecutor in Düsseldorf. It was also alleged that around 2007 the German authorities formally submitted a request for MLA to the South African authorities.

[106] The Commission needed to establish the veracity of these claims. If they were proven to be true, a concerted effort would have to be made to have access and sight of evidence and information accumulated by the German authorities during the investigation. To that end, it requested meetings with the Office of the Prosecutor General and the Office of the Public Prosecutor in Düsseldorf in May 2012 and beginning of June 2012. The Office of the Prosecutor General in Munich acceded to the Commission's request for a meeting but added a proviso that it would be

impossible to provide the Commission with detailed information without a formal request for MLA, which would need to be sent through diplomatic channels. Mr Joachim Götte, a Prosecutor in Düsseldorf, also informed the Commission under cover of a letter of 13 June 2012, that access to the case file 130 Js 2/06 could only be granted on the strength of a formal request for MLA that would have to be submitted to the Federal Office of Justice in Bonn for approval.

[107] The meeting with the Office of the Prosecutor General in Munich did take place. It was attended by the Prosecutor General, Chief Public Prosecutor, and a person responsible for MLA. They stressed that they would require a request for MLA before they could share information with the Commission. During the meeting they informed the Commission that the Debevoise & Plimpton report had been leaked online and provided the Commission with a link where it could download the report. After the meeting the Commission was provided with contact details of the official in the Federal Office of Justice in Germany who was responsible for requests for MLA from South Africa.

[108] On 13 July 2012, the Commission submitted a request for MLA in German and English to the German Federal Office of Justice in Bonn. In the request for MLA the Commission sought the following official and/or judicial records, which it believed were in the possession of the Office of the Public Prosecutor in Düsseldorf; the State Office of Criminal Investigation in Nordrhein-Westfalen; the Investigation Service into Suspected Tax Offences in Essen; the Office of the Public Prosecutor in Essen; the Office of the Public Prosecutor in Munich; the Bochum Economic Crimes Unit and the State Investigators in Munich:

- In relation to the German Frigate Consortium:
 - a. All documents seized by, submitted to or generated by the Office of the Public Prosecutor in Düsseldorf in relation to their investigation into allegations of corruption, fraud and tax evasion by the German Frigate Consortium;

- b. Documents submitted to the Office of the Public Prosecutor in Düsseldorf pursuant to the latter's request for MLA submitted on or about 18 June 2007 to the Secretary of State in the United Kingdom and which was given effect to by the SFO;
 - c. Documents submitted to the Office of the Public Prosecutor in Düsseldorf by authorities in Switzerland pursuant to its request for MLA submitted on or about 19 June 2007 to that country;
 - d. Documents submitted to the Office of the Public Prosecutor in Düsseldorf by authorities in the Republic of South Africa pursuant to its request for MLA submitted on or about 19 June 2007;
 - e. Evidence of 'onward' payment by Mr Tony Georgiadis in relation to his involvement in the contract to sell the frigates to South Africa.
- In relation to the investigation into Ferrostaal:
 - a. If any evidence gathered by Debevoise & Plimpton during their investigation into the affairs of Ferrostaal had been shared with or submitted to the authorities in Germany, then the Commission requested copies thereof, in particular, witness statements and evidence on which it had based its findings.
 - b. If the Munich Public Prosecutor's Office conducted raids in Ferrostaal offices in Essen and Geisenheim in July 2009 and in March 2010 as reported on the global security website, and if indeed an investigation was initiated by the Public Prosecutor's Office in Munich, then the Commission requested all relevant evidence and documents gathered during that investigation.

[109] In relation to the investigation into discounted cars by European Aeronautics Defence and Space Company, the Commission requested any evidence pointing to the reasons why these discounts were made in the first place and the names of all the recipients of the discounts and judicial pronouncements relating thereto.

[110] The Commission received copious documents from organs of state in the Republic of South Africa. When the Commission analysed the documentation it obtained from the DPCI, the successor to the DSO, it came across correspondence, dated 15 September 2008, from Ms Lioba Borowski, *Kriminalhauptkommissarin*, to Advocate Downer of the NPA in which reference is made to an MLA request to South Africa. The Director-General of the Department of Justice and Constitutional Development (as it then was), as the Central Authority in the Republic for the purposes of MLA, confirmed in its submission of 8 August 2008 that such a request was received circa 19 June 2007. However, it could not be located. The Commission deemed this request crucial. Although the Commission's request for MLA of 13 July 2012, referred to above, covered broadly all the information and evidence authorities in Germany could have, it would have been more targeted and focused if the Commission had access to the 2007 MLA. It thus asked Ms Borowski what appropriate course of action it ought to take to gain access to this MLA. A similar letter was directed to Mr Götte. Ms Borowski informed the Commission that German legislation did not allow police officials to disclose any information about criminal investigations whether actual or closed without permission from the 'procurator fiscal office'. She referred the Commission to Mr Götte, *Staatsanwaltschaft Düsseldorf*. Mr Götte, a public prosecutor (*Staatsanwalt*), in his response to the same query reiterated that assistance would only be granted if the Federal Office of Justice granted approval.

[111] On 16 November 2012, the Commission received the following queries from the Embassy of the Federal Republic of Germany in Pretoria, which it submitted on behalf of the *Bundesjustizamt* (Federal Justice Department):

- whether the Commission was entitled, according to South African law, to request legal assistance from another country
- to set out powers it had regarding criminal procedures
- whether it could impose and enforce sanctions,

- or whether it would merely prepare proceedings for the prosecutor.

[112] The Commission responded to these queries under cover of a letter dated 23 November 2012, which response was also translated into German.

[113] Among the documents submitted to the Commission was a copy of a request for MLA purportedly prepared by German authorities and submitted to authorities in Switzerland. This document was dated 19 June 2007 and was addressed to Mrs Schnebli. The Commission inquired from the German authorities whether this MLA was duly released by them to any person or entity in South Africa and whether there would be any objection if the information contained therein was used by the Commission, especially during the public hearings. To this query the Commission received no response.

[114] On 30 September 2014, the Commission received a Note Verbale, dated 2 September 2014, through the Department of Justice requesting it to confirm by means of a declaration that if the information it required was in the Republic of South Africa, it would have been subjected to a seizure order. A declaration was duly submitted on 19 March 2015.

[115] Despite the efforts alluded to above, no information material to the issues the Commission was seized with was ever received from the German authorities. The Commission only caught a glimpse of the reason why the investigation was discontinued from a document that appeared to have emanated from the Office of the Public Prosecutor of Bochum, dated 1 February 2008. An annexure to this letter dealt with the withdrawal of a prosecution of one Jens Gesinn, whom the Commission established was the financial officer of Ferrostaal AG.

6.1. Kroll Ontrack

[116] In August 2008, it was alleged in South African newspapers that Kroll Risk Consultancy had conducted an investigation into the affairs of MAN Ferrostaal, which it was alleged led the German Submarine Consortium

(GSC). The Commission asked Kroll Ontrack in Germany to verify this claim and, if it had conducted the alleged investigation, to share its findings with the Commission. In its response of 22 June 2012, Kroll Ontrack stated that it was a sister company to Kroll Risk Consulting, belonging to Altegrity Holding USA, and that Kroll Ontrack GmbH, Germany, was not involved in any submarine investigation. It stated that it had done work for Ferrostaal and was engaged to read data from backup tapes, copy it to hard drives and return all data directly to the client. It was not engaged to perform data analysis. It did not confirm that Kroll Risk Consultancy in the USA conducted the investigation reported in the media.

7. FRANCE

[117] France was amongst the countries approached by the team investigating the SDPP—the German Frigate Consortium (GFC) leg in particular—for legal assistance during the early stages of the investigation. This is borne out by a request for MLA, issued by the Magistrate’s Court in Pretoria on 20 March 2003 and provided to the Commission by the DPCI. Annexed to this letter of request for assistance was an affidavit, dated 20 February 2003, deposed to by Advocate Gerda Ferreira, the Deputy Director of Public Prosecution, who was in overall charge of the investigation. This affidavit confirmed that:

- The first request for MLA from the DSO to the French authorities in about September 2001, for the search of certain premises, seizure of certain documents and examination of a number of witnesses, was granted. The search and seizure operations were carried out at the French addresses on 9 October 2001.
- Officials of the DSO in charge of the investigation, including Advocate Ferreira, travelled to France and were present during the operations of 9 October 2001.
- The Honourable Judge Edith Boizette, who authorised the MLA request at that stage, informed Advocate Ferreira during the search and seizure operations that further requests for assistance by the DSO would be regarded as extensions of the first request

and that any such further requests could be forwarded directly to her.

- The examination of witnesses was deferred at the request of Advocate Ferreira.
- The DSO requested the French authorities to expedite the execution of the March 2003 request as the investigation in the Republic of South Africa was nearing completion and a decision regarding prosecution was being delayed, partly due to the fact that evidence from witnesses mentioned in the aforementioned request was outstanding.

[118] The evidence acquired by the DSO, pursuant to the interactions with the French authorities, culminated in the institution of criminal proceedings against Mr Shabir Shaik in the Durban High Court on 13 October 2004. The decision to go to trial is in itself indicative that the NPA and its investigating directorate, the DSO, had secured sufficient evidence from, amongst others, the French authorities. Although the Commission found no information in the documents provided to it, which suggested that the French authorities could have more evidence or information relating to the SDPP than what they had provided to the DSO, it nonetheless made an effort to meet with or obtain an official account of the investigation from Ms Edith Boizette or her successor, Mr Le Loire. This endeavour was of no avail. Mr Le Loire's office—the Office of Economic and Financial Affairs at the Paris Court of Higher Instance— informed the Commission under cover of an email dated 28 May 2015 that the investigation in France had been closed and access would only be granted upon receipt of an MLA request. In view of the cooperation the DSO had received in the early 2000s, it was highly unlikely that the Commission would find any useful further information and given the time it takes to execute a request for MLA, the Commission did not consider it feasible to pursue this avenue.

C. OTHER JURISDICTIONS**1. WEST INDIES AND LIBERIA**

[119] The Commission sent a letter of request for information to the Registry of Companies in the Nevis Island Administration for information pertaining to FTNSA Consulting which allegedly was incorporated in Nevis in the West Indies. The Commission received neither a response nor an acknowledgement of receipt.

[120] The Commission also sent a letter of request for information to the Liberian Anti-Corruption Commission in Monrovia, Liberia, in a bid to obtain company records and banking transactions of Mallar Inc, which had its last known address in that country. The Commission received neither a response nor an acknowledgement of receipt.

D. INTERACTION WITH DEFENCE COMPANIES**1. SAAB AB**

[121] In May 2012, the Commission requested a meeting with the Chief Executive Officer of SAAB AB (SAAB), Mr Hakan Buskhe, to discuss its involvement, together with its joint venture partner, BAE, in the sale of the Gripen JAS35 to the South African Government. The Commission also wanted to discuss the investigation that SAAB had commissioned into a consultancy agreement between its subsidiary, SANIP, and a South African consultant, the outcome of which was shared with the National Anti-Corruption Unit in Sweden. On 7 June 2012, the CEO of SAAB acceded to the proposed meeting and indicated that SAAB would also be willing to provide the documentation it had handed over to the Chief Prosecutor, Mr Gunnar Stetler, as a result of its internal investigation in 2011. Mr Buskhe had informed Mr Stetler accordingly.

[122] The meeting between the Commission and representatives of SAAB—Mr Buskhe, the President and CEO; Mr Bengt Hagersten, Senior Legal Counsel; and Ms Annika Baremo, Group Vice President, General Counsel and Secretary of the Board of Directors and Group Legal Affairs—took place on 30 August 2012, in Stockholm, Sweden. A number of issues were explored with SAAB at this meeting, including its relationship with BAE,

the SANIP contract and its BEE partners. At the conclusion of the meeting, SAAB gave the Commission a file containing all the information it collated during its own internal investigation. Further clarity on the SANIP issue was provided by SAAB in a letter of 27 August 2012, in which it was stated that the review of the circumstances surrounding the agreement was necessitated by two factors: the necessity to clarify the true facts and the need to make a thorough review of the circumstances in order to be able to respond to questions from the Swedish Prosecution Office. The review concluded that, despite the fact that the agreement was made by a company owned by SAAB, SAAB had no knowledge of and played no role in this agreement. As such SAAB did not express any view on the rationale or appropriateness of the agreement, but criticised the way it had been managed. The full report was submitted to the Prosecution Office in June 2011. The information provided by SAAB to the Prosecution Office did not result in any resumed or new investigation of SAAB. SAAB provided a translated version of the report it handed to the Prosecution Office on the assumption that its confidentiality would be protected. Any disclosure would require SAAB's prior approval.

[123] On 10 October 2012, SAAB submitted further information to the Commission in response to questions the Commission raised during the meeting of 30 August 2012. In this correspondence SAAB stated:

- It incorporated SAAB South Africa Pty Ltd in 1998. The reason for the formation of the company was to create a local organisation to support industrial participation requirements expected from future business in South Africa and to be the focal point for SAAB's activities in the country.
- In November 1998, SAAB AB and the DTI signed a Strategic Partnership Agreement, which meant that SAAB, through its local organisation, could initiate proactive work in identifying business projects qualifying for offset credits. When the contract between BAE and the South African Government for the supply of, amongst others, the Gripen aircraft became effective in April 2000, the

efforts of SAAB South Africa largely focussed on the support of offset commitments included in the contract. SAAB South Africa was at the time renamed SANIP (Pty) Ltd. In 2002, SAAB and BAE had reached an agreement confirming that BAE had the operational responsibility for the work, including the daily management and control over the team in SANIP. The intention was that the operation should also be formally transferred to BAE, which was eventually achieved through an asset-sale transaction in 2004. Since then SANIP (Pty) Ltd (renamed BFG Turnfloor (Pty) Ltd) had been dormant.

- Today, SAAB in South Africa has 1 100 employees, an annual turnover of 1 100 000 000 Rand and it represents the second largest Research and Development centre within the SAAB Group. SAAB's commitment to the development of South Africa's high technology industry is consequently well demonstrated and it is worth noting that this presence was engendered by an investment to satisfy the DIP requirements. However, at the time it was made it was moderately awarded compared to the eventual industrial value.
- At its meeting with the Commission, SAAB delivered a copy of the report of its own investigation to the Commission, with some minor deletions. The representatives of the Commission observed that the deletion of names caused some concerns, as among those could be South African individuals who might be of interest to the Commission. The Commission was assured that the deletions were made with regard to personal integrity and without the intention to withhold any information of importance to the Commission. The majority of the names deleted were those of employees of SAAB or BAE Systems. The 12 local employees of SANIP as at the date of the transfer from SAAB to BAE included two project directors, managers and office support personnel. Other deleted names were from the audit firm assisting in the

investigation. SAAB concluded that none of these belonged to the category that would attract the Commission's interest.

[124] The Commission requested SAAB to provide it with information relating to its BBBE partners. It had been reported in July 1999 that the National Union of Mineworkers (NUMSA) and the South African National Civic Organisation (SANCO) came out in support of BAE-SAAB to supply South Africa with the Gripen fighter aircraft. It was further alleged that in terms of the reciprocal agreements entered into by the parties, it was agreed that SAAB would support NUMSA in establishing an industrial school in South Africa. This initiative was supported by the Swedish union IF Metall and the Swedish Union for Clerical and Technical Employees Industry. It was further alleged that SAAB signed a separate agreement with the SANCO Development Trust. The Commission requested information pertaining to this matter under cover of a letter of 14 November 2012, including complete copies of the agreements and minutes of meetings held in Sweden and South Africa with officials of SANCO and/or NUMSA prior to and after the conclusion of the alleged agreements. In a subsequent letter of 19 November 2012, the Commission requested complete details of projects funded by SAAB in South Africa as part of its offset programme or obligations; details of companies in which it held shares; details of all agreements concluded with entities in the Republic, such as unions, trusts and organisations; and details of all subcontractors with whom SAAB concluded agreements in relation to the SDPP.

[125] In its response to these queries, SAAB expressed its concern that the information could include data and information which it would consider confidential in relation to SAAB and/or third parties that have entered into business or cooperative agreements with SAAB. The information would be disclosed on condition that it was not made public without prior approval of SAAB.

[126] In a response to the Commission on 21 January 2013, SAAB dealt comprehensively with the SANCO/NUMSA issues. It stated:

'Seeking contact with SANCO and NUMSA was natural for SAAB, as both those organizations were actively promoting programs for social and industrial development in South Africa. It was equally natural for those organisations to seek to benefit from the fact that substantial commitments in these areas were expected to be made by companies who at this point had been selected for final negotiations. The idea of supporting education in South Africa was heavily encouraged by Swedish labour unions, some which had already cooperated with NUMSA for several years.'

[127] In a further response on 18 February 2013, SAAB provided the Commission with details of all companies in the RSA in which it has shares, including the names of all board members of these entities from the date of incorporation to the present. It had previously, in a response to the Commission's letter of 14 November 2012, dealt with the NUMSA and SANCO matter and forwarded copies of the agreements for review by the Commission. These were the only agreements it had entered into with entities in the RSA. It was not aware of the existence of any other similar agreements. It also attached information relating to all subcontracts placed in South Africa and entered into by SAAB and the relevant domestic suppliers as a result of the Gripen aircraft system procurement. It also provided information on its BBBEE strategy.

2. BAE SYSTEMS PLC

[128] Following a letter from the Commission, dated 19 July 2012 and addressed to the Chief Executive Officer of BAE Systems, BAE made a submission to the Commission through its attorneys of record on 26 July 2012.

[129] In its submission, BAE admitted that it engaged advisers in relation to the sale of civilian and military aircraft in South Africa and in fulfilling offset obligations, and had paid them £115 million. It pointed out that the use of advisers by international companies exporting to countries where they have no material in-country capability or staff was, and continued to be,

commonplace across many industries. It argued that it was widely accepted that offset obligations required contractors to employ advisers to perform roles that included providing local knowledge of market-specific procurement processes and practices. The SDPP contracts were worth in excess of £2 billion and incorporated very significant offset obligations. The actual expenditure on advisers in relation to BAE and SAAB was well within what any company bidding for contracts of this sort would have expected to incur. It added that the conduct of BAE advisers in relation to the sale of the Hawk and Gripen aircraft to South Africa had been the subject of a number of detailed investigations over many years. None of these investigations demonstrated unlawful conduct on their part. It also stated that:

‘Some campaigners have suggested that the payment of these commissions is evidence in itself that there was corruption in the procurement process. The Institute for Accountability has suggested to the Commission that an admission of bribery was made in the UK’s House of Commons in 2003. In fact, the statement made by the then Secretary of State for Trade and Industry, Patricia Hewitt MP, on 9 June 2003 in relation to BAE’s sale of Hawk aircraft to South Africa, was “ECGD’s application process requires certain details of agents’ commission to be disclosed to ECGD in order that it can follow its due diligence procedures. In this case, such due diligence procedures were followed and no irregularities were detected. For reasons of commercial confidentiality specific details of the commissions cannot be revealed.” The Institute for Accountability’s letter to the then Evidence Leader of the Commission dated 14 November 2011 submitted that the word “commissions” meant “bribes”. These assertions do not accurately characterise the statement made by the Secretary of State. They also reflect a misunderstanding of the nature of the procurement process.’

[130] BAE admitted that it was investigated by the SFO from July 2004 in respect of, *inter alia*, the sale of the Hawk and the Gripen to South Africa.

Over the five years of that investigation it disclosed hundreds of thousands of documents to, and made relevant employees available for interview by the SFO at a cost of thousands of pounds. In 2007, the US Department of Justice also initiated an investigation into BAE's business. In respect of these investigations, BAE submitted that:

'In February 2010, BAES agreed with the SFO and the DOJ the basis upon which the investigations should be concluded. In the UK, BAES agreed to plead guilty to one charge of failing to ensure that the books and records of one of its subsidiaries were reasonably accurate in relation to a transaction in Tanzania and to make a payment for the benefit of the people of Tanzania. In the US, BAES agreed to plead guilty to making false statements to the US Government and certain export control violations. None of the charges against BAES related to its activities in South Africa. BAES did not plead guilty to any offence of bribery or corruption.

BAES understands that the South African authorities have also investigated allegations concerning the sale of the Hawk and Gripen aircraft to South Africa. In 2001, the Joint Investigation Team reported that it had found no evidence of improper or unlawful conduct by the Government. It also appears that the matter has also been investigated by the Scorpions but BAES has not been informed that that investigation made any adverse findings.'

[131] Further attempts by the Commission to get information from BAE came to nothing. The reasons were not that BAE refused to cooperate, but that:

- The South African authorities seized BAE's material in South Africa in the course of their own investigations.
- The UK's SFO compiled a very substantial archive of material in the course of its lengthy and wide-ranging investigation into the SDPP. BAE understood that this was derived from many sources,

including material obtained with the assistance of, and through close liaison with, the South African authorities as well as the extensive disclosure made to the SFO by BAE itself.

- Employees who had knowledge of the SDPP have, without exception, left the company.

[132] The Commission summoned Mr Johan Steyn, the Managing Director of BAE Systems Land Systems South Africa (LSSA), to appear before the Commission on 28 April 2015. LSSA made representations to the Commission that:

'Mr Steyn and the LSSA association with BAE Systems plc started in 2004 when BAE Systems plc acquired 75% interest in the company formerly known as Alvis (Pty) Ltd of which Mr Steyn held the equivalent position. Alvis South Africa was renamed LSSA following the acquisition in 2004 and the company manufactures military land vehicles (which did not form part of the SDPP). At no stage either before the acquisition by BAE Systems plc or subsequently has it or Mr Steyn had any involvement with the SDPP thus making his ignorance to the subject matter of the Commission evident.'

[133] The Commission decided to formally discharge Mr Steyn from his obligation to appear before it.

3. THYSSENKRUPP

[134] At first it was not clear to the Commission whether Thyssen Rheinstahl Technik still existed. If not, the Commission had to establish its legal successor. In the end, the Commission resolved to send its requests for information to Dr Heinrich Hiesinger, the Chief Executive Officer and Chairman of the Executive Board of ThyssenKrupp in Germany. It received two responses on 30 July 2012 and 26 November 2012 respectively. The one was from the Corporate Centre Legal: Department Materials Services, co-signed by Mr Klaus Wiercimok, who later came to testify on behalf of Thyssenkrupp Marine Systems (TKMS). The other response came from the

Corporate Center Legal and Corporate Compliance. Both were to the effect that ThyssenKrupp AG was not involved in the sale of the frigates to the South African Government and thus had no information in this regard.

[135] This matter was eventually clarified by the legal representatives of TKMS in South Africa who informed the Commission under cover of a letter dated 20 February 2014 that TKMS was the legal successor of Blohm+Voss and Howaldtswerke-Deutsche Werft AG and that ThyssenKrupp Facilities Services GmbH was the legal successor of Thyssen Rhein Stahl Technik GmbH. The attorneys of record represented both TKMS and ThyssenKrupp Facilities Services at the Commission in their capacity as parties to the corvette agreement of 3 December 1999.

[136] More information was captured in its first detailed response to the Commission on 30 July 2012, which was also co-signed by Mr Klaus Wiercimok, and in which it is stated:

‘ThyssenKrupp has cooperated closely with the German Authorities in relation to the investigation by them of issues surrounding the arms procurement programme of the SA Government to which you refer. This criminal investigation was officially closed and we cannot imagine that we have anything further that we can contribute to your commission in the light of the finding of the German Authorities.’

[137] On 17 September 2014, the Commission informed ThyssenKrupp that it intended calling it to come and give evidence at the Commission’s public hearings. On 9 October 2014, the legal representatives of ThyssenKrupp informed the Commission that their client was committed to assisting the Commission to the best of its ability. However, the challenge it was faced with was that it did not have an employee with first-hand knowledge of the issues the Commission needed to be addressed as a result of employees having retired, passed on or left the employ of the company. The only option available to them would be to nominate someone with no knowledge of the issues who would need to acquaint himself or herself with information from

the documents. They requested more time to consult with various individuals. Mr Klaus Wiercimok was designated to represent the company at the Commission and he appeared on behalf of ThyssenKrupp Marine Systems on 16 March 2015.

4. THALES

[138] Towards the end of 2012, the Commission tried to establish the whereabouts of two employees of Thomson CSF (now called Thales), namely, Messrs Pierre Jean-Marie Moynot and Alain Thetard, whom it believed could assist in the investigation and to obtain detailed information of its offset projects, BBBEE partners and all subcontracts. This it did by directing a query to the Chief Executive Officer of Thales South Africa (Pty) Ltd, Mr Patrick Oszczeda.

[139] However, the CEO of Thales South Africa could not assist the Commission as both employees had ceased to be employed by Thales South Africa. He also informed the Commission that Thales South Africa had no knowledge of any formal investigation conducted in France by any judicial authority regarding its activities. In respect of the offset projects, he annexed to his letter the final certificates issued by the DTI and Armscor confirming the successful completion by Thales of its commitment.

[140] Matters pertaining to Thales were dealt with by Ms Christine Guerrier, who appeared at the Commission on 26 March 2015. As mentioned earlier, the Commission established from Mr Le Loire from the Office of Economic and Financial Affairs at the Paris Court of Higher Instance, that the investigation in France had been closed and access would only be granted upon receipt of an MLA request.

E. APPROACH TO DOCUMENTS

[141] Apart from the documents that are specifically dealt with in this report, many others were handed in during the course of the public hearings. The documents fall under two broad categories.

[142] The one category consists of documents that were sourced from government departments that were involved in the SDPP and from other State departments and entities, like the office of the Auditor-General, the National Director of Public Prosecutions, the Public Protector, Parliament and its various portfolio committees. These include reports, memoranda, policy directives and guidelines, tender documents, minutes of meetings, correspondence exchanged by and between the various parties within the different departments and entities and with outside persons and entities. This category of documents presented no problems with regard to authenticity and admissibility and they were used extensively in the public hearings.

[143] The other category consists of non-official documents that were introduced mostly by the critic witnesses. These comprise memoranda, reports, books, statements and affidavits, including newspaper articles and reports. The common denominator to all these documents is that they were not authored by the witnesses tendering them and the authors could not be called to testify. In some instances the identity of the author could not be established. Naturally, the witnesses who introduced such documents and sought to rely on them had no personal knowledge of the contents thereof and could therefore not vouch for the truth thereof. Strictly speaking, the documents were inadmissible and in a few instances we made rulings to that effect.

[144] However, the Commission adopted a flexible approach to the documents and received and considered the bulk of them. In doing so, we took into account the following considerations:

- The witnesses who introduced the documents conceded that the documents were tendered not as proof of their contents but because the allegations contained therein were matters that the Commission needed to investigate. In other words, the documents were handed in in order to assist the Commission in its investigations. A typical example is the so-called De Lille dossier. Mrs Patricia de Lille made it clear that she had no personal knowledge of the allegations of

bribery, fraud and corruption made in the dossier and that all she wanted was for the Commission to investigate the allegations.

- We heeded a submission made by some of the interested parties and legal representatives appearing before the Commission, including some of the Commission's evidence leaders, to the effect that as an investigative tribunal, we were not bound by the strict terms of the rules of evidence applicable to the courts of law and that we had a discretion to receive any document that was relevant to the Commission's terms of reference. Ultimately, the critical question would be what weight, if any, to attach to any such document. In this regard we were referred, amongst others, to the judgment in *S v Sparks and Others* 1980 (3) SA 952 (T) at 961B-C.

[145] At the same time we needed to ensure that no undue prejudice was caused to individuals whose names were mentioned in such documents as a result of the publication of serious but unsubstantiated allegations contained in in the documents, and a witness could not be allowed to traverse the contents as if it was his or her evidence. In this regard, it has to be noted that such documents were received purely for the benefit of the Commission's investigations and for no other purpose. We accordingly imposed appropriate conditions on the use and dissemination of any such document.

CHAPTER 3

ADMISSIBILITY OF THE DEBEVOISE & PLIMPTON REPORT

[1] On its face, the document dealt with in this chapter is entitled *Ferrostaal Final Report Compliance Investigation* and is dated 13 April 2011. Inscribed at the left top of the document are the following words:

- 'Privileged & confidential'
- 'Attorney work product'
- 'Attorney-client communication'
- 'Confidential – EU Personal data'

[2] The document was undisputedly compiled by a USA firm of attorneys by the name of Debevoise & Plimpton LLP on behalf of and for their client, Ferrostaal GmbH. Ferrostaal is a company that formed part of the German Submarine Consortium (GSC), which was awarded a contract to supply the South African Navy with three submarines under the SDPP. This document (referred to alternatively as the 'Debevoise report' or 'the report') is clearly a confidential attorney-client communication and should ordinarily enjoy the protection of legal professional privilege. We use the word 'ordinarily' advisedly, because in the instant case it has been contended that the report has lost the protection of privilege because it was leaked to the internet from where it has become accessible to the public.

[3] The Debevoise report was initially introduced into the public hearings by Mr David Maynier when he appeared before the Commission on 11 August 2014 to give evidence. He had annexed it to his bundle of documents and sought to refer to it in his evidence. An objection was raised to its admissibility by the legal representative of Ferrostaal as well as by Advocate Jaap Cilliers SC on behalf of Advocate Fana Hlongwane, one of the persons implicated in alleged wrongdoing in the SDPP process. The basis of the objection was that it was a confidential document that enjoyed

privilege and was therefore inadmissible. Ferrostaal's legal representative made it clear that his client had not waived the privilege and that the report was leaked and put into the public space without his client's permission. At this juncture, the Chairperson implored Ferrostaal to consider waiving privilege but Ferrostaal was not prepared to do so. Argument was then heard on the matter, where after the Chairperson came to the conclusion that the report was akin to a stolen document and that the privilege attaching thereto had not been lost. He ruled it to be inadmissible (the first ruling of 2 September 2014).

[4] Subsequently, on 20 October 2014, Mr Hennie van Vuuren, who has co-authored a book on the SDPP, appeared before the Commission represented by Advocate Geoff Budlender SC. Mr van Vuuren had been subpoenaed to give evidence but he declined to take the stand and testify. His counsel read into the record and handed in a statement containing Mr van Vuuren's reasons for refusing to testify. In the statement Mr van Vuuren complained that the Commission had refused to accept as evidence some crucial documents that contain proof of malfeasance and bribery in the SDPP. He referred in particular to the ruling that the Debevoise report was inadmissible. His counsel argued that the ruling was wrong and cited the judgment in *Andresen v Minister of Justice* 1954 (2) SA 473 (T). He relied especially on the following passage:

'Wigmore, 3rd ed., sec. 2325 makes it clear where a privileged document is stolen or lost, the privilege is lost, on the principle that, since the law has granted secrecy so far as its own process goes, it leaves it to the client and his attorney to take proper precautions to prevent the disclosure of the contents of the document to third parties and if insufficient precautions are taken, either by the client or the attorney, the privilege is lost.'

[5] However, the above comments were made in passing and did not warrant reconsideration of the first ruling.

[6] Despite the first ruling, various attempts were made at different stages of the proceedings by different parties to rely on the contents of the Debevoise report. At one point Advocate Paul Hoffman SC, representing Mr Terry Crawford-Browne, claimed that he personally knew that Ferrostaal had consented to the report's release to the public and contended that his client was entitled to rely on the contents thereof. Advocate Burger, counsel then appearing for Ferrostaal, vigorously disputed Advocate Hoffman's claim that Ferrostaal had consented to the release of the report and objected to its use in the proceedings. At this juncture, the Chairperson again suggested to Ferrostaal through their counsel that it reconsider its stance and waive privilege so that the contents of the report could be canvassed with the witnesses, but Ferrostaal again declined. The Chairperson decided to call for fresh argument to be heard on the issue and invited all interested parties to make submissions. Having heard oral submissions, the Chairperson again ruled the document to be inadmissible (the second ruling of 8 October 2014).

[7] Owing to the purported importance of the Debevoise report and having noted some disquiet around its exclusion, the Chairperson extended a further invitation to all interested parties to include in their closing submissions further submissions on the admissibility of the report for possible reconsideration of the earlier rulings. In the closing submissions presented to the Commission by the team of evidence leaders, namely Advocates T Sibeko SC and M Sello, it was argued that the Commission was not bound by the rules of evidence as applied by the Courts and that it has a discretion to admit any evidence that is relevant to the Commission's terms of reference. The only issue would be what weight to attach to the information contained in the document. This was the same approach that Advocate Paul Hoffman SC took in his closing argument in respect of all the documents whose admissibility was in contention. Advocate Sibeko referred to the passage in *Andresen supra*, which was quoted earlier by counsel for Mr van Vuuren to the effect that the Debevoise report lost the protection of privilege once it was leaked to the internet and put in the public domain. Quite clearly, counsel had not consulted recent judgments on the matter, as will be shown shortly.

[8] In their closing submissions, Messrs Webber Wentzel for Ferrostaal pointed out that the decision in *Andresen supra* had been overruled by a number of subsequent judgments and that it was no longer good law. We turn now to consider some of the judgments cited.

[9] In *Bogoshi v Van Vuuren NO and Others* 1993 (3) SA 953 (T), Du Plessis J pointed out that the ratio in *Andresen* was that professional privilege was merely a rule of evidence that could not be exercised in *vacuo* but only in the course of litigation. The learned judge cited the judgment of Van Zyl J in *Sasol III (Edms) Bpk v Minister van Wet en Orde en Ander* 1991 (3) SA 766 (T) and went on to state the following at page 960:

'Finding that legal privilege is a fundamental right and not a rule of evidence only, Van Zyl J declined to follow the Andresen case. I respectfully agree that the ratio in the Andresen case should not be followed. It is not in accordance with what was said in the Safatsa case supra. For that reason, and also for the reasons that appear from the Sasol III case, it may now be accepted as established that professional privilege is a fundamental right. It can therefore be claimed, not only in the course of actual litigation, but also to prevent seizure by warrant of a privileged document.'

[10] The finding that professional privilege is a substantive right and not merely a rule of evidence is what distinguishes the *Bogoshi* case, the *Sasol III* case and the other cases to which we shall shortly turn from the *Andresen* case. This distinction is crucial because it signifies that the holder of a privileged document cannot be divested of his or her right by such occurrences as theft or loss or leakage to the internet.

[11] The *ratio* in *Bogoshi* has since been endorsed by the Constitutional Court. In *Thint (Pty) Ltd v National Director of Public Prosecutions and Others* CCT 89/07 [2008] ZACC 13; 2009 (1) SA 1 (CC), Langa CJ put the matter as follows at paragraph [185]:

'Accordingly, privileged materials may not be admitted as evidence without consent. Nor may they be seized under a search warrant. They need not be disclosed during the discovery process. The person in whom the right vests may not be obliged to testify about the content of the privileged material. It should, however, be emphasised that the common-law right to legal professional privilege must be claimed by the right-holder or by the right-holder's legal representatives.'

[12] In *Independent Newspaper (Pty) Ltd v Minister for Intelligence Services and Another: In re Masetlha v President of the Republic of South Africa* CCT 38/07 [2008] ZACC 6; 2008 (5) SA 31 (CC), at paragraph [72], Moseneke DCJ, writing for the majority, stated the position as follows:

'Whether or not a document classified "confidential" has been disclosed to some degree in the public domain is a relevant but not decisive factor in determining whether the document deserves continued protection. This is so because a leaked confidential document does not lose its classification. If it were so, people may be encouraged to reap the benefit of their own misconduct by leaking classified or protected documents and thereby rendering the documents beyond the protection they may deserve. However, the fact that the contents of the document has been referred to in public is not alone sufficient reason to order that the entire document should be accessible to the public.'

[13] Clearly what is stated above about classified documents equally applies to privileged documents. The latter passage also dispels, in our view, the notion that a privileged document loses its protection once it is stolen or lost.

[14] In this case, the Debevoise report was put in the public domain stealthily without the consent of Ferrostaal; nor has Ferrostaal waived its right of professional privilege. In the circumstances, the second ruling of 8

October 2014 stands and the Debevoise report cannot be used in these proceedings.

[15] Having said this, we indicated in the course of the public hearings that the Debevoise report had been made available to us on a confidential basis for the purpose of assisting us in our investigations and for that reason we have perused it. Having done so, we are satisfied that even if it had been admitted in evidence, it would not have made any difference to our findings, for the simple reason that its investigations and findings reveal no evidence of any bribery, fraud or corruption in the SDPP.

[16] Insofar as the South African leg of its investigation of Ferrostaal's compliance controls is concerned, the report deals with three aspects.

[17] First, key consultants were employed by Ferrostaal to advise it and support its bid for the submarine contracts. In this regard, it is undisputed that Ferrostaal had engaged a number of consultants and paid them substantial amounts of money. These consultants have been named in various other documents that have been placed before the Commission. Two of the consultants, Mr Tony Georgiades and Mr Tony Ellingford, are alleged to have known some senior political leaders in South Africa, and the insinuation is that they may have used part of the money they had earned to buy political favours for Ferrostaal. Regarding the third consultant named, Mr Jeremy Mathers, the report itself concedes that nothing untoward could be said about him.

[18] Significantly, the report concedes that there is no direct evidence that any of the consultants gave the money they received from Ferrostaal to third parties.

[19] The second aspect relates to the offsets. The report raises a number of concerns about the manner in which Ferrostaal approached and handled its offset obligations. Whilst it found some of the offset projects to be rather problematic, the report significantly concedes that there was no evidence that the projects were selected for improper reasons. In short, the report

does not contain evidence of any wrongdoing, least of all by any South African official involved in the offset programmes.

[20] The last aspect relates to Mr Shamin Shaik (Chippy), the DOD's Chief of Acquisition in the SDPP. The report repeats the assertion made by some of the critics that Mr Shaik influenced the award of the combat suite contract for the corvette programme to African Defence Systems (ADS), which, it is claimed, was controlled by Mr Shaik's brother Shabir. The evidence led before the Commission is very clear as to how ADS came to be awarded the combat suite contract and the authors of the Debevoise report were obviously given false information. Other than the wrong information about ADS, the rest of the concerns about Mr Chippy Shaik deal with the business relations that he had established with Ferrostaal after he had left the DOD in 2001, and nothing turns on that.

[21] Finally, we point out that there are some averments contained in the report that are in conflict with the substantive evidence, oral and documentary, placed before the Commission. In such instance, the evidence led before the Commission must prevail for the simple reason that the findings of the report are based on limited information that was informally obtained from a few employees of Ferrostaal together with the latter's internal records. Moreover, the information does not seem to have been obtained under oath. Most importantly, none of the State officials involved in the SDPP was interviewed, nor was the vast documentation made available to this Commission placed before or made available to the drafters of the report.

[Chapter 4: continued in volume 2]



**ARMS PROCUREMENT
COMMISSION**

Transparency, Accountability and the Rule of Law

**COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD,
CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE
STRATEGIC DEFENCE PROCUREMENT PACKAGE**

(ARMS PROCUREMENT COMMISSION)

REPORT

Volume 2

DECEMBER 2015

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ABBREVIATIONS/ACRONYMS FREQUENTLY USED

AAC	Armament Acquisition Council
AASB	Armament Acquisition Steering Board
ALFA	Advanced Light Fighter Aircraft
Arm Scor	Armament Corporation of South Africa SOC Ltd
COD	Council of Defence
DIP	Defence Industrial Participation
DOD	Department of Defence
DPCI	Directorate of Priority Crime Investigation
DTI	Department of Trade and Industry
GFC	German Frigate Consortium
GSC	German Submarine Consortium
IMC	Inter-Ministerial Committee
IONT	International Offers Negotiating Team
IPCC	Industrial Participation Control Committee
IPT	Integrated Project Team
JIT	Joint Investigating Team
LIFT	Lead-in Fighter Trainer
LUH	Light Utility Helicopter
MLA	Mutual Legal Assistance
MOD	Minister/Ministry of Defence
MODAC	Ministry of Defence Acquisition (Work Group)
NIP	National Industrial Participation (non-defence)
RFI	Request for Information
RFO	Request for Offer
SCOPA	Standing Committee on Public Accounts
SDPP	Strategic Defence Procurement Package
SOF COM	Strategic Offers Committee

CHAPTER 4

SUMMARY OF EVIDENCE

A. INTRODUCTION

[1] This chapter contains a summary of the evidence presented to the Commission, both in written form as witness statements and orally during the hearings. The purpose of the summary is to provide an overview of the issues traversed before the Commission by the respective witnesses. While it is also intended to capture the basis for the Commission's findings, it must be emphasised that the Commission came to its conclusions based on the evidence as a whole. Amongst others, the evidence can be found in the witness statements, documentary evidence presented by the witnesses and the transcript of the oral evidence led before the Commission.

[2] Four further points should be noted about the summary. The first is that the order of the witnesses in the summary is not chronological. For the sake of convenience and where possible the witnesses are broadly grouped according to the institution, sector or organisation they represent (for example, the SA Navy, the SA Air Force or Armscor). The grouping is not meant to be exact—in more than one case a witness who used to be employed in one of the groups, had left or moved to one of the other groupings. Two witnesses in particular, Messrs De Beer and Burger from Armscor, are grouped with the other Armscor witnesses, although they testified about defence industrial participation (DIP) and not about armaments, like their colleagues.

[3] The second point relates to language and terminology. Since the summary is based on written witness statements and the transcript of oral evidence, style and terminology may vary from witness to witness. Three typical examples will suffice. A Ministerial Committee chaired by the Deputy President at the time, Mr Thabo Mbeki, was entrusted by the Cabinet with

certain responsibilities relating to the SDPP. Some witnesses referred to the 'Ministerial Committee', some to the 'Inter-Ministerial Committee' or its abbreviated form of 'IMC', yet others to the 'Minister's Committee', MINCOM or simply the 'Cabinet Subcommittee'. Likewise, the oft-quoted Defence Policy Directive 4/147 would be referred to as 'Management Directive 4/147' or 'DOD Policy Directive 4/147' or even 'Ministerial Directive 4/147'. When referring to equipment, one witness would refer to the Mirage III aircraft while another would call it the MIR III. The summary by and large leaves the witness's use intact.

[4] The third point is about abbreviations and acronyms of which a substantial number were used by witnesses familiar with the workings of the SDPP. In the summary consistency of use was sacrificed for clarity and ease of following. Where considered appropriate, shorter forms are avoided.

[5] Finally, the evidence is summarised as it was presented at the time. Thus, a statement that a witness 'is' in a particular position, or that some or other factual situation 'currently' exists, captures the fact in the manner and tense stated by the witness. Factual inaccuracies in evidence are also not corrected except to the extent that they were canvassed before the Commission.

B. DEPARTMENT OF DEFENCE

I. SA NAVY

1. Rear Admiral Alan Graham Green

[6] The first witness to testify was Rear Admiral Alan Graham Green. He joined the SA Navy in 1971 where he served in various capacities. He was promoted to Rear Admiral (JG) in 2002, and until 2007 served as Chief of Staff to the General Officer Commanding of the SANDF Training Command in Pretoria. In 2007 he was appointed Director Military Strategy to the Chief of the SANDF, followed by an appointment in 2010 as Chief of Military Policy, Strategy and Planning. Admiral Green retired in December 2012 and is now serving in a reserve call-up capacity. He was called by the Chief of the SANDF to do a feasibility study on enhancing the strategic planning process.

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[7] From 1999 to 2002, Admiral Green commanded *SAS Simonsberg*, the SA Navy's functional training base ashore in Simon's Town. The functional training base is where all training functions of the Navy are conducted.

[8] After his promotion to the position of Rear Admiral (JG), he served on the staff of the General Officer Commanding the Joint Training Formations. The Joint Training Formations was an entity dealing with further education and training. Training institutions (colleges) were established and they were under his direct planning.

[9] In his testimony, Admiral Green referred to section 200(2) of the Constitution. The section stipulates that it is the primary objective of the SANDF to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force. The term 'defend and protect' includes peace support missions as may be ordered by the Government and as provided in law. This includes support to other Government Departments and the people of the country with regard to protection against environmental and other non-military threats.

[10] Prior to 1994, a lot of the equipment of the then South African Defence Force (SADF) was at the end of its life cycle, being the period for which the equipment could be used economically. This was, *inter alia*, due to the sanctions that were imposed on South Africa before 1994. During the 1970s, 1980s and early 1990s the SADF recognised the need to rejuvenate their main equipment in order to be able to effectively carry out the mandate of the SADF.

[11] The SADF's equipment was used extensively at sea, on land and in the air, and it required extensive maintenance. When the SANDF was established after the dawn of the new dispensation, it was clear to them that there was a dire need to rejuvenate their equipment.

[12] For many years prior to 1994 the Navy had large ships, the last of which were frigates. Admiral Green spent many years serving on those

ships. When the frigates were taken out of service due to their age and some other factors, the Navy was left with only small ships. A small ship was a 400 ton ship and a frigate a 2 500 ton ship at the time. They covered many nautical miles and spent many hours and days at sea. There are rough seas around South Africa's coast, which also affected the durability of the ships.

[13] In the 1970s they started upgrading the frigates. Some of the upgrades, such as those to the frigate *President Pretorius*, took up to seven years to complete. They had only three frigates and at that time they started a process of acquiring corvettes (1 200 tons) from France. The corvettes were smaller than the frigates but larger than the strike craft. This was an effort to increase the number of ships because with three ships one can only be guaranteed to have one ship ready all the time since the other two would be in various stages of maintenance. The project of acquiring the corvettes from France failed because of the United Nations arms embargo in 1977. A number of programmes to create larger ships for the Navy were initiated.

[14] The process of acquiring larger vessels for the Navy came a long way. The same applies to the submarines. The useful and economic life cycle of both ships and submarines was coming to an end. The same applied to the Air Force. The maritime patrol aircraft that had frequently been used in maritime operations was the Shackleton, and when it was decommissioned by the Air Force, it left a huge gap in maritime operations since the Shackleton had not been replaced.

[15] One of the three frigates, *SA President Kruger*, was lost at sea. They were left with two frigates and it was seldom that one vessel would be available at all times. All the upgrade programmes they initiated, failed. The remaining frigates were decommissioned in 1985.

[16] At that time the SADF had three Daphne class submarines, acquired from France. They were used frequently and their maintenance became too high. The submarines were also coming to the end of their useful life cycle and the last one was decommissioned towards the end of 2004.

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[17] They also had nine vessels known as strike craft—400 ton ships that were the only combatants left once the frigates were decommissioned. Out of the nine, they could at best have six at sea at any one time. These vessels were designed to operate in an environment very different to that of the South African coastline. They were designed for the Mediterranean that can also get very rough but not as bad as the shores of the east coast of South Africa. They are not suited to tasks around our coast. They were also getting to the end of their life cycle and certain upgrades were initiated.

[18] The strike craft are still in operation today. They are considered to be offshore patrol vessels rather than surface combatants. They no longer carry missiles and they are used extensively for training and force preparation. They still execute exercises and certain operations.

[19] After the dawn of the new democracy, certain policy documents that the DOD had to comply with in order to carry out its constitutional mandate were introduced in Parliament. The first document, introduced in 1996, was the White Paper on Defence that was approved by Parliament in May 1996. The White Paper was followed by the South African Defence Review that was approved in April 1998. Admiral Green was aware of the contents of the White Paper and the Defence Review of 1998. He referred to the introductory chapter of the White Paper as approved by Parliament in May 1996. One of the paragraphs referred to read as follows:

‘The government has prioritised the daunting task of addressing poverty and the socio-economic inequalities resulting from the system of apartheid. The Reconstruction and Development Programme (RDP) stand at the pinnacle of national policy and, consequently, defence policy.’

[20] He also referred to a paragraph in Chapter 2 of the White Paper that reads as follows:

‘The Government of National Unity recognises that the greatest threats to the South African people are socio-economic problems such as poverty, unemployment, poor education, lack

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of housing and the absence of adequate social services, as well as the high level of crime and violence.'

[21] He further testified that the policy referred to above required that the SANDF had to be rationalised and that military spending should be contained without undermining the country's core defence capability. The core force could be expanded should the need arise. He then referred to the 'Force Design Options' in Chapter 8 of the South African Defence Review, and in particular paragraph 1 that reads as follows:

'During peace-time the SANDF must maintain, develop and prepare forces that form the basis of its conventional defence capabilities. It must also employ such forces in the execution of secondary functions, as described in the White Paper and preceding chapters of this report. At all times, the SANDF must be ready to act in defence of South Africa in response to various defence contingencies.

This is reflected in the vision of the Department of Defence:

To ensure, in accordance with the Constitution, effective defence of a democratic South Africa, enhancing national, regional and global security, through balanced, modern, affordable and technologically advanced defence capabilities.

Accordingly, the Department has the following mission:

To provide, manage, prepare and employ defence capabilities commensurate with the needs of South Africa as regulated by the Constitution, national legislation and parliamentary and executive direction.'

[22] The White Paper envisaged an element of deterrence. The defensive posture postulated in the Defence Review was intended to be a deterrent: if you are seen to be having the core force and visible necessary equipment, such as ships at sea, aircraft in the air and forces on the ground that would deter a potential aggressor. Visible armaments have a deterrent effect.

[23] Admiral Green referred to Chapter 2 of the Defence Review and in particular to paragraphs 9, 10, 11 and 12 that read as follows:

'DETERRENCE

9. *As noted above, the White Paper requires the maintenance of a defence capability which is sufficiently credible to deter potential aggressors. Deterrence plays a crucial role in preventing armed conflict.*

10. *The maintenance of this capability should take account of the following:*

10.1 *A potential aggressor must believe that South Africa has the capacity to apply sufficient force to thwart an act of aggression.*

10.2 *A potential aggressor should also believe that South Africa has the political will to apply such force if it is compelled to do so.*

11. *The Constitution states that the security services shall adhere to international law on armed conflict (Articles 198(c), 199(5) and 200(2)). This includes the Geneva and Hague conventions and protocols, referred to as international humanitarian law, which provide inter alia, that armed forces may only attack military targets and must refrain from attacking civilians and civilian property. These rules necessarily circumscribe deterrence doctrine.*

12. *South Africa's approach to deterrence encompasses the following:*

12.1 *South Africa will pursue military co-operations with other states in such a way that potential aggressor run the risk of encountering the collective military capabilities in response. Collective capabilities would also deter threats to the region as a whole.*

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12.2 Capabilities to neutralize possible threats should be at a level of readiness commensurate with the lead time for such threats to develop. This should be clearly visible. Care must be taken not to open strategic gaps in the capability of the SANDF when reducing force levels.

12.3 Deterrence will not only be pursued against potential short term aggression through immediate force readiness. Potential aggression in the longer term will also be deterred by maintaining the capability for expansion.

12.4 Even if South Africa is not strong enough to ensure dominance in defensive actions, the risk to any potential aggressor should be unacceptably high.

12.5 Deterrence should not be counter-productive in that it triggers an arms race. This has implications for doctrine, force design and force levels.'

[24] Admiral Green further testified that the Defence Strategic Objectives of the DOD were consistent with the priorities of the Government as well as the medium term strategic framework. The said Defence Strategic Objectives were the following:

- To defend and protect South Africa, its sovereignty, its territorial integrity, its national interests and its people in accordance with the Constitution and the principles of international law regulating the use of force
- Secondly, to contribute to freedom from fear and want, including the promotion of human security both nationally and internationally, and
- Thirdly, to contribute to a better life for all of the people of South Africa.

[25] He also referred to the following Military Strategic Objectives:

- Enhancing and maintaining comprehensive defence capabilities

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- Promoting peace, stability and security in the region and the continent, and
- Supporting the people of South Africa.

[26] Defence planning was needs-driven and cost-constrained.

[27] When the SDPP was announced, the Navy had a need to replace the equipment that had either aged or had been retired. The frigates had been taken out of service and the submarines were engaged in an upgrade programme. The upgrade programme was the last alternative prior to having a rejuvenation programme in place. There was a need for the Navy to acquire large vessels, the corvettes. The acquisition process was time-consuming and it could take up to 10 years—that is the reason which caused them to start acquiring new equipment long before their existing equipment reached the end of its life cycle. Most of their equipment was due to be decommissioned in 2004.

[28] Their force design envisaged a larger amount of equipment, but what was acquired was less than what the Navy thought needed to be acquired. The same applied to the Air Force.

[29] The utilisation of armaments was not limited to the airtime flown by aircraft or the sea-hours spent by ships. Maintenance cycles must also be taken into account. Proper maintenance of equipment would not require that all the ships must be at sea at the same time. Budget and operational needs also enter into the equation. Long term storage of equipment is part of a process of utilisation when the life cycle of assets has to be managed in terms of the available resources. Their assets were utilised in a life cycle, taking into account the available funds.

[30] The Special Defence Account supported the funding of acquisition projects. It was structured in such a manner that funds could be rolled over for a number of years without returning to the Treasury, because acquisition projects take a number of years to complete. In the case of the SDPP, a ring-fenced allocation was made through the Defence Vote for the financial

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years that the SDPP contracts were to run. Ring-fenced money was spent on the hardware and not on project operations.

[31] Funding has an effect on utilisation because utilisation may be planned according to a certain funding profile and if that funding profile was less than anticipated, they were forced to reduce the utilisation cycle. As said, utilisation was planned on the basis of the allocated funds.

[32] During the process of the White Paper, followed by the Defence Review, the needs of the different arms of service were identified. The acquisition of equipment for the different arms of service was informed by the policy documents, which took into account other competing interests, such as the Reconstruction and Development Programme obligations of the Government.

[33] The DOD presented their requirements to the Government and it was Government's decision to acquire the armaments in the manner in which the SDPP was structured. The armaments acquired are utilised in accordance with the mandate and budgetary requirements of the DOD.

[34] Admiral Green further stated that the submarines, frigates and the aircraft that were acquired under the SDPP programme were functional and at various stages of maintenance. He further testified that South Africa's maritime jurisdiction was extensive. In relative terms the maritime area was three times that of the landed area. The economic zone of the Republic is vast and the core force is modest. The maritime environment to be covered by the Navy is immense and to cover that area with three submarines and four frigates was modest.

2. Rear Admiral Robert William Higgs

[35] Rear Admiral Higgs testified that he was employed by the SANDF as the Chief of Naval Staff at Naval Headquarters, Pretoria. He joined the Navy in 1976. During his career in the Navy he obtained a number of qualifications and became a trainer in various areas of the Navy, particularly submarines. He also underwent training overseas and received several awards. After the elections in 1994 he was selected to go to the United States of America to

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do the Naval Command and Staff Course at the United States Naval War College in Newport, Rhode Island. In May 1996 he obtained a Master's Degree in International Relations from Salve Regina University, Rhode Island.

[36] During 1996 and 1997 he participated as a member of the Defence Review Process, where he represented the Chief of the Navy, Vice Admiral Robert Claude Simpson-Anderson. He also participated in national consultative conferences, regional workshops in all the provinces and public hearings in Parliament. As a naval officer, he participated with a wide range of interest groups and members of the SANDF.

[37] In April 2007 he was appointed Chief of Fleet Staff in Simon's Town. On 1 March 2008, he became Flag Officer Fleet and was promoted to Rear Admiral. During this period he oversaw the new SA Navy, including its new Valour class frigates and Heroine class 209 submarines, exercising with the Brazilian, British, Chinese, French, German, Indian, Russian, US and many other navies.

[38] In 2011 he was appointed Chief of Naval Staff at Naval Headquarters in Pretoria where he advises the Chief of the Navy.

[39] South Africa's dominant position along a vital global trade sea-route, its dependence on sea trade and its vast maritime area make maritime defence a matter of great importance. South Africa derives significant financial and other benefits from maritime trade.

[40] Surface vessels can conduct sustained operations, maintaining a presence unequalled by other systems, and have substantial capabilities in countering aircraft, other surface vessels and submarines. Frigates or corvettes are the workhorses of any navy. Submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value.

[41] Submarines provide a highly credible threat to any potential enemy or aggressor and are extremely effective covert surveillance platforms. They

are used across the full spectrum of activity, from peace-keeping to escalating tension, crisis and eventually war.

[42] The Daphne submarines were built in France and commissioned in 1971-72. They were becoming increasingly difficult and expensive to support and it was envisaged that by the year 2005 it would no longer be cost-effective or possible to maintain them to the required level of operational effectiveness and safety. The usual design life of submarines was about 30 years.

[43] In 1980, the SA Navy realised the need to acquire new surface combatant vessels. *Project Outward* was then registered, but due to financial reasons it remained dormant until 1989 when a new *Project Foreshore* was launched. This defined the requirement for four multi-purpose (that is, anti-surface and anti-submarine) vessels. This project was also cancelled for lack of funds. The Navy lost its frigate capabilities in the mid-1980s, in other words, since about 1985 it had no frigates.

[44] In the mid-1990s the surface combat capability of the Navy was provided by nine strike craft. The strike craft had the attributes of speed, low signatures and good offensive capabilities within their limited sensor horizons. On the other hand, they had certain deficiencies: their small size severely limited their mobility and they could not carry a helicopter for over-the-horizon surveillance, scouting, targeting or attack. Their sea-training capacity was very limited. The small size of the hull and the combat suite architecture acutely limited the versatility of the vessel in terms of operational configuration and the growth/upgrade potential of on-board systems. Their design life was coming to its end, with the first of them having been built in 1977 and the last in 1986.

[45] As mentioned above, during 1996 and 1997 Admiral Higgs participated in the Defence Review process. It was a most consultative, inclusive and transparent process where many issues were thoroughly discussed, including, for example, the 'guns versus butter' question. In brief, the latter refers to the conflicting pressures on the national budget and the

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level of defence preparedness. The overall plan was the transformation of the SANDF so that South Africa would have a motivated, disciplined and adequately equipped force to carry out its constitutional responsibilities. The Defence Review was approved by Parliament in April 1998.

2.1. Project Optimum

[46] Parallel to the Defence Review consultations process, a special project was established to help determine the force design of the SANDF in an environment in which there was no clearly defined threat. This was called *Project Optimum*, a computer-driven model. All arms of service were involved.

[47] Regular meetings took place between members of the Defence Review and those of the *Optimum* team. *Optimum* was a specially designed operational research process that made use of costing models, a large number of contingencies, a number of joint strategies to counter each contingency and the costing of each strategy. Many of these were 'war-gamed' and the cost and success of each strategy was measured against others. There were well over 150 different contingencies. At the end of this process, various force design options were made available. In the final Defence Review document it was stated that the DOD developed various force design options, reflecting different permutations of level of defence, defence posture and cost, for public consideration during the consultative conferences of the Defence Review. Four options were presented to the parliamentary Defence Committee and to the Cabinet.

[48] On the question of force design, the Defence Review as approved by Parliament concluded as follows:

'69. The Department of Defence considers Option 2 to be the most prudent force design for the SANDF in the long term. This should remain the vision of the Department.

70. In the shorter term, however, due to financial restrictions and other national priorities, Option 1 will form an acceptable

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growth-core for the maintenance of military capabilities and skills.

...

73. *In the light of the above, Option 1 is the recommended force design for the SANDF.*

74. *The chosen force design option will become the object of implementation planning for the next decade or longer. However, the realization of this force design will be influenced by periodic revisions of the Defence Review and subsequent planning to reflect the continuously changing strategic environment and prevailing circumstances. The result is that the exact details regarding the type and quantities of main equipment will inevitably deviate from the vision. Such deviations will be subject to parliamentary oversight and the stipulations of the acquisition process.'*

[49] Option 2 that was favoured by the DOD was more costly as, *inter alia*, it required more personnel, both full-time and part-time, and more equipment in certain areas, although both options 1 and 2 recommended the same number of light fighter aircraft and helicopters for the Air Force, and submarines, corvettes and strike craft for the Navy.

[50] The approval by the parliamentary Defence Committee, Cabinet or Parliament of a force design as contained in Chapter 8 of the Defence Review constituted approval in principle for the maintenance of the specified capabilities at an approximate level.

[51] Admiral Higgs further pointed out that the affordability of the force design was central to its implementation. It was based on certain assumptions and qualifications—the long-term sustainability of the design required continuous investment in the periodic upgrading and replacement of equipment. The lifespan of major equipment was measured in decades and many replacement projects would commence many years down the line. It was, therefore, impossible to predict with absolute accuracy the actual

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annualised cost of equipment. When procurement of equipment was embarked upon, the equipment available to the SANDF, cost and available funds would have to be taken into account.

[52] He further testified that in order to maintain an army which was capable of fulfilling its constitutional mandate there must be continuous maintenance and renewal of its equipment.

[53] The Navy, through the SDPP, acquired three Heroine class 209 submarines and four frigates of 120 meters in length and about 3 500 tons. Frigates are capable of conducting autonomous, sustained operations in virtually any sea conditions. According to the witness, taking into account the South African maritime economic zone and other functions performed by the Navy, the investment in the Navy was modest. South Africa's trade sea route, its dependence on sea trade and its maritime area make maritime defence important for the survival and well-being of the economy.

[54] The South African exclusive economic zone that needs to be policed is much bigger than the mainland. The economic zone is the sea beyond the territorial waters but within a distance of 200 nautical miles from the baseline. It is important that South Africa should have capabilities to protect the mainland and the economic zone and other places where it has an economic interest.

[55] Frigates or corvettes are the workhorses of the Navy. They are capable of conducting sustained operations in the sea conditions found along the South African coast. Submarines also play a vital role. They can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value. Submarines and frigates complement each other in capabilities.

[56] Aircraft provide aerial coverage and a rapid response capability that ships and submarines cannot equal. There is thus a complementary relationship between these forms of equipment and the neglect of any one of them has a disproportionate effect on overall defence capability.

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[57] Our Daphne submarines were built in France and commissioned in 1971 and 1972. They were becoming increasingly difficult and expensive to support and it was envisaged that by the year 2005 they would no longer be cost-effective or possible to maintain at the required level of operational effectiveness and safety. The usual design life of submarines was about 30 years.

[58] It is significant to note that in the mid-1970s a further two French-built Agosta submarines were on order. As a result of the arms embargo they were not allowed to come to South Africa.

[59] The force design that was in the implementation phase in the 1970s included five submarines, namely three Daphne coastal submarines and two Agosta medium range submarines. The two Agosta submarines ended up being sold to Pakistan. A project to acquire four new submarines for delivery in the 1990s was approved, but later cancelled.

[60] The following three submarines were acquired under the SDPP:

- *SAS Manthatisi*, delivered in Germany on 27 February 2006 and arriving in South Africa on 7 April 2006
- *SAS Charlotte Maxeke*, delivered in Germany on 16 March 2007 and arriving in South Africa on 27 April 2007
- *SAS Queen Modjadji*, delivered in Germany on 2 April 2008 and arriving in South Africa on 22 May 2008.

[61] The frigates acquired under the SDPP were the following:

- *SAS Amatola*, arriving in South Africa from Germany during November 2003
- *SAS Spioenkop*, arriving in South Africa on 31 January 2004
- *SAS Isandlwana*, arriving in South Africa on 23 February 2004
- *SAS Mendi*, arriving at Simonstown in September 2004.

[62] On arrival in South Africa the vessels had the combat suite and various systems fitted to them. They were handed over by the German

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Frigate Consortium (GFC) to the South African authorities and ultimately to the SA Navy.

2.2. Utilisation: frigates and submarines

[63] According to Admiral Higgs, the frigates and submarines are utilised in various activities by the Navy, namely peace-keeping and peace-support operations, as well as humanitarian and relief activities. He reiterated that frigates or corvettes are the workhorses of any navy while submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value.

2.2.1. Frigates

[64] *SAS Outeniqua* hosted former President Nelson Mandela and then former Deputy President Mbeki as well as former President Mobutu and Mr Laurent Kabila of the DRC during the latter's negotiations on board the vessel.

[65] *SAS Amatola* was recently significantly deployed off the coast of Mozambique in anti-piracy operations. In addition, *SAS Amatola* was sent to the British Royal Navy to conduct a workup and measuring of her capability to NATO war-fighting standards, and she performed well.

[66] *SAS Amatola* was further deployed to Lagos to support the Chief of the Navy's Sea-Power Africa Symposium in Abuja. Admiral Mudimu played a significant role in bringing the navies of Africa together. He started with a Sea-Power Symposium in Cape Town, with the second one being hosted by the Chief of the Nigerian Navy in 2006. That coincided with a Nigerian fleet review in Lagos.

[67] *SAS Isandlwana* was the second of our frigates. In 2005 she was deployed across the Atlantic to participate in the bi-annual Le Sueur exercises. The South African Navy participates every two years in exercises with the friendly navies of Brazil, Argentina and Uruguay.

[68] *SAS Spioenkop*: in 2008 the South African ambassador to Beijing requested the DOD through the proper channels to support South Africa's 10

years of recognition of its relationship with the People's Republic of China. As a result of that request, the Chief of the Navy was tasked to deploy SAS *Spioenkop* from South Africa to China. She reached Singapore with enough fuel on board, which was significant for a warship. She then went to Shanghai in China where she was warmly welcomed by the Chinese authorities. The Chinese were impressed by our vessel, whose visit changed China's perception of South Africa.

[69] According to the witness, our naval capabilities help the economy grow and protect our natural resources for the good of the country. Maintaining a navy, which is crucial, implies continuous renewing of its capabilities so that it can continue to protect our natural resources at sea and the important sea-route trade, as well as deterring potential aggressors. In his view, we have achieved our strategic objectives, but our vessels are overworked. A well-funded military will create stability in the country and the region and will ensure that there can be better economic development and improved investors' confidence in our country, to the benefit of the country and its people.

[70] The frigates were being utilised more than originally planned and they are involved in many important activities.

2.2.2. Submarines

[71] SAS *Manthatisi*, a German-built class 209 submarine, was the first of our submarines acquired under the SDPP. She is modern, strong and brings credence to South Africa and its military. In 2007, the Chief of the Navy, together with the Commander of the North Atlantic Treaty Organisation (NATO), organised a navy exercise in South Africa. The NATO naval force came to our shores with six ships. The flagship of the NATO navy was the American Aegis cruiser, a significant surface combatant of the United States. It was accompanied by a Canadian anti-submarine frigate, a Portuguese anti-submarine frigate, a Dutch anti-air and anti-submarine frigate and a Danish corvette. They were supported by a German vessel that would provide them with fuel. They all sailed to Cape Town.

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[72] *SAS Manthatisi* was assigned to participate in the naval exercise with the NATO vessels. She performed extremely well. Our submarine did not disappoint and this earned us the respect of some of the more influential nations of the world. This vessel has a major element of deterrence, which enhances the capabilities of the military to protect and defend our territory, integrity, natural resources and people.

[73] The second submarine, *SAS Charlotte Maxeke*, was deployed off the Marion Prince Edward Islands Group where we have considerable economic interests. Fish is one of the smaller interests, the major one being the extended continental shelf-claim that the island group is giving us, including what is underneath the seabed, which will be determined in generations to come. It is difficult for a submarine to operate in that area, particularly if the aim was to gather intelligence about who was operating in the environment. You sit just beneath the surface, using your sensors to find out what was going on. *SAS Charlotte Maxeke* performed the function very well.

[74] *SAS Queen Modjadji*, the third of the submarines, has also been deployed on a regular basis off our coast, particularly up the East Coast, and has exercised with foreign navies when they came to our shores.

[75] In the past, because of our maintenance plans, there were only two submarines at sea at any given time. When admirals of foreign navies visited South Africa, they usually asked about our submarines. According to the witness, this was an indication of the deterrent effect of our submarines.

[76] Besides the equipment which was the subject of the present enquiry, the Navy has the following vessels:

- *SAS Drakensberg*, a combat support vessel that was in a maintenance period
- Three old strike craft, in service with degraded capabilities, making them offshore patrol vessels
- Three mine hunters that were built in the early 1980s
- *SAS Protea*, a hydrographic vessel about 40 years old. She was British-built.

[77] At present, the exclusive economic zone around our mainland and the islands as well as our extended continental shelf total 3,6 million square kilometres. The Navy's equipment is exceedingly modest, bordering on inadequacy.

[78] In Admiral Higgs's view, the South African Navy needed more equipment to be able to adequately carry out or fulfil its constitutional mandate. In his written statement he said the following:

'Following research undertaken in the mid-1990s, it once again became clear how dependent South Africa is on the sea. More than 55% of the GDP of our country was directly based on the use of the sea. More than 90% of our imports and exports by tonnage and more than 80% by value moved through our harbours. One of the SA Navy's primary functions is to ensure that our seaborne trade is not threatened in time of war or tension. Human security and the functioning of the economy were a function of unhindered maritime trade.'

[79] If the SDPP contracts were cancelled, the equipment would be returned and we would be refunded what was paid. New equipment would have to be bought, possibly at a higher price, in order to enable the military to fulfil its constitutional mandate and to comply with its international obligations. If the equipment were returned to the seller, we would lose the capabilities we have, and to re-establish them would be very costly.

[80] Admiral Higgs further testified that they would have found it difficult to carry out their constitutional mandate if the Navy had not acquired the frigates and submarines that formed part of the subject matter of the enquiry.

3 Rear Admiral Philip Schoultz

[81] Rear Admiral Schoultz is the Flag Officer Fleet of the South African Navy, a position he held from December 2010 to date. He commands the fleet in Simon's Town, and all the ships, submarines, training units and logistic units fall under his command. He reports directly to the Chief of the Navy who is stationed in Pretoria at the Naval Headquarters.

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[82] From 2005 to 2010 he served at the Joint Operations Division as the Chief Director Operations. He was responsible for the direction of all operations that the National Defence Force conducted.

[83] In 2004 he was the Chief Director Maritime Strategy. This was a position located at the Naval Headquarters where, *inter alia*, he was responsible for providing the Chief of the Navy with staff advice on the strategic direction of the Navy. From 1999 to 2003 he was the Director Maritime Plans, and from 1993 to 1998 the Director Management Services. He joined the Navy in 1972. After initial officer training he entered the Military Academy where he obtained a BMil (BSc) degree in 1975.

[84] During his service in the defence force, Admiral Schoultz attended various training courses. Whilst under training he also served on board the destroyer *SAS Jan van Riebeeck*, the minesweeper *SAS Pretoria* and the frigate *SAS President Kruger*. He received various awards and delivered various papers at national and international symposia.

[85] He has no knowledge of the reasons for the decision to proceed with the SDPP as he was not part of the team that dealt with the process of acquiring the equipment.

[86] Admiral Schoultz testified that the equipment and the capabilities that were acquired as a result of the SDPP packages were intended to enable the SANDF to satisfy and meet the constitutional mandate of, *inter alia*, defending and protecting the people and the territorial integrity of South Africa.

[87] He further stated that in 1975 the SA Navy had acquired three Type 12 frigates and three Daphne class submarines from France. During the same time and in order to increase its capabilities, South Africa ordered two A69 Aviso corvettes and two Agosta class submarines from France. However, the latter sale was cancelled following the 1977 mandatory arms embargo imposed against South Africa by the United Nations Security Council. During the late 1970s three strike craft were acquired from Israel and a further six were built locally during the early 1980s.

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[88] These vessels rendered excellent service and were able to provide good surface-warfare offensive capabilities, but they lacked anti-submarine warfare capability and the ability to carry a helicopter to provide for over-the-horizon surveillance, scouting, targeting or attack. Due to their small size, they were severely limited in adverse sea conditions.

[89] Throughout the years, acquisition of equipment has always been in the mind of the SA Navy. Warships typically have a lifespan of 30 years and thus the need to commence the process of replacing the Type 12 frigates that were acquired in 1960s arose. The Type 12 frigates were eventually withdrawn from service in 1985.

[90] The process of acquiring replacement vessels can take up to 10 years and consequently should start when the current vessels are 20 years old. In 1980 the Navy decided that there was a need to acquire six vessels during the period 1987 to 1991. These vessels were to replace the frigates. As replacement vessels the Navy wanted to acquire frigates as they have better capabilities than strike craft. Due to lack of funds, the Navy did not acquire the vessels it needed. Later, they decided to acquire four multi-purpose vessels to be delivered over the period 1997 to 2002, with the possibility of additional vessels in the future. In particular, the vessels to be acquired had to be anti-surface and anti-submarine ones capable of carrying a helicopter and providing suitable command and control facilities. This project was cancelled in July 1991. Next, in May 1993, Naval Staff Requirement 6/80 Revision 2 followed, which eventually gave rise to *Project Sitron*, a project to acquire frigates.

[91] During 1994 and 1995, two tendering rounds were held with international bidders before the process was deferred in May 1995 to await the outcome of the White Paper on Defence and the Defence Review. The White paper on Defence and the Defence Review confirmed that the SA Navy required the frigates and in the latter part of 1997 the tendering process was reopened, this time as part of the SDPP initiative. By November 1998, the Cabinet approved the GFC as the preferred bidder.

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[92] The first of the four new MEKO A200 frigates was commissioned into the SA Navy in February 2006 and the fourth in March 2007.

[93] With regard to submarines, after the failure to acquire the Agostas in 1977 due to the arms embargo, the SA Navy revitalised its submarines around 1980, followed up with the submarine life-extension programme in 1989 in order to ensure that the capability would be retained until such time as replacement submarines could be acquired.

[94] On 15 September 1999, the Cabinet announced that South Africa was to get three submarines as part of the SDPP. In November 1999 a Preliminary Staff Requirement 1/99 was submitted, which formed the baseline against which the new submarines were eventually acquired under *Project Wills*.

[95] In the past, Staff Requirements preceded procurement packages, but Staff Requirement 1/99 was written after the Cabinet had announced that South Africa would be receiving new submarines.

[96] On 6 January 2000, the Chairperson of the Armament Acquisition Control Board (AACB) submitted to the Chairperson of the Armament Acquisition Steering Board (AASB) a memorandum seeking approval for the acquisition of the three new submarines approved by the Cabinet on 15 September 1999. The memorandum noted that if the Daphne submarines that were already 29 years old were not replaced by 2005, the country would lose its submarine capability and, once lost, would be difficult and costly to recover in terms of vessels, infrastructure and expertise.

[97] Spares for the Daphne submarines were difficult to obtain, and that would also affect their utilisation.

[98] After the contracts were signed, the first Type 209 submarine arrived in South Africa during April 2006. By May 2008 all three had arrived.

[99] The question of maintenance and utilisation of the vessels depends to a very large extent on the available budget. Naval Staff Requirement 6/80

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states that the frigates should be available 260 days of the year for operational utilisation. This means that they must be ready to be utilised for this number of days. Moreover, the Staff Requirement says that each of these ships should spend some 180 days per annum at sea, and in terms of going away on missions each ship should do a 28-day mission.

[100] In order to comply with the above-mentioned levels of utilisation, the SA Navy would need a certain amount of money and would also have to establish certain maintenance capabilities. The allocated budget, or the budget to be allocated to the Navy, was not sufficient to allow its frigates to meet their utilisation targets.

[101] The various maintenance periods or cycles are also included in the term 'utilisation'. When a ship is not operational it does not mean that it is not utilised, as at times it needs to be prepared, maintained and rejuvenated. It is not the norm that all the vessels would be in the sea at the same time. Their maintenance cycles differ.

[102] At present, the SA Navy is required to have one vessel at what is termed a functional level of capability, in other words, one frigate must be fully fit for its war-fighting role. The others must be at a basic level of capability, meaning they can perform a number of tasks but not necessarily a full war-fighting role. One frigate must be at a seagoing level of capability, that is, it can go to sea, do limited tasks but it is safe to go to sea, with one frigate at no level of capability. The last-mentioned vessel will be in what is called a major refit period.

[103] Similarly, there are instructions with regard to the submarines as to how many must be at a functional level or sea-going level of capability and no level of capability.

[104] The above-mentioned instructions are both cost- and needs-driven. If the SA Navy would be required to keep all their vessels at the highest level of capability at all times it will be too costly and their budget might be unable to carry the associated costs.

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[105] According to the witness, the SA Navy is responsible for force preparations, with the Chief of Joint Operations being responsible for the conduct of operations and the conduct of joint and multinational exercises. The DOD's Annual Business Plan orders the number of vessels that the SA Navy is to maintain within the operational cycle and what their readiness levels are to be. This determination is a function of both requirement and the availability of funds.

3.1. Frigate utilisation

[106] Since their arrival, the frigates have spent about 1 932 days operationally deployed, engaged in the conduct of joint or multi-national exercises or in other ordered commitments. The total number of sea days that the frigates were utilised does not include safety-check days nor internal exercises or training. It is the numbers of days that the equipment was deployed between 2005 and 2012.

[107] Of the SA Navy's four frigates, one is normally in a maintenance cycle. At best this means that at any given time three or even two are ready to be deployed.

[108] The operations in which the frigates were involved range from goodwill visits to countries such as Brazil, Nigeria, China, India, Vietnam, Singapore, Tanzania, Mauritius; East and West Coast patrols; and anti-piracy patrols in the Mozambique Channel. The operations also include rescuing injured sailors, safeguarding the 2010 Soccer World Cup, drug-runner interdictions and escorting a vessel carrying nuclear waste.

[109] The exercises conducted range from simple procedural ones to complex task force tactical exercises. Participating in these exercises with the SA Navy were the navies of Argentina, Brazil, France, Germany, India, Mozambique, Namibia, the United States of America, Uruguay as well as the NATO Standing Maritime Group. One of the exercises was conducted off the Southern African coast, another off the South American coast and a third off La Réunion in the Indian Ocean.

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[110] The frigates have good engines—many navies in the world use the same engines in their vessels. All operations and exercises that were carried out with the frigates were successful. In Admiral Schoultz's view, our frigates are well-utilised.

3.2. Submarine utilisation

[111] Since the transfer of the submarines to the SA Navy they have spent about 807 days operationally deployed, engaged in the conduct of joint or multi-national exercises or in the initial delivery, trials and training. The period under review is from the date of delivery of the submarines, namely 27 February 2006 up to 11 June 2013.

[112] The number of days mentioned above does not include safety and readiness check days. As far as submarines in South Africa are concerned, the principle is that when two of them are kept operational in the cycle one would be reserved or will be undergoing maintenance. The same principle applies to the frigates.

[113] The submarines have conducted 16 operations, including East and West Coast patrols, two anti-piracy patrols in the Mozambique Channel, and two patrols to Marion Island, one of which was aborted due to a technical problem. They participated in safeguarding the Soccer World Cup 2010. They also took part in about 26 joint and multinational exercises with the navies of Argentina, Brazil, Germany, India, Namibia, the United States of America, Uruguay as well as the NATO Standing Maritime Group One. Most of the exercises were conducted off the Southern African coast. One of our submarines attended exercises in Namibia and Brazil respectively.

[114] The utilisation of the submarines was less than anticipated, but this was as a result of requirement or need rather than availability. The SA Navy prepares forces and makes them operationally available for utilisation should the need arise. The submarines were prepared, but the occasions on which they were required to conduct operations have been fewer than that for which the Navy have prepared. They were available but there was no need to utilise them to the expected extent.

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[115] There is a range of defence goals and tasks that the SA Navy's ships and submarines are provided for. One of the laid-down tasks is to deter and prevent conflict. Having ships and submarines operationally available in one's arsenal can also be construed as utilisation.

[116] Lastly, still dealing with utilisation over the period 2005 to 2013, the SA Navy has trained some 4 042 personnel (647 support personnel, 1 191 technical personnel and 2 204 combat personnel). It is from these trained people that the frigates, submarines and other vessels have been crewed.

[117] Despite this investment in training, critical shortages are still being experienced in the mechanical engineering mustering, mainly because once qualified, the personnel are 'poached'. As a result of this poaching it has not been possible to staff each ship and submarine fully with qualified personnel at all times, although it has been possible to ensure that the laid-down minimum seagoing standards were met.

[118] Not enough people are prepared or meet the requirements to go for technical training. This problem is being addressed. Entry requirements might be relaxed and the recruitment strategies might be improved in order to attract the required number of trainees. Currently not all ships and submarines have a full staff complement. This is a problem that existed for a very long time, even prior to 1994.

[119] According to Admiral Schoultz, there were a few technical/mechanical problems with the submarines and frigates. These problems have been adequately addressed. Some of the equipment has already undergone repairs. In one of the submarines they found that the power unit was incorrectly connected and it has been replaced. They also had a problem with the batteries of one of the submarines but the batteries have now been replaced. All the defects that were detected on their submarines have been repaired. In the normal course of operating the frigates certain defects were identified. In June 2008, *SAS Amatola* had a problem with her engine. A replacement engine was purchased and will be installed during the ship's upcoming refit.

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[120] Admiral Schoultz believes that defects that might be identified in the submarines or frigates can be fully addressed. Despite the defects that they have identified on the submarines and frigates they are still in a position to utilise the equipment as requested, and they discharge their functions adequately.

[121] If the contracts are cancelled, the witness believes it will be difficult if not impossible to return the equipment to the manufacturers. If the ships must be returned, it is unclear to whom they will be returned as hull and machinery were built in Germany, then brought to South Africa where subcontractors were appointed to integrate various systems on-board. The bi-control radars, the electronic warfare systems, dual-purpose gun and the surface-to-air missiles were built by South African companies. It would be illogical to strip these components from the ships and return them to the subcontractors who fitted them on the ships. If these components are kept by the Navy, the Navy might not have any use for them.

[122] Attempting to cancel the whole or part of the package will be extremely complex if not impossible.

4 Rear Admiral Derek John Christian

[123] Rear Admiral Christian joined the SA Navy in 1975. He rose through the ranks and is still in the Navy where he is employed as the Director Naval Logistics at Naval Headquarters, Pretoria, a post he held since January 2011. He has various military related qualifications, including an MBA (University of Cape Town) and an MA Degree in International Relations, obtained from Salve Regina University in Newport, Rhode Island.

[124] In January 1996 he was promoted to the rank of Captain (SA Navy) and appointed as the Navy's Senior Staff Officer Maritime Strategy at Naval Headquarters. He held this post until June 1996 and again from July 1997 to September 2000. He presented various papers at both local and international conferences. Some of the papers have been published. He also received various awards.

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[125] Concerning the rationale for the current force design, in his capacity as the Senior Staff Officer Maritime Strategy, he was one of the Navy's representatives involved in the discussion and compilation of the 1996 White Paper on Defence and the 1998 Defence Review.

[126] Admiral Christian referred to the constitutional mandate of the SANDF and said that the White Paper and Defence Review listed the functions and tasks that the SANDF had to be able to carry out. There were a total of 19 tasks, ranging amongst others from providing core defence capabilities against external military threats to providing hydrographical services to South African marines.

[127] The functions and tasks mentioned in the Defence Review were developed and analysed by a group of people within the DOD, including representatives from various divisions and the Secretariat. Different scenarios and possibilities were considered for each task, covering as many options and variations as possible. *Inter alia*, scenarios were developed to deal with peace-keeping operations, dealing with potential threats to South Africa's maritime trade and so on.

[128] The generation of the scenarios involved all services, as did the discussion concerning the possible outcomes and solutions. Finally, the best combinations of naval, air and land forces were considered in dealing with or solving each scenario. After considering as many options and variations as possible, as well as providing generic costing for each of the elements and forces involved, data concerning these force designs was fed into a computerised model that optimised the overall size of the force design for the entire SANDF for the amount of money available. This part of the exercise was known as *Project Optimum*.

[129] As these force designs developed and evolved, they were periodically presented to the Defence Staff Council for comments, approval or modification, as well as to the respective Services' Staff Councils. This process continued to be fine-tuned until the force design as contained in the Defence Review was approved.

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[130] Both the White Paper and the Defence Review process involved constant interactions with the general public and interested parties. Finally, both documents were fully debated and ultimately approved by Parliament.

[131] The witness referred the Commission, *inter alia*, to the three Daphne submarines that were built in France. They were commissioned in about 1970-71 and the last one was decommissioned in 2003. He also referred to the German-built Type 209 Heroine class submarines that were commissioned between 2005 and 2008. They are much larger and better than the Daphnes. They enable the Navy to fulfil its mandate much more effectively and efficiently.

[132] The acquisition under the SDPP was necessary and is worth our while.

[133] Navies around the world, including the SA Navy, battle to retain technically, highly qualified personnel.

[134] The Navy's philosophy is to have one submarine in maintenance cycle, one fully operational and one in training. Other navies around the world use the same philosophy.

5. Captain Jacobus de la Rey Jordaan

[135] Captain Jordaan joined the SA Navy in January 1977. He completed the officer training course at the SA Navy College and after a spell on the mine counter-measures flotilla, he joined the submarine services in March 1980 where he qualified as a submariner. He served in various posts on a number of submarines until 1990 when he became the Officer in Charge of the Submarine School.

[136] In 1991 he was appointed Project Officer of a submarine modernisation project and thereafter as Project Officer of a second submarine upgrade project. In 1998 he was promoted to Captain and appointed to the Acquisition Division as a Senior Staff Officer in the Naval Acquisition Directorate.

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[137] In April 2004 he was appointed Project Officer of the submarine project under the SDPP to oversee the execution of the project in Germany. Under his guidance the three new submarines were delivered in 2005, 2007 and 2008 respectively. He holds the same position to date.

[138] In 2008, Captain Jordaan returned from Germany and was appointed Project Officer for a tug boat project (2009-2012), and also as the Senior Staff Officer Sub-surface Systems from 2008 to date. He oversees a number of projects and renders an acquisition advisory service in the Defence Matériel Division of the DOD. He held these posts concurrently with his appointment as Project Officer of the submarine project, which is in the closing stages.

[139] He was awarded various medals, decorations and awards.

[140] He has a BSc (Hons) degree in Operations Management (*cum laude*) from the University of Hertfordshire and an Advanced Project Management Diploma.

[141] His qualifications and career progression were geared towards project management and acquisitions.

[142] Various policies and procedures were applied in the procurement of armaments within the SANDF, acting in conjunction with Armscor. The importance of these policies and procedures was that they formed the basis on which acquisition was planned and executed.

[143] The acquisition policy and process used by the Defence Matériel Division and Armscor evolved over a period of time. Prior to the SDPP, there was a strong focus on self-sufficiency in armaments because of sanctions imposed on the country. With the advent of democracy, new armaments markets not previously open to South Africa became accessible.

[144] One of the policies in place before the SDPP was Policy VB1000 ('Verkrygingsbeleid 1000', Afrikaans for 'Acquisition Policy 1000'). Associated with this policy was an internal SANDF policy definition called

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LOG 12 Pamphlet 2, tracing its roots to before 1986. These two documents were used in conjunction with each other. They were updated as time went on in accordance with changing situations. In 1994, VB1000 Issue 2 was promulgated in association with another edition of LOG 12 Pamphlet 2.

[145] VB1000 described the policies in regard to the approach to be followed by members of the defence family in the acquisition of weapons systems (armaments). These policies were in place until 1998.

[146] By 1998, after the Defence Review, a new policy was put in place based on the recommendation of the Ministry of Defence's Acquisition Work Group. This policy, called ACQ1/1998, was approved in 1999. In September 2004, the first major new policy was approved but it was replaced shortly thereafter, in November 2004, by another policy. The reason for the replacement was that the first policy was not written in the correct format.

[147] This policy was used from 2004 to 2010 when the current policy was approved.

[148] VB1000 Issue 1 became effective on 11 February 1992 under the title 'General policy for the management of Category 1 matériel acquisition process' ('Oorhoofse beleid vir die bestuur van die aanskaffingsproses van Kategorie 1 materiaal'). Category 1 matériel refers to military equipment like ships, aircraft, tanks and submarines. This was typically the type of equipment acquired under the SDPP.

[149] VB1000 Issue 2 became effective on 20 April 1994. Log 12 Pamphlet 2 that also dealt with the acquisition of Category 1 matériel, came into effect on 10 July 1994. The two policies, VB1000 and LOG 12 Pamphlet 2, in essence mirrored each other. In other words, they were the same policy, except that LOG 12 Pamphlet 2 included examples and templates for staff documentation that VB1000 did not contain.

[150] The primary philosophy articulated in these documents was that the acquisition process of Category 1 matériel was a systematic process, and inherently one of managing risk. It was a process in which three parties were

required to participate, namely the SANDF (or the SADF as it was before), Armscor as the acquisition agency of the SANDF, and the defence-related industry. The risks referred to primarily related to timescale risks, financial risks and technical risks.

[151] In August 1994, the Minister of Defence issued an instruction that the acquisition function of the DOD be investigated. A steering committee consisting of the Minister of Defence as chairperson, the Deputy Minister of Defence, the Chief of the SANDF, the Defence Secretary and the Executive General Manager of Armscor was established to approve proposals put forward by a project team. This project team became known as the Ministry of Defence Acquisition Work Group or the 'MODAC Work Group', for short.

[152] The MODAC Work Group consisted of members of the SANDF, the Defence Secretariat, Armscor and the defence industry. Its instruction was to investigate and make proposals with regard to the management, execution and structure of the acquisition function of the DOD. The Work Group conducted the investigation in three phases, resulting in reports that were approved as departmental policies. The full report was entitled *The MODAC investigation of technology and armament acquisition in the Department of Defence* and was dated 8 August 1996. The first MODAC Report (MODAC 1) was approved by the Steering Committee on 10 February 1995. The report for the first time defined the roles of the relevant parties within the DOD. The parties mentioned in the Report were the Minister of Defence, the SANDF, the Defence Secretariat and Armscor. The report also established a new acquisition management process and approval structure.

[153] In part, the executive summary of the MODAC report read as follows:

'The MODAC 1 report also established a new acquisition management process and approval structure. The model used for structuring the armament acquisition management process allows for sequential phases separated by formalised baselines that enhance effective and efficient management. This process systematically translates functional needs stated by the operational user into technical design and manufacturing

parameters. This process is managed by appointed Project Teams. A project team is responsible for the execution of a project and for the submission of project milestone documents as prescribed to the approval committees and boards.

The approval structure for project submission consists of four levels. The highest level of approval for acquisition is the Armament Acquisition Council (AAC) under the Chairmanship of the Minister of Defence. The second level of approval for acquisition is the Armament Acquisition Steering Board (AASB) under the Chairmanship of the Defence Secretary. This board approves non-cardinal projects and screens cardinal projects. The Armament Acquisition Control Board (AACB) under the chairmanship of Chief of Staff Logistics of the SANDF is the third level of control and screens all projects in terms of requirements. These councils and boards consist of senior personnel of the SANDF, Defence Secretariat and ARMSCOR.'

[154] After the approval of MODAC 1 in February 1995, its recommendations with regard to approval forums and levels were implemented. The DOD started to develop a new policy in the form of ACQ 1/98 that was finally approved on 2 July 1999 and promulgated on 19 July 1999, a few months before the SDPP contracts were signed.

[155] With regard to MODAC 2, under the heading 'Defence Industry Policy', the executive summary read as follows:

'The defence industry was investigated and a new industrial policy for the DOD was proposed. This policy deals with acquisition, industrial development and arms trade.'

[156] MODAC 2 was approved by the Steering Committee on 26 September 1995. As quoted earlier, the policy proposed in MODAC 2 dealt with acquisition, industrial development and arms trade. The MODAC 2 Report had its foundations in the Constitution that was applicable at the time. It acknowledged that armaments that would enable the National Defence

Force to carry out its constitutional mandate would also have to be acquired internationally, while recognising the obligation to develop the local armaments industry. It also recognised that for the SANDF to carry out its tasks it should have access to appropriately advanced armaments.

[157] In one of its paragraphs the report stated that the acquisition guidelines contained in it would guide acquisition decisions and therefore had to be included in the value systems for tender evaluations.

[158] Paragraph 2.4 of the Report, headed 'Competitive procurement', read as follows:

'2.4.1 OPEN COMPETITION

Fair and open competition shall be used as far as is practicable in the procurement of armaments. This shall include the invitation of foreign tenders.

2.4.2 TENDER ADJUDICATION

Adjudication of tenders shall not necessarily be based on the lowest price, but on value for money and industrial development goals. As part of the tender evaluation process, the concept of cost evaluation based on life cycle costing (cost of ownership) shall be employed.

2.4.3 COMPETITION ON SUBCONTRACTS

Suppliers of major systems or items shall be required to allow maximum amount of competition on the subsystem and parts level in an offer (i.e. reduce vertical integration).'

[159] The above-quoted paragraphs were based on the constitutional principle that, *inter alia*, acquisition by government entities must be fair, transparent and competitive.

[160] Paragraph 2.5.2 dealt with countertrade. It reads as follows:

'The policy in the case of importation of defence equipment and related items shall be that all contracts with a value of RM5 and more shall be subject to a counter trade and/or offset

requirement of at least 60% (shall be increased to 100% by 1998).'

[161] The policy further stated that secrecy in respect of acquisition programmes would pertain only to military capabilities—such as force levels and technical specifications—and commercial confidentiality.

[162] The Cabinet had to approve defence policy and cardinal projects (the latter will be returned to below). Parliament's Joint Committee on Defence would have oversight over the role played by the Cabinet in its approval function. In the contracting phase, the principle of 'best value for money' was introduced. Contracts were to be entered into with the manufacturers of the equipment.

[163] Prior to MODAC 1 and 2, there was a value system against which tenders were evaluated. Paragraph 2.8 of the MODAC 2 Report, dealing with tender adjudication, read as follows:

2.8.1 VALUE ANALYSIS

All tender adjudication for armaments shall be based on a value analysis using an objective value system.

2.8.2 TENDER BOARD

The ARMSCOR Board of Directors shall act as an independent and impartial tender board for the procurement of armaments in terms of the Armaments Development and Production Act 57 of 1968 as amended. This responsibility could be delegated to the ARMSCOR Management Board for smaller contracts (<R5 million), but the Board of Directors remains accountable for all tender adjudication.'

[164] The acquisition policy set out above was similar to the policies contained in VB1000 or Log 12 Pamphlet 2. It should be noted that VB1000 dealt with singular type of acquisition programmes.

[165] The recommendations contained in MODAC 3, dealing with the structure of the defence acquisition programme management, were

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presented to the Steering Committee on 31 May 1996. They were not approved and the Minister decided that Armscor should continue to operate as a state-owned company with statutory powers in accordance with the Armaments Development and Production Act 57 of 1968.

[166] Prior to 1994, South Africa's ability to acquire arms was restricted by the arms embargo and defence acquisition was primarily aimed at self-sustainment in armaments. With the new dispensation, international markets opened up to South Africa and so did the international defence markets and industries.

[167] As mentioned earlier, before 1994 the SADF dealt with projects on a singular basis, in other words projects were undertaken individually. After 1994, various foreign armaments manufacturers offered their respective products to South Africa, following which the Strategic Defence Package concept emerged. This resulted in a more complex environment where they had to deal with complex systems of various disciplines from a variety of countries and across departments in the South African domain.

[168] As a result, it was considered at the time that international defence equipment offers fell outside the scope of the existing acquisition policy and a specific policy for such international defence equipment offers had to be established.

[169] In order to deal with international defence equipment offers in the Ministry of Defence (MOD), DOD Policy Directive 4/147 was approved on 8 August 1997 by the COD, which was chaired by the Minister of Defence. The Policy Directive was signed by both General Meiring, Chief of the SANDF, and Mr PD Steyn, the Secretary for Defence.

[170] The Policy Directive dealt with the process to be followed by the DOD and Armscor in dealing with international or government-to-government defence equipment offers. The aim of the directive was stated as follows:

'To provide MOD Policy guidelines and management procedures for dealing with foreign initiated international government to

government defence equipment offers relating to armaments acquisition for the SANDF, that are to be integrated with an interdepartmental coordinating and decision making structure.'

[171] Policy Directive 4/147 dealt with various issues, including how offers were to be evaluated. It further provided that preference should be given to offers characterised by multinational suppliers in order to avoid the creation of single-country dependencies; that international suppliers with whom enduring relationships had been established were to be pursued; and technology transfer was to be included where significant inventory impact was evident.

[172] Captain Jordaan further testified that the acquisition process has remained the same over time and was still the same today, although with the approval of certain programmes there had been some change. While the policies of the DOD were previously aimed at singular type programmes, the concept of the SDPP introduced a different dimension: these packages were much more complex, dealing with multiple government departments across various countries in multiple disciplines, amongst others.

[173] Within the armaments acquisition environment, armaments were classified as cardinal projects or non-cardinal projects. The reason for the classification was to determine the level of top management involvement during the approval stages of the projects. In general terms, cardinal projects would be presented to Parliament whereas non-cardinal projects, as they are far less complex and smaller projects, would generally not be reported to Parliament on a regular basis. When the project risk was major or of a comprehensive nature it would certainly indicate a cardinal project. The SDPP fell in the category of cardinal projects.

[174] Where a project involved international treaties or where domestic policies could become involved, it would also indicate that the project in question was a cardinal project. The SDPP involved government-to-government agreements and this also qualified the SDPP as a cardinal

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project. The classification of projects has in principle remained the same over time, from VB1000 to the latest DOD Instruction (DODI).

5.1 The DOD acquisition structure

[175] The overall structure of the DOD is headed by the Minister of Defence. The Department is divided into two main parts. One is headed by the Secretary for Defence, a civilian who is the accounting officer. The other is headed by the Chief of the SANDF, who is responsible for the operational part of the DOD.

[176] The Acquisition and Procurement Division falls under the control of the Defence Secretary. This division was created in 1998 and dealt with the acquisition of the SDPP. The division has a number of directorates, primarily the Directorate Air Force Acquisition and the Directorate Navy Acquisition, both of which were involved in the SDPP. The directorates, in turn, have project teams functioning under them. Besides the Acquisition and Procurement Division, the Financial Division and the Inspector General also fall under the Secretary for Defence.

[177] The other main part of the DOD, headed by the Chief of the SANDF, consists of the arms of service as well as the Intelligence Division, the Joint Support Division and the Joint Operations Division. The latter division actually deploys the forces whereas the arms of service prepare the forces. One of the roles of the Inspector General's Division under the Secretary for Defence is to serve as an internal audit organisation within the DOD. The Division also deals with issues of compliance with policies and procedures that have been promulgated. The SDPP was subjected to a number of inspections by the Inspector General.

[178] As mentioned above, the various acquisition directorates have project teams. For each project that is registered to satisfy a requirement, a project team is established and a project officer appointed. An Armscor programme manager is also appointed to the project team, as well as a number of other specialists. The team works to achieve the objectives of the specific project.

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[179] The SA Air Force projects would account to the Directorate Air Force Acquisition and the Navy projects would answer to the Directorate Naval Acquisition, and so on. As the acquisition agency of the DOD, Armscor would participate and make inputs into the discussions.

[180] The Acquisition and Procurement Division that falls under the Secretary for Defence, acquires the equipment for the forces. The Joint Support Division under the Chief of the SANDF is responsible for the general support activities within the SANDF. It consists of subsections for logistics, personnel, police and command management information systems.

[181] Prior to the new dispensation, during the arms embargo period, Armscor and the SADF worked in silos to a large extent. There was a clear division of responsibilities. Following the Defence Review, the Secretariat of Defence was created. It introduced civil control, and there was a much more integrated approach.

[182] The Cabinet is at the top end of the structure and below it is the COD, chaired by the Minister of Defence. Below the COD are the Defence Staff Council on the one hand and the Armscor Board on the other. Below the Armscor Board is Armscor, with the DOD below the Defence Staff Council.

[183] Between the Defence Staff Council and the Armscor Board is the Armament Acquisition Council (AAC), which reports directly to the COD. Below the AAC is the Armament Acquisition Steering Board (AASB), and below that the Armament Acquisition Control Board (AACB). At the bottom is the Integrated Project Team (IPT), which is made up of representatives of Armscor, the acquisition entities mentioned above and the DOD. The last structure that stands on its own at the same level as the Defence Staff Council and the Armscor Board, are the suppliers.

[184] The teams and various entities mentioned in the preceding paragraph are now working together. In the past, Armscor was operating separately from the SADF because of the separate pieces of legislation that created and controlled them. With the advent of the IPTs, these project teams started working together much closer and in a more integrated manner. At

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the time of the SDPP, each project team had a DOD project officer and Armscor project manager, working together as an integrated entity.

[185] The AACB was previously chaired by the Chief of Acquisition but is now chaired by Chief of the Defence Matériel Division. The AASB is chaired by the Secretary for Defence and the AAC by the Minister of Defence. The DOD and Armscor have seats on the AAC, AASB and AACB.

[186] Armscor is controlled by the Armscor Board of Directors and once the Board has given the final authority for the contracts, Armscor contacts the suppliers.

5.2. Roles of various parties in the acquisition process

[187] As far as the roles of the different parties are concerned, the Minister of Defence is the ultimate political authority, in other words, the political responsibility for the acquisition function rests with the Minister.

[188] The SANDF, for its part, is primarily responsible for the determination of armaments requirements as derived from and substantiated against the approved force structure and in accordance with policies, programmes and budgets. During the execution of armaments acquisition programmes, the SANDF is responsible for overall project management to ensure that the stated requirements are satisfied through the acquisition of optimised user systems and final acceptance of these systems against the stated needs.

[189] The Defence Secretariat is responsible to ensure that all acquisition activities are executed within national objectives, policies and constraints.

[190] Armscor is responsible for the professional programme management and contracting of industry during the execution of armament acquisition programmes. Armscor ensures that technical, financial and legal integrity is in accordance with MOD requirements. It also oversees industrial development in order to support acquisition programmes.

5.3. The acquisition process

[191] Early in the acquisition process the SANDF prepares a document called the Required Operational Capability (ROC). In this document a

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comparison is made between the existing capability and the capability required by the SANDF to fulfil its constitutional mandate. Once the ROC is completed, processed and approved, a decision is made whether it is to be fulfilled by means of a project or by means of an internal arm-of-service process.

[192] Should the decision be by way of project, a study is done upon the conclusion of which the output is the Staff Target. The Staff Target is then developed over time into the Staff Requirement, which is an expansion of the requirements from higher level capability and operational terms to more functional terms. The finalised and approved Staff Requirement contains the requirements of the SANDF against which the success of the project would be measured.

[193] Then follows the Project Study, which is intended to evaluate the various options that are available to satisfy the requirements. A primary option is selected. From there, either of two possible processes could be followed. If there are suitable products available on the market, they can go directly to an acquisition study, leading to an acquisition plan. If there is no suitable product on the market or if for some good reason it is not advisable or desirable to acquire products available in the market, they can decide to go into a development cycle. In the latter event a development study would be undertaken with a view to a development plan that would basically indicate how they intended going through the process of developing the product.

[194] During the arms embargo period, many of the projects embarked upon were development projects because the Defence Force could not buy any products from the market. Under the democratic dispensation the markets opened to South Africa and it became easier and much more cost-effective to follow the direct-acquisition route as was done in the case of the SDPP.

[195] After the development plan has been finalised, the acquisition plan follows. The latter provides the authority for the greater portion of the

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expenditure that is to be expended on the programme. It approves the acquisition of the equipment which is the subject of the project.

[196] Once the acquisition plan is approved, the programme executor is allowed to sign the contracts, establish the products, accept them, deliver them to the arms of service and commission the systems into the SANDF.

[197] The detailed planning and control of the execution of projects are done by the project team, consisting of the arms of service project officer, the Armscor programme manager and the contractor's programme manager. The project officer and the Armscor programme manager form the project management committee responsible for the day-to-day management of the project. The project officer's main function is to advise and guide the Armscor programme manager on all relevant military aspects during the design and development of the product or system.

[198] The functions of the Armscor programme manager, as the head of the programme office, include gathering and processing of all information regarding the programme, ensuring the integrity of the acquisition process and thus also of the product or product system. Quality assurance must take place and be maintained throughout the programme by means of close liaison with the relevant arm of service and where necessary with the manufacturer.

[199] When the need arises, the programme manager must in good time make the project officer aware of the fact that there are or could be deviations in the programme's technical performance, costs or schedule constraints.

[200] In any acquisition process the Staff Target is mandatory. The approval of the Staff Target indicates the commencement of a project in the acquisition process. The Staff Target is basically a summary of the results of the preliminary study with an exposition of the desired operational missions in qualitative terms, the operational environment in which the system will be implemented, the operational performance that is required as well as the broader logistic support implications that may be expected. The Staff Target

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will at least ask for the appointment of a project officer for that project. Upon approval it is standard process that the Staff Target would be allocated a number for it to be identified.

[201] The acquisition plan is drawn up by the user, based on the acquisition study executed by Armscor, and represents the SANDF manufacturing decision. It is approved by top management and together with the Staff Target are non-negotiable documents for any project. It provides the authority for the bulk of the finances of the specific project to be expended.

[202] As stated earlier, cardinal projects are approved by the AAC, which is normally chaired by the Minister of Defence. Non-cardinal projects, being less complex and generally much smaller with less risk, are approved at one level lower by the AASB, chaired by the Secretary for Defence.

[203] The other important phase in the acquisition process is the industrialisation phase. This phase involves, *inter alia*, a manufacturing baseline for the matériel in terms of which industry can manufacture so that the system produced is in accordance with the user-stated requirements. The industrialisation phase is carried out mainly by industry in close interaction with the SANDF and Armscor.

[204] With the SDPP the industrialisation phase was not critical since the industry was already 'industrialised', given that the manufacturers were existing foreign industry. So, this phase was minimal.

[205] The industrialisation phase includes all activities between the product baseline and the manufacturing baseline. The product baseline indicates the set of documents, drawings and specifications against which the product must be manufactured. The manufacturing baseline would include, *inter alia*, the processes within the industry relating to manufacturing.

[206] During the manufacturing phase the product system is manufactured, erected and established by industry and Armscor, while the user system is established by the SANDF and the contracted parties. The manufacturing phase is executed by industry in close interaction with the SANDF and

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Armcor. Armcor is amongst others responsible for ensuring that the manufacturing phase is carried out by industry according to the contract and that the acquisition project is carried out according to the agreement.

[207] In the manufacturing phase the SANDF is responsible for conducting the qualification study in cooperation with Armcor and the manufacturing industry in order to determine precisely in which way the user system logistic support will be qualified. Amongst others, this consists of a complete plan with timescales; persons and organisations involved; qualification norms; final operational test and evaluation documentation.

[208] The final operational test and evaluation is aimed at confirming compliance with the operational requirements set out in the functional User Requirement Statement, while the logistic requirements are set out in the logistic User Requirement Statement.

[209] The results of the study are summarised as the qualification plan and are used to direct the commissioning phase, executing the 'doctrine' study in order to establish a complete 'employment doctrine' before the system is declared ready for full operational deployment. The 'employment doctrine' and the 'logistic doctrine' are documents developed by the SANDF. They describe how the system will be utilised and how the system will be supported logistically.

[210] The next phase would be the commissioning phase, the purpose of which is to set up the supply baseline for the matériel levels and the operational baseline for the combat capability. During the commissioning phase the matériel is subjected to factory testing by industry in accordance with the requirements contained in the technical specifications.

[211] After proper acceptance, the matériel is supplied to Armcor, which in turn supplies the product to the SANDF for final operational test and qualification. This is measured against the functional User Requirement Statement and the logistic User Requirement Statement as contained in the Staff Requirement.

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[212] Once the commissioning phase has been conducted, the project is coming to an end. By and large, most if not all of the project objectives will have been achieved at this stage. As the project needs to be closed, a provisional project conclusion report is prepared by the project officer. The report is basically a summary of the results produced in the commissioning phase and contains an introduction with a short overview of the course of the project, important lessons learnt and recommendations for future projects.

[213] The provisional project closure report also indicates that the product system(s) as contracted with Armscor had been finalised satisfactorily in all respects. It would also contain a completed handover certificate in which the weapon system manager or equivalent takes over the full extent of the project responsibility for the operation.

[214] It could take some time between the operational decision and the final closing down of the project because there may be outstanding items that need to be dealt with. The provisional project conclusion report will therefore contain a recommendation on the timescale for handing in the final project conclusion report because the logistics system can only be finally qualified when the first major repairs to the user system begin. In some cases this can be up to 16 years later.

[215] A full financial report of completed activities, including budget funds or budgeted funds not spent, is required with an estimation of what would still be required for future activities until submission of the final conclusion report.

[216] The next phase is the operational phase. The purpose of this phase is to employ the user system in accordance with the set requirements contained in the functional User Requirement Statement. Quite often in this process the end user relays back to the functional User Requirement Statement and the logistic User Requirement Statement, which is associated with the Staff Requirement. In order to do so the system must logistically be fully supportable during its operational life in accordance with the logistic User Requirement Statement.

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[217] During the operational phase the user system is deployed by the SANDF and supported logistically by the SANDF, Armscor and the industry.

[218] The SANDF is responsible for preparing the final project conclusion report so that the project part of the life cycle of the user system may be terminated.

[219] A final project conclusion report is submitted for approval only within the framework of the arm of service. This is so because as far as the Chief of the SANDF is concerned, the project had already been concluded upon submission of the provisional project conclusion report. When the final project conclusion report is approved the project is closed. What needed to be achieved had been achieved and the project ceases to exist.

5.4. Flow of project submissions in the recommendation and approval process

[220] Various councils and committees deal with recommendations and approvals of projects.

[221] To recapitulate: the SDPP was a cardinal project. It had to pass through the Project Control Committee for recommendation. At the time, the Project Control Committee was chaired by the Chief of Staff Logistics. From there it had to go to the Defence Command Council for further recommendation. The Defence Command Council was chaired by the Chief of the SANDF. The Staff Target had to be passed to the Defence Planning Council for final approval. The Defence Planning Council was chaired by the Minister of Defence.

[222] The Staff Requirement of the cardinal projects would have to be recommended by the Project Control Board and approved by the Defence Command Council. Project study reports would similarly be recommended by the Project Control Committee and be approved by the Defence Command Council.

[223] The acquisition plans in terms of the policy would have to pass through the Project Control Board as well as the Defence Command Council

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and be submitted to the Defence Planning Council for approval. While this latter process was initially in place, by the time the acquisition plans had to be approved for SDPP purposes, new processes were in place.

[224] Log 12 Pamphlet 2 that came into force in July 1994 was mentioned earlier. It reflected and echoed VB1000. Log 12 Pamphlet 2 referred to 'National Defence Force' whereas VB1000 referred to 'SADF'. Log 12 Pamphlet 2 described the acquisition process, the same system hierarchy, classification of projects and categories of matériel as VB1000, but also included examples and templates of documentation that VB1000 did not provide. Thus, Log 12 Pamphlet 2 was issued in conjunction with VB1000 Issue 2. It contained an appendix dealing with approval of projects, again echoing what VB1000 said.

[225] The Log 12 Pamphlet 2 policy and document formed the standard acquisition policy in the SANDF.

[226] The MODAC 1 Report that was approved by the Steering Committee on 10 February 1995 defined the roles of the different parties within the DOD and established a new acquisition management process and approval structures. This included the establishment of the Armament Acquisition Control Board (AACB), the Armament Acquisition Steering Board (AASB) and the Armament Acquisition Council (AAC), which replaced the then existing structures. The Project Control Board was replaced by the AACB, the Defence Command Council, for the purposes of recommendation and approval processes, was replaced by the AASB, while the Defence Planning Council, at the highest level for the purposes of recommendation and approval, was replaced by the AAC.

[227] MODAC 2 related to the Defence Industry Policy that dealt with the acquisition of armaments, industrial development and arms trade. This policy also stated that all major foreign procurement contracts should contain countertrade agreements.

[228] MODAC 3 contained the results of the investigation into the organisational structure of the Defence Acquisition Programme Management

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Organisation. The MODAC 3 analysis was presented to the Steering Committee on 31 May 1996 and the Minister decided that Armscor should continue to operate as a state-owned entity with statutory powers.

[229] In terms of the new approval structure introduced by the MODAC Report, as far as cardinal projects were concerned, the Staff Target would be approved by the AACB, subject to an Acquisition Master Plan being recommended at the next higher level, the AASB, and approved at the AAC.

[230] Also, as far as cardinal projects were concerned, Staff Requirements would be approved at the AACB level; the project study report for cardinal projects would be recommended at the AACB level, then recommended to the next higher authority, namely the AASB, and be approved by the AAC.

[231] Development plans were not relevant to the SDPP. Acquisition plans, on the other hand, would have to be recommended by the AACB, then by the AASB and approved by the AAC.

[232] The AAC is chaired by the Minister of Defence, the AASB by the Secretary for Defence and the AACB by the Chief of the Defence Acquisition and Procurement Division, currently known as the Defence Matériel Division.

[233] With minor differences, the approval structure provided for by VB1000 was similar to that of the MODAC Report. Previously the Staff Target was approved by the Defence Planning Council (the highest authority), whereas the new structure provided that the Staff Target could be approved by the AACB (the lowest authority), subject to an Acquisition Master Plan having been approved at the AAC level. The other difference was that under the VB1000 dispensation, the Project Study Report would have been approved by the Defence Command Council (2nd highest authority), while under the MODAC Report the Project Study Report would have to be approved by the AAC (highest authority).

[234] At the time when the SDPP was considered, MODAC 1 and 2 were applicable together with other policies. The VB1000 that applied prior to the contemplation of the SDPP was insufficient in so far as it did not address the

acquisition that was envisaged in the SDPP and the policy had to be augmented in order to deal specifically with the acquisitions foreseen for the SDPP.

[235] In terms of the new policy, as under the VB1000 regime, it is the responsibility of the SANDF to establish its requirements.

[236] A change introduced by the new policy was the establishment of the Defence Secretariat. The policy defines the role of the Defence Secretariat as being responsible for ensuring that all acquisition activities are executed within national objectives, policies and constraints, for example.

5.5. Negotiating and approval structure

[237] Earlier, reference was made to the AAC, which is chaired by the Minister of Defence. The AAC includes the Chief of the National Defence Force, the Defence Secretary and the Executive General Manager of Armscor. The terms of reference of this council include the approval of the armaments acquisition policy, armament acquisition budgets and cardinal projects.

[238] The AASB as the second highest body for the approval of projects, is chaired by the Defence Secretary. This Board consists of senior personnel of the SANDF, the Defence Secretariat and Armscor. It approves non-cardinal projects and screens cardinal projects.

[239] The AACB under the chairmanship of the Chief of Staff Logistics is the third level of control, and screens all projects. Members of the Defence Secretariat are part of the AACB. The AACB Executive Committee is a support group that ensures the maintenance of the integrity of the processes followed and the relevant documentation.

5.5.1. Armament Acquisition Council (AAC)

[240] The AAC is the highest level where cardinal armaments acquisition is approved. It ensures that armaments acquisition is carried out in terms of policies and procedures, and oversees the activities of the lower level bodies or structures.

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[241] As stated earlier, its members are the Minister of Defence as chairperson, the Deputy Minister of Defence, the Secretary for Defence, the Chief of the Defence Force and the Managing Director of Armscor.

[242] The policy document (MODAC) further states that the Chief of Staff Logistics would provide secretarial services to the Council until the Secretariat was sufficiently staffed. The functions of the AAC include the following:

- i. To review and approve the Armaments Acquisition Master Plan (yearly)
- ii. To review and approve submissions regarding major milestones on cardinal programmes
- iii. Yearly progress reviews of all cardinal acquisitions and technology programmes
- iv. The review and ratification of the minutes of the AASB
- v. The review of draft submissions to be made to the Cabinet at the request of the Minister of Defence.

[243] The Staff Targets, Project Study Reports and Acquisition Plans of cardinal projects must be approved by the AAC.

[244] A project can proceed only after the Staff Target was approved. Policy VB1000 stipulated that the Staff Target and the Acquisition Plans were mandatory documents.

[245] Once an Acquisition Master Plan has been approved by the AAC, the AACB would be competent to approve Staff Targets.

[246] The Minister of Defence has the final authority on all acquisition matters and has the right to refer a decision on acquisition programmes to the Cabinet.

[247] The responsibilities of the Secretary for Defence, who is also a member of the AAC, are stated as follows:

- i. Maintaining records of all proceedings and decisions

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- ii. Liaising with members and ensuring that documentation is distributed timeously
- iii. Distributing minutes within seven working days after a meeting.

5.5.2. Armament Acquisition Steering Board (AASB)

[248] The AASB is chaired by the Secretary for Defence. Its other members are the Deputy Director-General Defence Policy, Programming and Budgeting, the Deputy Director-General Finance and Admin, the Chief of Staff Logistics, the Chief of Staff Finance, and the Managing Director and two general managers of Armscor. Secretarial services are provided by the Director Logistics Policy.

[249] In the absence of the Secretary for Defence, the Deputy Director-General Defence Policy, Programming and Budgeting acts as chairperson of the Board.

[250] The AASB ensures that armaments acquisition is carried out in terms of policies and procedures and performs oversight over the activities of lower-level structures.

[251] Functions of the AASB include the following:

- i. To review and approve all non-cardinal programme submissions and to overview the major research and development activities
- ii. To screen programmes to be submitted to the AAC
- iii. To review and ratify minutes of the AACB and the Defence Research and Development Board
- iv. To confirm or upgrade projects classification at the Project Study Report stage.

5.5.3. Armament Acquisition Control Board (AACB)

[252] The role of the AACB is to control the flow of acquisition submissions to the AASB and the AAC. The Chief of Staff Logistics is the chairperson of the AACB. The other members are two representatives from the office of the Secretary for Defence, five from the SANDF and two from Armscor.

[253] Functions of the AACB include:

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- i. The review of all staff documents
- ii. The review and approval of programmes amended within the delegation framework.

5.5.4. Strategic Offers Committee (SOFCOM)

[254] The purpose of this committee was to support the Minister of Defence in the management and execution of the DOD involvement in the international government-to-government strategic partnership and/or alliance proposals in which defence equipment was offered.

[255] SOFCOM functioned under the dual chairmanship of the Chief of Acquisition of the DOD (Mr S Shaik) and the General Manager Aero Maritime of Armscor (Mr H de W Esterhuysen, the Acting CEO). Decisions of SOFCOM were valid once confirmed by both chairpersons. The chair was occupied on a rotational basis.

[256] SOFCOM consisted of the following members: the two co-chairpersons; the Chief of Finance; the General Manager Combat Systems, Armscor; the Director Weapon Systems, Acquisition Division; a Chief of Army representative; a Chief of Air Force representative; a Chief of Navy representative; a Chief of Intelligence representative; a DTI representative; a Department of Finance representative; a representative from the Acquisition Division (SOFCOM Secretariat;) and a representative from Armscor (SOFCOM Secretariat).

[257] In terms of its Constitution and Rules, SOFCOM's functions were set out as follows:

'3 Functions of the SOFCOM:

The SOFCOM performs the following functions in support of the Minister of Defence, the Council on Defence and mutual support amongst members of the SOFCOM:

- a. *Gathering, sifting and advising of relevant information.*
- b. *Interpreting and executing direct instructions from the MOD and members of the COD.*

- c. *Managing the involvement of appointed DOD and Armscor project team members.*
- d. *Co-ordinating the involvement of nominated State Departments on the SOFCOM and supporting Workgroups.*
- e. *Ensuring compliance with policy that is generally applicable or specifically promulgated.*
- f. *Conduct the second order evaluation of competing offers and submit the recommendations to the COD.'*

[258] A number of evaluation teams were responsible for evaluating the different projects. There was a team for technical evaluations, for defence industrial participation, for national industrial participation and for financial evaluation. The technical teams were made up of members from the arms of service and from Armscor.

[259] There were teams for each project, namely the ALFA project, the LIFT project, the LUH project, the submarines project and the corvettes project. After evaluating the projects, the teams submitted their recommendations to SOFCOM. The value system contained in the acquisition policy was utilised.

[260] As stated earlier, SOFCOM would conduct the second order evaluation of competing offers and submit their recommendations to the COD.

5.5.5. International Offers Negotiating Team (IONT)

[261] On 18 November 1998, the Cabinet approved the preferred suppliers. The next phase of the international strategic initiative was the appointment of a task team to negotiate an achievable funding arrangement and affordable packages with the preferred suppliers.

[262] A letter dated 25 January 1999 from the office of the Deputy President contained the following:

*'TERMS OF REFERENCE OF THE INTERNATIONAL OFFERS
NEGOTIATING TEAM
MANDATE*

1. *Cabinet approval of the international offers preferred suppliers on 18 November 1998 refers. The task of negotiating an achievable funding arrangement, and an affordable package with the preferred suppliers, which will result in final contracting for the offered equipment to the SANDF, is the next phase of the IO strategic initiative. This task will be undertaken by a negotiating team which is led by a Chief Negotiator supported by the Department of Trade and Industry (DTI), the Department of Finance (DOF) and the Department of Defence (DOD), including ARMSCOR (ACSA). The negotiating team is to negotiate and conclude an affordable set of contracts which satisfactorily combines the technical, industrial participation and financial imperatives. The Negotiating Team (NT) will now commence with the work programme agreed to by the Minister's Committee.*

STRUCTURE

2. *The Chief Negotiator reports to the Ministers' Committee and directly to the Deputy President as and when required. The negotiating team reports to the Minister's Committee consisting of the Defence, Trade and Industry, Finance, Public Enterprises and the Deputy Minister of Defence. The Minister of Defence will chair the Ministers' Committee in the absence of the Deputy President. The negotiating team also liaise with a Monitoring Committee consisting of the DGS of the DTI, the DOF, the DPE, the DOD, including the advisor to the Minister of Defence.*
3. *The five member negotiating team under the leadership and co-ordination of the Chief Negotiator, consists of the following four additional members representing the four domains developed per equipment type selected for procurement:*
 - a. *The technical and DIP domain will be addressed by the CEO of ARMSCOR, who leads the technical negotiating*

workgroup and the DIP negotiating workgroup, supported by Chief of Acquisitions of the DOD.

- b. The National Industrial Participation (NIP) domain will be addressed by the Acting Director Industrial Participation of the DTI who leads the NIP negotiating workgroup.*
- c. The financing domain will be addressed by the Senior Manager Budget Office of the Department of Finance who leads the financing negotiating workgroup.'*

[263] The letter was signed by Mr Jayendra Naidoo, and under his signature was written 'Chairman: Chief Negotiator'.

[264] The above-quoted terms of reference were apparently approved by all the members of the Ministerial Committee mentioned above.

[265] Project teams were constituted from members of the DOD and Armscor. These teams would provide their technical inputs through a project control board where the Chief of Acquisition, the CEO of Armscor, the Chief of the Navy and the Chief of the Air Force were present. The technical inputs were then made to the negotiating team. There were three sets of teams, namely a technical team, an industrial participation team and a finance team. They made their inputs to the IONT, which in turn fed the inputs to an Affordability Team that made recommendations to the Ministers' Committee.

[266] The IONT consisted of Mr J Naidoo as the Chief Negotiator, Mr R White from the Department of Finance, Mr V Pillay from the DTI, the CEO of Armscor, Mr L Swan, and the Chief of Acquisition from the DOD, Mr S Shaik.

[267] The Affordability Team consisted of Messrs J Naidoo, S Shaik, R White and P Jordaan.

[268] In his closing remarks, Captain Jordaan emphasised that the two important documents in the acquisition process were the Staff Target and the Acquisition Plan, as the former constituted the project decision and the latter was required to obtain authority for financial expenditure.

6. Rear Admiral (JG) JEG Kamerman

[269] Rear Admiral Kamerman joined the SA Navy in 1973. He specialised in surface warfare, served in the strike craft flotilla for 14 years, amongst others as Weapons Officer, Combat Management Officer and Commanding Officer.

[270] During his time in the strike craft flotilla he was appointed as User Specialist of equipment projects for the strike craft. He was appointed User Specialist and Project Officer of various projects.

[271] In 1993 he was appointed Project Officer for *Project Sitron*.

[272] In 1997 he led the execution of the RFI phase of *Project Sitron* and *Project Maulstic*, both part of the SDPP. He led the development of ship platform and helicopter specifications and value systems, as well as the evaluation of international offers to reach a shortlist of contending ship and helicopter suppliers.

[273] In 1998 he led the execution of the *Project Sitron* RFO phase and the evaluation process for the Military Value component for the selection of the preferred supplier for the patrol corvettes. In late 1998, he authored the patrol corvette combat system User Requirement Specification and in 1999 he co-led the technical negotiations for the patrol corvette contractual baseline, which formed the technical basis of the supply contract for the patrol corvettes.

[274] In 2000 he authorised the *Project Sitron* acquisition plan and was posted to Germany as Project Officer for *Project Sitron*. In June 2000 he was promoted to Rear Admiral (Junior Grade) as Project Director with disciplinary, administrative and oversight control for both the patrol corvette and submarine projects that were executed in Germany.

[275] From 2000 to 2006 he jointly led the *Project Sitron* Joint Project Team for the acquisition phase of the patrol corvettes and their Integrated Logistic Support, and led all activities for their commissioning into the SA Navy service as fully operational vessels.

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[276] In February 2006, together with his Armscor co-leader of *Project Sitron*, Mr Fritz Nortjé, he accepted the first corvette from the Main Contractor and handed it over to the SA Navy.

[277] In 2006 he retired from the SA Navy. He was offered an executive post by ThyssenKrupp Marine Systems (TKMS) in Germany. He accepted offer and is still employed as a Senior Vice President of TKMS in Hamburg, Germany.

6.1. The SA Navy's need for frigates

[278] Since the early 1970s, the SA Navy had operated frigates as its main surface combatant.

[279] When he joined the Navy in 1973 they had eight such vessels, although five of them were obsolete ex-WW2 ships and were all scrapped by 1980.

[280] Since 1980, the Navy had repeatedly attempted to acquire replacement frigates, without success. They also could not modernise the remaining three because of, *inter alia*, the 1977 UN arms embargo against South Africa and a lack of funds.

[281] The crisis worsened in 1982 when one of the three remaining frigates was lost in an accident at sea, and a shortage of spares led to the premature decommissioning of another.

[282] By 1985, after the cancellation of plans to modernise the last of its frigates, the Navy was obliged to withdraw the ship from service and was forced to rely on small Israeli-origin missile strike craft as its surface combatant force. These ships were not able to meet the Navy's required capabilities.

[283] In the early eighties a naval project called *Project Falcon* (later *Foreshore*) was launched. A contract was placed on the Spanish naval shipbuilder Bazan in 1989 for the supply of four frigates to the Navy. Spain was one of the few countries that were at that time willing to circumvent the UN prohibitions on the export of armaments to South Africa.

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[284] Because of financial constraints as well as the political changes taking place at that time, defence contracts across the board, including *Project Falcon*, were cancelled in August 1991 by the Minister of Defence.

6.2. Inception of Project Sitron

[285] In 1993, after intense lobbying, the DOD was willing to consider the Navy's needs again and a new Naval Staff Requirement for a surface combatant was written by him, approved by the Naval Board in April 1993 and subsequently by the Chief of the SANDF. With the approval of the Naval Staff Requirement, a new acquisition project for these ships, called *Project Sitron*, was launched.

6.3 Project Sitron phase 1: 1993-1995

[286] At the time of the inception of *Project Sitron* in the two-year period between approval of the Naval Staff Requirement in April 1993 and the suspension of the project in May 1995, the acquisition strategy for the project was that only the ship platforms would be acquired from an overseas ship builder via a contract placed by Armscor. The ship platform would then be integrated in South Africa with a combat suite consisting of the upgraded strike craft combat system plus systems and equipment that would provide the ship with the proper anti-air, anti-submarine warfare capability and maritime helicopter capabilities. These systems would be supplied and integrated under contracts separately placed by Armscor, with Armscor as the main contractor.

6.3.1. Local combat systems

[287] It was envisaged that the combat suite would mainly be locally sourced. Arising from South Africa's increasing international isolation since the sixties, which intensified after the United Nations arms embargo imposed in 1977, South Africa had by the early nineties developed a very broad defence technology base, vested in both the state and private industry.

[288] In the early eighties, because of the necessity of locally upgrading the existing Daphne class submarine, Altech established ADS to focus on naval

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combat systems technology, particularly sonar systems and naval combat system integration engineering.

[289] ADS was thus from the start and throughout the acquisition of the corvettes, the only naval combat systems house in South Africa, and the only local company capable of naval system integration engineering.

6.3.2. Appointment of the project team

[290] Admiral Kamerman was the principal author of the Naval Staff Requirement for the new ships, approved in April 1993, and was duly appointed as the Project Officer for *Project Sitron*. He reported to the then Chief of Naval Staff Plans, then Commodore AN Howell, who was the Naval Board member responsible for naval projects. A *Project Sitron* joint project team was assembled from members of the Navy and Armscor.

[291] Several SA Navy specialists, naval engineering officers, combat and technical officers and Warrant Officers from the Naval Engineering Bureau and the logistics and operational fleet units were appointed under his control as the Navy part of the project team. Mr Byrall Smith (later Mr Fritz Nortjé) was appointed as the Armscor Programme Manager, supported by engineering and logistic managers appointed from the various Armscor specialist divisions.

6.3.3 Feasibility study 1993

[292] The next step for *Project Sitron* was the execution of a feasibility study to determine whether the Staff Requirement was technically and commercially achievable. In May 1993, the project team issued an RFI to a large number of shipyards internationally. They received responses from 18 countries with 42 ship designs. A high-level value system was applied resulting in a shortlist of eight shipyards, all from Europe. Notably absent from their evaluations and deliberations, was Blohm+Voss of Germany. Blohm+Voss, a world-leading supplier of frigate vessels, was sent the RFI but declined to participate, stating that they were prevented by the German Government's export regulations from offering a naval vessel to South Africa until the advent of democracy and the formal lifting of the UN arms embargo.

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[293] The feasibility study was concluded at the end of 1993. It recommended a shortlist of four potential suppliers from four countries to be considered for the next phase of the project process, namely the project study phase. These were Yarrows of the UK, Svenborg of Denmark, Bazan of Spain and DCN of France.

6.3.4. Project study and inclusion of the Germans in 1994

[294] The project study commenced in early 1994 with preparations for the RFP to be sent to the four contending shipyards.

[295] While this process was underway, the elections of April 1994 were held, heralding the advent of a democratic government and the lifting by Germany of restrictions on its industry to offer warships to South Africa. Blohm+Voss immediately requested to participate and made presentations to the Navy and the project team in May 1994. This resulted in them being included in the project study contender list, which therefore became five shipyards from five contesting countries. In July 1994, RFPs were issued to the five competing shipyards. The offers were duly evaluated against a registered value system derived from the Naval Staff Requirement and the technical information received during the feasibility study. The results of this evaluation were captured in a project study report authored by him and dated 30 November 1994. The result of the evaluation ranked Bazan of Spain first, followed by Svenberg of Denmark, Blohm+Voss of Germany came third, with Yarrows of UK and DCN of France ranked fourth and fifth respectively.

6.3.5. Suspension of *Project Sitron*

[296] A request for approval to proceed with the acquisition of the patrol corvette was placed before the Cabinet by the DOD and Armscor on 3 May 1995. The Cabinet, on the recommendation of Minister of Defence, declined the request on the basis that the corvette acquisition would have to wait for the completion of a Defence Review. On 25 May 1995, the Minister of Defence announced in Parliament that the patrol corvette project was deferred until the achievement of national consensus on defence.

[297] The Minister announced the launch of a White Paper on a Defence Strategy, followed by a Green Paper on the required force structure and force level of the future defence force, which gave rise to the Defence Review.

6.4 *Ensuring retention of naval surface combat system technology 1995 – 2000*

[298] One of the immediate strategic issues facing the Navy was how to ensure the survival of the fledgling South African naval combat system industry base, which had been nurtured over the previous years.

[299] In June and July 1995, Admiral Kamerman initiated and led a strong argument within Naval Headquarters for the retention of the combat system development technology base as best as they could, and the Naval Board agreed. In July 1995, the Chief of the Navy motivated as an urgent necessity to the Chief of the SANDF and the Chief Logistics the allocation of funds to enable the retention of the critical parts of the combat system development that had taken place under *Projects Diodon* and *Sitron*, and to further fund those technologies which held critical potential for the Navy's weapon needs.

[300] The Navy's motivation was accepted by the Defence Research and Development Board and its Armament Technology Acquisition Secretariat and funding was found to launch a Technology Retention Fund. This activity became known as *Project Suvecs*, as part of a larger *Project Garfield*, in late 1995.

[301] Admiral Kamerman was appointed the naval leader of *Suvecs*, with Mr P Meiring of Armscor, then the Divisional Manager Command and Control, leading the overall Armscor management effort.

[302] Technology retention projects were aimed at retaining critical sections of the local defence industry capabilities when there were insufficient capital acquisition projects or other sources of funding to otherwise keep them commercially viable, and so retain the expertise and facilities within the industry and also within the country.

[303] All the Technology Retention Fund projects and activities were defined and funded exclusively on a year-by-year basis and aimed towards the achievement of a 'technology demonstrator', not a product.

[304] The technology-retention *Project Suvecs* was not part of or in any way contractually related to the capital acquisition *Project Sitron* that was suspended in 1995. Contracts placed for work under *Project Suvecs* did not accord any company or person the right to be selected nor contracted for work on *Project Sitron*, were the latter to continue, or for any other capital acquisition project.

[305] The 18 companies that participated in *Suvecs* were not guaranteed participation in *Project Sitron*. The same applied to CCII Systems. Their participation in *Suvecs* did not guarantee participation in *Project Sitron*.

[306] In fact, any participation in *Suvecs* in a particular year did not even guarantee participation in the next financial year. It was always dependent on available funds and technology retention prioritisation.

[307] In line with its main goal of retaining local naval technology, participation in *Suvecs* was designed to enable its participants to survive, and thereby provide them with the potential to be considered for participation in future capital projects. However, such participation did not and was never intended by Armscor or the DOD to accord an automatic right to any future work to the participating companies, nor was any such guarantee ever made or given to any of the participants.

6.5. *The success of Project Suvecs*

[308] *Suvecs* continued up to 2000 and was entirely successful in its main goal of retaining the South African naval combat system technology base for use on capital acquisition projects. Every single one of the 18 South African companies that participated in *Project Suvecs* and their technologies survived to participate in *Project Sitron* and other acquisition projects. This included CCII Systems.

[309] *Suvecs* made it possible for 60% of the technology acquired for the combat systems for the corvettes to be purchased in South Africa from South African companies relying on South African ingenuity.

[310] CCII Systems tendered for at least seven contracts under the SDPP (*Project Sitron* and *Project Wills*). It won four of the seven tenders. Two of the contracts won by CCII Systems were cancelled on grounds of non-performance.

[311] *Project Suvecs* fulfilled its purpose. It enabled many companies to retain their technology. That enabled them to participate in *Projects Sitron* and *Wills*. These companies went on to prosper and provide significant gain to the South African economy and defence technology base by securing export contracts and attracting overseas investment. For example, CCII Systems won contracts to supply their combat databus-component technology that was retained and developed under *Project Suvecs*, to the US Navy for several tens of millions of Rand.

[312] Several local companies also survived and they became attractive entities for securing investment partners from among leading international combat system suppliers, such as ADS with Thales, Reutech Radar Systems with DASA (now known as Airbus Defence), Grintek Avitronics with SAAB and Denel Eloptro with Carl Zeiss.

6.6. *Project Sitron Phase 2: Project restart and selection of preferred supplier 1997-1999*

6.6.1. SDPP RFI: September – December 1997

[313] The Defence Review was completed in mid-1997, confirming the force design of the new SANDF. It was therefore decided that the individual procurement processes which had been initiated by Armscor on behalf of the DOD prior to 1997 would be superseded by the package approach reflected in the SDPP strategy. *Project Sitron* was unfrozen and re-commenced.

[314] The Cabinet's new strategy and tendering actions of September 1997 formally reset *Project Sitron* to the acquisition status it had been at in 1995 at the start of the project study.

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[315] It follows that all of the tendering activities of the project study of 1994/95—RFOs, offers, evaluations, selections, shortlisting, project management plans and the project study report—were superseded and rendered null and void. This included the tender process in November/December 1994 in terms of which the Spanish and UK shipyards were shortlisted and the Danes, German and French shipyards excluded, as well as the processes of December 1994 to February 1995 following which Bazan of Spain was recommended for acquisition.

6.6.2. The inclusion of Germany

[316] At the restart of *Project Sitron* under the SDPP programme, it was appropriate that at least all five countries—Denmark, France, Germany, Spain and the UK—that had competed in the now-defunct tendering rounds of 1994/95, should be given a fresh chance in the new competition. Brazil, Canada, Italy and Sweden were also added. The inclusion of the other countries, including Germany, in the tender process was consistent with the Government's new acquisition strategy.

6.6.3. Intended tender processes and contracting strategy

[317] The Cabinet decision with regard to the execution of the SDPP deviated significantly in two important aspects from the capital acquisition tender process that was in place and controlled by Armscor.

6.6.4. Prime contracting

[318] It was decided that these acquisitions would be contracted at the 'prime contractor' level only, holding these contractors solely responsible for the delivery of the complete integrated weapon system to be acquired at Level 5 of the system hierarchy.

[319] In the case of the corvettes, this meant a fundamental change from what was envisaged in the previous rounds of the corvette acquisition, namely *Project Falcon* and *Project Sitron* Phase 1.

[320] The new contracting model meant that the selected prime or main contractor would be contracted and held responsible for all aspects of contractual performance for the three main Level 4 elements of the corvette

vessel to be acquired, namely the ship platform, the combat system and the integrated logistic support, as well as the integration of all three. It would also be liable for technical, cost and schedule performance for all three by way of performance guarantees, liquidated damages and penalties.

[321] The above-mentioned approach was fundamentally different from *Project Falcon's*, as the contracting model that was envisaged in Phase 1 of *Project Sitron*, where Armscor would have been the prime contractor with ultimate responsibility was changed.

[322] The second change introduced by the Cabinet was that these strategic acquisitions would be co-ordinated and managed as a package—later called the SDPP—between three Government Departments, namely the DTI, the Department of Finance and the DOD, and Armscor, with especially established mechanisms and an inter-departmental value system.

[323] The usual Armscor tender procedures and controls were therefore replaced by broader and more comprehensive inter-departmental tender evaluation and management arrangements. Various evaluation teams were appointed. He was appointed chairperson and leader for the corvette and maritime helicopter evaluations.

6.6.5. *Project Sitron* RFI strategy

[324] It was decided that the offering suppliers for the corvettes would be invited to respond with an offer for a ship-platform design and price only. Each design was to be equipped with the identical combat system. This was defined in the solicitation pack and based on the largely local combat system technology.

[325] It was decided that certain critical components would be sourced from overseas, for example the Sonar, Surveillance Radar and Surface-to-Surface Missiles. One of the aims of this new strategy was to enable the achievement of a combat suite whose content was 60% or greater in local value. The corvette Military Value System was drawn up by the *Project Sitron* project team.

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[326] By 3 November 1997 corvette offers had been received from six countries, namely Canada, France, Germany, Italy, Spain and the UK.

6.6.6. Evaluation results

[327] Ten designs were evaluated against the approved value system by an appointed team of expert naval officers and Armscor specialist managers.

[328] Military performance evaluation was done in closed sessions and in strict security at Armscor. A total of five designs—two from Germany and one each from the other three contenders—were subjected to the full military performance evaluation. The results of the evaluation were as follows:

[329] The GFC MEKO A200 (Germany) came first, followed by the GFC MEKO 200 (Germany), then the Bazan 590B (Spain), with the GEC F3000 (UK) and the DCN (France) fourth and fifth respectively. The ranking order remained precisely the same as during the RFI phase.

[330] Five designs from four countries were passed to be evaluated against the full value system in order to obtain a ranking that would reflect the Military Value. The Military Value was obtained from the performance-to-cost ratio of the evaluated offers.

[331] For the purpose of valid calculation, only the basic ship platform cost—without South African duties and taxes—was considered, as the performance evaluation was confined to the technical evaluation of the various ship platforms offered, the combat suite being an identically specified and costed SA Navy prescription.

[332] The resultant order of merit after the Figures of Merit were normalised to 100, ranked the Bazan (Spain) first, followed by the GFC MEKO A200 and MEKO 200 (Germany), and the GEC F3000 (UK) and DCN Lafayette (France) in fourth and fifth place respectively.

[333] The German GFC MEKO A200 had the best military performance, but when military performance is divided by the offer cost, the Spanish Bazan 590B achieved the best Military Value score and was ranked first. All the competing designs were technically acceptable to the SA Navy, though.

[334] The resultant evaluation report was authored and signed by Admiral Kamerman, accepted by the Evaluation Moderator, ratified by the Naval Board and approved by the Chief of the Navy. The report was submitted, as prescribed, to the Management Committee (later known as 'SOFCOM') for inclusion with the industrial participation and finance evaluation results and a recommendation to higher authority.

6.6.7. SOFCOM

[335] In order to co-ordinate the tender evaluation phase and integrate the military, IP and financing evaluations into a 'Best Value' ranking score per equipment type as solicited by the SDPP RFOs, an interdepartmental co-ordinating committee known as SOFCOM (Strategic Offers Committee) was established.

[336] In early 1998 and at a meeting on acquisitions attended by all relevant seniors, including the Minister, Defence Secretary, Mr Steyn, and the CEO of Armscor, Mr Swan, the Minister gave a directive to the aforesaid officials to appoint their respective delegates to co-chair a joint management committee to manage the offers. Admiral Kamerman was present as he was to brief the meeting.

[337] No member of the corvette evaluation team or project team was a member of SOFCOM. Admiral Howell was the SA Navy representative on SOFCOM.

[338] In keeping with the strict instructions of SOFCOM, the execution of each respective evaluation of the Military Value, IP Value and Finance Value was kept strictly separated.

[339] No member of the Military Evaluation Team had any insight or knowledge whatsoever of the IP or Financing Value Systems, nor took any part in the IP Value or Financing Value deliberations and evaluations, or was party to their results.

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6.6.8. Ratification by the Naval Board and presentation to SOFCOM

[340] On 18 June 1998, Admiral Kamerman presented the results of the military evaluation to the Naval Board, which ratified them without change. The Military Evaluation Report was signed by him on 25 June 1998 and accepted by the evaluation moderator on 26 June 1998 and submitted to the SOFCOM Secretariat on the same day.

[341] During the presentation to the Naval Board, he was asked by the Board to confirm that any of the five evaluated designs would be acceptable to the SA Navy. The Board's concern was that the Military Value represented only one third of the weight in the so-called second-order SOFCOM value system to determine 'Best Value', the other SOFCOM criteria being the IP Value and Financing Value, with the formula being Best Value = Military Value + IP Value + Financing Value.

[342] He confirmed to the Board that the Navy would be happy with any of the five designs, all of which were excellent ships, including the lowest military performance scorer.

6.6.9. SOFCOM derivation

[343] No member of the military evaluation team was permitted to attend the deliberations of SOFCOM. From the documentation he had seen, SOFCOM applied the Military Value Figures of Merit, without changing any of the results, to the overall value system to arrive at the 'Best Value'.

[344] The German IP and financing values outweighed the Spanish Bazan's number one position for Military Value, and GFC was consequently adjudged by SOFCOM to have the 'Best Value' and was accordingly recommended as such to higher authority.

[345] The Navy was satisfied when the GFC MEKO A200 was selected as the preferred corvette.

6.6.10. Contract negotiation phase: December 1998 – December 1999

[346] A joint technical negotiating team (or integrated project team) was appointed. It consisted of SA Navy and Armscor *Project Sitron* project

members. There were six of them, one for each of the main equipment types.

[347] He was the Project Officer and Mr Nortjé the Project Manager. Other specialists from the Navy and Armscor were members of the team. No member of the Integrated Project Team was at any stage during the negotiation phase a member of the IONT, the Naval Board or the Project Control Board.

[348] The mandate of the Integrate Project Team, as the lowest level of the technical negotiation structure, was to recommend—not to decide—on the negotiation strategy and progress for the achievement of the technical baseline of the contract. This team reported to the Project Control Board on a routine basis and made recommendations to it on all matters requiring higher level attention and decisions.

[349] As *Sitron* Project Officer, he reported to the Naval Board. He interacted with the Board, amongst others to obtain approval for changes to the user requirement baselines for the platform and combat system that were necessitated by the negotiations; and to receive approval for the selection of main combat system equipment from overseas suppliers.

6.6.11. Invitation to the GFC to offer combat system

[350] The negotiation phase for the corvette contract commenced in December 1998 with an invitation to GFC to enter into negotiations for a contract baseline for the whole vessel, and in particular to include the combat system part.

[351] The GFC was issued with the corvette combat system User Requirement Specification in December 1998 and instructed to make an offer for the combat system in January 1998.

[352] The User Requirement Statement laid down the desired technical performance requirements of the combat system, and included a list of suppliers from local industry as candidate suppliers, as well as the candidate

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suppliers for the three sub-systems that had already been decided would be sourced from overseas suppliers.

6.6.12. The GFC and ADS as partners

[353] The GFC had offered in its original response to the RFO that if selected, it would enter into a partnership with ADS as its contractor for the supply of the combat system. ADS was the only South African company with naval systems integration technology and experience.

[354] From the start of the negotiations for the combat system, the GFC had indicated to the Integrated Project Team that its partner for the offer of a combat system would be ADS, particularly since technically and corporately ADS had been strengthened considerably through the recent acquisition of a 50% ownership by Thompson.

[355] Thompson was one of the world's foremost naval combat system suppliers and highly experienced in frigate combat system integration. Thompson changed its name during the course of the negotiations in 1999 to Thales.

[356] During the negotiations, the main contractor they were negotiating with consisted of GFC, ADS and Thales.

[357] ADS had played—and in 1999 was still playing—the leading role in the combat system technology development under *Projects Diodon*, *Sitron* Phase 1 and *Suvecs*. From the start, ADS partnered with GFC to offer the combat system, initially as its main sub-contractor for the system and later as part of the prime contractor, offering the entire vessel.

[358] The IONT, through the Integrated Project Team, conducted the technical negotiations with the GFC-ADS consortium.

6.6.13. Competition for overseas-sourced sub-systems

[359] As Thales was a competitor for the first two of the three sub-systems that were already decided would be sourced overseas, namely Hull Mounted Sonar, the Surveillance Radar and Surface-to-Surface Missile, it was

decided that quotations for all three items would be exclusively obtained through GFC and not disclosed to ADS.

[360] GFC obtained three quotations for each of the sub-systems and passed them to the IPT for evaluation.

[361] The evaluation reports signed by him and Mr Nortjé, being in each case the unanimous scoring of the expert evaluation teams, recommended MBDA to supply the Exocet MM40 SSM; Thomson Marconi to supply the Multi-Role Surveillance Radar; and Thomson France to supply the Kinglip Sonar. These recommendations were ratified by the Naval Board and the Project Board for inclusion in the naval combat system baseline.

6.6.14. Competition for locally sourced sub-systems

[362] There were two instances where the IPT was of the view that the quoted price for a local sub-system that was offered by ADS was too high and that the product could potentially be supplied by another local supplier. These were the System Management System (SMS) and the Navigation Distribution System (NDS).

[363] The Integrated Project Team therefore requested GFC to obtain competitive quotes from ADS and CCII Systems for the identical scope of supply. The quotes were given to the Integrated Project Team for evaluation and recommendation.

[364] In the case of the System Management System (SMS), ADS won the competition with a substantially lower price than it had previously quoted. The ADS quote was lower than that of CCII Systems. In the case of the NDS, CCII Systems beat the price of ADS and displaced ADS as the supplier of this sub-system in the contractual baseline.

6.6.15. Compromises and strategies to reach a vessel technical contract baseline

[365] GFC (with ADS) made the first offer for the combat system to the project team at a meeting in January 1999. The team had estimated that the cost of the combat system would be in the order of R2 000 million.

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[366] The GFC quote at this meeting was around R3 900 million, without missile ammunition, with the result that the actual price was about R4 200 million.

[367] The high price was caused amongst others by the unexpectedly high prices quoted to the GFC by local industry and the layered contractual risk provision in the quotations from GFC as the main contractor.

[368] The layered contractual risk provision in the quotations from GFC as main contractor included:

- i. A large risk provision from the main contractor on their proposed combat suite sub-contractor, Thomson/ADS
- ii. Further substantial risk provisions on all of the combat suite elements added by ADS as combat systems sub-contractor.

[369] It was clear that when estimating the combat system costs, the project management as well as the local industry had underestimated the cost implication of contracting at the highest level with a private commercial main contractor, obliging it to take full contractual responsibility for a combat system that was largely still under development. This contracting model was new to Armscor and the DOD.

[370] When they realised that the costs of the project or programme would exceed the budget, they devised and implemented certain strategies to reduce the costs. These strategies included the reduction in the scope of supply and functionality of the combat system where this would not unacceptably impinge on the combat functionality of the corvettes.

6.6.16. Main contractor consortium

[371] The first major relief to the overall acquisition cost was the formation of the GFC Thales/ADS Prime Contractor Consortium, known eventually and contracted as the European South African Corvette Consortium (ESACC). The combat suite contractor formed a consortium with the shipbuilders to deliver the total vessel, with internal agreements dealing with risk liability.

[372] All three parties were jointly and severally responsible to the State for prime contractor performance and liabilities. These new arrangements completely eliminated one layer of risk provision and realised a price reduction of about R600 million. However, the offer for the combat system of R3 500 million was still substantially in excess of the budget of R2 300 million.

[373] The Navy had to accept reductions in the scope of supply and performance of both the ship platform as offered and the combat system as specified in the User Requirement Statement, and offered in January 1999. This was necessary in order to further reduce the cost of the vessels to within their budget limitations.

[374] A number of cost-reducing measures on the ship platform were discussed with GFC. The measures they were exploring would not have caused an unacceptable degradation of the basic performance of the ship.

[375] The non-propulsion platform reductions brought a combined cost saving of some R60 million.

[376] It was also necessary for the Navy to consider major reductions in the scope of supply and performance of the combat system to be acquired under *Project Sitron*. That had to be done in such a manner that the essential performance of the corvettes was not affected. Certain logistic support equipment that could be acquired later was also considered.

[377] The proposed reductions were approved by both the SA Naval Board and the Project Control Board and realised a cost saving of approximately R570 million, of which R270 million was achieved by halving the missile ammunition to be acquired under *Project Sitron*.

[378] After implementing the above-mentioned cost cutting measures, they were still significantly over budget. Some relief was afforded by the adjustment in the 'guideline ceiling budget' for the corvettes by the Affordability Team of the Department of Finance. The latter set a guideline ceiling for the corvettes in March 1999, derived from the tender price of 1998

adjusted for statutory costs, export credit guarantees and other costs. When factoring the costs for the ship platform and project management, the new ceiling allowed a maximum total combat suite allocation of R2 600 million, which was still more than R200 million over the budget. The main contractor had allocated a large amount of contractual risk money to each local sub-system integration.

6.6.17. Consideration of new contracting model to share risk between supplier and the State

[379] In order to meet the new combat suite ceiling it was necessary to consider whether the State could assume some of the risk of the local sub-systems in order to save costs.

[380] This would allow them to come below the combat system budget ceiling and at the same time preserve the South African combat system technology as part of the corvette acquisition contract.

[381] The alternative, in order to meet the combat system budget ceiling, was to delete several of the local sub-systems altogether, and replace them with mature overseas-sourced products that carried little development integration risk for the main contractor.

6.6.18. The risk of sharing contractual arrangement

[382] During the negotiations, the Integrated Project Team and the main contractor evolved a model of risk sharing in terms of which the State agreed to enter into a limited risk-sharing agreement that would eliminate another layer of risk for the vessel. The sub-systems were then divided into three parts, termed Parts A, B and C, also referred to as 'Categories' A, B and C.

[383] Part A denoted the ship platform part of the overall vessel delivery, for which the main contractor retained contractual responsibility and risk towards the State. The combat system part of the overall vessel delivery was divided into Part B and Part C.

[384] Part B denoted those elements of the combat system where the main contractor retained contractual responsibility to the State. It included all

those elements that were deemed to carry an unacceptable risk for the State, and where the State was not prepared to assume any risk-sharing due to the critical nature of those elements.

[385] These elements included:

- All combat system integration activities, particularly the Combat Management System and the Combat System databus sub-systems. They were critical components of the combat system.
- The systems to be supplied from overseas sources, the Sonar, Surveillance Radar and Surface-to-Surface Missile, and all subsystems to be provided by the main contractor itself.

[386] Part C denoted the set of locally supplied sub-systems still under primary development, which by their nature were not critical components of the combat system or vessel.

[387] It was agreed that the main contractor would retain full contractual responsibility for the integration of the entire combat system into the ship and its delivery performance as an integral vessel, and retain responsibility for all contracting and contractual management of the Part C systems. The schedule risk, performance risk and related cost risks of these Part C sub-systems would be borne by the State until Factory Acceptance Tests, after which their integration and finally delivery performance would revert to the full responsibility of the main contractor.

[388] The State thus accepted limited responsibility for Part C sub-systems, without relieving the main contractor of its integration and contract management responsibilities and liabilities, or of ultimately carrying the responsibilities to deliver a complete vessel.

[389] The Part C risk-sharing arrangement resulted in a further saving of about R350 million, without inducing an unacceptable risk environment to the State. It would also enable them to reach an affordable technical contract baseline.

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[390] The new proposed contracting model was presented to the Project Control Board on 19 and 24 August 1999, where it was approved. The matter was presented to the Inter-Ministerial Committee as well. The State ultimately accepted the proposed categorisation of the risks.

6.6.19. Further price reduction

[391] During the price negotiations, the Integrated Project Team insisted that ADS remove handling fees and integration fees from their own sub-systems that they were providing under Part B. They succeeded and a total of R120 million was removed from the price of Part B systems.

6.6.20. Contracting

[392] *Project Sitron* proceeded to an affordable and risk-manageable technical and contract baseline, and the contract for the supply of four patrol corvettes as defined in the contract was duly signed on 3 December 1999 between the DOD/Armcor and ESACC, becoming effective on 28 April 2000.

[393] All four platforms were built in Germany, two at the Blohm+Voss shipyard in Hamburg and two at Howaldtswerke-Deutsche Werft shipyard in Kiel.

[394] The ships were accepted from ESACC by the Integrated Project Team, handed over to the SA Navy in Germany and sailed to Simon's Town where they were integrated with their combat systems that had been developed and shore-integrated in South Africa while the platforms were being built in Germany.

[395] After combat system tests and trials, the first vessel, *SAS Amatola*, was handed over to the Navy and commissioned in February 2006. The remaining three vessels followed and all four vessels were in service with the SA Navy by 2008.

[396] These were the most advanced light frigates in the world and had successfully demonstrated South African prowess at sea, including

successful live firings of the advanced anti-air missile developed in *Projects Suvecs* and *Sitron*.

[397] The corvettes project succeeded in achieving the largest participation by the local industry and local 'spend' in the history of overseas-sourced armament acquisitions by South Africa. Over 33% of the content of the corvettes was locally sourced and spent.

6.7. *Allegations made against him*

[398] Admiral Kamerman denied that any person, body or organisation ever attempted to or influenced him in any manner when he was carrying out his functions. To the best of his knowledge, the same applies to all his Navy and Armscor Project Team colleagues.

[399] There was not a single occasion or instance that he is aware of where Mr Shaik made an attempt of any nature to interfere in or influence him or any member of his team during the time they were carrying out their functions as members of *Project Sitron*. Mr Shaik was not present during negotiations or discussions with any of the offering parties nor did he solicit or receive any feedback from these sessions.

[400] ADS was the only company in South Africa capable of acting as a partner for the naval combat system integration of a major warship programme. ADS would have taken the roles that it did in 1998-1999, irrespective of its ownership or shareholding before, during or after the corvette evaluations and negotiations.

[401] The patrol corvettes replaced the Type 12 and Type 15 frigates lost more than 15 years before, and the submarines replaced the obsolete and no longer supportable Daphne submarines.

[402] As far as the allegations by Dr Young were concerned, he pointed out that it was important to bear in mind that at all times all combat system sub-systems were Part B sub-systems and the sole responsibility of the main contractor. This included the databus. The databus was therefore never re-categorised. It remained where it had always been.

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[403] On 3 May 1995, the Cabinet decided on recommendations of the Minister of Defence, to defer the corvette acquisition until a national consensus on defence was reached, which resulted in the Defence White Paper and Defence Review.

[404] The 1997-reconstituted *Project Sitron* had a technical baseline which was different from the 1993-1995 baselines. The proposed contracting model was also different. In 1993-1995 they were not soliciting a main contractor for the vessel system but in 1997-1998 they were.

6.7.1. The German State Prosecutor's investigation

[405] In November 2006, shortly after he joined ThyssenKrupp Marine Systems (TKMS), the German State Prosecutor investigators raided their offices. They were investigating the allegations of corruption in the frigate contract. The search warrant stated that he was not investigated as an accused person, but as a witness, on the grounds that in his previous career as a Naval Officer he was central in ensuring the selection of GFC as prime contractor and that he left the SA Navy and joined TKMS without permission of the SA Navy.

[406] His office and home were searched and he was required to be interrogated by the German officials.

[407] No evidence incriminating him was found. The following day he made a sworn statement wherein he stated, *inter alia*, that contrary to the allegations contained in the search warrant, they had actually recommended the Spanish and not the German offer in all four the evaluations carried out by the team he led between 1994 and 1998.

[408] The German investigators found amongst the documents they seized a copy of the original letter from the Chief of the Navy, approving that he could join TKMS.

[409] The German investigators realised that they had been misled and since that day he never heard anything from them. No charges were preferred against him.

[410] He referred us to the letter approving that he could join TKMS. The letter, which was in his bundle, was signed by the Chief of the SA Navy, Vice Admiral J Mudimu, on 9 December 2005.

6.7.2. Allegations by Dr Richard Young

6.7.2.1 Selection criteria for the corvettes

[411] In one of the affidavits signed by Dr Young, the following is stated:

'Normally military equipment is selected according to the combined criteria of military performance and price. On this basis Bazan again won the bid with its 590B light frigate with the GFC in a fairly distant second place with its MEKO 200AS light frigate.'

[412] The witness testified that this statement is false. In his experience as an executive in a major international naval system supplier, he can confirm that major military equipment in international contracting is certainly not normally selected on the grounds only of military performance and price. On the contrary, most countries usually include a degree of industrial participation, also known as 'offset', as a primary evaluation criterion for the selection of a main contractor. In the many frigate, corvette and submarine competitions his company has participated across the world in the last three decades, Industrial Participation has in fact been a normal and sometimes dominant feature in the Request for Proposals from the customer navies.

[413] The RFO evaluation process and report prepared under his leadership recommended the Spanish Bazan 590B as the vessel with the best military value. The fact that Bazan was not recommended as the preferred bidder was as a result of the NIP, DIP and Financing scores, in which evaluations he was not involved.

6.7.2.2 The State had nominated suppliers of the combat suite

[414] In his statement Dr Young advances allegations, *inter alia*, that South African companies, including ADS and South African sub-system suppliers, had been nominated for the corvette combat suite and that by this

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nomination the State had in effect selected them and prescribed them to the main contractor for inclusion in the contract baseline.

[415] Neither ADS nor any of the South African sub-system suppliers were selected by virtue of their nomination as the suppliers in the RFO. The whole combat suite was nominated in the RFO solely to provide a design baseline for the platform offer.

[416] The RFO and accompanying documentation indicated that there would be a tendering phase for the combat suite only after selection of the main contractor.

[417] The nominated combat suite consisted of items available in the SANDF inventory, items then under South African technology development programmes and items that would have to be sourced from overseas due to a lack of local potential.

[418] It was described as a 'Nominated combat suite'. Each potential supplier was listed as an 'element supplier'. It was not intended as a selection or prescription by the State of any of the listed suppliers.

[419] After the selection of GFC as the preferred supplier, it had offered to form a consortium with ADS to supply the required minimum 60% of the combat suite from local industry without committing to any sub-contractor or supplier.

[420] ADS was the only viable local company that had the capacity and the technology to act as a partner for the combat system and as combat system integrator.

6.7.2.3 Dr Young's attempts to replace ADS

[421] Admiral Kamerman mentioned the activities and participation of Dr Young in BAE SEMA's attempts in December 1998 to displace ADS—prior to ADS being owned or controlled by Thales—and capture the whole of the corvette combat system business, including combat system engineering, combat system integration and corvette vessel integration.

[422] Had Dr Young's attempts succeeded, it would have impacted negatively on ADS, the local industry and their about 450 South African employees.

[423] Fortunately, Dr Young's attempts failed to get ADS replaced by BAE SEMA.

[424] The very fact that Dr Young sought to displace ADS as described above shows that he understood that CCII System's nomination as a candidate supplier in the RFO and User Requirement Statement did not mean that it had been selected or prescribed as the supplier.

6.7.2.4 Mr Shaik's role in the combat suite acquisition process

[425] Admiral Kamerman denied allegations that Mr Shaik contaminated the combat suite acquisition process. During the combat suite negotiations attended by members of the Integrated Project Team, GFC and ADS, Mr Shaik was not present. He was also not present when the Project Team and representatives of the main contractor held meetings with the candidate South African sub-system suppliers for the purposes of selecting the sub-systems on technical grounds.

[426] During the negotiations phase, Mr Shaik did not take part in any of the meetings and negotiations at project team level. There was no occasion where Mr Shaik intervened, influenced or was involved in any of the negotiations conducted by the *Project Sitron* Project Team. Mr Shaik had no influence over the selection of the combat suite and its elements.

6.7.2.5 Mr Shaik's alleged conflict of interest

[427] The only potential conflict of interest he became aware of was that Mr Shaik's wife worked at ADS. During the Project Control Board meeting of 4 December 1998, where the witness was present, Mr Shaik declared that he had a possible conflict of interest, and would recuse himself from any decision taken on the combat suite, but would not recuse himself from the meeting. At all relevant times, in his limited knowledge of any possible

conflict, it was not of significance as it related to his wife being an employee of ADS.

[428] There were many occasions when Mr Shaik physically left the room and on other occasions he did not leave the room during the meetings of the Project Control Board.

6.7.2.6 CCII Systems' price allegedly disclosed to ADS

[429] Dr Young alleged that CCII Systems' price for its System Management System (SMS) was disclosed to ADS.

[430] Admiral Kamerman denied this allegation. He testified that in the competition between CCII Systems and ADS after the announcement of the preferred main contractor for the entire vessel, a fair and confidential procedure was put in place. This involved requiring ADS and CCII Systems to submit offers simultaneously to GFC by a closing date of 16 April 1999. Both parties submitted their offer simultaneously on 15 April 1999. The offers were then passed to the Integrated Project Team.

[431] The Project Team found that the ADS offer was better than the one of CCII Systems for a variety of reasons. CCII Systems' offer was also found to be higher than ADS's. Besides that, ADS still had the full system integration responsibility and the SMS is at the system integration level in the combat suite.

[432] In assessing the two bids, the State added to CCII Systems' price a handling fee of 3,2%, an integration fee of 7% and an estimated extended warranty cost of 1,85%. This was done because, had CCII Systems won the competition, ADS as the main contractor would have been entitled to add those fees to their offer to the State. These costs were therefore real costs that the State would have had to bear if it selected the CCII Systems product.

[433] On the other hand, if ADS won the SMS bid, there would not be any handling and integration fees because ADS as main contractor would be selling directly to the State. Those fees and charges were added in exactly

the same way in the competition between CCII Systems and ADS for the Navigation Distribution System, which CCII Systems won and for which it was awarded the contract.

[434] This was a consequence of the contracting model, whereby a single contract for the entire vessel was entered into with a main contractor, with ADS as part of the main contractor.

[435] At the time of the competition for the SMS, ADS was already acting as part of the main contractor for the combat suite and all sub-systems from local suppliers were to be procured through them.

[436] On the other hand, the fees did not apply to any sub-system acquired directly from ADS as they were already paid to assume risk and performance accountability.

6.7.2.7 SA sub-systems allegedly deselected in favour of French systems

[437] The witness further dealt with the allegation by Dr Young that South African sub-systems were deselected in favour of French sub-systems. He denied this allegation.

[438] He explained the procedure followed to select the foreign-sourced sub-systems. The latter were identified prior to the tendering process and the RFO made provision for them.

[439] He concluded this portion of his testimony by stating that all the companies that were selected to supply the foreign sourced sub-systems of the combat suite won fairly on their own merits. A fair evaluation process was followed.

6.8. Joint submission of Messrs Feinstein and Holden: the subcontract for the supply of the information management system (IMS) to be used in the corvette combat suite

[440] At page 93, paragraph 1.6 of their joint submission, Messrs Feinstein and Holden alleged that:

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- Thales and ADS played a role as the main tender board in the selection of the IMS supplied by their own group company, Detexis
- The GFC ensured the selection of the Detexis IMS by claiming that the product offered by CCII Systems was risky, thus attracting an unjustified risk abatement fee without which CCII would have won
- The categorisation of the CCII Systems databus into Category B rather than Category C, ignored the fact that the Detexis databus was equally if not more risky than CCII Systems', a fact they said was confirmed in a report on the Diacerto databus, of which neither the Project Control Board nor the Cabinet sub-committee was appraised.

[441] Admiral Kamerman testified that the above allegations were incorrect.

[442] The corvette combat system databus was a highly complex engineering system, affecting the whole of the combat suite performance. A failure or under-performance of the databus would put the entire vessel's combat capability, survivability and safety at risk.

[443] The cause of a data failure in a combat suite is very difficult to pinpoint as the databus and the Combat Management System are completely integrated in respect of dataflow. Thus, any dispute regarding contractual responsibility relating to identifying the cause of failure between these two systems had to be avoided.

[444] The careful management of this risk was therefore crucial to the successful completion of the project. It was essential that the main contractor retained full risk responsibility for the databus at a vessel level.

[445] The nature of the risk that had to be managed by the State in regard to the combat suite was not limited to the technical risk of a product not meeting its specification, or to the financial risk to the State. It included the risk to the lives of the men and women who might go into combat at sea to defend our nation.

[446] The Integrated Project Team, fully supported by the Project Control Board and the IONT, required the main contractor to retain the full risk responsibility for the databus at a vessel level. This necessarily meant that the databus, regardless of the supplier, was categorised into Category B for which the main contractor was required to carry the full risk.

6.9. The specific risk attaching to the CCII Systems databus

[447] The CCII Systems offer to the main contractor was based on a local databus technology 'demonstrator' that had been under development as part of the SA Navy's Technology Retention project, executed in 1995-1999 to ensure the survival of the local naval industrial base.

[448] As indicated, the CCII Systems offer was merely at technology demonstrator level, and was not a 'product', as defined in RSA Military Standard 3. While it had potential, the CCII Systems IMS had not yet been qualified, operationally fielded or tested in any warship or simulator.

[449] According to Dr Young, completing the CCII Systems databus development required at least another R15 million and a further nine to twelve months.

[450] It still had to undergo a full risk evaluation, including the demonstration of its functionality in a fully-integrated ship environment.

[451] In a letter of 19 July 1999 to ADS, Dr Young acknowledged the risk associated with the CCII Systems technology.

6.10. The nature of the main contractor risk premium

[452] The main contractor was obliged to contract at the vessel level and to assume the full risk for both the performance and delivery schedule of the IMS. It was also obliged to offer an overall performance guarantee for the vessel of 5% of the contract price (about R300 million).

[453] Due to the main contractor's calculation of its risk exposure at a vessel level, if the CCII Systems was included, a risk premium of some R42 million would have been included in its offer to the State for the IMS. This premium was made up as follows:

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- R12 million to execute a comprehensive risk analysis, including independent expert studies
- R30 million to cover integration development risks, particularly the very complicated interfacing with the Combat Management System hardware and software, and to partially cover the risk of having to replace the CCII Systems IMS in the event of the latter developing problems.

[454] The R30 million represented only 10% of the main contractor's vessel performance liability, and only 0,05% of the total cost of the vessel to the State. For a programme risk of this nature, R30 million was well within international norms. It was considered prudent and reasonable by the Integrated Project Team.

[455] The main contractor initially offered to waive the risk premium if the State was willing to relieve it of the responsibility for the IMS and related vessel performance. This was unacceptable to the State. So too was the additional cost implication to the State of the CCII Systems IMS. It was clear that the State's only option was to select the Detexis databus.

[456] In an effort to accommodate CCII Systems, one other potential solution was considered. The other South African sub-contractors had included an internal development risk allocation in their quotations to the main contractor. This averaged about 10%, which on some sub-systems was a considerable sum. The exception to this approach was CCII Systems that did not include development risk cover in its quotation to the main contractor.

[457] As the potential risks attached to the CCII Systems IMS were much higher than those of the Detexis databus, it was fair that CCII Systems should be requested to put up a performance guarantee to cover the risks, as the other South African sub-contractors had done. This was to cover the R42 million risk premium attaching to its IMS.

[458] Dr Young refused to provide a guarantee for the risks attached to his product. If Dr Young had agreed to provide the performance guarantee, the

State's decision to select the Detexis databus could have been reversed. As Dr Young was not amenable to the suggestion of putting up the performance guarantee, the State was left without any alternative, and its decision to select the Detexis databus was implemented.

[459] The Integrated Project Team fully investigated the Detexis databus and came to the conclusion that it was not only an acceptable alternative to the CCII Systems option but was technically superior to the CCII Systems option in certain aspects. Coupled to the cost of the Detexis option, the Project Team had no hesitation in recommending that the Project Control Board ratify the main contractor's option of Detexis.

[460] Admiral Kamerman was not a member of the Project Control Board but he was from time to time instructed by Admiral Howell to report to the Board on issues pertaining to *Project Sitron*.

[461] The Project Control Board was fully aware that Detexis was a subsidiary of Thales, as that was the reason why the main contractor was prepared to offer the Detexis databus without a risk premium.

6.11. The PCB meeting of 24 August 1999

[462] The witness denied the allegations contained in the joint submission of Messrs Feinstein and Holden that the categorisation of the CCII Systems databus into Category B rather than C was not properly made.

[463] He explained the process followed and that the issue of categorisation was placed before the Project Control Board for decision on 24 August 1999. He further said that Admiral Howell has confirmed that the Board in fact ratified the classification of the databus as a Category B item and confirmed that the prescribed cost ceiling of the corvettes could not be exceeded.

[464] These factors resulted in the selection of the Detexis databus.

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6.12. Allegations relating to his retirement

[465] Dr Young alleged that his resignation from the SA Navy in July 2006 and taking up employment with TKMS was contrary to the corvette Umbrella Agreement. This issue was also raised by Messrs Feinstein and Holden.

[466] Both Dr Young and Mr Feinstein make these allegations in the context of inferring or insinuating that his employment was a bribe in return for corrupt acts performed by him to influence the selection of GFC as the preferred bidder.

[467] He denied the allegations. At some stage after the acquisition process was finalised and while awaiting the commissioning of the first ship into service (scheduled for 2006), he decided for a variety of reasons to change careers.

[468] TKMS had just been established and was aware of his intention to leave the Navy, and was also aware of his skills and capabilities.

[469] Like a number of other companies, TKMS contacted him and said that if he should leave the Navy, they would extend an offer to join them.

[470] He was aware that the Supply Terms of the corvette contract prohibited the employment of SANDF or Armscor members who were involved in the corvettes procurement by any constituent company of ESACC. This applied for a period of 8 years after the effective date of the contract, unless permission was granted by the CEO of Armscor or the Chief of the SANDF or their deputies.

[471] He sought the written permission of the Chief of the SA Navy to take up employment with TKMS. The Chief of the SA Navy was the appropriate deputy of the Chief of the SANDF. The Chief of the Navy granted the requested permission and signed the approval of his request on 9 December 2005. A duly certified copy of the approval letter was attached to the bundle made available to the Commission and interested parties.

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[472] TKMS was aware of the Supply Terms. Its senior personnel officer contacted him early 2006 to request him to obtain the required permission, if he had not done so.

[473] For a period of six months prior to his retirement from the Navy, virtually the entire Navy was aware that he was leaving and going to work for TKMS.

[474] In his speech at the reception hosted in Durban by TKMS in July 2006 after the commissioning of the second corvette, the *SAS Isandlwana*, and in front of some 300 guests, the Chief of the Navy made laudatory remarks about him and expressed his regret that he (the witness) was leaving the SA Navy. He added his congratulations to the top management of TKMS present that he was joining them.

[475] After he had left the Navy, he was privileged to be awarded one of the highest SANDF medals for outstanding performance. The medal, in keeping with military culture, was not posted to him but was presented to him by a SA Navy admiral, in the witness's office at TKMS in the presence of the top management of TKMS.

[476] The results of the evaluation made by his team ranked Bazan of Spain first. His employment by TKMS had nothing to do with the results of the evaluation by his team.

7 Rear Admiral Anthony Neville Howell

[477] Rear Admiral Howell joined the SA Navy in 1965. In 1968 he graduated at the Military Academy in Saldanha with a BMil (BA). He served in all three Daphne submarines as Detection and Weapons Officer and First Lieutenant.

[478] In 1986 he was promoted to Commodore and appointed Chief of Naval Staff Plans. He inherited responsibility for projects and started the corvette project that became known as *Project Sitron*.

[479] On 1 April 1998 he was appointed Director Naval Acquisition in the Defence Secretariat. He moved to the Armscor building with the Director

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Projects, Captain OJ van der Schyff, project officers and teams. His immediate superior was the Chief of Acquisition, Mr Shaik.

[480] On 1 April 1999 he was promoted to Rear Admiral and appointed Chief Director Maritime Warfare, Navy Office. He retired on 31 July 2001.

7.1. Background

[481] After the introduction of the new structure in the SANDF with the creation of the Defence Secretariat, it was envisaged that the latter would serve as the administrative arm of the DOD under the leadership of the Secretary for Defence and the Minister of Defence. Mr Pierre Steyn served as the Secretary for Defence and Mr Chippy Shaik was appointed as the Chief of Acquisition.

[482] Pursuant to the 1996 White Paper on Defence, the then Minister of Defence appointed a project team known as the Minister of Defence Acquisition workgroup (MODAC) to investigate and make proposals with respect to the management, execution and structure of the acquisition function in the DOD. Recommendations made were accepted as departmental policies.

[483] Paragraph 3.1.2 of the MODAC Report of 8 August 1996 reads as follows:

'Since the acquisition process consumes national resources, the process must take into account the national objectives of job creation, wealth generation, trade balance, counter trade, technology development and industrial establishment. These objectives are often in conflict with acquisition at lowest cost and therefore must be prioritized by acquisition management.'

[484] It was recognised at that stage that this new approach might conflict with the previously applied acquisition processes, including the objective of ensuring that acquisitions were done at the lowest cost. The objectives mentioned above had thus to be prioritised by management.

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[485] While previously defence acquisition was done by the different arms of service together with Armscor, with the establishment of the Secretariat acquisition was taken away from the arms of service and placed under the domain of the Secretariat.

[486] Project officers who were dealing with various projects in the respective arms of service were seconded to the Secretariat.

[487] *Project Sitron* was initiated in 1993 when the Naval Board realised that all its strike craft were old and nearing the end of their designed life. The concern was 'block obsolescence' throughout the Defence Force.

[488] On 3 May 1995, they sought permission from the Cabinet to acquire new surface vessels, but their request was declined. The Minister of Defence was of the view that acquisition process for *Project Sitron* should be deferred to allow the Defence Review to be completed so that the needs of the new Defence Force could be assessed as a whole. From May 1995 *Project Sitron* was put on hold.

[489] Maintenance of the Navy's submarine capability was a serious challenge. The Daphne submarines were acquired in the early 1970s. They were reaching the end of their designed lifespan and were no longer cost-effectively and economically supportable. He was working on the project of the replacement of the ageing Daphne submarines.

7.2. *The Strategic Defence Procurement Package*

[490] The package deals that were being offered to the SANDF presented a new challenge, because the acquisition policy and process that were in place at the time provided little guidance on what should be done in the consideration of 'package deals' and government-to-government negotiations. It was recognised that new policies and procedures were required to guide the acquisition of government-to-government package deals.

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[491] There were several defence equipment offers that had been presented to the Ministry of Defence (MOD) at the time, and these offers fell outside the scope of existing acquisition policy.

[492] On 8 August 1997 the COD approved DOD Policy Directive 4/147. Policy Directive 4/147 was intended to establish specific policy guidelines for the acquisition of international defence equipment. As the officer responsible for naval projects at the time, Admiral Howell had to ensure that the projects under his supervision for the purposes of the SDPP were properly executed in accordance with Policy Directive 4/147.

[493] While foreign acquisition policy objectives were stated in the Directive, it was made clear that these objectives were subject to the principle that the best interests of the MOD would be the primary consideration.

[494] The Policy Directive also dealt with the assessment procedure, which was to incorporate a multi-tier approach consisting of three orders, namely:

- i. The First Order that was the responsibility of the Minister of Defence
- ii. The Second Order that envisaged the appointment of a representative MOD evaluation team to develop a second order MOD value system; it was envisaged that this would embrace inter-departmental and political sections. It was further envisaged that project teams would be appointed at this level to deal with the separate acquisition projects. A management committee that was also appointed to operate at this level later became known as SOFCOM. He was a member of SOFCOM
- iii. The Third Order consisted of the six project teams—appointed at the second order level—that were tasked with the evaluation of the six separate acquisition projects.

[495] He was appointed as the Moderator for *Project Wills* (submarines) and *Project Sitron* (corvettes).

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[496] Policy Directive 4/147 introduced a departure from the previous acquisition processes. As he understood the new procedure, Armscor was no longer to be solely responsible for evaluating and arriving at a preferred bidder. Instead, broader policy objectives were to be brought to bear by senior members of the DOD and politicians in a three level process.

7.3. Management Directive: evaluation of international offers

[497] Management Directive 4/147 gave rise to key bodies in the acquisition process, commencing with the Management Committee (MC), which then changed to the International Offers Management Committee (IOMC), and then to the Strategic Offers Committee (SOFCOM). SOFCOM developed a second-order evaluation contemplated in Policy Directive 4/147.

[498] There were six teams involved with the six defence equipment segments of the proposals, one team for each type of equipment. As stated earlier, he was the Moderator for both *Project Wills* and *Project Sitron*.

[499] The Management Directive implementing the second order envisaged in Policy Directive 4/147 set out the evaluation process and time schedules and appointed the members of the Management Committee (SOFCOM). He was appointed to SOFCOM as representative of the SA Navy.

[500] The Directive also appointed the leaders of the six defence equipment evaluation teams. He was to be the Moderator of the project teams to be led by Captain (later Rear Admiral) (JG) Kamerman (*Project Sitron*) and Commodore (later Captain) Reed (*Project Wills*)

[501] These two teams reported to him as their supervisor. He assisted the teams throughout the whole process and signed their reports. He was reporting to the Naval Board and he never changed any of the findings of the two teams.

7.4. His role as Chief of Naval Staff Plans, Director Naval Acquisition and Moderator of Projects Wills and Sitron

[502] Admiral Howell oversaw *Projects Wills* and *Sitron*, initially as Chief of Naval Staff Plans and later as Director Naval Acquisition, until 1 April 1999

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when he became Chief Director Maritime Warfare (CDMW). As CDMW he remained the Navy's representative on the Project Control Board for both *Projects Sitron* and *Wills*.

[503] The project officers, Captain Kamerman (*Project Sitron*) and Commodore Reed (*Project Wills*) reported directly to him.

[504] He was responsible for providing the Chief of the Navy and the Naval Board with regular progress reports. The Naval Board insisted that all ships and submarines evaluated were acceptable to the SA Navy.

[505] As moderator he was the most senior officer responsible for *Projects Wills* and *Sitron*. He was required to bring his expertise and experience to bear in order to ensure that the value systems and evaluations appropriately applied the policies set out in the MODAC Report and DOD Policy Directive 4/147.

[506] It was his duty as moderator to ensure that the equipment was evaluated by the project teams in accordance with the relevant value systems formulated by those teams for the specific equipment being considered; that the results of the evaluations were credible and accurate; and that the ships and submarines evaluated were acceptable to the SA Navy.

[507] Pursuant to Policy Directive 4/147, and as moderator of the two project teams, he put in place a procedure applicable to the projects and he signed the relevant document on 20 October 1997.

[508] The procedure was designed to ensure the fair and equitable treatment of potential suppliers, transparency, confidentiality of value systems, and confidentiality of the proposals received and of the evaluations and of the results. The procedure he introduced was also aimed at ensuring that the flow of information during the evaluation period was both limited and controlled.

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[509] Amongst others, the procedures he introduced provided that once the RFOs were issued, the members of the naval evaluation teams were prohibited from communicating with the bidders. Only Captain Kamerman and Commodore Reed could direct any communications to the bidders through the Armscor Secretariat. Such communications could only be for clarification purposes and had to be disseminated to all bidders. A written recordal of such communications had to be maintained.

7.5. Project Wills

[510] The day-to-day running of *Project Wills* was done by the Integrated Project Team with Captain Reed serving as Project Officer until 2004, when Captain Jordaan took over that role. Mr Robert Vermeulen from Armscor served as Programme Manager.

7.5.1. RFI phase – Project Wills

[511] The proposals received were evaluated against the approved RFI value system during November 1997. After the technical evaluation was carried out, the Navy was satisfied that all five submarines were acceptable to the Navy.

[512] Based on the information that was provided, the leading contenders following the RFI evaluation were the German T1400 and the Swedish Type 192. He moderated the evaluation report that was compiled by Commodore Reed. The report detailed the evaluation process followed and the results for performance, costing and military value. He had no need to adjust Commodore Reed's evaluation report as it fully complied with all relevant policy guidelines.

7.5.2. RFO phase – Project Wills

[513] As stated earlier, it was established during the RFO phase that all the proposals received during the RFI phase were technically acceptable to the Navy. The Value System that was approved by the Chief of the Navy, the Chief of Acquisition and him, was duly registered and sealed by the Armscor Secretariat on 12 May 1998 prior to receipt of the offers. The evaluation was

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carried out by the Integrated Project Team from 18 to 29 May 1998. It considered all the proposals simultaneously.

[514] In his role as moderator he required specified adjustments in the evaluation report, all of which were fully disclosed in the report.

- i. First, in respect of the German bid it was noted that while the logistic support package offered by the Germans was comprehensive, a large number of the deliverables were offered as options, and therefore not costed into the proposal. The logistic risk regarding the German submarine was determined as low. As many options were not costed, he decided after consultation with the team members, that an additional amount should be factored into the price. He directed the evaluation team to add an additional 75% of the quoted logistic cost to the logistic cost for risk management. Despite the addition of this amount, the German bid still came out as the best value for money.
- ii. Similarly, with the Swedish offer there was a significant difference in the quoted logistic cost for the Integrated Logistic Support (ILS) offered by the Swedes as opposed to the French and the Italians. As with the Germans, the logistic risk was determined as low and it was clear to the evaluation team that the Swedes understood the theory and application of the ILS principles. However, as the moderator he directed that an additional amount should be allocated to deal with this risk, and thus an amount of 50% of the quoted logistic cost was added to the logistic cost for risk management.
- iii. The performance results as a relative measure between the four offers had to be adjusted to give proper weight to the critical factor of cost and thus to arrive at the Military Value Index.

[515] As stated earlier, all four proposals were technically acceptable to the Navy and consequently they had to place emphasis on logistic support to ensure life-cycle costs were kept as low as possible.

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[516] He was aware that there were two ways to factor in cost to determine the Military Value Index. He used one of the two known formulas. The formula he used gave the cost implications of the competing bids proper and credible effect. It resulted in the Type 209 German submarine being recommended, being R800 million cheaper than the Italian bid and clearly the best value for money. The other alternative would have led to a situation of preferring a bid that was nearly R800 million more expensive, when the bids were all technically acceptable to the Navy.

[517] As the moderator with overall responsibility he had to ensure that the best product was procured for the Navy in accordance with the policies prescribed by MODAC and Policy Directive 4/147. He was satisfied that the evaluation report achieved this objective in recommending the Type 209 German submarine.

[518] At that stage more than 50 Type 209 submarines had been built and were in operation in many navies around the world. The Italians had not exported a single Sauro class submarine at that stage. The Italian Navy decided to discontinue use of the Sauro class and moved to the German Type 212 design, to be built in Italy.

[519] It is worth repeating that during the RFI stage a detailed technical evaluation was carried out and it was determined that all four of the proposals were technically acceptable to the SA Navy. On this overall technical evaluation, the German submarine came first and the Italian submarine was last.

[520] He signed the evaluation report in his capacity as moderator on 30 June 1998.

7.6. Project Sitron

[521] Project Sitron was revived in September 1997 with the introduction of the SDPP. The day-to-day running of the project was done by the members of the Integrated Project Team with Captain Kamerman serving as Project Officer from 1993 and Mr Byrall Smith from Armscor as Programme Manager from 1992 until the completion of the evaluation phase of the patrol

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corvette platform in November 1998. Mr Smith was replaced by Mr Fritz Nortjé as the Programme Manager.

[522] On 21 October 1997, the RFI Value System was approved by the SA Navy. It was compiled by Captain Kamerman and as the responsible authority as Chief of Naval Staff Plan, Admiral Howell signed it. It was also approved by Admiral Simpson-Anderson.

[523] The RFO Value System dated 8 May 1998 was also compiled by Captain Kamerman. As the responsible authority, Admiral Howell signed it and Admiral Simpson-Anderson and the Chief of Acquisition approved the document on 11 May 1998.

[524] The value system consisted of two parts, namely the critical performance filler and the 'discriminatory' factors.

7.6.1. RFI phase – *Project Sitron*

[525] The responses received to the RFI were evaluated from 3 to 9 November 1997 under the leadership of Captain Kamerman. The results of the evaluation were contained in a report dated 14 November 1997. The report was prepared and signed by Captain Kamerman. As moderator he also signed the report. The report was ratified by the Naval Board on 17 November 1997.

[526] The RFI evaluation results indicated that from the military performance perspective, the German GFC Meko A200 had the best military performance of all the designs offered, but all five designs offered were technically acceptable to the Navy.

[527] From the military value perspective, the Spanish Bazan 590B had the best military value as the most cost effective patrol corvette offered, with the German Mekos scoring a close second and third.

7.6.2. RFO phase – *Project Sitron*

[528] After the RFI phase, four countries were selected to make final offers for the supply of the corvettes. The RFO was issued on 13 February 1998.

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On 11 May 1998, responses to the RFOs were received. The evaluation report was dated 25 June 1998. As moderator, he signed the report.

[529] The evaluation report revealed that all the evaluated designs were technically acceptable to the Navy, that the German GFC Meko A200 had the best military performance of all the designs offered, but that from a military value perspective, the Spanish Bazan 590B had the best value as the most cost-effective patrol corvette, being excellent value for money. The Spanish Bazan was recommended as offering best military value.

7.7. The Strategic Offers Committee (SOFCOM)

[530] While Policy Directive 4/147 did not specifically refer to SOFCOM as a body, it did refer to an inter-departmental Management Committee that was subsequently constituted and became known as SOFCOM. Admiral Howell was representing the Navy on SOFCOM. Various other arms of service, the DTI, the Department of Finance, the Chief of Intelligence and Armscor were also represented on SOFCOM.

[531] SOFCOM was responsible for developing the second order evaluation value system that was used for the consolidation of the evaluation results from the respective teams.

[532] The formula that was ultimately adopted was the following: $BV = MV + IP + FI$, where BV = Best Value; MV = Military Value (Military Performance Index divided by cost); IP = Industrial Value Index; FI = Financing Index.

[533] In early July 1998, SOFCOM met to consider the evaluation reports of the six procurement programmes that were under consideration. Senior representatives from Armscor, the arms of service, the DOD, the DTI and the Department of Finance were present. The outcome of its deliberations was the recommendation of the preferred bidders to the AASB on 8 July 1998.

[534] As far as the submarines were concerned, the GSC 209 1400 MOD was recommended and in the case of the corvettes the GFC MEKO A200 was recommended. The Type 209 German submarines scored the highest

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on all three indexes and were recommended to the AASB as the preferred bidder.

[535] As far as the corvettes were concerned, the Spanish Bazan was put forward as having the best Military Value for the Navy. However, when the scores for Industrial Participation and the Financing Index were also taken into account, the German Meko A200 scored the highest and was recommended to the AASB as the preferred bidder.

7.8. Post SOFCOM

[536] Admiral Howell's next involvement in the SDPP was after Cabinet had approved the preferred suppliers and authorised that negotiations be entered into with the preferred suppliers in order to arrive at an affordable contracting position with them.

[537] During the negotiation phase he served on the Project Control Board (PCB).

[538] The PCB was established for the navy projects to deliberate on issues that would affect the contract baseline. The role of the PCB was to apply an oversight role over the project teams during the contract negotiation phase. The PCB was chaired by the Chief of Acquisition and consisted of both Armscor and DOD members, including the Chief of the Navy and Armscor's Chief Executive Officer.

[539] From time to time, members of the integrated joint project teams would report to the PCB. The Chief of Acquisition disclosed to the PCB his possible conflict of interest in respect of certain sub-contractors that were considered at PCB meetings.

7.9 SA Navy corvette gearbox

[540] One of the issues considered by the PCB was the recommended gearbox supplier for the corvettes. The minutes of the PCB meeting held on 24 August 1999 indicated that the PCB was advised by the acting Project Officer for *Project Sitron* that there were continuing deliberations around the selection of the Maag or Renk gearbox.

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[541] The dilemma arose from the fact that whilst the Maag gearbox was the approved selection, the inclusion of the Renk gearbox would provide much needed work for Gear Ratio, a South African company which was an important supplier to the SA Army.

[542] The only issue of concern to the Navy was whether either gearbox met the Navy's technical baseline, and therefore the Project Team was instructed by the Chief of Acquisition to take the lead in determining this requirement.

[543] The minutes of the PCB meeting held on 6 October 1999, reflected the following:

'... since both the MAAG and RENK gearboxes complied technically with the requirements, the project officer recommended that the decision as to which gearbox to acquire, should be based on the DIP evaluation. DIP Manager presented the DIP evaluation and pointed out that from a DIP point of view it is clear that the RENK option should be selected. The RENK option provided work to GEAR RATIO which is considered a strategic industry for the SA Army. The matter was discussed at the ARMSCOR Board.'

[544] The PCB then ratified the selection of the Renk gearbox for *Project Sitron*. GFC was later informed that the Renk gearboxes had been selected for *Project Sitron*.

7.10. The selection of Detexis databus

[545] The main point that led to the selection of the Detexis databus turned on the categorisation of risk of the CCII Systems Integrated Management System (IMS).

[546] During the negotiations regarding the combat suite it became apparent to the project team that the quoted price for the individual elements of the combat suite had escalated significantly since the initial estimates were obtained by the team.

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[547] During negotiations, the problem was addressed by way of a different contracting model and the DOD agreed to enter into a limited risk-sharing agreement regarding some of the individual combat suite elements.

[548] The sub-systems for which the DOD accepted performance and time-scale risks came to be known as 'Part C' sub-systems. The project team categorised the various sub-systems into the following three groups:

- i. Category A, consisting of the vessel platform
- ii. Category B, consisting of all the sub-systems that had a critical effect on the overall vessel delivery and performance, and for which the main contractor retained full responsibility
- iii. Category C, consisting of sub-systems for which the main contractor was not responsible for performance to specification or timeous delivery and hence the Navy was at risk for these sub-systems.

[549] At a meeting of the PCB held on 24 August 1999, the acting Project Officer for *Project Sitron*, Captain Watson, briefed the PCB about the combat suite risks and risk management built into the contracting model. It was confirmed that the project team had categorised the CCII Systems databus as a Category B risk, thereby requiring the main contractor to retain full responsibility for the delivery and performance of this sub-system. This was because the IMS (databus) was a critical sub-system of the combat management system (CMS) and that the SA Navy was unwilling to assume the equipment risk for the CMS and associated databus, regardless of the supplier.

[550] The PCB was also informed that the AAC had decided that the ceiling price per equipment should not be raised. This meant that the Navy could not afford the CCII Systems databus as it came with a risk premium of about R40 million.

[551] The decision of the PCB was that the state was unwilling to assume the responsibility for the IMS and unable to carry the additional cost

implication of the CCII Systems IMS. This meant that the only option was to select the Detexis databus.

[552] Another scenario was considered, namely that CCII Systems be requested to put up a performance guarantee to cover the approximately R40 million risk premium attaching to its IMS, and if that were done, the PCB would be able to select CCII Systems IMS. The above-mentioned proposal was conveyed to CCII Systems but the latter was not prepared to put up a performance guarantee as suggested.

[553] At the PCB meeting of 6 October 1999, after noting the refusal of CCII Systems to put up a performance guarantee, the selection of the Detexis databus was confirmed.

[554] Admiral Howell further testified that the combat suite negotiations with the representatives of GFC and the SA industry commenced during January 1999. He was present at those meetings, but Mr Shaik was not present.

[555] During the negotiations phase, Mr Shaik did not take part in any of the meetings or negotiations at the project team level. He was not aware of Mr Shaik intervening, influencing or being involved in any of the negotiations being conducted by the *Project Sitron* team. Mr Shaik had no influence whatsoever over the selection of the combat suite and its elements.

[556] He also mentioned that ADS was the only South African company that was developing combat suite technology during the years of the arms embargo. It had the capability of providing the combat suite and it had no local competitor in that area.

[557] There was no doubt about the fact that ADS was going to be GFC's South African partner to supply the combat suite to the SA Navy.

[558] From the above facts, it was obvious that ADS's role as the provider of the combat suite was not in any way influenced or caused by any action of Mr Shaik.

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[559] The only conflict of interest of which he became aware was that Mr Shaik's wife worked as an employee at ADS. During a PCB meeting of 4 December 1998 and again on 8 March 1999, Mr Shaik declared that he had a possible conflict of interest and would recuse himself from the discussion about the combat suite element of the corvette and submarine requirements.

[560] He confirmed that on 26 February 1999 he attended a short meeting with Messrs Shaik and Moynot. The latter was the CEO of ADS. The sole purpose of the meeting was to inform ADS that unless the prices quoted at that stage were reduced, the State would not afford the project.

8 Captain Andrew John Cuthbert Reed

[561] Captain Reed attended the Military Academy at the University of Stellenbosch from 1977 to 1979.

[562] He joined the SA Navy in 1975 and qualified as a submariner. He moved up the ranks and between 1991 and 1994 he commanded two submarines, including South Africa's first foreign deployed submarine.

[563] He was promoted to the rank of Captain and between 1997 and 2005 he was the Project Officer, Submarine Procurement Programme. He was responsible for drawing up the formal specifications to solicit tenders for the provision of new submarines, evaluating tenders, and transmitting and presenting evaluation findings and results to the relevant authorities. He left the SA Navy in 2005. He is currently employed by SAAB AB in Sweden.

[564] His involvement in *Project Wills* started during March 1997. He was formally appointed Project Officer on 13 May 1997, continued in this role through the contracting phase and was eventually deployed to Germany to execute the project.

[565] As Project Officer his role was to ensure that the submarines on offer were acceptable to the Navy, to evaluate the offers and present the best value for money to higher authorities.

[566] He was appointed as the leader of the evaluation team for *Project Wills* and Admiral Howell as the Moderator for the evaluation of the

proposals for both *Project Wills* and *Project Sitron*. As the leader of the evaluation team for *Project Wills* he was responsible for receiving the information to be evaluated and providing the results.

[567] He compiled the evaluation report entitled 'Project Wills: Submarine Evaluation Report', dated 18 November 1997. The report detailed the evaluation process followed and the results for performance, costing and military value.

[568] As stated in the RFI Evaluation Report, proposals from five countries were received.

[569] The proposals were evaluated against the approved RFI Value System. A detailed technical evaluation was carried out and it was established that all four proposals were technically acceptable to the SA Navy. On this overall technical evaluation, the German submarine was ranked first.

[570] The value system for the evaluation of the responses to the RFO for *Project Wills* was issued on 26 March 1998 and it was approved accordingly. This value system was duly registered and sealed by the Armscor Secretariat on 12 May 1998, before receipt of the offers.

8.1. *The RFO evaluation*

[571] The five submarines that were shortlisted for the RFO phase had all passed the RFI phase and were all technically acceptable to the Navy.

[572] The RFO proposals were adjudicated in three main categories with the weightings allocated as follows:

- Response to the RFO (6,54%)
- Technical evaluation (25,95%)
- Logistical evaluation (67,51%)

[573] The percentages were agreed based on operational, logistic and engineering inputs. The rationale for this weighting was that it had already been determined in the RFI phase that all the submarines on offer would

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meet the operational requirements of the SA Navy. The key to long-term sustainability was therefore the supportability of the submarines. One of the five (UK) withdrew from the race or bidding process.

[574] Captain Reed compiled the evaluation report dated 25 June 1998 and entitled 'Project Wills: Submarine Evaluation'. He compiled the report in his capacity as Submarine Evaluation Team Leader. The report was moderated by Admiral Howell who signed the document with him on 30 June 1998.

[575] The results indicated that technically and logistically the Italian S1600 was ranked first, followed by the French Scorpene, then the Swedish T192 with the German 209 (1400) last.

[576] As far as the price was concerned, the Germans were the cheapest, followed by the Italians, the French and lastly the Swedes.

[577] The performance results as a relative measure between the four offers had to be adjusted to give proper weight to the critical factor of cost to arrive at the Military Value Index. He reported to Admiral Howell that there were two ways to factor in cost to determine the Military Value Index, and he decided upon a certain formula, which they then used. It resulted in the German 209 submarine being recommended, as being R800 million cheaper than the next contender.

[578] The formula used to arrive at the Military Value Index was based on the ratio of the performance, logistic and engineering management values and their associated costs. The results of this calculation placed the Germans first, followed by the Swedes, the Italians and the French.

[579] A number of risks and assumptions were also taken into consideration. Included here was the fact that only the German and Swedish submarine designs were operational and tested at sea whilst the other designs that were offered were new or 'paper' designs. Although not exactly the same as the Type T192, the Swedish Type A19 was very similar to their offered design.

[580] It was also noted that while the logistic support package offered with the German 209 submarines was comprehensive, many of the deliverables were offered as options and not costed into the proposal. However, this was not considered to be unacceptable because the logistical risk was low and it was dealt with in a conservative way by allocating additional funds to this potential cost to ensure that no prejudice would be suffered as a result of the fact that many of the options were not costed.

[581] After a discussion of the non-costed items between the Programme Engineer, Admiral Howell and himself, Admiral Howell directed that an amount of 75% of the quoted logistic cost be added to the logistic cost for the Swedish submarine to offset the shortfall in the response to the Integrated Logistic Support (ILS). This was done because once the project and budget were approved, no additional funding would be allocated for such items, and so this shortfall had to be factored in. This made the offers more comparable.

[582] It was recognised that the Italian proposal was a new design and one which the Italian navy did not intend to acquire for its own use. An additional consideration was that the Italian submarine was the largest of the submarines and that would have a significant impact on the local facilities, as opposed to the German submarine, which would have a low impact because it was the smallest of the submarines.

8.2. Post evaluation phase

[583] On 1 and 2 July 1998, Captain Reed presented the scores from the Military Evaluation team to SOFCOM. In his presentation, he set out the manner in which the scores were arrived at and referred to the formula employed to derive the final Military Value Index. The presentation was given to the whole of SOFCOM, which included senior Armscor officials, and was adopted without any questions.

[584] There were affordability concerns and he was of the opinion that *Project Wills* might be abandoned for lack of funds, a decision he thought

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might impact negatively on the SANDF. He prepared a memorandum raising his concerns and handed it to the Chief of Naval Staff Plans, Admiral Howell.

[585] Later in July 1998, he was instructed to make an estimate of the prices for a reduced number of vessels for all the submarines on offer. The reduced number was three. The results of his estimation were that the cost of three submarines and their logistic support would not equate to 75% of the cost of four submarines. A decision was afterwards taken to reduce the number of submarines from four to three because of budget constraints.

8.3. Negotiation phase

[586] As stated by the other witnesses, the Integrated Project Teams were involved in the second tier of the negotiations. The submarine Project Team's negotiations were done between the personnel of the Project Team, the appointed legal advisors and the GSC.

[587] The main objective of the submarine Project Team in the negotiation phase was to come to an agreement with respect to the technical, logistic and project management activities, deliverables, costs and time-scales for the selected offer to a stage where a contract could be signed.

[588] After the negotiations phase was concluded, the contract pertaining to the acquisition of the three submarines was initialled on 12 June 1999 and formally signed on 3 December 1999.

[589] In conclusion, Captain Reed stated that the German Type 209 has five variants. Prior to the RFO it was successfully exported to 12 countries, with 48 submarines being built and commissioned between 1971 and 1999.

[590] To date 61 Type 209 submarines had been built and exported to 13 countries. In his view, the German submarine was not only the best value for money for the Navy, but it was and still is the most successful export submarine model in the world.

9 Rear Admiral Alan Graham Green**9.1. Utilisation of frigates and submarines**

[591] The Chairperson of the Commission addressed a letter to the DOD, requesting it to provide details of the projected number of days it was anticipated that the frigates and the submarines would spend at sea.

[592] Rear Admiral Philip Schoultz, who testified before the Commission earlier about utilisation of the frigates and the submarines, had retired and Admiral Green was designated to collate relevant information and testify about it before the Commission.

[593] The SA Navy's records reflect the planned hours at sea rather than planned days at sea, as originally presented by Admiral Schoultz. According to the Navy's records for the financial years 2006 up to June 2014, the planned sea hours for the frigates were 87 584, while the actual sea hours of utilisation were 38 647. The actual hours of utilisation were approximately 44% of the planned hours of utilisation.

[594] For the same period, the planned hours of utilisation for the submarines were 47 275 and the actual hours 18 269. The actual hours were approximately 40% of the planned hours of utilisation.

[595] The utilisation of the frigates and the submarines was less than anticipated, which was as a result of requirement, or need, rather than availability. The frigates and submarines were ready and available but there was no need to utilise them to the expected extent.

[596] The actual hours mentioned above refer only to deployment and not to force preparation. As stated earlier, force deployment depends on need and not on the force preparedness to be deployed. When required, the frigates and submarines have always been ready to be deployed.

II. SA AIR FORCE**10. Brigadier General John William Bayne**

[597] General Bayne was the first witness from the Air Force to be called to the witness stand. He made a slide presentation and spoke about the

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various aircraft that the SAAF had utilised in the past. He also showed visuals of the various aircraft the SAAF had in its arsenal.

[598] He joined the SAAF in 1971. He completed his officer's course, followed by a BMil Degree at the Military Academy. In 1975 he was awarded SAAF wings, having trained on Harvard two-seat American trainer aircraft and the single-seat, light-fighter version Aermacchi Impala. He later became an A1 category instructor. He ended active flying in 1994 and became Officer Commanding 85 Combat Flying School.

[599] In February 1998, he was selected to head up the Technical Project Team to replace the fighter fleet of the SAAF. This appointment gave him the opportunity to fly numerous other fighter and fighter-trainer aircraft.

[600] He served on the newly formed Air Combat Acquisition Team (ACAT), which managed both *Project Ukhozi* (ALFA) and *Project Winchester* (LIFT) during the initial project phase, as well as the bidding, negotiating and contracting phases up until the contracts were signed in 1999. Once the contracts were signed, two separate Project Teams were formed for the further project phases. He was appointed Project Officer for *Project Winchester* during the formulation of the staff documentation until October 2008.

[601] General Bayne went to the United Kingdom on the Hawk project for a period of 5 years and returned in 2005, spending three years on the implementation of the Hawk system in the SAAF.

[602] In 2008 he returned to SAAF Air Combat at Directorate Combat Systems. In 2009 he was promoted to the position of Brigadier General and appointed as the Director of Combat Systems in the SAAF. Resources and requirements of the Hawk and Gripen system fall under his supervision.

[603] In the distant past and at different periods, the SAAF had various types of aircraft. Impala aircraft were the mainstay of jet training between 1966 and 2005. Mirage F1s were in service from 1956 to about 1980, when they were replaced by Cheetahs from 1986 onward. The latter were not new

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aircraft. They were given an upgrade to the cockpit and a few other changes in order to extend their lifespan until 2008. They were also used for training, and were able to do reconnaissance.

[604] Boeing 707 aircraft were introduced during 1988. They were not new and remained in service until 2007.

[605] In 2005, Hawk aircraft were introduced for training of fighter capabilities. They are dual-seats, used mainly for training. They are able to carry bombs or cannon and can perform reconnaissance functions. On the Hawk, the SAAF integrated the same reconnaissance capability that was previously on the Cheetah. The Hawk took over the role of reconnaissance whilst the Cheetah was being phased out. The Hawk has a modern Rolls-Royce Adour 951 engine.

[606] The new generation Gripen fighter aircraft are multirole or swing-role aircraft. They can carry out combat roles. Since it is capable of carrying a mix of weapons it can perform various missions during the same sortie.

[607] There are dual-seat and single-seat Gripens. The dual-seat is used for an operational conversion course, which is a short course undertaken after the pilot has finished training on the Hawk. The single-seat Gripen is used when the pilot is involved in combat functions. The dual-seat has combat capabilities as well. The single-seat does not carry a cannon.

[608] In order to get initial wings in the training system, prospective combat pilots start with the basic training at Air Force Base Langebaanweg Flying School. From there they do what is called the orientation course as well as additional training to prepare them for the jump to the Hawk Lead-in Fighter Trainer (LIFT) at Air Force Base Makhado. The training takes about 18 months.

[609] They are then transmitted to the Gripen, which is our frontline fighter. After the pilots' operational conversion onto the aircraft in a dual-seat, they fly the single-seat aircraft as operational combat pilots in 2 Squadron, the frontline squadron based at Air Force Base Makhado.

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[610] The Gripen has limited maritime strike capability. It can release a long range anti-ship missile and support the Navy in its maritime role. Ground attack functions can be carried out with the same aircraft.

[611] The Hawk LIFT was purchased as part of the SDPP to replace the fleet of Impala aircraft, while the Gripen as the ALFA was required to replace the Mirage F1 and Cheetah fleet of aircraft.

[612] When General Bayne joined the SAAF, the three-tier training system was well-established. The initial wings training was done on piston-engine Harvard and jet-engine Impala Mk1 aircraft. Aircrew would then be selected to go to Combat Flying School for initial fighter training on Impala Mk1 aircraft, and then fly the Sabre that was later replaced by the Impala Mk11 as a stepping stone to completing training on the Mirage III. From graduating on the Mirage III operational conversion course, aircrew would be posted to any one of many operational squadrons to fly Mirage III, Mirage F1, Canberra and/or Buccaneer types.

[613] The Canberra was introduced into the SAAF in 1963 and served until 1990. It was utilised in a bombing role of air-to-ground as well as in reconnaissance. The Mirage III had variants, was an air-to-air fighter and also had reconnaissance capability. The Buccaneer, a large bomber aircraft that was introduced in 1965, had bombing capacity and also played a role in reconnaissance activities.

[614] All these types of aircraft were acquired in an ongoing process of renewal of the ageing equipment and were procured from various countries and companies throughout the seventies and eighties, a period during which sanctions were becoming more and more effective and technology was developing at an increasing rate.

[615] Air forces have become an integral part of most balanced defence forces worldwide, participating jointly with armies, navies and special forces, which in South Africa are supported by Armscor, local defence industries and research centres.

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[616] The SAAF has retained a three-tier fighter-training system throughout its history. Just before phasing-out the Sabre aircraft in 1980, the SAAF had about 350 jet trainer, fighter, bomber and reconnaissance aircraft.

[617] In the late 1980s, wars in the region receded and peace talks ensued. The defence budget was drastically cut in the early nineties, many squadrons closed down and a lot of aircraft were phased out. These included the Canberra, Buccaneer, Mirage F1 CZ and some Impala and Cheetah aircraft. As stated earlier, the Impala and Cheetah aircraft were fulfilling the bombing and fighter roles.

[618] After the adoption of the new Constitution, the White Paper on Defence was published in 1996, followed by the Defence Review in 1998. During this period the defence budget was cut again in 1997, which reduced the number of fighter fleet even more. The impact was that Mirage F1 AZs, some Cheetahs and more Impalas were phased out. By that time, the Impala fleet was ageing, with a lifespan of up to the latest 2003, while the remaining Cheetah fleet was estimated to have an upgrade-life until 2008 for the dual-seat and until 2012 for the single-seat.

[619] In the mid-nineties, the debate began over replacement of the rapidly ageing Impala and upgraded Cheetah fleets. The Impala fleet needed to be replaced by latest 2003 and the upgraded Cheetah medium-fighter fleet by 2008, to be operational until 2012. The SANDF rationale in 1996 was to replace the Impala fleet with 48 advanced fighter trainers (AFTs) and the Cheetah fleet with 32 future medium fighters (FMFs). The Harvard basic trainer fleet was replaced with the Pilatus Astra fleet in the mid-nineties. The acquisition of the Pilatus Astra was not part of the SDPP under investigation but was a project on its own.

[620] The White Paper on Defence of 1996 and the Defence Review of 1998 mandated the need for an SAAF air defence capability that included two frontline squadrons of 32 FMFs, a light-fighter squadron of 16 AFTs and a combat flying school of 22 AFTs. This meant a total of 70 aircraft. The 22

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AFTs would be required for training. The force design did not include training assets. Astras were not in the force design.

[621] The further budget cuts in 1997 meant that the SAAF had to lower its sights in terms of performance class of the future front-line fighter. Hence the requirement for an ALFA and an attempt to move to a two-tier fighter training system instead of the three-tier system that was previously in use.

[622] After the RFIs were received, the SAAF held various work sessions, following which it was decided that the Air Force would need to stay with the three-tier system, hence the requirement for the LIFT aircraft. The initial training would still be on the Astra, followed by the LIFT and then the ALFA. The decision to remain with the three-tier training programme was arrived at after working groups took into account, *inter alia*, the limited capabilities of the Astra.

[623] The Pilatus Astras were acquired from the early 1990s and delivered from 1994. Sixty aircraft were acquired, all two-seats for the purpose of basic flying training. Currently the Pilatus PC7 Astra does the basic training of a prospective pilot who starts flying for the first time. The pilots chosen for the combat or fighter line then go to the LIFT, which today is the Hawk MK 120 that was acquired through the SDPP. The front-line fighter is an ALFA, the Gripen, also acquired through the SDPP.

[624] The witness referred to the Joint Investigation Report and in particular Chapter 4, which deals with the selection of prime contractors for the ALFA and LIFT programmes. He was involved during this process.

[625] He referred to paragraph 4.1.12 of the report that deals with the evaluation results of the bids received from the various bidders. In the report it is stated that the cost of the Hawk 100 was high and that it did not satisfy SAAF operational requirements. The JAS 39 Gripen was said to be unaffordable. He did not agree with this statement. He said some people confuse the requirements of the future medium fighter and those of the advanced fighter trainer. The requirements of the advanced fighter trainer would be lower than those of the future medium fighter. The requirements of

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the LIFT and ALFA aircraft are different from those of the front-line medium fighter. They are in different classes. He was unable to comment on the affordability comment in the report as he was not part of the team that allegedly arrived at that conclusion.

[626] After some discussion, the Air Force decided that they could not afford the future medium fighter. The Eurofighter, which was also considered, is a medium fighter and the acquisition costs would probably be at least double the costs of a lighter fighter aircraft, and almost the same as those of a light fighter.

[627] In their military evaluation with regard to the ALFA programme, the Gripen came first. They evaluated three aircraft. The German AT200, at that stage a paper aircraft under development, scored the highest, the Gripen second and the French Mirage third. The risks associated with an aircraft that was in development stage ruled out the German AT200 and the Gripen was selected.

[628] For the LIFT programme evaluation, there were two classes of aircraft. On the one hand, the Aermacchi was cheaper but in terms of its flying performance and capability it was of a lower order than its competitors. On the other hand, the L159 from the Czech Republic and the Hawk 100 from BAE Systems were both aircraft in a higher flying performance domain or capability. When an evaluation is made, other factors are taken into account as well.

[629] The SAAF itself does not decide which aircraft must be acquired. It states its requirements and as long as the aircraft that is acquired meets the mandatory requirements, the SAAF will be comfortable with whatever aircraft is selected.

[630] Even during a period of peace, it is imperative for a state to maintain a credible deterrent capability as an insurance policy. The SAAF should be able to carry out its constitutional mandate and to perform other tasks when so required.

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10.1. Project phase

[631] Numerous options were considered by the SAAF between 1994 and 1997 and the final solutions arrived at, namely 28 ALFA (*Project Ukhozi*) and 24 LIFT (*Project Winchester*), were cost- rather than needs-driven because of the Government's various competing priorities. The number of aircraft required was reduced from 70 to 52. The revised Staff Target and Staff Requirement for *Project Ukhozi* and the combined Staff Target and Staff Requirement for *Project Winchester* were approved by the relevant authorities during February and March 1998. Project processes were carried out for the ALFA and LIFT and in November 1998, the Government selected the Gripen and the Hawk as the preferred equipment to satisfy the SAAF combat system requirements.

[632] General Bayne was involved as the Project Officer. The Project Team for *Project Winchester* spent 5 years in the United Kingdom at BAE Systems, managing and overseeing activities with the BAE Systems team. He was part of this team.

[633] In 2004, the local Hawk implementation team was formed to prepare the environment for receiving the equipment and to receive delivery of all the components of the entire equipment. Training forms part of implementation. BAE trained six pilots in South Africa. Two Gripen pilots were trained in Sweden and thereafter in South Africa. The Hawk aircraft were delivered from May 2006 over 12 months and the Gripen from April 2008 over 30 months.

[634] Facilities were prepared, air and ground crews were trained, logistic support was delivered and the unit commenced with operational test and evaluation (OT & E), which is the final testing by the end-user in the SAAF to check if the equipment delivered met the requirements of the SAAF.

[635] The handover of the Hawk system to the SAAF took place in 2012 and some project activities are still to be completed by 2015.

[636] Although he was not part of the *Project Ukhozi* team, he is aware that the same occurred between April 2001 and about 2008 in Sweden at the

SAAB facilities where the Gripen Integrated Project Team was resident. A Gripen implementation team was formed in 2006 and similarly assisted with the Gripen system delivery. The Gripen system is still in the final stages of handover to the SAAF and this is estimated to conclude in 2015.

[637] The Gripen is the SAAF's only full-fighter capability aircraft, while the Hawk is primarily a fighter-trainer with a considerable level of collateral operational capability in low-threat environments. It has growth in this role when operating in a package together with the Gripen.

[638] Both the Hawk and the Gripen have been found by the SAAF to be acceptable aircraft. They meet the requirements and fulfil the needs of SAAF and have exceeded the SAAF's expectations.

10.2. Role and capabilities

10.2.1 The Gripen

[639] The Gripen acquired in the package under consideration is a supersonic, single-engine, dual/single seat, multi-role combat aircraft able to perform air defence as well as surface attack and surveillance in the same mission, and is globally interoperable. The Gripen's capability includes modern defensive and offensive air-defence radar, air-to-air missiles, a helmet-mounted display and other important features. These enhancing features give self-protection, increased range and rapid turnaround times to the Gripen. The Gripen has all the capabilities that the SAAF stipulated as mandatory.

[640] The SAAF Gripen system consists of 26 aircraft (17 single-seat and 9 dual-seats), a modern centralised training centre for both air and ground crews and associated ground support and test equipment. As at date of evidence the Gripen was still in project phase, and has not been fully handed over to the SAAF. It has completed about 85% of its operational test and evaluation and will be handed to the SAAF upon completion of the test and evaluation.

[641] The Gripen aircraft have been fully delivered and the bulk of the deliverables are in place at Makhado. The SAAF has done the best part of

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the testing and the system has passed the OT & E up to this point in most areas. It is anticipated that the final stage of handover of the Gripen system will be early-2015.

[642] The Hawk has already been accepted by the SAAF and the SAAF has already trained pilots successfully on the Astra, then on the Hawk and ultimately on the Gripen. The three-tier training system is working well.

[643] Various countries, besides Sweden, have Gripen aircraft in their inventory.

10.2.2. The Hawk

[644] The SAAF's Hawk MK120 is a transonic, single-engine, dual-seat aircraft capable of performing all required fighter-training missions. The Hawk is utilised to ensure safe and seamless fighter training, bridging the gap between the Pilatus PC-7 Astra and the Gripen ALFA. The Hawk can also be utilised for certain collateral SANDF air support tasks.

[645] The Hawk system consists of 24 dual-seat aircraft, a modern centralised training centre for both air and ground crews and associated ground support and test equipment.

[646] Both the Hawk and Gripen aircraft are capable of assisting other services and government departments, like –

- support to the South African Police Service, SA Army, SA Navy, Special Forces, Defence Intelligence and joint and multi-national exercises and operations
- command and controls
- surveillance
- border control
- search and rescue
- communication support

[647] The Hawk meets the requirements of the SAAF, has been accepted in the Air Force and the fleet is now in the possession and control of the SAAF.

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10.3. Utilisation

[648] The SAAF estimated the average flying hours per year in the Staff Requirements. It works on flying hours per year as a baseline per type of aircraft to predict all its costing and funding-resources planning. In doing these exercises, the average life-span of an aircraft is estimated at 30 years.

[649] The Staff Requirement was amended and the final number that was introduced in the User Requirement Specification was that the Hawk was designed to fly 4 000 hours a year and the Gripen 3 000 hours a year.

[650] The current fleet of Gripens and Hawks is an integral part of the SANDF and the SAAF capability must be able to meet its air defence and other mandates as contained in the White Paper on Defence and the Defence Review. The current fleet of 26 Gripens and 24 Hawks are adequate to meet the needs and requirements of the SAAF.

[651] Fighter air and ground crews have been well-trained and developed and are capable of operating and maintaining the aircraft. The air crews for the Hawk were all trained in South Africa at Air Force Base Makhado. Six pilots were initially trained. They were all instructors, either having previously flown Cheetah or Impala. They were trained by staff of BAE Systems, after which they started training other pilots under the auspices of BAE Systems.

[652] BAE Systems sent out two instructors employed by them to train our initial six pilots. One of the instructors stayed on for a year to help with the development of our syllabi and curriculum and to give guidance in our overall training. At the moment the training of the air crew is done solely by the SAAF.

[653] The ground crew were trained on the computer-based system on the aircraft. After the training, BAE Systems left behind a service representative who is a highly experienced engineer and logistician from their company. He assisted the SAAF for about two to three years and continues to help with the training.

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[654] As our aircraft also use Rolls Royce engines, a field representative from the manufacturers was on site for about two to three years. After total takeover of the systems they will rely solely on Air Force staff. They will call for assistance from manufacturers if the need arises.

[655] The SAAF has trained engineers and other support staff to service and maintain the aircraft. They have a fully-fledged air servicing unit.

[656] All aircraft have to be serviced either after a number of flying hours or after a certain calendar period. The Hawk is on calendar, the Gripen on flying hours. The air frame on the Hawk is still calendar-based but the engine and the avionics, being more modern, are time-based. This is much better than the calendar base because it means that if the aircraft does not fly it does not have to be serviced. The Air Force also has maintenance test pilots, who do maintenance test flying after the aircraft has undergone certain major maintenance and repairs.

[657] Initially, about 80% of the Hawk's maintenance and 60% of the Gripen's maintenance and repairs is done either on the premises of the SAAF, or by the local industry. Currently only 40% of Gripen and 20% of Hawk equipment has to be sent offshore for major repairs.

[658] Since the arrival of the Hawk, 50 Hawk air crew and around 18 Gripen air crew have been trained. Since 2005 to date, the Hawks have flown over 10 000 accident free flying hours and the Gripens 3 500 since 2008. These hours include completion of 95% of Hawk and 80% of Gripen OT & E at the units operating the aircraft, with SAAF air and ground crews. The remaining OT & E for both types will be completed before final system handover.

[659] The performance of both systems has met the expectations. The SAAF has experienced certain problems with the aircraft, some of which have been resolved and some still being attended to.

[660] Since 2005, both aircraft have taken part in many SAAF, joint SANDF and multi-national exercises in and outside South Africa, as well as specific SANDF operations. The two Flight Test Instrument Aircraft have been

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utilised for various test programmes and clearances at the SAAF Test Flight and Development Centre in Overberg.

[661] General Bayne referred to a detailed programme of all the activities that the Hawks and Gripens were involved in. Some of the activities took place in South Africa and some internationally.

[662] One of the major events that the SAAF participated in was the security of the FIFA 2010 World Cup. The Government was required to guarantee the security of the 2010 Soccer World Cup. The SAAF was tasked to ensure that the air space of the Soccer World Cup venues was secured. This process began in 2008 with a number of exercises starting with a single point or a single stadium, building up to a number of stadiums in a single province and then in two or three provinces and finally in all the provinces at all the stadiums, where they secured the World Cup from an air safety point of view.

[663] SAAF aircraft had to be in the air over all the relevant soccer stadiums for an hour before, an hour during and an hour after the game. This exercise had to be done in all the provinces in about 13 stadiums, both day and night as some games were during the day and others at night. The Hawks and the Gripens worked very well as a combination to do the task. During all the games that were played in the course of the Soccer World Cup 2010, the Hawks and Gripens were in the air doing their work.

[664] Both the Gripens and the Hawks have taken part on various occasions in border control exercises.

[665] The SAAF recently deployed some of these aircraft in the Central African Republic. Hawks and Gripens are also involved in exercises on their own and at times with air forces of foreign countries.

[666] One of the most important exercises the SAAF took part in, was the February 2012 Lion Effort, a Gripen exercise hosted by the Swedish Air Force in Sweden. The air forces of the Czech Republic, Hungary, Norway and Thailand brought their Gripen aircraft, while the Czech Republic also

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brought their L159. Four of the SAAF Gripens took part in the exercise, which was extremely beneficial to the SAAF.

[667] The witness referred to two tables dealing with the budgeted hours and the actual hours flown by the Hawks and the Gripens.

[668] The table for the Hawks indicates that from 2005 to 2012, the budgeted hours of the Hawks were 11 305 while the actual flown hours were 10 527. The variance between the budgeted hours and the flown hours was due to the availability of the aircraft and funding. In 2005, when the aircraft arrived, the budgeted hours were 125 and this figure was achieved. Both the budgeted hours and the actual flown hours increased from one year to the other because of various factors, but mainly funding. In some of the years, for example 2007, 2011 and 2012, the flown hours exceeded the budgeted hours. In the years 2006, 2008, 2009 and 2010, the actual hours flown were slightly less than the budgeted hours. The increase in the flying hours was as a result of the threat level, extra funding and the tasks that the Hawks were required to undertake.

[669] The table dealing with the Gripen shows that the budgeted hours to be flown by the Gripens from 2008 to 2012 were 2 525 and that the actual hours flown totalled 3 523. In the year 2008 the flown hours exceeded the budgeted hours. This was caused by the fact that extra funding was provided. In 2009 the flown hours were less than the budgeted hours as a result of a lower number of available aircraft. In 2010, the flown hours were almost double the budgeted hours. This was as a result of extra funding and the increased demand for the services of the aircraft, mainly because of the 2010 Soccer World Cup. In 2011 and 2012 the flown hours were more than the budgeted hours. This was due to more money that was made available for fuel, not for spares.

[670] All the aircraft have flown, some more than others. As stated earlier, the number of hours that are flown depends to a significant extent on funding.

[671] Currently there are an adequate number of pilots on the Hawk aircraft to feed the Gripens. The training of their aircrew is continuing, although at a lower level because of budgetary constraints.

[672] General Bayne referred to the need to manage the aircraft fleet more cost-effectively because of budgetary constraints. He referred to a letter he wrote to the Chief of the SAAF on 16 August 2013. The letter is headed 'Gripen aircraft preventative maintenance'. It was written after they had investigated the possibility of putting into long-term storage 12 identified Gripen aircraft. They engaged the manufacturer, SAAB, and worked with them on a more effective and less costly process, reducing the number of maintenance activities required and making the aircraft more readily available for flying. The letter reads as follows:

- 1. During the first quarter of 2013, Director Combat Systems investigated the possibility of inhibiting twelve Gripen aircraft due to the low allocated flying hours in the 2013/14 Financial year. During engagement with the Original Equipment Manufacturer (SAAB) a more effective and less costly process was agreed to, reducing the number of maintenance activities required for storage and making the aircraft more readily available for flying.*
- 2. Director Combat Systems supported by a statement to Operator from SAAB, then embarked on a Rotational Preventative Maintenance (RPM) programme to better retain fleet system integrity. RPM requires that each aircraft is flown at least every 60 days.*
- 3. Combat Systems also placed the aircraft that was identified for RPM in tents inside revetments to prevent corrosion, external damage to the aircraft and strictly control the environment in which the aircraft are secured. All 26 Gripen Aircraft will be flown and managed in accordance with the aforementioned procedure.*

4. *Serviceable aircraft can be removed from the RPM maintenance programme and be available on the flight line within two days.'*

[673] The same procedure could be applied to the Hawks if necessary. At the moment, no Gripen aircraft is in long-term storage.

[674] The other advantage of the above-mentioned programme is that serviceable aircraft can be removed from the RPM maintenance programme and be available on the flight line within two days as opposed to going into long-term storage where it would take a long time to get the aircraft out.

[675] The above-mentioned procedure is a much more cost-effective and efficient way of maintaining the fleet in times when not all the aircraft are required for utilisation and training.

[676] If the combat line slows down, other lines also slow down. A lesser number of pilots are being trained as well. The technical personnel are not affected as they can be moved to train on other types of aircraft, servicing the aircraft in the hangers and so on. On-the-ground maintenance of the aircraft continues at a normal rate and the technicians keep practising.

[677] An enormous amount of work has to be done, particularly during periods of high flying, causing some work to fall behind. When flying hours are low, the young air crew members undergo some of the developmental courses, are trained, and sent on other courses that they need to do. When flying hours increase, the personnel have done their training and can return to their posts to carry out their functions. This process is not abnormal and the SAAF has taken similar action during 1990 and 1997.

[678] The witness believes that the SAAF has an excellent and well-equipped fighter-system capability within the three-tier system. The training success rate has been high for aircrew.

[679] The Hawk has proven to have a cost-effective collateral operational capability that can be packaged with the Gripen. Both the Hawk and the

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Gripen have exceeded the expectations of SAAF and the SANDF. They have been well-utilised since their delivery in line with the current security requirements of, and the funding allocations to, the SAAF.

[680] If the contracts to purchase the equipment under consideration are cancelled, the SANDF will not be able to meet its constitutional mandate. When, at a later stage, the capabilities that would be lost as a result of the cancellation of the contracts are to be replaced, it will take a long time and it will be more costly to do so.

[681] The local industry is involved in the Hawk and Gripen projects. If the contracts were to be cancelled, the local industry will be negatively affected. This will also result in our inability to ensure the security of major international events like the 2010 Soccer World Cup. This might affect our ability and/or chances of staging major events in our country.

[682] General Bayne further testified that during the RFO evaluation the Gripen came first on military value. The Mirage 2000 came second, with the gaps between the second and the rest being significant compared to the performance of both the Mirage 2000 and the Gripen. Both aircraft were already flying and had already been delivered to the French and Swedish Air Forces respectively. They were both very competitive products from a military flying perspective.

[683] During re-examination, the witness was told that there are currently 16 trained pilots for the 26 Gripen aircraft on the SAAF inventory. In reply, he said that a standard squadron benchmark is normally 16 aircraft, and with two squadrons there would be 32 aircraft. Due to budgetary constraints, the SAAF decided that they would scale down to a single squadron being 2 Squadron at Air Force Base Makhado and that all the aircraft would go to that squadron. Ideally, there should be 2 squadrons. So, for 16 aircraft one would generally require 16 pilots.

[684] Around 1999 the SAAF did not fully understand the capabilities of the Gripen. Their view (rationale) was that six aircraft would be dedicated to air defence, another six to air-to-surface and two to reconnaissance, all of which

must be available at a peak for operations and at 65% average serviceability. It was this experience that led to the number 28, which was below the SAAF's force design requirement.

[685] Sixteen pilots for 28 aircraft are not outside the international benchmark. Their intention was to have capability and steadily increase the number of pilots. It is correct that they have only 16 pilots.

[686] As far as the LIFT contenders were concerned, all three the aircraft they flew would have met the training capability of the SAAF. The L159 Vodochody and the Hawk were in a higher flying performance class of aircraft and closely matched in that domain. The Aermacchi 339FD was a lower performance class aircraft. The Hawk was evaluated as the aircraft with the best capability, followed by the Aermacchi 339 FD and the L159 Vodochody.

11. Lieutenant General Willem Hendrik Hechter

[687] General Hechter joined the SAAF in 1960 and is now retired. He was involved in the SDPP process in his then capacity as Chief of the SAAF. He became Chief of the SAAF on 1 May 1996 until the end of February 2000.

[688] Amongst others, he qualified as a flying instructor at the Central Flying School, Dunnottar. He was a flying instructor on Harvard aircraft at various other places in the country. He was also a pilot instructor on Vampire MK1 and MK2 aircraft at 85 Advanced Flying School, Langebaanweg. (This was the basic weapons training for pilots who have received wings on their way to the frontline fighters.) He also flew the Sabre K6 and the Mirage 3E and 3D.

[689] He was appointed to various other positions at different places in the country as well as in Israel. He was later appointed Director Forces Preparation where he was in charge of all the forces, including the fighters. His responsibility was to make sure that the forces were combat ready.

[690] As Chief of the Air Force he was a member of the Military Command Council, in which structure he served until his retirement on 29 February

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2000. As Chief of the Air Force he also chaired the Air Force Command Council that later became the Air Force Board. As mentioned earlier, he was a member of the Military Command Council.

[691] As far as the acquisition of armaments is concerned, the Air Force Command Council made proposals to the Military Command Council. The latter made decisions on proposals which were sent to the next higher level that included the Minister, the Deputy Minister, the Secretary for Defence and the Chief of the SANDF.

[692] The Harvard aircraft was used for basic flying training. It was also used for the citizen force pilots to do normal general flying and weapons training.

[693] The Vampire, an old British jet aircraft, was flown at 85 Advanced Flying School, doing basic weapons training in preparation for going on to the next step. The Vampire was replaced by the Aermacchi Impala MK 2, doing the same job of basic weapons training and preparing young pilots for the next step.

[694] The Sabre was a single-seat aircraft used as a fighter during the Korean War. It was also an old aircraft and was used for advanced training before going on to the Mirages. There were the Mirage 3E and D. The E was a solo and the D a dual-seat aircraft, with the Mirage F1 as the ground-attack version. The Dakota was an old transport aircraft that has been on the SAAF inventory since 1945.

[695] Because of his qualifications and experience, General Hechter contributed to the debate that led to the retention of the three-tier training system by the SAAF.

[696] He received various decorations and medals.

11.1. Rationale for acquisition of the Hawks and Gripens

[697] The South African Defence Review was approved by Parliament during April 1998. The force design as recommended in the Defence Review provided the following in so far as the SAAF equipment was concerned:

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Fighters

Light fighters: 16

Medium fighters: 32

Helicopters

Combat support helicopters: 12

Maritime helicopters: 5

Transport helicopters: 96

[698] The force design contained specific air systems, namely the fighter system, reconnaissance system; a transport/maritime system; helicopter system; air space control; in-flight refuelling and electronic warfare aircraft.

[699] Prior to the SDPP, the SAAF had a three-tier system in the fighter line, consisting of, first, the (Pilatus) Astra on which all young pilots in the SAAF did their basic flying training, up to wings standard. The second level in the three-tier system was the Impala MK 1 and MK 2, while the third level was the frontline fighters Cheetah C and D (single and dual-seat respectively). There were no funds to do a midlife upgrade of the Impala MK 1 and MK 2 in order to extend their service life.

[700] The planning for Cheetah C and D was that they should be phased out of service, the dual-seats in 2008 and the single-seats in 2012. The SAAF further needed to replace the outdated Puma helicopters that were in service as they had come to the end of their service life.

[701] After receiving wings on the Pilatus Astra, a trainee pilot would proceed to the Impala MK 1 and MK 2 for introduction into the fighter training. After this, the trainee would proceed to the combat capability of the Air Force, namely the Cheetah C and D.

[702] In the helicopter system, basic training is also done on the Pilatus Astra, then on the Alouette III, followed by the Oryx and Rooivalk helicopters respectively.

[703] Both the fighter and helicopter systems had a three-tier training process. Every system has a specific lifespan. For strategic planning

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purposes a life cycle of 30 years is accepted internationally as the norm. Included in this lifespan of an air system is the so-called half-life or mid-life update, which should take place from about the 13th to the 17th year of the specific air system.

11.2. The Air Force inventory

[704] The Cheetah D is the dual-seat aircraft in the fighter system. It has certain combat capabilities. It has been in operation in the SAAF since 1986. The air frames of the aircraft and the wings were produced in 1963/1964. It was planned to stop flying these aircraft in 2008.

[705] The Cheetah C, the solo fighter aircraft, has been in operation with the SAAF since 1963 and could be utilised until 2012. The Cheetah C and D were old frames and the original aircraft were bought in 1963, 1964 and 1965. Throughout the period they received their necessary midlife upgrades and even beyond that.

[706] The Impala Mk 1 and Mk 2 came into the service of the SAAF progressively from 1966 up to and including 1975. The Impala Mk 1 was a dual-seat and the Impala Mk 2 a single-seat with a better weapons capability than the Impala Mk 1. They were bought later in 1975. These aircraft were used at 85 Advanced Flying School and also replaced the Harvards at the citizen force squadrons.

[707] Due to lack of funds, the Impala Mk 1 and Mk 2 did not receive a mid-life upgrade or half-life update, and only safety modifications were made to them. In time, problems arose and they had to place restrictions on the individual aircraft. The SAAF was forced to retire the Impala Mk 1 and Mk 2.

[708] The Alouette III came into the service of the SAAF progressively from 1984 onwards. Due to lack of funds, no midlife upgrade was done and only flying safety modifications were effected. The Alouette III was the basic platform for training young pilots to fly helicopters.

[709] From the above it is clear that there was an urgency to replace major air systems in the SAAF.

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[710] In the early 1990s, prior to the SDPP, the SAAF realised the need to replace its major systems. The first priority was to replace the Alouette III; the second priority was the replacement of the Impala Mk 1 and Mk 2; and the third was the replacement of the maritime patrol aircraft.

[711] The fighter programme requirement and replacement started in the early 1990s and was based on the three-tier training system.

[712] To recapitulate, the three-tier training system consisted of basic training for which the Pilatus Astra was used, followed by advanced fighter trainer and then medium fighter training. The Staff Target for the advanced fighter trainer (AFT) was approved on 18 October 1994 by the Minister of Defence and the Staff Requirement on 4 October 1995 by the AASB.

[713] The supporting studies that were conducted in respect of the AFT and the medium fighter indicated that the medium fighter capability would be completely unaffordable within the national budget.

[714] It was clear to the SAAF that basic weapons training had to be done before one could proceed to any advanced weapons training or weapons utilisation.

[715] At the time when the Pilatus Astra was purchased, it was sold to the SA Government on condition that it would be used for basic flying training and no weapons training.

[716] A study was initiated to determine the feasibility of moving from the three-tier system to a two-tier training system. The studies conclusively proved that the two-tier training system was not in the best interest of the SAAF or the SADF. The gap between the basic trainer (Pilatus Astra) and the advanced light fighter aircraft was deemed huge and it would be very expensive to do all the basic and advanced weapons training on the ALFA aircraft, which was top of the range of our combat capability and with their flying hours excessively expensive.

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[717] As a result of these problems it was decided that the three-tier training system had to be maintained. This approach was approved on 17 November 1997 by the AAC and was accepted formally as the SAAF's future fighter requirement.

[718] Due to financial constraints, the SAAF settled for a reduced combat-effective capability of the three-tier training system. This fighter training system consisted of the Pilatus Astra as the basic trainer, the LIFT and the ALFA.

[719] On 6 March 1998, General Hechter made a presentation to the Ministers Committee, urging that the LIFT should be made part of the SAAF aircraft system. Amongst others, he said the following during the presentation:

'The proposed two tier training system would have to be replaced with a three tier system using the ASTRA for ab initio training and a new light Lead-In-Fighter Trainer (LIFT), Project Winchester for weapons training on to the advanced light fighter aircraft project because the jump was too great from ASTRA to ALFA and it would be too expensive to do weapon training on the ALFA.'

[720] In the course of 1998, the LIFT was included in the SDPP and on 6 March 1998 the combined Staff Target and Staff Requirement for the LIFT was approved by the AAC. At the same meeting the updated Staff Target and Staff Requirement for the ALFA was also approved.

[721] For the very first time, they realised that this process would require an interdepartmental or a multi-departmental approach, with each department responsible for a specific task. Various departments would be involved, namely the DOD, which would be responsible for functionality; the Department of Trade and Industry for national industrial participation; and the National Treasury and Public Enterprises Department for the financial side of the transactions. The SAAF was primarily concerned with operational utilities and usage of the equipment to be bought.

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[722] As explained by other witnesses, the selection of the best aircraft stood on three legs, namely the technical, financial and countertrade.

[723] The SAAF Command Council, in cooperation with the Procurement Division of Armscor, went through the whole process of evaluation and selection of appropriate equipment. This process was preceded by an RFI sent to various countries and the receipt of responses from those countries. There was a clear-cut evaluation process that was approved at the highest levels, and from a technical point of view the aircraft were evaluated against predetermined criteria.

[724] As far as the LIFT programme is concerned, in a meeting of the Ukhozi Control Council held on 24 April 1998, certain aircraft were eliminated as they did not comply with the mandatory requirements. Four aircraft were shortlisted, namely the Aero Vodochody L159 from the Czech Republic; the Aermacchi MB339 from Italy; the Aermacchi S 211 A from Italy; and the British Aerospace Hawk 100 from the United Kingdom. In the minutes of the meeting, the following note appears:

'Note 2: The Hawk 100 is the only aircraft in the recommended shortlist that could be linked to the ALFA procurement in the Government packages.'

[725] As it happened, the meeting of the Control Council was not quorate. On 30 April 1998, a Special Ukhozi Control Council meeting was held with General Hechter in the chair. The purpose of the meeting was to confirm the decisions of the Ukhozi Control Council meeting held on 24 April 1998. The decision taken at the previous meeting was confirmed, but a fifth aircraft—the Russian Kulkoni MIG-AT—was added as the 5th shortlisted aircraft. The meeting further resolved that the shortlist would be tabled for approval at the AAC meeting scheduled for 30 April 1998.

[726] As far as the ALFA programme is concerned, after receipt of the responses to the RFI, an evaluation was carried out and the following aircraft were shortlisted: the AT 2000 supplied by DASA from Germany; the JAS 39 Gripen supplied by Sweden's SAAB and the United Kingdom's British

Aerospace; and the Mirage 2000 supplied by Dassault from France. The Mirage 2000 and the Gripen were already flying whereas the AT 2000, the German aircraft, was still in its developmental stage. The Air Force Command Council was happy with any of the shortlisted aircraft but they were concerned about the high risk normally associated with an aircraft that was in the developmental stage.

[727] As far as the light utility helicopters (LUH) are concerned, the Air Force Command Council evaluated only three, and all three met the evaluation requirements. The helicopters were the following: the German EC 653; the Canadian Bell 427; and the Italian Agusta A109. The SAAF would have been satisfied with any of the three helicopters.

[728] In August 1998 the Minister's Committee approved the preferred bidders: for the LIFT, the Hawk aircraft; for the ALFA the Gripen; and for the LUH, the 109 Agusta. The above decision was ratified by the Cabinet on 18 November 1998. Thereafter the Air Force Board and the Air Force Project Teams became involved again during the contract negotiation process by giving support in the technical evaluations.

[729] General Hechter further testified that if the contracts were cancelled, South Africa would not have an air force and the fighting capability of the SANDF would be drastically reduced, and that might impede the SANDF in carrying out its constitutional mandate.

[730] He knows that about 90% of the NATO countries use a three-tier training system while some even use a four-tier training system. The United States of America uses the four-tier training system. He himself joined the Air Force in 1960 and they have used a three-tier system ever since that time.

[731] In his view, the Hawk is the better aircraft. It is a fully operational aircraft and has proved itself beyond doubt in many countries. He emphasised the point that the SAAF was happy with any of the shortlisted aircraft. He also pointed out that the Italian-built Aermacchi was at the end of

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its normal service life. If the Aermacchi were to be bought it would have meant a lot extra work and extra money to ensure a service life of 30 years.

[732] Prior to the advent of the SDPP, there was an SANDF Acquisition Plan in place. Major equipment has a lifespan of 30 years, and it takes time to acquire equipment. As a result, the acquisition or replacement plan needs to be put in place well in advance.

[733] The SAAF wanted to replace the Impala aircraft that were acquired in 1960. By 1990 they would have been obsolete. The original Cheetah Mirage III aircraft were acquired in 1963 and 1964. The original Mirage IIIs were modified extensively. Due to their midlife modification their service life was extended and they became the Cheetah D and E. They were supposed to come out of service in 2008 and 2012 respectively.

[734] Their ambition was to replace the Impala first, then the Cheetah. The Air Force Command Council pushed for the replacement of the Impala with a LIFT type aircraft and that is why the latter programme was included in the SDPP.

12. Major General Gerald Malinga

[735] General Malinga is currently Deputy Chief of the SAAF. He has a Bachelor of Arts (Humanities) Degree, obtained in 1991 from Stillman College, Tuscaloosa, Alabama, United States of America.

[736] Prior to the integration process of the different defence forces, he was a member of one of the non-statutory forces, namely the Azanian People's Liberation Army, which he joined in 1975. He left the country in 1976 and went into exile. He received military training in various countries and from January 1977 he did his pilot training course in Nigeria, where he qualified in 1979. He received his commercial pilot's license in 1980 and later flew in Nigeria as a freelance pilot for 18 months. Thereafter he returned to the APLA base in Tanzania for further military training. At some stage he became a platoon commander. He then went to the United States of America to study.

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[737] He came back to South Africa in 1995 and joined the SANDF. He was assigned to the SAAF and was a line pilot at 41 Squadron from 1996 to 1998. His main responsibility was flying aeroplanes, without any administrative functions. 41 Squadron provides light transport capabilities to the SAAF or SANDF. As a commander of 41 Squadron he had to ensure that his staff was operational-ready or combat-ready.

[738] In 2002 and 2003, he was Officer Commanding 21 Squadron, a unit dedicated to transporting VIPs. According to a Cabinet memo, VIPs include the President, the Deputy President, the Minister of Defence and the Deputy Minister of Defence.

[739] During 2004 and 2005, he was the Director Education, Training and Development, responsible for all the installations in the SAAF College and the SAAF Gymnasium.

[740] From 2005 to 2006, he held the position of Chief Director Force Preparations. To a very large extent his duties had to do with the readiness of the forces, all the flying system groups, combat transportation and helicopters, the command and system groups and so forth. He had to ensure that the forces were prepared correctly, supported correctly and, as far as possible, that they are kept to the business plan of the SAAF.

[741] One of the system groups referred to is the Combat System Group. General Bayne is the Director of the group and is responsible for the Gripen and the Hawk. General Burger is the Director of another system group, the Helicopter System Group. The latter system group is, *inter alia*, responsible for the Agusta A109 or the LUH. The third flying system group is the Transport and Maritime Systems Group, which is responsible for all transport aircraft and the maritime aircraft of the SAAF, except the Lynx Helicopter. The latter is a maritime helicopter falling under the Helicopter System Group.

[742] In 2006, General Malinga held the position of Chief Director Operations Development. The division is responsible for operations or force employment. His current position includes responsibility for the budget. The Defence Force budget has reduced since 1997.

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[743] During his tenure as an employee in the SANDF he has received various orders, decorations and medals.

[744] Like other witnesses, General Malinga reiterated the mandate of the SANDF.

[745] The SAAF started acquiring aircraft in the early 1920s. The United Kingdom Vampire and the American Sabre aircraft were acquired in the 1950s. The Sabre could compare with the Gripen and the Vampire with the Hawk. The SAAF also obtained the American Harvard that could be compared to the Pilatus Astra.

[746] The SAAF was using the Harvard for its basic training. Soon thereafter it acquired from the United Kingdom the Vampire jet trainer and fighter aircraft to train jet crews and create a jet-fighter capability.

[747] In the 1950s, the SAAF acquired 34 transonic Sabre aircraft as its fighter aircraft from Canada. The three-tier training system was then established. This means that training took place at three levels, with trainee pilots commencing on the Harvard for basic flying training, then graduating to the Vampire for fighter-jet training and then to the Sabre, which was the operational aircraft. At that stage the SAAF had 111 jet trainer and fighter aircraft.

[748] In the sixties and early seventies, the SAAF acquired the first jet bomber and reconnaissance aircraft, namely nine Canberras and 16 Buccaneers, both from the United Kingdom. The SAAF also acquired 57 MIR III variants from Dassault in France.

[749] From the mid-sixties to early seventies, the 77 Vampires were phased out and Atlas Aircraft Corporation (now Denel Aviation) built 151 Impala Mk I jet trainers and 100 Impala MkII light fighter aircraft under license from the Italian firm Aermacchi. In the mid-seventies, the SAAF acquired two variants of Mirage F1 fighters from Dassault, namely 16 air-to-air FCS and 32 F1 AZ air-to-ground aircraft. All-in-all 48 Mirage F1s were acquired.

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[750] The SAAF retained the three-tier fighter training system throughout. At this time it was Harvard to Impala, and from there to the various operational types.

[751] Just before phasing out the 34 Sabre aircraft in 1980, the SAAF had a total of around 350 jet trainer, fighter, bomber and reconnaissance aircraft, acquired from numerous manufacturers in different Western countries. Today, all-in-all the SAAF has 52 fighter aircraft, which is only 15% of the number of aircraft the SAAF had in the 1980s.

[752] Armscor and local industry, in co-operation with the Israeli aircraft industry, embarked on a programme to upgrade the SAAF MIR III aircraft. The result of these efforts was the Cheetah. Three variants of Cheetah aircraft were delivered to the SAAF between 1986 and 1994.

[753] When the peace talks towards a political solution in the then South West Africa and in South Africa began, the defence budget was drastically cut in the early nineties, many squadrons were closed and a lot of aircraft phased out. These aircraft included the Canberra, Buccaneer and some Impalas and Cheetahs.

[754] After the 1994 democratic elections, further defence budget cuts reduced the SAAF fighter fleet even further when the Mirage F1 AZ and more Impala aircraft were phased out. By that time, the Impala fleet was beginning to age fast and the remaining Cheetah fleet was estimated to have a lifespan till 2012.

[755] By the mid-eighties, the defence budget was 4,7% of GDP. In terms of total government expenditure it was 25,7% of such expenditure. Today the defence budget is about 1,2% of GDP and about 16% of total government expenditure.

12.1. Helicopters

[756] In 1957, the SAAF formed its first helicopter squadron, 17 Squadron, with one Sikorsky S-51 and three Sikorsky S-55s. These helicopters, based on the helicopter evolution during and from the Korean War, were purchased

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primarily to fight and eradicate Tsetse fly in the northern parts of South Africa.

[757] In 1961, the SAAF acquired a small number of Alouette II helicopters from France. They were the first modern turbine engine helicopters to be acquired by the SAAF. These helicopters were mainly used for training graduates from Central Flying School who were flying Harvards. From 1962 on the SAAF started taking delivery of Alouette IIIs that became the standard light utility helicopters. Further consignments of Alouette IIIs followed in 1967 and 1975. By this time, the SAAF had gained experience in the utilisation of this equipment. Alouette IIIs were used in reconnaissance, command and trooping roles, as well as in the close air support role with machine-guns and a 20mm cannon.

[758] All the helicopter pilots first trained on Harvards at the Central Flying School. After graduating they were trained on the Alouette II before they went to operational helicopters. The three-tier training system was maintained.

[759] The SAAF also bought the Wasp from the United Kingdom as its ship-borne helicopter for anti-submarine operations, as well as the French Super Frelon as its heavy lift helicopter. Sixteen of the latter were ordered and delivered between June 1967 and November 1969. In 1969 the SAAF ordered its first Pumas for the medium transport role. The SAAF later realised certain shortcomings of this helicopter.

[760] The Alouette II was phased out in 1974 and the Alouette III became the primary basic helicopter trainer. The latter aircraft is almost in the same class as the Agusta A109.

[761] After realising the shortcomings of the Puma, the SAAF embarked on a project to replace them. This resulted in the locally-developed Oryx Medium Transport Helicopter. The first flight of the Oryx was in 1987.

[762] The Super Frelon was phased out in 1989 and the LUH replacement project for the Alouette III was initiated in 1992.

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[763] In 1990, when the SAAF received its major budget cut, the helicopter fraternity realised that it had to review its helicopter fleet composition. The medium transport helicopter (MTH) fleet was already being upgraded with the introduction of the Oryx MTH. The future of the Alouette needed to be reviewed.

[764] The Alouette III had been in service since 1962 and was becoming more difficult to operate, as costs were increasing and the helicopter was limited in its operational utilisation. It was a single-engine helicopter with inherent limitations at night and poor visibility. Indications were that its manufacturers, Eurocopter, were about to discontinue the spares production line of the Alouette III.

[765] In the SDPP under consideration, the Agusta A109 replaced the Alouette III, with the three-tier training system still in place. The basic flying training is done at Central Flying School using the Pilatus PC7 Astra. When trainees graduate and are earmarked for the helicopter line, they are trained on the A109 and when they qualify, they move on to the Oryx.

[766] General Malinga further testified that the main aim of the Defence Review of 1998 was to elaborate on the policy framework contained in the White Paper, and particularly long-term planning on issues such as structure, force design, force levels and what armaments would be required. He further said that the force design was motivated, *inter alia*, by the need to reduce the defence budget so that more funds could be directed to socio-economic issues, the development of the country and its people, and so on. Needs-driven and cost-constrained were the driving force behind the formulation of the force design.

[767] The absence of a clearly defined military threat does not mean that the SANDF has no need for rejuvenation. The mandate of the SANDF requires that it should have a force design to be able to execute the mandate. Threats usually appear unexpectedly and do not always allow for long lead-times to acquire combat systems, including equipment and competent operators.

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[768] Besides being prepared for any possible threat, the SANDF is involved in a number of other activities that contribute to the betterment of the quality of life of South Africans and the neighbouring countries. Examples are dealing with organised crime, border controls, search and rescue missions, and peace-keeping in some African countries. Recently the SANDF got involved, together with the armies of other countries, in a peace-enforcement mission in one of the African countries. The SANDF is also concerned with the protection of our marine resources, thus contributing to the economy of the country.

[769] As far as the rationale for the SDPP is concerned, General Malinga said that the combat capability of the SAAF was over decades developed into a formidable and well-equipped airpower capability for the country. The same applies to the Navy and the entire SANDF.

[770] Continuous acquisition was key, even during the sanctions era. The capabilities of the SANDF were enhanced by the efforts of Armscor and local industry innovations, adaptations and capabilities.

[771] The SAAF retained a three-tier training programme as it was the most suitable training programme for the SAAF.

[772] In the early 1990s, the authorities realised that there was a need to acquire further equipment in order to provide for the various arms of service to an acceptable level. The strategic packages of the Defence Force were seen as a necessary programme to undertake in order to replace the ageing equipment of the SANDF's respective arms of service.

[773] The Constitution, the White Paper on Defence and the Defence Review of 1998 mandated the country to acquire the equipment that was procured through the SDPP under consideration. The equipment acquired under the SDPP was necessary to enable the SANDF to meet its strategic objectives.

[774] Prior to acquiring the equipment under the SDPP, Parliament's approval was obtained.

[775] The DOD developed different force design options. These options reflected the different permutations of the level of defence, defence structure and cost, for public consideration during the consultative conferences on the Defence Review. The Cabinet and the parliamentary Defence Committee were presented with four options. One of the four options was chosen and approved subject to the availability of funds.

[776] Chapter 8 of the Defence Review sets out the force design options. The approved option provides, amongst others, for 16 light fighter aircraft, 32 medium fighter aircraft, 12 combat support helicopters, 5 maritime helicopters and 96 transport helicopters.

[777] In 1997 there was a budget cut. The cut compelled the DOD to have a relook at its approved option and it was found that it might not be affordable. Whilst the Department was revisiting its options, the selection process was continuing. The acquisition of the advanced light fighter aircraft and future medium aircraft was reconsidered and the conclusion was that they were no longer affordable. A proposal was made that the DOD would instead purchase the advanced light fighter aircraft and a lead-in fighter trainer.

[778] Unlike before, when various pieces of equipment were bought by the DOD, the concept of packages emerged and became policy of the Government. The new policy was cost-effective and it enabled the DOD to acquire the best equipment, although the acquired pieces of equipment were far fewer than originally anticipated in the approved options.

[779] The SDPP did not address all the required capabilities of the SANDF. It addressed only some of them, for example, the gap in the maritime patrol aircraft and the long-range maritime aircraft.

13. Colonel Frank Kevin Sargent Viljoen

[780] Colonel Viljoen joined the SADF in January 1968. He underwent his military training at the SAAF Gymnasium. On 10 June 1968, he commenced his pupil training at Central Flying School Dunnottar. He received his pilot's wings and was commissioned as a 2nd lieutenant in December 1969. He

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completed various flying, instructor's and ground courses. Amongst others, he was an instructor on the Alouette III, of which he was a pilot himself. He participated in the Oryx Intensive Flight Trials at AFB Swartkops in 1990 and concluded his flying career in 1992.

[781] From 1987 to 1994 he served as the Project Officer for the Oryx Medium Transport Helicopter (MTH).

[782] While on the Oryx project, he commenced a study to determine the requirements for the Alouette III replacement. The Alouette III was designed in the late 1950s by a French company now known as Eurocopter. The SAAF acquired their first Alouette III in 1962. By the time Colonel Viljoen started investigations into the possibility of upgrading or replacing the Alouette III they had already been in service for about 30 years.

[783] From the drafting of the initial document in the process of acquiring equipment until the equipment is brought into service could take anything between 10 and 15 years. It came to the SAAF's notice that the manufacturers of the Alouette III intended to close down the production line of Alouette III, which would have made it difficult in future for the SAAF to acquire spare parts.

[784] He was appointed leader of the investigative group that was dealing with the Alouette III replacement capability study. The study concluded that it would not be cost-effective to upgrade the Alouette III. The information gathered by the study was incorporated into the User Requirement Statement (URS). This information was incorporated into the various versions of the Light Utility Helicopter (LUH) URS. Version 5 of the LUH URS was eventually approved in March 2000. Clause 2.1 of the adopted URS reads as follows

'This User Requirement Statement defines the LUH System in terms of the capabilities, performance, design, development, support, training and test requirements.'

[785] Clause 8.3 of the same document reads as follows:

'The utilisation of the LUH will in all probability be utilized in peacekeeping operations and will possibly require specialist surveillance, navigation and self-protection equipment.'

[786] In 1994 he was transferred to the post of Staff Officer for Battlefield Support. While in this position, he was appointed as the User Specialist Officer for the maritime helicopter capability and Alouette III replacement. He wrote the Required Operational Capability (ROC) for the LUH as well as the Staff Target (ST). The ROC was approved in 1995 and the ST in May 1996.

[787] In 1996 Colonel Viljoen was transferred to the Directorate Projects where the acquisition process for the Alouette III replacement programme was initiated. He drafted the URS for the Alouette III replacement. He also compiled the Staff Requirement.

[788] Once the Staff Target is approved, a programme receives project status. Thus, with the approval of its Staff Target the future LUH programme, as it was known, was registered as *Project Flange*. After a project is registered, a joint project team is established under the leadership of Armscor, which is usually or traditionally the lead agent in an acquisition process. The team generated certain information and, as a result, on 17 June 1996 an RFI was issued to 16 companies that would possibly be interested in satisfying the Alouette III replacement. After receipt of the responses, three products were shortlisted, namely the Agusta A109, Bell 427 and Eurocopter's EC635.

[789] The information in the RFI is sourced from the URS. Before the RFI could be issued a value system had to be drawn up.

[790] The traditional acquisition process of the SANDF did not include the requirement of National Industrial Participation (NIP) or Defence Industrial Participation (DIP). Both these elements were added to the acquisition process by the SDPP. As a result, in September 1997, a second RFI that included the requirements of the SDPP was issued to the three shortlisted companies. A second evaluation model to address the specific requirements of the SDPP was compiled and was approved in October 1997. The results

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of the second evaluation model unanimously concluded that the Agusta A109 was the superior product as measured against the approved Military Value Index (MVI). It was also significantly cheaper.

[791] On 13 February 1998, a Request for Offer (RFO) for 60 units was issued to the three shortlisted companies. The number of 60 units was arrived at in view of the Alouette replacement study, which indicated that 60 units would be required as opposed to the 118 Alouette IIIs that had earlier been acquired by the SAAF. The force design and the Defence Review that were already approved at that stage also specified that 60 LUHs should be acquired to replace the Alouette III.

[792] The three short-listed contenders had different engines. Agusta offered the Pratt & Whitney as their preferred engine, although they agreed that should the client prefer an alternative engine they would consider that. The Bell helicopter offered only the Pratt & Whitney engine and Eurocopter offered a Turbomeca engine.

[793] In November 1998, the Cabinet announced that Agusta with their A109 Power variant had been selected as the preferred supplier for the Alouette III replacement.

[794] In May 2000, the witness relocated to the Agusta helicopter facility in Italy where he served as the Project Officer until December 2003. He retired from the SAAF at the end of February 2009 after serving in the SAAF for about 41 years.

[795] In March 2010 he was approached by the SAAF to serve in a reserve capacity to assist in finalising the LUH Project. To date, he is still being utilised in that post where he reports directly to the Director Air Force Acquisition in the Defence Matériel Division.

[796] *Project Flange* should have been finalised around 2010-11, but during the operational test and evaluation certain deficiencies were identified. They are in the process of rectifying the shortcomings, including five items or pieces of equipment that are being tested through the operational and

evaluation phase. Most of these items were outside the original acquisition phase. New requirements were also identified. The system has already been handed over to the SAAF but the additional requirements are in the process of being addressed.

[797] At the end of the project the end user—in this case SAAF—would like to know whether the product actually meets what was specified in the URS. They were in the process of generating the required document, called a Deviation Report. A report had been written in 2002, but since the LUH had not flown at that stage, the report was generated on information obtained from the original equipment manufacturer. As a result, the correctness of the original Deviation Report had to be validated and updated, if required, so that the Director Helicopter Systems of the SAAF could be satisfied to accept the product in its totality.

[798] During his career, Colonel Viljoen was awarded various medals by the SADF and SANDF. He also received an award from Armscor and Denel respectively.

[799] In his view, what was delivered to the SAAF complies with the URS, the document that contains in detail the type and features of the required product.

[800] The LUH is being deployed to units where the Alouette III previously served. There was no need for major infrastructure development and only the LUH specific requirements had to be addressed by the project, and they were in the process of being completed. A few capabilities were still outstanding and they were being attended to.

[801] After the Defence Review came into effect in 1998, the acquisition process changed slightly in the sense that NIP and DIP became part of the equation. As the initial RFI was issued prior to the adoption of the Defence Review, a second RFI was issued incorporating the requirements of NIP and DIP. The NIP Programmes are the responsibility of the DTI and the DIPs that of Armscor. The second RFI was sent only to the shortlisted contenders and the technical requirements were the same as those of the first RFI.

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[802] When considering the offers, the Integrated Project Team, comprising members of both Armscor and the SAAF, had specific responsibilities that did not include the NIP and DIP side of the evaluation, nor the costs. They evaluated, amongst others, the technical effectiveness of the proposed system, supportability right through its life cycle, value for money, as well as risks associated with the tender.

[803] Colonel Viljoen led the contingent of the SAAF. From a management perspective, Armscor and the SAAF had different requirements. The witness was there as the operational specialist and the overall manager while his counterpart was the Armscor programme manager. There were also engineers and logistic specialists from both Armscor and the SAAF.

[804] The technical team took the view that the Agusta A109 was the superior product as measured against the approved MVI. All the disciplines were evaluated by specialist teams and the results of these evaluations were put into the formula that finalised the 'Military Figure of Merit'.

[805] While Pratt & Whitney had a certified engine, the Turbomeca engine was still under development and consequently carried a higher risk.

[806] After the contract was signed, Agusta decided to upgrade the A109 Power to the A109 LUH. Useful new features were added to the helicopter at no extra cost.

[807] All the equipment, components and training aids that were included in the original acquisition plan have been delivered to the SAAF and the aircraft are in service.

[808] Compared to the Alouette III, the Agusta A109 LUH is a much better product.

[809] The witness confirmed that the manufacturer of Agusta A109 did favour the Pratt & Whitney engine but added that it is incorrect that the SAAF's preference was the Turbomeca. The SAAF was neutral. Either of the engines was acceptable to them as long as there was no risk. The SAAF

had done business before with Turbomeca. Other aircraft of the SAAF, namely Alouette III, Puma, and Oryx, have Turbomeca engines. While they had no problems doing business with Turbomeca, the problem was with the risk that they had identified. At the same time, certain aircraft in the SAAF use Pratt & Whitney engines. The SAAF still had relationships with both companies.

14. Brigadier General Pieter Burger

[810] General Burger testified that he joined the SAAF in 1976. He completed various training courses and flew Harvards and Pumas. He left the SAAF in 1981 to go to the private sector.

[811] In 1985, he joined the then Bophuthatswana Force Wing until its integration into the SANDF in 1994. In Bophuthatswana he flew Alouette helicopters. He attended all the relevant courses and was later promoted to the rank of Colonel.

[812] In July 1998, he was appointed Officer Commanding Forward Air Force in Centurion. The main role and functions of this division were to render air support to the South African Police Service and other government departments, in conjunction with other SANDF services, in crime prevention operations, big events and disaster relief operations. Crime prevention operations were executed on a daily basis in the urban areas. Helicopters and light reconnaissance aircraft were extensively utilised.

[813] In 1999, he was promoted to the rank of Brigadier General. In 2005, he was appointed Director Military Aviation Regulations and Policy. In January 2008, he was appointed Director Education, Training and Development. Amongst others, his directorate was responsible for basic military training and basic flying training.

[814] In 2011, he was appointed Director Human Resources Development and in February 2013 Director Helicopter Systems. The latter division is responsible for providing combat-ready systems for the execution of the SANDF mandate. He is responsible for the LUH systems for the SAAF, including the A109 LUH system; the Oryx MTU system; the BK 117 system

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(part of the LUHs); the Rooivalk system, which is the Combat Support Helicopter system; as well as the maritime Lynx system.

[815] They are responsible for training people to crew the aircraft and provide them with the required competencies. They also collaborate with another directorate to get people trained, take them through their careers and give them experience in operating systems.

[816] He was awarded various medals.

[817] General Burger testified that he was not involved in the setting up of the SDPP. His career related to helicopters and his evidence and knowledge would deal with the utilisation of the equipment acquired in terms of the SDPP.

[818] In 1957, the SAAF formed its first helicopter squadron, 17 Squadron, with one Sikorsky S-51 and three Sikorsky S-55s. They were purchased primarily to eradicate the Tsetse fly.

[819] He testified that the first modern turbine-engine helicopters procured by the SAAF were French Alouette IIs, delivered in 1961. They were used mainly for training. From 1962, the SAAF started taking delivery of Alouette IIIs, which became the standard LUH. Further batches of Alouette IIIs followed in 1967 and 1975. By this time, the SAAF had gained operational experience working with these aircraft, using them in reconnaissance, command and trooping roles, as well as in a close air-support role, with machine guns and 20mm cannon.

[820] In the meantime, the SAAF had bought other helicopters from the United Kingdom and France as its shipboard and heavy lift helicopters respectively. The Alouette II and Alouette III became the primary basic helicopter trainers.

[821] As a result of some studies, the SAAF saw the need to acquire medium transport helicopters. The Puma was selected as the preferred aircraft. Deliveries commenced in November 1969. The Puma generally

proved a very useful and effective aircraft, but at some stage the SAAF became aware of some shortcomings of the Puma aircraft.

[822] After the shortcomings of the Puma aircraft were noticed, a Puma aircraft replacement project was introduced. This Puma replacement project resulted in the locally developed Oryx MTH for the SAAF. Some of its parts were manufactured and repaired locally. The first flight of the Oryx was in 1987. Another helicopter was phased out in 1989 and the Alouette III replacement project was initiated in 1992.

[823] The Alouette III had been in service since 1962 and was becoming more difficult to operate as the costs were increasing. The helicopter was also limited in its operational utilisation as it was a single engine helicopter, and had inherent limitations at night, including poor visibility.

[824] In 1992, a study was initiated and various SAAF stakeholders were consulted on their requirements for the Alouette III replacement. This study indicated that at least 60 units were required to replace the Alouette III fleet. One of the requirements of the Alouette III replacement aircraft was that it had to be suitable for basic helicopter training, as the Alouette III was used for basic helicopter flying training.

[825] In 1993, the drafting of the Required Operational Capability (ROC) was launched, followed closely by the drafting of the Staff Target (ST). The ROC was approved in 1995 and the ST on 4 April 1996. This project was ultimately code-named *Project Flange*.

[826] The background sketched above reveals that the Alouette III replacement project was a registered SAAF requirement long before the initiation of the SDPP. Later, the Staff Requirement called for the establishment of a helicopter training facility with computer training aids and a cockpit procedural trainer to reduce training costs.

[827] The LUH plays an important role in deterring external hostilities, in rescue operations, and assisting other services and government

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departments to accomplish their tasks or missions. It plays, *inter alia*, the following roles:

- Supporting the South African Police Service in the maintenance of internal stability
- Supporting other services of the SANDF
- Assisting both local and foreign government departments in accomplishing their tasks and/or missions, such as support in the maintenance of regional stability and the rendering of aid
- In support of the South African Police Service in crime prevention operations in order to reduce the local crime rate
- In support of the Department of Foreign Affairs in pursuit of the national foreign policy
- Rescue missions in mountainous terrains, at sea and in disaster situations
- Transporting both local and foreign VIPs (dignitaries)
- In maritime operations, firefighting and various other exercises.

[828] The LUH is utilised as the basic helicopter trainer to train air crews to fulfil all the roles and missions required in both conventional and unconventional conflict scenarios. This training role is both a priority and an imperative as it instils the basic helicopter skills and knowledge required for future operational utilisation. The level of technology of the LUH makes it an advanced technology helicopter. Training on the LUH enables pilots to adjust better to flying the bigger platforms like the Rooivalk, Lynx and Oryx.

[829] The first four A109 LUH pilots were trained by the main contractors. This was the initial cadre that then formed the core instructor cadre to carry out the initial system implementation, operational test and evaluation flying. The initial cadre also established the new aircraft at the units and then continued training further SAAF pilots to date.

[830] The LUH performs various roles both during peacetime and conflict situations, including various humanitarian services to communities.

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[831] Thirty A109 LUH helicopters were delivered over time, the first in 2005 and the last in September 2009. Unlike the Alouette III, which the LUH replaced, the A109 LUH can do night-flying.

[832] The SAAF helicopter section had 3 accidents and the number of LUHs is down to 27. These catastrophic accidents occurred over a period of 7 years.

[833] Since their acquisition, the LUHs have participated in various exercises and operations, such as air force exercises with other arms of service; preparations for the 2010 World Cup Soccer tournament; army border protection and control; anti-rhino poaching operations; and supporting the National Parks Board in nature conservation.

[834] The LUH and the Oryx can do the same work and they have the same capabilities, but the Oryx is a bigger aircraft and more expensive to keep in the air.

14.1. Current status

[835] The current fleet of 27 LUHs is at various stages of readiness. The three that were lost were damaged beyond economic repair. One more LUH was damaged in an accident and awaits repairs. A number of the remaining LUHs await maintenance under regular maintenance programmes. There is enough crew to do what needs to be done.

[836] About 50% of the maintenance and repairs of the equipment is done locally and where it is not cost-effective to do so, maintenance and repairs are done overseas. The LUH complies with the URS.

14.2. Utilisation

[837] To date, the LUHs have flown over 18 000 hours since entering service in 2005. It was initially planned that they would fly 6 000 fleet hours per year, which, given the build-up of the fleet, would amount to about 40 000 hours to date. The reason for flying far fewer hours than initially planned was that the aircraft had not arrived at the same time, but over a period between 2005 and 2009. Another reason is that because of austerity

measures they had stopped flying at other times. The damaged aircraft had also not flown for some time.

[838] The hours flown allowed for 95% of the operational test and evaluation to be done at the units operating the aircraft, with their own air and ground crew.

[839] The operating costs of the A109 LUH, calculated on a basis of cost-per-hour flown, are higher than anticipated due to the low number of hours flown. Their system runs on calendar-based servicing, which means that the aircraft is serviced after a certain period. It does not matter whether it has flown any hours or not, but the more hours it has flown during that period, the more cost-effective the aircraft will be.

[840] The current resources available to the helicopter systems are insufficient to achieve full and sustainable operational status.

[841] The A109 LUH is a very useful system in the SAAF inventory and fulfils an important role in enabling the SANDF to carry out its mandate. Cancellation of the purchase agreement and return of the system to the seller will be an irresponsible action as the SANDF and the community at large will lose the services offered by the LUH.

[842] In conclusion, General Burger stated that, as soldiers, their main function is to support the country. They also supported the 1994 elections by delivering ballot papers to polling stations around the country; they supported neighbouring countries during their elections; and they supported them with rescue missions during natural disasters like floods.

15. Major General Johan Daniel Pelsler

[843] General Pelsler underwent basic military training from July to September 1981. After a further three months at 3 Electronics Workshop, he was drafted into the SAAF as engineering officer in January 1982. He attended various courses and served in various engineering divisions of the SAAF. In 1980 he obtained a BEng (Electronics) from the University of Pretoria and an MEng (Engineering Management) (*cum laude*) in 1997 from

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the same university. He received various decorations and medals. He was promoted to the rank of lieutenant on 12 January 1982 and ultimately to the rank of Major General on 1 October 2010. He is a registered professional engineer.

[844] He is currently a Major General in the SANDF and Chief Director Force Development and Support (SAAF,) and since October 2010 responsible for the overall management of the SAAF's technical, engineering and supply capabilities (maintenance and limited manufacturing capability); base support; human resources; and the technical airworthiness of aircraft.

[845] He testified that the Occupational Health and Safety Act require the SAAF to reduce the risk of military aviation mishaps to 'as low as reasonably practicable'. As a result, the SAAF follows a very formal process of airworthiness certification.

[846] The URS defines what the SAAF intends doing with a system. After receipt of any system, the operational test and evaluation kicks in during which, amongst others, the operational effectiveness ('can it perform the intended mission successfully?') and operational suitability ('is it satisfactory for field use, including supportability?') are evaluated.

[847] After the evaluations, and once the Military Airworthiness Board is satisfied that the safety risks have been reduced to an acceptable level, an airworthiness approval in the form of a Military Type Certificate is granted.

[848] According to the witness, the Gripen's contracted baseline was certified in June 2013. This means that a provisional military type certificate was issued, allowing the aircraft to complete its full operational test and evaluation in all its intended roles. It was also granted temporary full release for its air-policing role during the 2010 Soccer World Cup.

[849] The Hawk aircraft is currently released to operational test and evaluation in all the training roles and was also fully released for the air-policing role in 2010.

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[850] The A109 helicopter is currently certified for single pilot-operation in accordance with visual flying rules, that is, when the weather is such that one can see adequately, and for two-crew operation according to instrument flying rules when the weather is such that one cannot see. For the latter a minimum of one pilot and one type-qualified crew member is required. The basic A109 aircraft was also civil certified.

[851] All three systems (aircraft fleet) have initial or provisional military type certificates allowing them to continue with operational test and evaluation. Once operational test and evaluation is satisfactorily completed, final military type certificates will be issued. As stated earlier, the LUH A109 is already fully-certified for single-pilot operation in visual conditions and for two-crew operation in instrument flying conditions. A provisional military type certificate is adequate for the optimal use of the equipment.

15.1. SAAF technical and engineering capability

[852] In the SAAF, hands-on aircraft maintenance is performed by artisans, who are trained at 68 Air School in the theory and practice of the relevant systems. After achieving generic qualifications in a variety of specifications, they are also extensively trained on the specific type they are to maintain, such as the Gripen and Hawk. On each type of equipment and on each type of aircraft they have specialised artisans.

[853] The SAAF has sufficient aviation-related artisans for about 90% of the posts, with average post-qualification experience of more than 10 years. This is partially the result of a special technical allowance instituted in 2002. Retention of artisans is excellent at the moment.

[854] Maintenance is managed by technical officers. Artisans who demonstrate an aptitude for management and command are selected for officer training. The SAAF has sufficient technical officers for about 80% of posts. Retention is good, although a small number of junior resignations (about 5%) have been experienced.

[855] These numbers are sufficient for the SAAF's aircraft maintenance needs at the readiness levels currently required.

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[856] Graduate engineers are employed to optimise military capabilities and systems, including support, and also to monitor aircraft fleets for ageing, obsolescence and airworthiness. The SAAF has graduate engineers for only 44% of posts. For the past year-and-a-half, there has been an unacceptably high resignation rate of 22% per annum. Average experience after graduation is only about 5 years. The high turnover is caused by the availability of employment and high remuneration in the private sector and other institutions. A further contributing factor is the low number of graduate engineers in the country.

[857] The number of artisans and technical officers in the SAAF is adequate for current needs and has no negative influence on readiness of their aircraft fleet. However, the number of engineers is not adequate. The latter problem is being addressed.

[858] The SAAF has a continuous replacement training programme. It is in the process of enhancing its own capability in the short, medium and long term by improving aspects of technical recruitment, education, training, development, motivation, utilisation, retention and even trial redeployment. Work beyond the SAAF's own capability is outsourced.

[859] The total operating cost of most assets, including military aircraft, consists of a fixed cost component and a variable cost component. The variable cost component is dependent on utilisation. Therefore, as more hours are flown, variable costs increase, but per-hour costs decrease as the effect of the fixed costs is diluted over more operating hours.

[860] Aircraft are designed in such a manner that no single failure can lead to a catastrophic accident.

[861] The SAAF is capable of maintaining its fleet of aircraft. This is due mainly to the continuous training of its personnel, both air crew and ground crew.

[862] Multinational exercises with other countries also involve the technical staff, the artisans and engineers. During such exercises the technical staff,

artisans and engineers have an opportunity to observe foreign crews performing the same functions and they learn how such crew members, artisans and engineers perform their tasks.

[863] Finally, General Pelser testified that if the contracts relating to the SDPP were cancelled, the capabilities of the SANDF would be negatively affected and the SANDF might be unable to carry out its constitutional mandate.

III. CHIEF OF THE DEFENCE FORCE

16. General Solly Zacharia Shoke

[864] General Shoke joined the liberation movement after the 1976 Soweto uprising. He received general military training in Angola and the former USSR and completed an Intermediate Staff Course in Zimbabwe. He attended the Senior Command Staff Duties Course and Joint Command and Staff Course at the South African Army and Defence College.

[865] He served in the South African Army as the Director Personnel Planning, Director Integration, Director Personnel Acquisition, Chief Director Human Resources Support and then as Chief of the Army. As Chief of the Army he was the commander of all ground forces.

[866] On 1 June 2011, he was promoted to the rank of General and the Chief of the SANDF, a position he holds to date. In his current position he is the commander of the entire force, all four arms of service, namely the Army, Air Force, Navy and the Medical Corps. He is the principal advisor to the Minister of Defence as far as military policy is concerned. He is also responsible for the air, ground, maritime and health services and he executes his functions through the respective chiefs of service, that is the Chief of the Army (responsible for the ground forces), the Chief of the Air Force (responsible to ensure that our airspace is protected), the Chief of the Navy (responsible for our maritime security) and the Surgeon-General (responsible for the wellbeing of the soldiers and also to ensure that South Africans are protected from chemical and biological attacks).

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[867] He is a member of the COD, which is chaired by the Minister of Defence; a member of the Plenary Defence Staff Council, which he co-chairs with the Secretary for Defence; and of the Military Command Council, which he chairs. The latter Council consists of the chiefs of the four arms of service and other divisional chiefs, namely the Chief of Operations, Chief of Logistics, Chief of Human Resources and the Chief of Corporate Services.

[868] He has received various awards.

[869] In order to fulfil their mandate, he must ensure that there are enough personnel, that they are properly trained and that they are adequately equipped.

[870] General Shoke further testified that at the time that the frigates, submarines and aircraft were acquired under the SDPP programme, the country needed those capabilities, and indeed others, to supplement the SANDF's capabilities and to replace its ageing equipment that was approaching redundancy. The armaments purchased under the SDPP were and remain essential to the SANDF to enable it to carry out its constitutional mandate. If the SANDF lost any of the capabilities acquired under the SDPP programme, it would be unable to fulfil its constitutional mandate to protect and defend the country, its people and its resources.

[871] He does not agree with the notion that the country faced no threat. There is always a threat to the country's marine economy, which cannot be protected without a navy that is adequately equipped for this purpose. There are various important activities that the equipment acquired under the SDPP programme is utilised for, such as border control; crime control; peace-keeping and peace enforcement missions in other African countries; piracy control on both the West and East coasts of Africa; humanitarian missions; and protection of the important Cape sea route. Piracy has led to an increase in the use and importance of the latter route.

[872] Had we not acquired the assets under consideration, and if a military threat arose, we would not be able to acquire adequate capabilities within a short period of time to deter or ward off a threat. South Africa must maintain

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such capabilities at all times so that, whenever required to execute its mandate, the SANDF is in a position to do so.

[873] As part of the constitutional mandate, members of the SANDF are deployed at the moment to protect South Africa's borders—spanning a distance of about 4 400 kilometres—to defend and protect the territorial integrity of the Republic.

[874] The SANDF is also responsible for protecting both the South African high and low air space. The acquisition of air platform or air assets certainly adds a lot of value to the SANDF, allowing it to guard and protect the South African air space.

[875] South Africa has a vested interest in protecting its sea lines of communication, since 90% of trade takes place via the sea. Sea lines of communication cannot be interrupted as the economy depends on this trade. South Africa's maritime border covers a distance of about 2 900 kilometres. Our coast line stretches from the border with Namibia to the border of Mozambique and includes both the Atlantic and Indian Oceans. Beyond that, the exclusive economic zone needs to be protected because that is where the marine economy thrives. The Marion Islands, which are part of South Africa, also have to be protected.

[876] Had South Africa entered into defence co-operation agreements without the equipment acquired under the SDPP, the SANDF would not be able to enhance its international and peace support obligations.

[877] The SANDF is one of the most important instruments of national power (others being diplomacy, intelligence and the economy). These tools of national power are interlinked and there is an important inter-relationship between them. A credible military may be used to support all other instruments of national power and South Africa has, for example, played a meaningful diplomatic role in Burundi.

[878] Without the equipment obtained under the SDPP, South Africa would not be in a position to protect its sovereignty. Failure to do so would be a

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violation of section 200(2) of the Constitution and section 14 of the Defence Act. South Africa cannot afford to outsource that responsibility to any other country.

[879] The equipment under consideration is being used effectively, a fact that can be demonstrated by the use of the equipment to protect and secure major events that took place in our country, such as the 2010 Soccer World Cup, World Economic Forum meetings and many other major events that took place in our country.

[880] The SANDF is subordinate to the political authority of the country, which is a member of SADC, the AU, the UN and other international forums. As a result of our country's membership of these international organisations, it has attracted certain national and international obligations of a military nature. On the instructions of the political authority, the SANDF carries out or fulfils those obligations.

[881] As required, the SANDF works jointly with SADC and other African defence forces through AU and UN peace missions.

[882] South Africa has bilateral relationships with a number of countries. From time to time, the SANDF conducts joint exercises with defence forces of such countries. Recently, the SAAF participated in an exercise in Angola with other air forces in the region.

[883] The defence forces of the SADC region are required to form a SADC standby force, so from time to time as a SADC member force, the SANDF participates in joint exercises. They do this so that when required by SADC or the AU, they are able to execute any mission that the AU or SADC may instruct them to undertake.

[884] The SANDF is very active in rescue missions. Almost every year there are floods in this country or in Mozambique, and the SANDF is always there to rescue people. In these rescue missions, some of the equipment acquired under the SDPP was utilised.

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[885] The equipment that forms the subject of this enquiry is essential to enable the SANDF to carry out its national and international obligations.

[886] In General Shoke's view, the equipment currently on the inventory may not be sufficient to enable the SANDF to fulfil its constitutional mandate and to honour its international obligations: South Africa needs to incrementally add to its current capabilities and personnel.

[887] Members of a defence force must have confidence in their equipment for their morale to be high. If there is only old and redundant equipment the morale would be low.

[888] The SANDF still requires additional equipment as the SDPP covered only a portion of the full requirement.

[889] Cancellation of the contracts and return of the armaments to the manufacturers would have disastrous consequences for the country, the SANDF, our allies and our neighbours.

IV. DEFENCE SECRETARIAT**17. Mr Pierre Derksen Steyn**

[890] Mr Steyn ('Lieutenant-General' before his appointment to the civilian position of Secretary for Defence), obtained a BMil (BSc) in 1963 from the University of Stellenbosch, an MBL from Unisa in 1990 and the LLB in 2011 from the same University.

[891] He served in the SAAF from 1960 until 1992. He had more than 2 500 flying hours, with 1 600 hours on fighter aircraft.

[892] From 1985, he served in several staff positions where he assumed responsibility for the advanced training of pilots and preparing forces for combat. He was also entrusted with various acquisition and development projects.

[893] From 1986 until his retirement in 1993, he served in a number of senior and top management staff positions, holding the rank of Major General and Lt General. His last position was Chief of Staff of the SADF.

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[894] He was appointed Secretary for Defence in August 1994 and served until August 1998. The position of Secretary for Defence was created in 1994 as a civilian component within the Ministry of Defence, staffed by civilians. The Secretary for Defence is the equivalent of the Director-General of a Government Department.

[895] As Secretary for Defence he managed the Secretariat for Defence. He was also the principal advisor to the Minister regarding defence policy. He was further the Accounting Officer for the DOD.

[896] As he understood the legal position, a department could not utilise funds for any project unless the funds had been formally voted for. One was not allowed to embark on expenditures if the required services and products were not reflected on the budget voted for by Parliament.

[897] The SDPP did not appear on their budget and that caused him serious concern. Even if funding was sought somewhere else, Parliament and the public should have been informed.

[898] The foundation of the SDPP could be traced to the Defence Review that was conducted by the DOD from 1995 onward. The White Paper on Defence drafted in 1996 subsequently captured the essence of the Defence Review. Parliament endorsed the Defence Review early in 1998.

[899] It was generally accepted that the Defence Review conducted by the DOD and the associated force design served as a blueprint for the design of the SANDF in the future.

[900] Mr Steyn referred to the three MODAC reports commissioned by the Minister of Defence. Through these reports, all rules, procedures, standards, structures, procurement councils, mandates and templates related to defence procurement were reformulated into a single MODAC document.

[901] Within this framework, the MOD could select military and industrial strategic elements for research, development, industrialisation, production

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and life cycle support whilst managing the procurement risk. The MODAC policy was issued by the Minister of Defence on 8 August 1996.

[902] It was a MODAC requirement that all submissions for programme approvals, both cardinal and non-cardinal, were first screened for compliance by the AACB, prior to submission to the AASB. The AASB approved non-cardinal projects and screened cardinal projects for recommendation and submission to the AAC.

17.1. Council of Defence (COD)

[903] The COD was created by the Minister of Defence for the purpose of assisting the Minister in managing his functions. The body was chaired by the Minister and consisted of the Deputy Minister, the Chief of the National Defence Force, the Secretary for Defence and the Chairman of Armscor. Other persons were also invited to the meetings. The Council existed prior to the advent of MODAC.

[904] The COD was used by the Minister of Defence to make decisions regarding the role and departmental functions of the MD. From time to time, matters relating to the SDPP would be placed on the agenda of the COD for discussion. When required, submissions were also made directly from SOFCOM.

[905] The COD was not an integral element in the MODAC programme approval chain.

[906] With the exception of secretaries, the members of the COD and the AAC were the same persons. The meetings of the COD and AAC were sometimes arranged on the same day, but as two separate meetings with separate agendas.

[907] The COD had much wider functions than the AAC. The AAC had a narrow mandate and it focussed on acquisitions, while the COD would consider a wide variety of issues and policies, the budget and so on. The Management Board of the DOD could include or exclude matters of acquisition.

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[908] At times SOFCOM made submissions to the COD for decision and/or approval. SOFCOM in some cases circumvented the AACB and the AASB.

[909] The functional workgroups and project teams that first reported to the AACB, and thereafter to the AASB, were from October 1997 supported in their deliberations by an International Management Committee. Later, from April 1998, SOFCOM played a similar role.

[910] From January 1997, the DOD received approaches from a number of countries offering to sell to the DOD various armaments on a government-to-government basis. Those countries included the United Kingdom, France, Germany and Italy. For various reasons the offers were not acceptable to the DOD.

[911] At the time, the MOD had an acquisition policy and process in MODAC, but it provided little guidance in the consideration of international offers or so-called 'package deals'. On instruction of the Minister, Mr Steyn charged the Chief of Acquisition with the task of putting together a workgroup from the MOD and Armscor to produce policy advice for dealing with international packages.

[912] He indicated that the policy needed to include interaction with the DTI and that final approval of the policy would formally be obtained from the Minister. In his view, the COD could not take decisions relating to acquisitions, although at times the COD took such decisions without converting their meeting into an AAC meeting.

17.2. Management Directive 4/147 – evaluation of international offers

[913] On 28 October 1997, the Chief of Logistics of the SANDF issued a management directive entitled 'Evaluation of International Offers'. This directive was consistent with the MODAC policy and was intended to give guidance with regard to the evaluation of international offers.

[914] Paragraph 2 of the directive read as follows:

'In the absence of interdepartmental policy or instructions regarding international proposals, co-ordination of

interdepartmental involvement in the evaluation of the proposals accrues to the MOD management committee established to address the proposals. This co-ordination is executed iaw the principles and guidelines contained in reference B (MODAC), in pursuit of the aim of this management directive.'

[915] The directive further provided that DOD Policy Directive 4/147 would be applicable to the evaluation of the proposals.

[916] The document further dealt in detail with the evaluation process and established the various evaluation teams. Relevant government departments were represented.

[917] Mr Steyn further testified that DOD Policy Directive 4/147 sought to deal with foreign-initiated international government-to-government defence equipment offers.

[918] In the COD meeting of 8 February 1998, the question of funding the SDPP was raised, and the Minister said that funding of the package would be from outside the defence budget and that the solution would be formulated by the Government.

17.3. SOFCOM

[919] SOFCOM was established by the Chief of Acquisition purporting to act as Secretary for Defence. The letter dated 7 April 1998 and signed by Chief of Acquisition, was accompanied by a document entitled 'International Offers Management Committee (SOFCOM): Constitution and Rules'. The Chief of Acquisition was not delegated by him to issue a constitution and rules for an International Offers Management Committee nor to write or sign the covering letter. A committee for this purpose already existed since 28 October 1997 and was created by the Chief of Logistics.

[920] The draft constitution of SOFCOM, to the best of his knowledge, was never adopted. The Chief of Acquisition listed the function of SOFCOM as to support the Minister of Defence and the Council of Defence and mutual support amongst members of SOFCOM.

[921] The COD and existing organisational structures for the management of the SDPP created by MODAC—the AAC, AASB and AACB—were sidelined. The direct link between SOFCOM and the Minister undermined and compromised the existing policies and directives relating to the acquisition of the SDPP equipment. SOFCOM was created outside MODAC structures.

17.4. Combined AAC and AASB meeting 30 April 1998

[922] The SAAF Project Officer and the Armscor Programme Manager briefed the meeting on *Project Winchester*, which was conducted in support of the LIFT requirement of the SDPP.

[923] After discussions, it was agreed that contenders scoring below 69% military value could be excluded. This left six aircraft on the preliminary shortlist, namely the Hawk 100, YAK 130, AMX, MIG AT, L159 and MB339FD. After a short discussion the AMX and MIG AT were excluded.

[924] During the discussions, the Minister questioned the team on the operational capabilities of the remaining contenders. The presentation team confirmed that these aircraft all had an inherent operational capability that could be utilised in a low-threat environment.

[925] Paragraphs 8 and 9 of the minutes of the meeting read as follows:

'8. The project team presented the meeting with an affordability analysis of LIFT contenders, without cost considerations, the selection process is biased towards the higher performance category of aircraft.

These aircraft are, however, also significantly more expensive to acquire, operate and maintain.

Thus unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognizance of budgetary constraints in the selection process.

9. The Minister of Defence cautioned the meeting that a visionary approach should not be excluded, as the decision on

the acquisition of a new fighter trainer aircraft would impact on the RSA Defence industry's chances to be part of the Global Defence market through partnership with major international Defence companies, in this case European companies. With this vision the most inexpensive option may not necessarily be the best option. The Minister requested that DOD Acquisition staff should bear this vision in mind during the selection process.'

[926] The concept of 'non-costed' was for the first time entertained at this meeting.

17.5. Special AASB meeting held on 8 July 1998

[927] Mr Steyn chaired the special AASB meeting of 8 July 1998 where they were briefed on the outcome of rankings regarding the offered weapon systems.

[928] The minutes indicated that as far as the LIFT programme was concerned, two rankings were prepared, one based on the cost option and the other on a non-cost option. On the cost option ranking, the Italian MB339FD came first followed by the British Hawk and on the non-cost option, the Hawk came first followed by the Italian MB339FD.

[929] Paragraph 27(d) of the minutes reads as follows:

'The decision by the AAC during the 30 April 98 briefing on the shortlist of offers required the project team to consider a solution taking cost into account and a solution where cost was not taken as a deciding factor.'

[930] In his view, the above quoted recordal of the minutes was incorrect.

[931] At the meeting the Chief of Acquisition again presented the non-cost option, despite the fact that the previous combined meeting of the AASB and AAC of 30 April 1998 did not give a mandate for the non-cost option to be factored into the rankings. (It is interesting to note that the minutes of the meeting were dated 21 October 1998 and signed on 25 February 1999 by D

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Dewey and JL Grundling. The latter signed the minutes ostensibly as chair of the AASB.)

[932] At this meeting, no recommendation with regard to a non-cost option was formulated.

17.6. Special AAC meeting – 13 July 1998

[933] The non-costed option relating to the LIFT programme was again presented to the meeting of the AAC on 13 July 1998. The Chief of the Air Force warned against the risk associated with the non-cost option. He stressed that the winner of the cost-option was significantly cheaper (half the cost to purchase and almost half the cost to operate) than the non-cost winner.

[934] The Air Force requested that more information, particularly in relation to logistic support and engineering management, be solicited.

[935] No decision was taken regarding which of the two options should be preferred. At the conclusion of the meeting, the chairperson instructed that the bargaining/negotiations process must proceed without eliminating any of the contenders.

[936] From Mr Steyn's point of view, the consideration of a non-cost option was contrary to the prescripts of the Treasury.

17.7 AASB meeting held on 16 July 1999

[937] Mr Steyn chaired the AASB meeting of 16 July 1998. The minutes were also dated 21 October 1998 and signed by Mr L Grundling on 26 February 1999. He doubted the correctness of these minutes.

[938] The LIFT project team made a presentation. They dealt with their evaluation results. The SAAF confirmed that the three contenders – the MB339FD, the L159 and the Hawk – all satisfied the SAAF pilot training requirement for conversion from the Astra to the ALFA.

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[939] Utilising the value system, the project team concluded that the MB339FD was ranked first, followed by the L159, the Hawk and finally the AEM/YAK.

[940] The Chief of Acquisition contended that the AAC instructions to adopt the visionary approach that involved major international defence companies in the LIFT acquisition, resulted in the generation of two options in the evaluation team and SOFCOM recommendations. He stated that SOFCOM recommended two options, one being a cost-option and the other a non-cost option. However, no minutes of SOFCOM reflected that its members supported a recommendation regarding a non-cost option.

[941] The chairperson ruled that the AASB recommendation was the MB339FD, as evaluated, which accorded with the wishes of the SAAF.

[942] Mr Steyn further testified that he chaired the AASB meetings of 8 July and 16 July 1998. At the meeting of 16 July 1998, the minutes of the previous meeting of 8 July were not read and adopted. When he requested the draft minutes they were not available. The minutes of 16 July 1998 were also not made available to him. He insisted on getting the minutes but they were never made available to him. It was an oversight on his part not to insist and make sure that the minutes were produced.

17.8. Meeting of the Council of Defence held on 21 August 1998

[943] Mr Steyn was a permanent member of the COD in his capacity as Secretary for Defence.

[944] The meeting of 21 August 1998 had on its agenda an item termed 'Briefing on the Government-to-Government Offers'.

[945] Mr Shaik informed the meeting that the team would like to brief the Council on six aspects, including 'LIFT/ALFA programme – strategic issues (MB339 or Hawk)'. The Chief of Acquisition dealt with the financial implications of the SDPP and decisions taken in certain respects, and the reduction of the numbers of certain hardware that was to be purchased.

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[946] Mr Shaik spoke about the cost implications of purchasing the MB339 that was cheaper or the Hawk, which was more expensive. He said, '[t]he strategic decision required is do we choose the MB339 or the Hawk. The recommendation of the AASB is the cheaper option namely the MB339.'

[947] The Secretary for Defence remarked that the Hawk doubled the cost of the LIFT aircraft for an increase in performance of approximately 15%, hence the AASB recommendation that the cheaper option be recommended.

[948] The minutes at paragraph 7.3.9 reflect the following:

'The Minister enquired as to what the recommendation of the Minister of Trade and Industry was. The availability of funds was secondary.

The amount of investment coming in was of primary importance. The business plan was all important.

That is why so many of the companies are trying to improve on their bids. From the very beginning we knew we did not have the funds to pay for the packages. That is why we opted for the way we have been operating, not through a normal tender process but through an option of partnership in which the participating countries empower us through investments and favourable deferred payments to buy their equipment.'

[949] The Minister further said that he wanted to be known as the Minister who, in very difficult financial times, managed to find means and ways of not only arming the defence force but also improving our economy.

[950] The minutes further indicate that by means of two slides a comparison of the effects that the purchase of the Hawk and MB339 had on the overall financial package was shown to the Council.

[951] It is clear from these minutes that the cheaper option was still the preferred option of the AASB. In paragraph 7.3.24 of the minutes, the following is recorded:

'The Minister said the political decision needed must not revolve about the operational aspect of the air-craft—that is part of our recommendation. Government must decide if they want to enter the European market and if so, through which partner. The defence industries of the world are forming consortiums. If we are not part of one of those consortiums our aircraft industry will be lost.

He said we must not pre-judge let the politicians decide.'

[952] As far as the LIFT programme was concerned, the meeting recognised that both contenders, the MB339 and the Hawk, should remain as possible contenders, but the meeting did not make a choice as to which would be recommended to the Deputy President and other Ministers.

[953] No AAC meeting was held on this day.

17.9. Special briefing on 31 August 1998

[954] The Minister of Defence arranged for a special briefing to the Deputy President and other invited Cabinet Ministers on the progress made with the SDPP. The Minister directed beforehand that officials—including the witness—who attended the meeting would be excluded from participating in the discussions, except for the Chief of Acquisition who was tasked to make presentations.

[955] No discussions took place during or after the presentation and no minutes were taken.

[956] Later, various versions of minutes were produced. His view was that none of the drafted versions of the minutes of the meeting was correct. Paragraphs 9, 11, 12 and 13 of the various versions of the minutes were false.

[957] He was not aware of the AAC meeting of 21 August 1998 that allegedly approved the successful bidders. There was a COD meeting on 21 August 1998, but the latter did not make any recommendations regarding the successful bidders.

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[958] Paragraph 12 of the version of the minutes signed by the Ministers differs substantially from the other versions.

[959] After becoming aware of the draft minutes, he addressed a memorandum to the Chief of Acquisition on 7 September 1998. In the memorandum he pointed out that the merits of the Hawk and the MB339 were not discussed. As far as he recalled, the choice between the Hawk and MB339 would be made later in Cabinet.

[960] In a verbal response he was informed that after the officials had been excused from the briefing, the collective reconstituted themselves as a Cabinet meeting.

[961] Later the Chief of Acquisition sent a further version of the minutes for signature to Ministers Kasrils, Sigcau, Erwin and Modise, under cover of a letter dated 28 September 1998. The Ministers signed the minutes but the Deputy President, who chaired the meeting, did not.

[962] The creation of SOFCOM became a tool for circumventing the Defence Secretary and MODAC structures, the AACB and the AASB.

[963] During cross-examination by Advocate Cane SC, Mr Steyn was referred to DOD Policy Directive 4/147 that was signed by him in his capacity as Secretary for Defence and General Meiring, Chief of the National Defence Force, on 8 August 1997.

[964] He testified that it was his understanding that the Minister had endorsed this Policy in the COD meeting held on that same day, 8 August 1997.

[965] The said Policy was superseded by a decision of the Minister to issue RFIs, and the result thereof was that only the Armscor procedures were applicable. The Policy Directive was superseded by the Minister's decision when he sent letters to foreign governments on 23 September 1997, advising them that the SANDF intended acquiring certain equipment.

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[966] MODAC procedures had to be followed as Policy Directive 4/147 was not endorsed by the Minister.

[967] The SDPP was directed, for a short period, by Policy Directive 4/147, but since 23 September 1997 it was directed by MODAC policies.

[968] In his letter of 9 June 1997, he charged the Chief of Logistics and Chief of Acquisition to put together a workgroup from the staff division, namely logistics, finance, acquisition, policy and plans, arms of service and Armscor to produce a policy document for dealing with the various international offers. The letter further stated that the DTI should be invited to participate.

[969] He was referred to a document dated 28 October 1997, entitled 'Management Directive: Evaluation of International Offers'. This document referred to, *inter alia*, MODAC and DOD Policy Directive 4/147. It was suggested to him that in terms of this document, MODAC and the Policy Directive applied to the SDPP. He replied that the policy referred to in this document had been superseded and was no longer applicable.

[970] He agreed that Policy Directive 4/147 was never withdrawn, but it applied if there were in existence government-to-government agreements. Since there were no government-to-government agreements, Policy Directive 4/147 was irrelevant. MODAC and Policy Directive 4/147 could not apply side-by-side and that is why he said that Policy Directive 4/147 did not apply to the SDPP.

[971] He further stated that Policy Directive 4/147 never had status as a policy. The Minister had not approved the policy document that he (the witness) and General Meiring had signed, and therefore it had lapsed.

[972] He was referred to the minutes of the COD meeting held on 31 October 1997. He was present at that meeting where the second level of the value system that was being formulated for the purposes of the SDPP was discussed.

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[973] He was taken through various documents and correspondence that seemed to suggest that Policy Directive 4/147 was applicable during the SDPP process, but he maintained that the policy was not applicable.

[974] He was referred to the minutes of the special AASB meeting held on 8 July 1998. According to the minutes, he chaired the meeting. Paragraph 2 of the minutes read as follows:

'2. Chief of Acquisition briefly reviewed the process stressing

(a) The establishment and approval of the value system, and the appointment of evaluation teams prior to evaluation; and

(b) The integration of the results of four independent evaluations per equipment undertaken by the SOFCOM. Due to the disproportionate influence of the financing results in the top level value system, the SOFCOM accepted modified equation prior to integration, i.e. RANKING = TECHNICAL + IP + FINANCING.

(each evaluation contributing one third to the final ranking)'

[975] When asked whether he could confirm that the application of the second order evaluation value system had been presented at the meeting, he said that he could only confirm he was present at the meeting but not the correctness of the minutes as they were signed by someone else months after he had left.

[976] He denied that the Minister gave instructions that a non-cost evaluation should be considered. He said that if the minutes of the AAC meeting of 30 April 1998 indicated that a decision was taken to consider a non-cost option, then the minutes were incorrect.

[977] He was referred to the transcript of his interrogation in terms of section 28 of the National Prosecuting Authority Act 32 of 1998, and in particular where the following was recorded:

'You will recall that there was a so-called costed option ranking and the minister instructed us at a previous occasion to leave out cost... That was a specific instruction, I objected'.

[978] It was put to him that during the section 28 interrogations, which took place in 2001, he was fully aware that the Minister gave instructions about the non-cost option.

[979] He further said that he had participated in many acquisition exercises and it was not strange to select an option other than the cheapest one. He understood that the Minister had said that the most inexpensive option may not necessarily be the best option and he agreed with that.

[980] He was referred to the minutes of the special AAC meeting of 13 July 1998. The role of SOFCOM was mentioned in the minutes. In fact, the following was stated: *'The valuation results of the equipment elements are contained in SOFCOM record dated 1 and 2 July 1998.'*

[981] He was again referred to the AASB minutes of the meeting of 16 July 1998, paragraph 7 whereof reads as follows: *'The Chairman rules that the AASB must submit logical and rational recommendations to the AAC.'*

[982] It was put to him that the above minutes suggested that SOFCOM, which was a known DOD structure, did lawfully exist and did not undermine any of the MODAC structures, namely the AASB and the AAC, but he did not agree with the proposition. He also denied that SOFCOM was a legitimate DOD structure.

[983] He was referred to a MODAC document, headed 'Acquisition approvals', and in particular to a paragraph that read: *'The Minister of Defence has the final authority on all acquisition matters and has the right to refer decision on acquisition programmes to cabinet level.'* It was put to him that the Minister of Defence and the Cabinet were entrusted with final authority concerning acquisition, and he agreed with the proposition.

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[984] He was referred to the transcript of his section 208 interrogation, and particularly to the portion where he is recorded to have said the following about the Durban meeting of 31 August 1998:

'We met initially with me present and Mr Esterhuysen also. Then there was a break for refreshment and stuff and we were told that the Deputy President and the Cabinet Ministers would continue to discuss the matter, without some or all of the officials... I then left and boarded the plane back to Pretoria.'

[985] The above quotation was not consistent with the statement he had submitted to this Commission and his oral evidence.

[986] He was referred to the minutes of the Durban meeting signed by Cabinet Ministers and he said that the fact that they had signed the minutes did not necessarily mean that they had read and agreed with the contents thereof.

[987] He later said that there was no Cabinet meeting after he had left the Durban meeting. The Ministers had a function to attend after meeting with them, so they could not have had a meeting after he and colleagues had left.

[988] He further said that the formula to determine the best value was modified by SOFCOM on 1 and 2 July 1998 after the tenders were opened. SOFCOM applied the modified formula after the various project teams had finalised their evaluations.

[989] At the special AASB meeting of 8 July 1998, SOFCOM presented the outcome of the evaluation and ranked the various types of equipment in each category. As far as the LIFT was concerned there were two options. After the presentation he, as chairman, closed the meeting after saying that the AAC should be briefed.

[990] On 13 July 1998, there was a special AAC meeting where the same presentation was made. Results of the evaluations were presented and as far as the LIFT programme was concerned, there were two options.

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[991] On 21 August 1998, there was a COD meeting. At this meeting, Mr Shaik said that the team would like to brief the meeting about, *inter alia*, the 'LIFT/ALFA Program-strategic issues (MB339 or Hawk)'. In this meeting the Minister said that the politicians would decide on contentious issues. He agreed that the Minister had powers to make a political decision and carry or convey that to Cabinet. It was in accordance with MODAC policy.

[992] It was put to him that the Cheetah dual-seat's life expectancy expired in 2008 and the single-seat could no longer be operated safely beyond 2012, and he could not dispute that. It was also pointed out to him that the very first Gripens were operational in 2010 and the balance delivered in 2012, on schedule and operational in the same year. He said he could not dispute that.

[993] He said that he accepted that there were Staff Targets and Staff Requirements for both *Project Ukhozi* and *Project Winchester*.

[994] He denied that the RFO requested bidders to make proposals regarding financing of the equipment.

18. Mr Shamin (Chippy) Shaik

[995] Mr Shaik holds the following qualifications: MSc (Mechanical Engineering) from San Diego State University, and Masters in Technology (Mechanical Engineering) from Technikon Natal, currently known as Durban University of Technology.

[996] From 1984 to 1994 he worked for various institutions, including the African National Congress, which appointed him as a representative on the Defence Negotiations Team and Defence Industry Work Group from 1992-1994. He was also a mechanical engineering lecturer for about five years at Technikon Natal (Durban University of Technology).

[997] From 1996-1997 he was employed by the DOD as Director of Defence Logistic Policy and from 1998-2002 he was Chief of Acquisition and Procurement in the, DOD. He is now in the private sector. Currently he resides in Australia.

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[998] As Chief of Acquisition he was simply a manager of the acquisition process within the DOD. He had no authority to approve or disapprove any of the acquisition programmes under investigation. The final decision rested with the Cabinet, and the Minister of Defence was the overall custodian of the defence acquisition programme as outlined in the Defence Review and MODAC 1, 2, 3 and 4. The MODAC policies and the Defence Review placed the final authority of acquisition, procurement and production of military equipment on the Minister of Defence and the Cabinet as the final executive decision-making body of the country.

[999] In late 1995, he was appointed by the DOD as Director of Logistic Policy within the Defence Secretariat, starting January 1996. This was a policy position reporting to the DDG Policy and Plans within the Defence Secretariat.

[1000] After the approval of the Defence Review, various countries approached Armscor and the MOD with package equipment offers. Most of this equipment was presented with the endorsement of their respective governments. This then became known within the DOD as a 'Strategic government-to-government package offer'. The armament acquisition tender process at the time, as administered by Armscor, did not make provision for such unsolicited initiatives by foreign governments and defence industry producers.

[1001] The first of such offers was made by the UK Government, headed by DESO and UK defence industries. This was followed by the French Government and French defence industries. These offers resulted in the establishment by the Secretary for Defence and the DG of the DTI of an inter-departmental workgroup between the DOD and the DTI.

[1002] The Secretary for Defence addressed a memorandum, dated 9 June 1997, to the Chief: Logistics, copied to the Chief of Acquisition. In the memorandum it was stated that the DOD had a policy and process for the acquisition of armaments, but it provided little guidance for the consideration of 'package deals'. The memorandum continued:

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'4. It is vitally important to provide counselling to the Minister (and Cabinet) regarding the way we should treat these "packages". Unfortunately the inter-departmental effort with DTI to assess the British offer has not progressed very far

...

6. You are charged to put together a work group (from the staff division, i.e. logistics, finance, acquisition, policy and plans, arms of service and Armscor) to produce policy advice in dealing with various international package offers. We should, of course, obtain the Minister's blessings on the recommendations in Council of Defence. The Department of Trade and Industry should be invited to participate.'

[1003] The Chief of Acquisition was nominated by the Chief of Policy and Planning to be included as a member of this workgroup.

[1004] Following the above request from the Secretary for Defence, on 8 August 1997 the COD approved an MOD policy that would be applicable when dealing with defence strategic partnership proposals.

[1005] The new inter-departmental workgroup became known as the Management Committee. The COD approved the second order value system on 31 October 1997 as recommended by the Management Committee. At the same meeting, the Secretary for Defence informed the COD *'that the system was only a decision support mechanism. The politicians have the final say when selecting the best offer.'*

[1006] At a meeting of the International Government Offers Management Committee of 1 April 1998, chaired by Mr H de W Esterhuyse, a draft constitution and rules for the Committee was tabled. There was a proposal to the effect that the Committee should be known as 'SOFCOM: Strategic Offers Committee'. The proposal was accepted.

[1007] The main function of SOFCOM was to establish policy guidelines for dealing with the various international defence equipment offers.

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[1008] Amongst others, the Secretary for Defence addressed a letter to the Director-General of Finance requesting the Department to nominate a representative to the Management Committee to assist in the evaluation.

[1009] On 24 April 1998, at a Special Ukhozi Control Council meeting, a number of decisions were taken. Paragraph 5.1.2 note 1 of the minutes reads as follows:

'The Hawk 100 is the only aircraft in the recommended shortlist that could be linked to the ALFA procurement in the Government to Government packages.'

[1010] On 30 April 1998, there was the South African Air Force Command Council meeting. He was not present at the meeting. Paragraph 5.1.2 of the minutes recorded that:

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

Country	Supplier	Aircraft
<i>Czech Republic</i>	<i>Aero Vodochody</i>	<i>L159</i>
<i>Italy</i>	<i>Aermacchi</i>	<i>MB339</i>
<i>Italy</i>	<i>Aermacchi</i>	<i>YAK 130</i>
<i>United Kingdom</i>	<i>British Aerospace</i>	<i>Hawk 100</i>
<i>Russia</i>	<i>Kulkoni</i>	<i>MIG-AT'</i>

[1011] The minutes reflected that the shortlist would be tabled at the AAC meeting scheduled for later on the same day. The SAAF Project Officer and the Armscor Programme Manager presented the SAAF Command Council recommendations, formulated earlier in the morning, to the later combined AAC and AASB meeting. The project team presented to the meeting the analysis of the LIFT programme without cost considerations.

[1012] Paragraphs 8 and 9 of the minutes read:

'8. The Project team presented the meeting with an affordability analysis of LIFT contenders. Without cost considerations, the selection process is biased towards the higher performance category of aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. Thus unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognizance of budgetary constraints in the selection process.

9. The Minister of Defence cautioned the meeting that a visionary approach should not be excluded, as the decision on the acquisition of a new fighter trainer aircraft would impact on the RSA defence industry's chances to be part of the Global Defence market through partnerships with major international Defence companies, in this case European companies. With this vision the most inexpensive options may not necessarily be the best options. The Minister requested that DOD Acquisition staff should bear this vision in mind during the selection process.'

[1013] On 5 May 1998, there was another Ukhozi Control Council meeting. The minutes noted the discussions that had taken place at the Air Force Command Council meeting of 30 April 1998. It also noted that as far as the LIFT programme was concerned, recommendations to the combined AAC/AASB were not based on cost-effectiveness only. It was also noted that the SAAF, funds permitting, would prefer a better product.

[1014] The SAAF Command Council meeting of 29 June 1998, chaired by the Chief of the SAAF, Lt General Hechter, amongst others again took a decision to present to SOFCOM cost and non-cost options for the LIFT programme. The minutes reflected the following:

'2.7 Decision: The MB339 might have a lifespan limitation in providing training up to the year 2035, since the Italian Air Force plans to phase out its MB339's in the year 2025. This risk has to be managed accordingly.'

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[1015] On 1 and 2 July 1998, the various project teams presented their results per programme to SOFCOM. On 8 July 1998, SOFCOM presented the final results to the AASB. Present at this meeting, amongst others, were the Chief of the SANDF and the Director-General of the DTI. A full presentation was made. The LIFT programme had both a cost and a non-cost option.

[1016] On 13 July 1998, the AAC meeting was briefed. The Minister of Trade and Industry, the Director-General of the DTI, the Chief of the Army, the Chief of the Air Force, the Chief of the Navy, the DOD Chief of Finance and other senior officials from the DOD, Armscor and the DTI were invited to the meeting. At this meeting the two options for the LIFT programme were presented.

[1017] On 16 July 1998, the Secretary for Defence reconvened another AASB meeting to specifically address the issue of the LIFT programme. At the meeting the Secretary for Defence said that the AASB supported the cost option and that this view should be communicated to the AAC.

[1018] On 31 August 1998, a Cabinet sub-committee (IMC) meeting took place in Durban. Mr Shaik made a full presentation on the evaluation results. At the end of the briefing, a discussion ensued around the selection of the Hawk or the MB339. A decision was taken by the sub-committee to select the Hawk and to accept the recommendations of the AAC/COD meeting of 21 August 1998 in respect of the remaining programmes. At the end of the meeting, he was requested by the Minister of Defence to draft minutes of the meeting and submit a copy to his office for approval.

[1019] The first draft of the minutes was circulated to all the relevant Ministers, their inputs were obtained, whereupon he drafted the final minutes and circulated them to all relevant Ministers, who signed the final minutes.

[1020] The constitution of the AAC/AASB/AACB stated that the Defence Acquisition and Procurement Division would supply the secretariat services to the various acquisition forums. He thereafter followed the Minister of

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Defence's instructions to draft the minutes of the Cabinet sub-committee as this was within his approved management delegation of responsibilities.

[1021] On 21 October 1998, he joined the Minister of Defence at the latter's request to brief the Cabinet in Cape Town on 'the progress thus far completed' on the SDPP. Together with the Minister of Defence, they briefed the Cabinet on the procurement offer details. A full detailed presentation on the acquisition programme and process followed by Armscor/DOD/DTI was presented to the Cabinet members.

[1022] On 18 November 1998, the Minister of Defence submitted an executive summary of the earlier presentation to the Cabinet on behalf of the sub-committee –

'to obtain approval for the recommendation for the preferred bidders and for the Departments of Finance, Defence, Public Enterprises and Trade and Industry to enter into contract negotiations with the preferred bidders.'

[1023] During the negotiations phase he carried out his functions appropriately and did not in any way influence the technical teams to select or 'deselect' any products that were offered to the various prime contractors.

[1024] He disclosed at Project Control Board (PCB) meetings his potential conflict of interest that could arise in respect of the combat suite. The relevant minutes of the PCB meeting where this arose and where his disclosure was made, had been tendered into evidence by other witnesses. He had submitted letters to the JIT and SCOPA from the Minister of Defence, the Chief of the SA Navy and the CEO of Armscor, acknowledging his voluntary disclosure of a possible conflict of interest.

[1025] He had disclosed his brother's business association with Thompson South Africa and recused himself from any decision relating to the combat suite. He had no interest in his brother's company, Nkobi Holdings, therefore he could not have had a conflict of interest other than a perceived potential

conflict of interest that might have arisen due to his position within the Department.

[1026] He left the DOD at the end of April 2002 after tendering his resignation. His departure from the DOD was on amicable terms and was not shrouded in controversy.

C. ARMSCOR

19. Mr David Griesel

[1027] Mr Griesel obtained a BSc Eng (Electronic) *cum laude* in 1978 and BEng (Hons) (Electronic) in 1981 from the University of Pretoria. In 1992 he obtained a certificate after attending the Advanced Executive Programme at the University of South Africa. In 1983 he registered as a professional engineer with the South African Council of Professional Engineers.

[1028] He was employed by Armscor as Engineer-in-Training in the Telecommunications Division and seconded to the University of Pretoria for the execution of specified projects in 1978.

[1029] From 1981 to 1994, he was employed by Armscor in various project management positions in the Telecommunication and Electronic Warfare and Telecommunications Products and Technologies Division.

[1030] From 1994 to 1997 he was Senior Manager (Technical) in the Telecommunications Division and Division Manager of the Telecommunications Division from 1997 to 2001. In 2001, he was appointed Assistant General Manager in the Acquisition Department, responsible for the Electronics and Weapon Systems Group Divisions. In 2009 (and to date) he was appointed Acting General Manager of the Acquisition Department.

[1031] During 1997, he was appointed as co-secretary of SOFCOM that dealt with the SDPP. During the period leading up to the signing of the SDPP contracts, he was closely involved with the high level management of the programmes and assisted both the co-chairmen of SOFCOM with the coordination of the respective projects as well as with the final consolidation of the results of the evaluation of the received offers.

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[1032] He was co-author of the joint DOD/Armcor Acquisition Policy (DAP 1000) that presently governs the entire acquisition process followed by both the DOD and Armcor.

[1033] He was employed by Armcor before, during and after the conclusion of the SDPP. His involvement with the SDPP acquisition process was as a senior manager responsible for acquisitions and he attended meetings of SOFCOM in his capacity as co-secretary of SOFCOM.

[1034] During the entire period that he was employed by Armcor, he gained substantial experience relating to both the Armcor and DOD acquisition processes and the Armcor tendering and contracting process.

[1035] Armcor was established in terms of section 2 of the Armaments Development and Production Act 57 of 1968 under the name Armaments Development and Production Corporation of South Africa Limited. When the 1968 Act was repealed in 2003, Armcor continued to exist in terms of the Armaments Corporation of South Africa Limited Act 51 of 2003.

[1036] The 1968 Act applied during the SDPP acquisition.

[1037] In terms of section 3 of the 1968 Act, Armcor's objects were

'to meet as effectively and economically as may be feasible the armaments requirements of the Republic, as determined by the Minister, including armaments required for export.'

[1038] In terms of section 5 of the 1968 Act, the affairs of Armcor were to be managed and controlled by a board of directors. This is still the position under the 2003 Act. The Chairperson of the Armcor Board of Directors reported directly to the Minister of Defence at the time of the SDPP process.

[1039] Armcor was appointed as the Defence Matériel Acquisition Tender Board in terms of the 1968 Act. In other words, authorisation of contracts and the decisions regarding the appointment of preferred suppliers in terms of the Act had to be made by the Acquisition Tender Board, which is the Armcor Board.

[1040] According to Armscor's standard tendering and contracting processes, Armscor as the Tender Board would have been responsible for all phases of the SDPP process.

[1041] As stated by the other witnesses, Policy Document VB1000 contained policy dealing with the process of acquisition of Category 1 matériel and was applicable to both the DOD and Armscor. Paragraph 3 of the policy that contained the system hierarchy reads as follows:

3.3 The system hierarchy

A system is a combination of mutually dependent items, assemblies, skills, techniques, doctrines, or anything that can play and/or support an operational role in the intended environment. A system hierarchy does exist, however, which can currently be broken down as follows:

<ul style="list-style-type: none"> • Level 8: Operational force • Level 7: Combat grouping • Level 6: User system 	Combat capabilities
<ul style="list-style-type: none"> • Level 5: Product system • Level 4: Product • Level 3: Product subsystem • Level 2: Components • Level 1: Materials/processes 	Matériel

As indicated combat capabilities may imply more than one system level. The form in which the need for a combat capability is made visible to ARMSCOR and other organisations by the SA Defence Force, is that of a user system (i.e. level 6 on the system hierarchy. This represents the simplest system containing all the dimensions of a combat capability, viz:

- Doctrines
- Personnel

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- *Facilities*
- *Product system and/or other materiel components*
- *Logistic and other support systems*
- *Command and control, etc.)*

Whereas ARMSCOR is primarily responsible for the supply of matériel to the SA Defence Force, the SA Defence Force is responsible for the establishment and running of the total system, the components of which are properly integrated up to at least level 6 of the system hierarchy. A level 6 user system is the full budget level, and includes operational test and evaluation cost (OT and E) for integration in the operational environment.'

[1042] Level 1 of the systems hierarchy quoted above indicates materials/processes. This would be basic materials which would then be combined to form components, which represent level 2 of the systems hierarchy. Those components would be put together to form a product subsystem, in other words a subsystem of a product, like the engine of a motor vehicle.

[1043] At level 4 the subsystems would then be combined to form a product, and at level 5 a number of these products would be combined to form a product system. For example, where a helicopter stays on board a frigate, the total helicopter-frigate combination would be a product system because that would be something the end-user intends to use as a system; however, the frigate in its own right and the helicopter in its own right are products.

[1044] When facilities and personnel are added to the product system, then one has a user system (level 6). A number of user systems form a combat grouping at level 7 and a number of these combat groupings would form an operational force, which would be a combined force of Army, Air Force and Navy.

[1045] In terms of the Acquisition Policy, Armscor and the DOD or SADF (at the time) have certain responsibilities. Armscor would always operate at

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level 5. Armscor would provide the user with a product system. The DOD would add to that product training, facilities and personnel which would then constitute a level 6 user system.

[1046] The standard Armscor practice for the request of proposals, quotations, submissions and orders was set out in Policy Document KP021, which was applicable at the time of the SDPP processes.

[1047] The standard procurement process would commence with the issuing of a User Requirement Statement (URS) to Armscor. The URS would contain input criteria furnished by the DOD. In the case of an acquisition programme, the Staff Requirement would contain the functional as well as the logistic URS.

[1048] After the finalisation of the Staff Requirement, which contains the URS, a project study would be conducted jointly by Armscor and the DOD. During the project study, a Request for Information (RFI) could be issued to obtain information as to what products exist that could potentially meet the stated URS. The RFI would be based on a value system to be used for subsequent evaluation of the received information. The information gathered by means of the RFI also informs the 'make' or 'buy' decision that is recommended in the project study report.

[1049] The value system is a document which contains all the criteria that would eventually be used to evaluate the offers received from industry.

[1050] During the Acquisition Study, the Requests for Offer (RFOs) are solicited from prospective bidders. The RFOs are very detailed documents, based on the RFO value systems that address all the important criteria emanating from the URS. The RFO would indicate all the technical, costing, Defence Industrial Participation (DIP), National Industrial Participation (NIP) and other information that is required. Commercial conditions that would apply would also be stated. The offers are binding documents which are used for purposes of establishing a contract with a preferred supplier.

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[1051] The RFOs received would then be evaluated in terms of the RFO value system, which is developed on the basis of the URS, and based on the outcome of the evaluation, a recommendation would be made regarding the preferred supplier. The value system would be completed prior to Armscor's requesting offers from the industry. These value systems would be lodged with the Armscor Procurement Secretariat, which is independent from the Acquisition Department.

[1052] A number of parties are involved in the evaluation of the offers. The Integrated Project Teams comprising members from Armscor and the DOD would form the evaluation team. There would also be an independent process conducted by a person from outside the Armscor Acquisition Department who has the responsibility to ensure that the process as documented is properly followed. There is also an independent consolidator who consolidates the evaluation results of the different members of the evaluation panels. Subsequent to the evaluation of the offers, an evaluation report would be compiled.

[1053] Once the evaluation of offers has been completed, the results have been consolidated and a preferred bidder emanated from the evaluation of the results, the Armscor Tender Board is approached to authorise the placement of a contract. In terms of Armscor's normal practice, the Armscor Tender Board would not consider authorising placement of a contract until the funding from the DOD has been approved by means of a 'Financial Authority' (FA). In order for the DOD to issue an FA to Armscor for placement of a contract, the Acquisition Plan for that project must be approved by the relevant DOD forums.

[1054] The recommendation would then be referred to the Tender Board (that is, the Armscor Board) for approval. The preferred bidder would be indicated in the Acquisition Plan (AP). The AP is a DOD governance milestone document. It would amongst others contain details of what was being acquired and the cost implications. The reason for including information relating to the preferred bidder and the offered cost in the AP, is that the AP would amongst others serve to authorise the project financial

ceiling and allow an FA to be approved for the contract to be placed. Armscor can only submit a recommendation for contract placement to the Armscor Tender Board after an FA has been approved.

[1055] Depending upon whether the subject-matter of the acquisition was considered to be a cardinal programme or a non-cardinal one, the AP would be referred to either the AASB in the case of non-cardinal programmes or the Armaments Acquisition Council where the programme is a cardinal one. The AASB and AAC do not have any decision-making powers with respect to the selection of preferred bidders.

[1056] The AP relating to cardinal projects must go through the AACB, the AASB and must finally be approved by the AAC. Only after the AP has been approved and the financial ceiling has been established, can an FA be approved for Armscor to actually place a contract.

[1057] The witness explained the SDPP process. It started with the required operational capability, followed by the Staff Target compiled by the SANDF and the Staff Requirement compiled by the Armscor Procurement Secretariat and the DOD, which also contains the functional and logistics User Requirement Statements. Next are the Project Study Report, the Development Plan, the Acquisition Plan and eventually the Closure Report. The Project Study Report, *inter alia*, assists the DOD in making a decision whether to buy or manufacture the desired capabilities. To enable them to make this decision, information must be sourced worldwide in order to determine whether equipment exists which can satisfy the needs of the DOD.

[1058] Armscor's acquisition policy at the time of the SDPP was contained in a Policy Document KB1000, which came into effect on 1 May 1995.

[1059] Mr Griesel referred to five phases of the acquisition process as contained in the policy. Those phases are contained in paragraph 6.3 of the document and it reads as follows:

'6.3 ACQUISITION PROCESS

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The five important milestones decision-making points and five phases in the acquisition process, as indicated below, provide the basis for comprehensive decision making with regard to programme maturity.'

[1060] The first task is to determine statements of requirements and concept, followed by a definition, full-scale development, industrialisation, production/commissioning and operation. These tasks are performed by Armscor, which is the official acquiring agent of the DOD.

[1061] VB1000 was the general policy for the management of Category 1 matériel Acquisition Process, Issue 2, dated 20 April 1994 (Joint Armscor/DOD Policy). It described the approach to be followed by members of the defence family in the acquisition of weapons systems. It contained, *inter alia*, the mandates and roles of Armscor and the SADF in the acquisition process and the policy to be applied with regard to the management of the acquisition process of Category 1 matériel through all the phases.

[1062] Policy Document KB1000 of 1 May 1995 was the Armscor policy document which dealt with acquisition and weapon management support. It described the technical baselines to be approved by Armscor and was completely aligned with the DOD Acquisitions Policy VB1000. VB1000 described the functions and powers of the DOD in the acquisition process, while KB1000 focused on the powers and functions of Armscor in the acquisition process.

[1063] Another guiding document, A-PROC-097, entitled 'Practice for the selection of contractual sources', Issue 2 of 12 November 1997, dealt with the procedure relating to the selection of contractual resources, provided guidance with regard to the development of value systems, the process of developing value systems, the development of RFOs, approving the RFOs, doing the evaluations and approving the evaluation reports.

[1064] The practice dictated that the above process would be led by Armscor and provided for participation by DOD officials only on evaluation panels.

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[1065] In the SDPP process the guidelines were used in the development of value systems and RFOs, but there were deviations in respect of the responsibilities of the Armscor Programme Manager and project teams. In the SDPP process some of the value systems and evaluation reports were finally approved and signed off by DOD officials and not by Armscor, thus constituting a deviation from the formal process. In the case of the submarines and corvette programmes, for example, value systems and evaluation reports were signed off by the DOD officials, instead of having been signed by Armscor officials.

[1066] A further document, 'KP019 – Delegations', described the decision-making powers within Armscor. In terms of KP019, the Armscor Board of Directors, as the Tender Board, was the sole authority to authorise preferred bidders and to authorise contracts to be placed on identified preferred bidders. In the case of the SDPP, the preferred bidders were authorised by the Cabinet and the subsequent contract placement was also authorised by the Cabinet, thus constituting a deviation from the Armscor process.

[1067] Policy Document VB1000 indicated that the Staff Target and the Acquisition Plan were non-negotiable documents. When the SDPP was executed or at the time of contracting, acquisition plans did not exist for all the programmes. In most cases the Acquisition Plans were approved post-contracting.

[1068] The importance of the Acquisition Plan to Armscor is that Armscor cannot proceed to authorise a contract if it did not have an approved FA from the DOD. In order for the DOD to approve an FA, the Acquisition Plan has to be approved. However, in the case of the SDPP there was no FA. The normal programmes could not continue if the DOD did not have sufficient funds on the budget to actually execute the programme(s). When the SDPP programmes were started, the DOD did not have a budget for such programmes. It was not a case of money being available in the Special Defence Account, which could be appropriated to Armscor by means of an FA before Armscor could enter into contracts with various manufacturers of the armaments.

[1069] The SDPP process was embarked upon without any funding or budget in the Special Defence Account, which would normally be the budget which is required for acquisition programmes. During the period of negotiations after the appointment of the preferred bidders and prior to contracting, part of the negotiations involved the financing agreements with international financial institutions. This was done primarily by the Treasury, the Department of Finance and people who were part of the International Offers Negotiating Team. They negotiated financing for the SDPP and once the financing agreements had been signed, they were approved by the Cabinet. After that the required funding was reflected on the DOD budget. The DOD called that 'quasi-money' because it was not really money on their budget but it was reflected on the budget to allow them to issue an FA to Armscor, which would allow the latter to register the contracts on their contract administration system. The money was not under DOD control, but it was ring-fenced and reviewed on an annual basis in terms of a model that was developed.

19.1. DOD Policy Directive 4/147

[1070] Policy Directive 4/147 came into effect on 8 August 1997. It dealt with policy guidelines and management procedures for dealing with international government-to-government defence equipment offers. The Directorate Weapon Systems within the DOD was responsible for the administration of the policy directive. Policy Directive 4/147, approved by the COD on 8 August 1997, seems to have initiated the SDPP. The introduction reads as follows:

- '1. Several international defence equipment offers have been presented to the MOD and others have been proposed.*
- 2. These international defence equipment offers fall outside the scope of existing acquisition policy, and specific policy for such international defence equipment offers has to be established.'*

[1071] When dealing with the aim thereof, the document states:

'3. To provide MOD policy guidelines and management procedures for dealing with foreign initiated international government to government defence equipment offers relating to armaments acquisition for the SANDF, that are to be integrated with an interdepartmental coordinating and decision making structure.'

[1072] This MOD Policy Directive stated that prior to translating an offer into separate standard acquisition projects, an assessment procedure incorporating an iterative multi-tiered approach was to be followed. This basically authorised some of the deviations from Armscor's standard process where this directive introduced a three-tier evaluation and three-tiered value systems that would exist for the evaluation of the SDPP.

[1073] The Policy Directive provided, *inter alia*, that in all instances where defence equipment offers were considered, a security agreement between the governments must be in existence or was to be established as a priority. Preference would be given to offers characterised by multinational suppliers to avoid the creation of single-country dependency. International suppliers, with whom enduring relationships have been established, were to be pursued. Technology transfer was to be included where significant inventory was evident.

[1074] The Policy Directive further provided that notwithstanding the interdepartmental evaluation of offers against foreign policy objectives, the MOD evaluation against foreign relations objectives was to adhere to the principle that the best interest of the MOD was to be the primary consideration.

[1075] Paragraph 15 of the Directive dealt with the MOD Management of Assessment of Offers. It reads as follows:

'Prior to translating an offer into separate standard armament acquisition projects, an assessment procedure incorporating the following iterative, multi-tier approach is to be followed:

- a. *First Order: An authorization to evaluate a defence equipment offer is to be obtained from the Minister of Defence. This authorization would include the appointment of a MOD work group to undertake a first order evaluation of the strategic implications of the offer. A first order value system incorporating the military evaluation ... of the supplier government and of the equipment is to be established. Criteria establishing measures for interoperability and best value for money are necessary elements of the first order value system. Recommendations regarding political, interdepartmental and intradepartmental involvement are to emanate from this first order MOD evaluation.*

NOTE: these recommendations and the first order value system are to be prepared for presentation at the interdepartmental level.

- b. *Second Order: Upon acceptance of the first order evaluation, implementation of the recommendations should be via appointment of a representative MOD evaluation team to develop a second order MOD value system concurrent with the development of the other national criteria emanating from the interdepartmental forum. Presentation of this second order value must embrace interdepartmental and political sanction to pursue detail solicitation of information on a competitive basis for the individual equipment elements of the offer. The recommendations regarding the appointment of Project Teams and project management requirements to bridge the gap between the elements of the offer and separate, standard acquisition projects are to accompany the second order value system.*

NOTE: These recommendations and the second order value system are to be prepared for presentation at the interdepartmental level.

- c. *Third Order: The Project Teams must develop third order value systems for the individual elements of the offer, iaw the*

second order value system, and proceed to solicit competitive proposals for evaluation of the best solution for the approved requirement statement iaw the MOD Acquisition Policy.'

[1076] Policy Directive 4/147 was only relevant to international defence equipment offers. Other acquisition programmes that Armscor were managing at that time were not affected. The Directive did not amend Armscor's standard policies and practices. There were certain cardinal programmes that Armscor ran parallel to the SDPP, for example, the acquisition of the Astra trainer aircraft, a programme that started before the SDPP but which was in production at the time; the upgrade of the C130 Transport Helicopter, which was a foreign contract placed on a foreign company to upgrade the avionic system of the aircraft; and also the Rooivalk Combat Support Helicopter, which started *circa* 1992 and was completed about two years ago.

19.2. The SDPP initiation process

[1077] Prior to the approval of the SDPP acquisition, Armscor was in the process of procuring various product systems on behalf of the DOD, but before these processes could be completed, the individual procurement processes were suspended at various stages in 1997. The DOD subsequently decided that the individual procurement processes which had been initiated by Armscor on behalf of the DOD prior to 1997 would be superseded by the package approach reflected in the SDPP. The following acquisitions programmes were underway prior to the SDPP:

- Light Utility Helicopters: an RFI had been issued
- A corvettes/frigates programme was initiated in 1992, and the project had been the subject-matter of a review process initiated by the Cabinet in 1994/5
- Advanced Fighter Trainer: an RFO had been issued in May 1995 and a supplementary one in March 1996, which process was altered before the RFO was issued in respect of the submarines, a Staff Target document was compiled in August 1996 for the

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replacement of the Daphne class submarines by the Upholder class submarines.

The above projects were administered in terms of the standard policies and practices until they were suspended.

[1078] The initiation of the SDPP acquisition process can be traced back to June 1997 when the international government-to-government defence equipment offers were dealt with by the DOD and Armscor in accordance with DOD Policy Directive 4/147.

[1079] The seven programmes that constituted the SDPP emanated from the Defence Review, which identified 14 required equipment types, of which seven types were deemed to require foreign participation, and the other seven systems deemed to be of such a nature that they could be developed or manufactured by local South African industry in possible cooperation with foreign partners. Programmes for equipment acquisition, which had previously been initiated as individual requirements but which formed part of the seven types identified to require foreign participation, were stopped as individual projects and were subsequently incorporated into the SDPP process.

[1080] The SDPP process was a unique acquisition management programme, not only because it involved bringing seven cardinal project systems to a common starting baseline, but because it introduced certain deviations from Armscor's standard procurement processes.

[1081] The South African Minister of Defence initiated a formal process when on 23 September 1997 the Armscor issued RFIs for seven cardinal equipment types to the embassies of 11 countries under the signature of Mr Ronald Haywood in his capacity as Executive Chairman of Armscor. Several embassies received RFIs for all the types of equipment and were required to distribute the RFIs to relevant companies in their respective countries. The RFIs were submitted to the United Kingdom, Germany, France, Canada, Italy, Spain, Sweden, Russia, the Czech Republic, Brazil and Denmark.

[1082] The information elicited in the RFIs dealt with aspects such as functional performance of the offered equipment, industrial participation considerations relating to South African industry involvement and financing schemes to facilitate the business arrangements.

[1083] By 31 October 1997, 37 responses to the RFIs were received. The offers were evaluated against previously approved value systems in each of the categories of functional performance, financing and industrial participation. After completion of the offer evaluation process, the COD (a DOD structure) approved the following shortlist of 23 products offered by eight countries in order to enter a subsequent round of 'best and final offer' bidding (the two programmes for the main battle tank and maritime patrol helicopter are not relevant to the Commission's enquiry and will not be dealt with):

1. Corvettes/frigates

- GEC F300 – United Kingdom
- GFC MEKO 200/A200 – Germany
- DCN LAFAYETTE – France
- Bazan 590B – Spain

2. Submarines

- Upholder – United Kingdom
- GSC 209 1400 MOD – Germany
- DCN Scorpene – France
- Fincantieri S1600 – Sweden

3. Advanced Light Fighter Aircraft (ALFA)

- BAE/SAAB Gripen – United Kingdom and Sweden
- DASA AT 200 – Germany
- Dassault Mirage 2000 – France

4. Lead-in-Fighter Trainer (LIFT)

- BAE HAWK 120 – United Kingdom
- AERO VODOCHODY L159 – Czech Republic
- AERMACCHI MB339FD – Italy
- AERMACCHI AEM/YAK 130 – Italy

5. Light Utility Helicopter (LUH)

- Agusta A109 – Italy
- Eurocopter EC 635 – France/Germany
- Textron Bell 427 – Canada

[1084] The shortlisted products were arrived at after an evaluation of the RFI responses against the RFI value system that existed for each product type. Minimum functional levels were determined by the respective user environments. The minimum functionality levels were determined on the basis of minimum functionality that would meet the User Requirement to such an extent that the products would be acceptable for use in the intended role. The shortlisted products were identified on the basis of them all meeting the minimum functionality requirements.

[1085] As mentioned above, the COD approved the shortlist of 23 products. The reason why the shortlist was approved by the COD, which is a military structure, is that it had to approve the shortlist of equipment types which would meet the User Requirements. The shortlist was done by the Project Teams comprising Armscor and DOD officials.

19.3. The SDPP final offer solicitation

[1086] During February 1998 (May 1998 for the LIFT), the RFOs for the shortlisted products in the equipment categories (excluding the LIFT) were submitted to the shortlisted manufacturers. The closing dates for submission of the best and final offers ranged from 11 May to 15 May 1998. The RFO for the LIFT was sent out on 11 May 1998 and responses were received back on 15 June 1998.

[1087] The RFOs for the shortlisted equipment types indicated that the final offers should consist of four separate sections, each detailing the following aspects:

- Functional performance of equipment and tender price for the specified quantities
- Economic advantage to the South African industry, with industrial participation in the two categories of DIP and NIP

- Financial benefits available from financing arrangements.

[1088] Prior to acceptance of the final offers, detailed value systems against which the respective proposals would be evaluated were lodged with Armscor's Procurement Secretariat. Armscor's Procurement Secretariat was responsible for issuing the RFOs to prospective offerors and distributing such offers to the various Integrated Project Teams.

[1089] The value systems referred to above constituted the 'third order' value systems contemplated in Policy Directive 4/147. These third order value systems were to be developed for each equipment type. The value systems were based on the requirements of the respective URSs and were aimed at evaluating the functionality of the offered equipment.

[1090] None of the received offers in any of the categories was released to any of the programme teams prior to the lodging of an approved value system by the evaluation team.

[1091] As jointly agreed by the DOD, the Department of Finance (Treasury) and the DTI, the three elements of each offer—Military Value, Industrial Participation Value and Financing Value—would carry equal weights in the final consolidation of the evaluation results.

[1092] To facilitate the consolidation of the results, the following guidelines to the evaluations teams were laid down by the inter-departmental coordinating committee (SOFCOM):

- A uniform structure and method of calculation of programme cost was established
- A Military Value Index for each offer in the respective equipment categories would be determined from the results of the evaluation by dividing the results to a value of 100 with the best value option, carrying a weight of 100
- A Financing Index would be determined from the evaluation of the elements of the offers relating to financing by normalising the

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results to a value of 100, with the best option carrying a weight of 100.

- Industrial Participation Indices_for the elements of the offers relating to proposed industrial participation projects (DIP and NIP) would be determined by normalising the results to a value of 100, with the best options carrying a weight of 100. A consolidated Industrial Participation Index would then be determined by adding the DIP and NIP indices, and again normalising the highest scoring option to a value of 100.
- The final consolidation of the results of the evaluation of the respective elements of the offers would be achieved by adding the three indices mentioned above to obtain a Best Value option, being the bidder obtaining the highest score.

Thus, Best Value = Military Value Index + Financing Index + Industrial Participation Index.

19.4. The SDPP structures: Strategic Offers Management Committee (SOFCOM)

[1093] Due to the fact that seven running procurement programmes had now been consolidated into a single procurement package under the auspices of the SDPP, it was necessary to coordinate and consolidate the acquisition process. For such purpose the SOFCOM was created. Policy Directive 4/147 contemplated the establishment of a workgroup, and such workgroup was the SOFCOM. Amongst others, the Policy Directive envisaged a body that would do a second order evaluation but, more importantly, it contemplated the existence of a second order value system to be determined by an inter-departmental committee. SOFCOM could not change any of the recommendations of the project teams.

[1094] SOFCOM was a coordinating committee appointed by the AAC on 7 April 1998 with the aim of supporting the Minister of Defence in the management and execution of the DOD involvement in the SDPP acquisition.

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[1095] SOFCOM operated under a formal constitution, which spelt out its functions. Its members were senior representatives from Armscor, the DAPD (the Acquisition Division of the DOD at the time), arms of service (SANDF), the DTI and the Department of Finance. SOFCOM functioned under the dual chairmanship of the Chief of Acquisition of the DOD, Mr Shamin (Chippy) Shaik and the General Manager: Aero Maritime of Armscor, Mr H de Waal Esterhuysen.

[1096] In terms of its Constitution, SOFCOM had to be made up of the following members: Chief of Acquisition (Co-chairperson); General Manager: Aero Maritime, Armscor (Co-chairperson); the Chief of Finance of the DOD; the General Manager, Combat Systems, Armscor; the Director Weapon Systems, Acquisition Division; a Chief of Army representative; a Chief of Air Force representative; a Chief of Navy representative; a Chief of Intelligence representative; a DTI representative; a Department of Finance representative; a representative from the Acquisition Division (SOFCOM Secretariat); and a representative from Armscor (SOFCOM Secretariat).

[1097] Armscor had four representatives on SOFCOM. Mr Griesel was one of them. The Department of Finance was represented by Messrs A Donaldson and R White and the DTI by Messrs A Hirsch, V Ponsamy and V Pillay.

[1098] SOFCOM met approximately once every two weeks during the three months of its existence. Most of the time, SOFCOM performed the function of, *inter alia*, reviewing and monitoring the progress of the evaluations performed by the different project teams. Its primary concern was to ensure that there was consistency and alignment in approach on the part of the seven project teams, especially in the light of the fact that the DIP, NIP and Finance project teams straddled each of the seven projects.

[1099] The constitution of SOFCOM did not provide for decision-making authority in respect of any matters that would materially affect the evaluation with regard to the selection of the preferred bidder. However, SOFCOM was entitled to submit recommendations to the COD. The Minister of Defence

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had approved this deviation from the standard Armscor procurement procedures through the appropriate structures.

[1100] SOFCOM continued to formally function as a committee until the recommendation of the preferred bidders was presented to the AASB on 8 July 1998, even though it was not formally dissolved.

[1101] As indicated earlier, SOFCOM was also responsible for developing the second-order evaluation value system that was eventually to be used for the consolidation of the evaluation results from the respective teams. To recapitulate, the formula that was ultimately adopted was the following:

$$BV = MV + IP + FI$$

where BV = Best Value; MV = Military Value (military performance index divided by cost), IP = Industrial Value Index and FI = Financing Index.

[1102] Simply stated, the second-order evaluation value system comprised a military value (the technical performance), divided by offered cost, to which was added the financing and the industrial participation results.

[1103] As stated earlier, SOFCOM was appointed by the AAC on 7 April 1998 and its final function was on 1 and 2 July 1998 when it was consolidating the results of the evaluation of the different sections of the offers. After performing this function SOFCOM, never met again. The results of the five programmes that were evaluated are set out in the following tables:

i. Submarines

OFFEROR/ PRODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @13.5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
GERMANY GSC 209 1400 MOD	995,9	532,6	1528,5 (523,0)	80,6	100,0	100,0	100,0	100,0	100,0
FRANCE DCN SCORPENE	1210,2	728,1	1938,3 (615,0)	85,7	66,0	72,0	69,0	93,0	77,0
ITALY FINCANTIE- RI S1600	1173,1	574,4	1747,5 (632,4)	100,0	83,0	67,0	75,0	87,0	79,0
SWEDEN KOCKUMS TYPE 192	1280,8	738,7	2019,5 (676,6)	80,9	91,0	69,0	80,0	78,0	79,3

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ii. Advanced Light Fighter Aircraft (ALFA)

OFFEROR/ PRODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @ 13,5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
UK SAAB JAS 39 GRIPEN	2217,0	1252,1	3469,1 (1067,6)	100,0	100,0	100,0	100,0	100,0	100,0
GERMANY DASA AT 2000	2139,0	No Offer	-	76,0	79,0	59,0	69,0	0	46,0
FRANCE DASSAULT MIRAGE 2000	2257,0	No Offer	-	79,0	76,0	25,0	50,5	0	33,7

iii. Light Utility Helicopter (LUH)

OFFEROR/ PRODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @ 13,5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
FRANCE EUROCOPTER EC635	503,0	196,3	699,3 (261,7)	83,5	69,0	71,0	70,0	100,0	80,8
ITALY AGUSTA 109	423,0	192,3	615,3 (282,2)	100,0	100,0	100,0	100,0	97,0	100,0
CANADA TEXTRON BELL M427	462,0	294,9	756,9 (289,9)	64,0	57,0	67,0	62,0	68,0	64,6

iv. Corvettes

OFFEROR/ PRODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @ 13,5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
UK GEC F3000	946,6	409,2	1355,8 (363,8)	80,2	74,7	57,0	68,6	100,0	85,5
GERMANY GFC MEKO 200	949,5	230,7	1180,2 (419,6)	97,5	90,6	100,0	99,3	79,0	99,5
GERMANY GFC MEKO A200	960,2	234,5	1194,7	100,0	91,9	100,0	100,0	79,0	100,0
FRANCE DCN PATROL CORVETTE	1036,7	386,7	1423,4 (444,4)	76,3	65,0	82,0	76,6	90,0	87,5
SPAIN BAZAN 590B	832,2	311,9	1144,1 (291,3)	94,6	100,0	82,0	94,8	84,0	98,2

v. Lead-In-Fighter Trainer Aircraft (LIFT)

OFFEROR/ RODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @ 13,5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
UK BAE HAWK	756,5	402,5	1159,0 (422,2)	90,2	45,1	100,0	89,6	100,0	96,5
CZECH AERO VODOCHODY L159	641,4	273,3	914,7 (338,0)	88,3	52,0	93,0	89,5	69,0	84,3
ITALY AERMACCHI MB339FD	377,7	139,9	517,6	100,0	100,0	62,0	100,0	92,0	100,0
ITALY AERMACCHI AEM/YAK 130	550,6	203,9	754,5 (281,7)	62,5	42,9	64,0	66,0	90,0	77,5

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[1104] These results were presented to the AASB on 8 and 16 July 1998. It should be noted that during the presentation by SOFCOM to the AASB on those dates, the Chief of Acquisition of the DOD, who was the presenter, introduced a 'non-costed option' for the LIFT. This option was a consolidation of the evaluation results for the LIFT, but excluded cost. This implied that the normalised Military Performance Index, without having been divided by cost, was added to the normalised Industrial Participation Value and Financing Indices. The exclusion of cost in the Military Value brought about a change in 'Best Value' scores and also in the ranking of the offerors, as depicted in the table below.

[1105] The 'non-costed' option was prepared by Mr Griesel on instruction of the Chief of Acquisition of the DOD. He took out costs from the equation. The LIFT programme was the only programme for which a 'non-costed' option was calculated.

LIFT: 'Non-costed' option

OFFEROR/ PRODUCT	PROG COST (M US\$)	FIN COST (M US\$)	TOTAL COST (NPV @ 13,5%)	MIL PERF INDEX	MIL VALUE INDEX	IP VALUE INDEX	MIL + IP INDEX	FIN INDEX	BEST VALUE
UNITED KINGDOM BAE HAWK	756,5	402,5	1159,0	90,2	90,2	100,0	100,0	100,0	100,0
CZECH REPUBLIC AERO VODOCHODY L159	641,4	273,3	914,7	88,3	88,3	93,0	95,3	69,0	86,3
ITALY AERMACCHI MB339FD	377,7	139,9	517,6 (193,2)	100,0	100,0	62,0	85,2	92,0	87,5
ITALY AERMACCHI AEM/YAK130	550,6	203,9	754,5	62,5	62,5	64,0	66,5	90,0	74,6

[1106] Mr Griesel was present at the SOFCOM meetings. He has no recollection that SOFCOM took a decision that the non-cost option had to be pursued in regard to any of the programmes. As a committee, SOFCOM had no authorisation to recommend a non-cost option. SOFCOM had to develop an evaluation formula, the second order evaluation formula, which was used to do the consolidation of all the results of the evaluation. The approved

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evaluation formula included costs for each of the programmes. Only in the case of the LIFT were two alternatives presented to the AASB, namely the costed and non-costed option.

[1107] It will be noted that in the costed option, the Aermacchi MB339FD aircraft received the highest best value figure, but by excluding costs, the BAE Hawk received the highest best value figure.

[1108] The formula that was used for the costed option is the formula that was developed by SOFCOM and which included cost in the Military Value Index. That formula provided for a military performance figure to be divided by the programme cost from which the military value would be determined. The Military Value Index would be added to the Industrial Participation and Financing Indices to yield the Best Value Index.

[1109] As Secretary of SOFCOM, he made all the calculations for SOFCOM. He made the non-costed option on the instructions of the Chief of Acquisition. SOFCOM as a committee never discussed the non-costed option.

[1110] As far as the evaluations of the LIFT aircraft were concerned, the Aermacchi costs were almost 50% of the costs of the Hawk, although the Hawk aircraft had a higher performance for which they did not award higher points. According to the URS, the requirement was an aircraft that would be used as a trainer aircraft, and the value system for that particular product was drawn in accordance with the URS. The fact that the Hawk aircraft had additional functionality over and above that which would normally be required for a trainer aircraft, did not entitle the Hawk to additional points. Although the Hawk had certain capabilities beyond that of a trainer aircraft, it was only scored as a trainer aircraft. The Aermacchi with a price about 50% of the Hawk's scored higher in military performance than the Hawk. The Hawk was evaluated as an aircraft to be used as a trainer aircraft, not as an aircraft with additional capabilities. Unlike the Aermacchi, the Hawk has capabilities to carry weapons, but those were not scored in the evaluation because those capabilities were not required for a trainer aircraft. If the user

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had a requirement for a product, that product could not automatically be scored higher for having more capabilities than what the user required.

[1111] Mr Griesel presented the SOFCOM 'cost' options only. In the ordinary course of events, SOFCOM made presentations to the AASB. In terms of the normal structure, the AASB would then make recommendations to the AAC. At no stage did SOFCOM make presentations to the AAC.

[1112] To reiterate, as far as he could recall, at the SOFCOM meetings of 1 and 2 July 1998, the non-costed option was not debated or discussed at all.

[1113] SOFCOM made a presentation to the AASB on 8 July 1998. After SOFCOM's presentation, the AASB decided not to make a recommendation to the AAC at that point. Mr Griesel referred to the minutes of the joint meeting of SOFCOM and the AASB and which he attended in his capacity as a member of SOFCOM.

[1114] In the minutes, the following is noted:

'31. Arrangements to brief the Minister of Defence on 13 July followed by a Select Cabinet Committee (Deputy President, Minister of Finance, Minister of Trade and Industry, Minister of Defence) briefing on 21 July are underway.'

[1115] Mr Griesel referred the Commission to the minutes of a special AAC meeting held on 13 July 1998. Members of SOFCOM and other officials from the DTI (including the Minister of Trade and Industry), the SA Army, the SAAF, the SAN, the DOD and Armscor were invited to the meeting. The main purpose of the meeting was to discuss the consolidation of all the evaluations by SOFCOM.

[1116] As far as the LIFT was concerned, both the cost-option ranking and the non-costed ranking were presented. In the costed-option ranking, the Italian MB339FD came first and the British Hawk second. In the non-costed option, the British Hawk was first and the Italian MB339FD second.

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[1117] As he had said before, the non-costed option was never part of the discussion at the AASB meeting, and the option was never recommended by SOFCOM.

[1118] At the above-mentioned AAC meeting, no decision regarding the bidders was taken as it was only a briefing session.

[1119] As a member of SOFCOM, Mr Griesel was part of the meeting mentioned above. At no stage did the AASB resolve to make any recommendation to the AAC regarding the LIFT non-costed option.

[1120] The non-costed option table was prepared by him at the request of the Chief of Acquisition (co-chairman of SOFCOM). When he prepared the tables of the consolidated results of all the different products, he used the information presented by the respective teams to the SOFCOM meeting of 1 and 2 July. From that information the costed option of the LIFT programme was prepared together with the options of all the products. It was at a later stage that he was requested to prepare an alternative table indicating a non-costed option which would be done by means of excluding the costs from the military value for each of the offers received, thus resulting in a best value figure that was different from the best value figure indicated in the costed option.

[1121] At the time when the Chief of Acquisition instructed him to prepare a non-costed option for the LIFT programme, the co-chair of SOFCOM, Mr Esterhuysen, was no longer in the service of Armscor.

[1122] When he was given the instruction to prepare the non-costed option, he did not know the reason for the instruction, nor did the Chief of Acquisition explain the reasons for the instruction.

[1123] He attended the presentation that was made by SOFCOM to the AASB on 8 July 1998, where all the tables were presented to the AASB with all the consolidated results of the evaluations which had been done. It was at that meeting where both options—costed and non-costed—for the LIFT programme were presented to the AASB. He did not know why the non-

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costed option was presented to the AASB because it was never discussed by SOFCOM.

[1124] He did not draw the attention of the AASB to the fact that the non-costed option was generated by him and it was not generated for the purposes of presentation to the AASB, as he attended the meeting of the AASB as an observer.

[1125] During the meeting of 8 July 1998, where the results of the evaluations of the LIFT programme were presented, the Chief of Acquisition who presented the consolidated results to the AASB, showed a slide with the results from the RFI for this aircraft, where all the responses to the RFI were evaluated and plotted in terms of functionality versus cost. It was a graph with the results of each of the evaluations from the RFI, indicating the measured functionality of each of those aircraft together with the cost.

[1126] From that graph it became evident that there were two clusters of results, as they called it at the time, namely a lower cost with lower functionality group of aircraft and another group of aircraft with a higher functionality and higher cost. It was on that graph that the functionality threshold was drawn at 65% and all aircraft above that 65% functionality would make their way onto the shortlist for the LIFT's best and final offer solicitation.

[1127] Above the functionality threshold line were the aircraft appearing on the RFO and all, except the Aermacchi MB369, were in the higher functionality and cost cluster. The Aermacchi was in that group with a lower cost but still with functionality above the threshold. The argument at the AASB was that it would not be correct to compare the results of all these aircraft on the basis of cost. An alternative option was to take cost out of the equation and to compare them without the cost.

[1128] Mr Esterhuyse attended the AAC meeting of 13 July as well as the AASB meeting of 16 July.

[1129] Following the decision taken by the AASB as a consequence of the results of the non-costed option, the AASB submitted its recommendations to the AAC. The AAC in turn submitted its recommendations to the Ministers' Committee, which in turn submitted its recommendations to the Cabinet.

[1130] The Ministers' Committee consisted of the following members of the Cabinet:

- Mr Thabo Mbeki as Chairperson and Deputy President of the Republic
- Mr Mosiuoa Gerard Patrick Lekota as Minister of Defence (initially Mr J Modise)
- Mr Alec Erwin as Minister of Trade and Industry
- Mr Trevor Manuel as Minister of Finance; and
- Mr Jeffrey Thamsanqa Radebe as Minister of Public Enterprises (initially Ms S Sigcau).

[1131] The Ministers' Committee tabled the recommendations on the SDPP in the Cabinet to obtain decisions on the selection of the preferred suppliers and the allocation of finance to fund the purchase of the SDPP.

[1132] It should be noted that the evaluation results and indicated preferred bidders that were presented to the AASB, the AAC, the Ministers' Committee and subsequently to the Cabinet for approval, were all in the form of presentations and not part of the project governance documentation that would normally be submitted to structures such as the AASB and the AAC. The action therefore constituted a deviation from Armscor's standard procurement processes where Armscor would normally be solely responsible for authorising a preferred bidder, with the result that this part of the procurement process was out of Armscor's control.

19.5. The SDPP process: Integrated Project Teams (IPTs)

[1133] The IPTs, consisting of members from both Armscor and the DOD, were established for each of the product systems. The appointment and responsibilities of the members were in accordance with VB1000.

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[1134] Hereunder is the list of project team members of the five programmes that formed part of the SDPP.

LIST OF PROJECT TEAM MEMBERS**i. Submarine team**

Tech		DIP	NIP	FIN
AoS	ARMSCOR			
Capt (SAN) AJC Reed Capt JB Rabe Cdr N Marais Cdr K Wise Lt G Dirksen Mr H Zietsman Mr C van der Merwe	Mr R Vermeulen Mr D Erasmus Mr A Jordaan	Mr DH Glatthaar Col MB Delpont Mr L Butler	<u>Econ Eval</u> Mr Z Rustomjee Mr A Hirsch Mr R Crompton Mr P Jordan Mr V Pillay Mr C Nakooda Ms K Makoba Mr W Makoba Ms C Jogessar Mr R Andrews Ms T de Risi Mr W Ramutla	Mr CJ Hoffmann Mr JL Grundling Lt Gen BS Raubenheimer Ms JEJ Potgieter Mr L Kganyago Mrs P Bristowe Mr R White Mr W Erasmus Mr D Marx

ii. Corvette Team

Tech		DIP	NIP	FIN
AoS	ARMSCOR			
Capt (SAN) JEG Kamerman Capt (SAN) JC Visser Cdr K Watson Cdr GF Filmlalter Lt Cdr SJ Scheepers Lt Cdr I Egan-Fowler Lt A Cothill	Mr B Smith Mr F Nortje Mr D Erasmus Mr L Mathieson	Mr JJ van Dyk Capt (SAN) OJ van der Schyff Mr TBR du Toit	<u>Econ Eval</u> Mr Z Rustomjee Mr A Hirsch Mr R Crompton Mr P Jourdan Mr V Pillay Mr C Nakooda Ms K Makoba Mr W Makoba Ms C Jogessar Mr R Andrews Ms T de Risi Mr W Ramutla	Mr C J Hoffmann Mr J L Grundling Lt Gen BS Raubenheimer Ms JEJ Potgieter Mr L Kganyago Mrs. P Bristowe Mr R White Mr W Erasmus Mr D Marx

iii. LIFT Team

Tech		DIP	NIP	FIN
AoS	ARMSCOR			
Col J Bayne Col Q Nel Lt Col M Edwards Capt K Gettliffe Lt Col J Erasmus Capt J Rossouw <u>Co-opted members</u> Col P Haley Col F de Kock Lt Col G van Loggerenberg Maj B Hechter Maj C Coetzee	Mr AJ Kok Mr J Ferreira Mr B Linde Mr L van Heerden Mr B Swart <u>Co-opted members</u> Mr D Blain Mr A Raubenheimer Mr C du Plessis Mr H Heslinga Mr G Ellis Mr W Crouwkamp Mr JJ Brits	Mr JJ van Dyk Mr DH Glatthaar Mr JB de Beer Lt Col JA Skinner Mr JBR du Toit	<u>Econ Eval</u> Mr Z Rustomjee Mr A Hirsch Mr R Crompton Mr P Jourdan Mr V Pillay Mr C Nakooda Ms K Makoba Mr W Makoba Ms C Jogessar Mr R Andrews Ms T de Risi Mr W Ramutla	Mr CJ Hoffmann Mr JL Grundling Lt Gen BS Raubenheimer Ms JEJ Potgieter Mr L Kganyago Mrs. P Bristowe Mr R White Mr W Erasmus Mr D Marx

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iv. ALFA Team

Tech		DIP	NIP	FIN
AoS	ARMSCOR			
Col J Bayne Col Q Nel Lt Col M Edwards Capt K Getliffe Lt Col J Erasmus Capt J Rossouw <u>Co-opted members</u> Col P Haley Col F de Kock Lt Col G van Loggerenberg Maj B Hechter Maj C Coetzee	Mr AJ Kok Mr J Ferreira Mr B Linde Mr L van Heerden Mr B Swart <u>Co-opted members</u> Mr D Blain Mr A Raubenheimer Mr K Cloete Mr H Heslinga Mr G Ellis Mr B Brits Mr C du Plessis Mr W Crouwkamp Mr H Pretorius	Mr JJ van Dyk Mr TBR du Toit Lt Col C Skinner	<u>Econ Eval</u> Mr Z Rustomjee Mr A Hirsch Mr R Crompton Mr P Jourdan Mr V Pillay Mr C Nakooda Ms K Makoba Mr W Makoba Ms C Jogessar Mr R Andrews Ms T de Risi Mr W Ramutla	Mr CJ Hoffmann Mr JL Grundling Lt Gen BS Raubenheimer Ms JEJ Potgieter Mr L Kganyago Mrs P Bristowe Mr R White Mr W Erasmus Mr D Marx

[1135] The IPTs were responsible for:

- Preparations of the RFI and the RFO documentation based on the URS
- Development of the third order value system in terms of DOD Policy Directive 4/147 for individual product systems
- Adjudicating received offers against the approved value system
- Negotiating the technical contents of the contracts
- Negotiating the supply terms.

19.6. The SDPP offer evaluation and consolidation

[1136] Following receipt of the offers, the IPTs independently evaluated the respective elements of the offers against the predetermined value systems. Requests for clarification of certain aspects relating to the offers were formally submitted to the offerors via Armscor's Procurement Secretariat.

[1137] The received proposals were evaluated by 12 IPTs. Seven were programme-related teams for the technical appraisal, comprising members from the respective arms of service, Armscor and the Defence Secretariat. There were seven programmes, each with its own unique value system and a project team that evaluated the received offers or category of offers against the previously approved value system. (The present inquiry is concerned with only 5 programmes since two of the projects, for one reason or another, were off the table when the SDPP contracts were signed.)

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[1138] There were further one National Industrial Participation (NIP) Team comprising members from the DTI and three Defence Industrial Participation (DIP) Teams for the defence industrial participation appraisal, both comprising members from Armscor, the SANDF and the Defence Secretariat. Finally, there was one Financial Team for the financing appraisal, comprising members from Armscor, the Defence Secretariat, the SANDF, the Department of Finance and financial institutions.

[1139] The evaluation results of the DIP and NIP evaluation teams were moderated jointly by the DOD and the DTI. The moderation was done to ensure that no duplication of offered industrial participation projects occurred between DIP and NIP offers.

[1140] Upon completion of all evaluations by the respective programme teams, the final consolidation of the evaluation results for the respective elements of each programme (technical, financing and industrial participation) were performed by the inter-departmental coordinating team. The final recommendation was arrived at by adding the normalised results of the respective elements in each offer to a maximum total score of 300 points, which was subsequently normalised to a maximum score of 100 points. The recommendation of the preferred supplier was determined by the offeror with the highest points scored in each of the categories.

[1141] SOFCOM presented the final scores to the AASB, which was chaired by the Secretary for Defence. The AASB subsequently recommended the evaluation results indicating the preferred suppliers to the AAC, chaired by the Minister of Defence, and to which the Minister of Trade and Industry was invited. The AAC in turn made a recommendation to the appointed Ministers' Committee comprising the Ministers of Defence, Trade and Industry, Finance and Public Enterprises. The Ministers' Committee finally made a recommendation regarding the preferred suppliers to the Cabinet, who approved the recommendations on 18 November 1998.

[1142] The witness pointed out that the creation and introduction of additional structures outside Armscor's known internal procurement

structures constituted a deviation from Armscor's standard procurement process, resulting in that part of the procurement process to be beyond Armscor's control.

19.7. Contract negotiations and contract authorisation

[1143] During November 1998, the Cabinet announced the preferred suppliers that had been selected. It also approved the establishment of the International Offers Negotiation Team (IONT) to negotiate umbrella agreements with each of the preferred suppliers, and to finalise the financing arrangements with financial institutions. The IONT was led by a Chief Negotiator and reported to the Ministers' Committee and also directly to the Deputy President as and when required.

[1144] After the approval of the preferred bidders, negotiations were conducted at two tiers or levels. At the one level were the negotiations carried out by the IONT. In these negotiations the IONT had to balance funding and affordability with the supply of equipment, the cost of the equipment based on the amount of equipment and the delivery of the equipment.

[1145] In many cases the quantities of the equipment actually acquired were much lower than the quantities mentioned in the RFOs. This was caused by affordability difficulties.

[1146] At the other level, negotiations were carried out by the project teams. They were dealing with the actual technical items to be supplied. Negotiations by the project teams resulted in the 'Supply Terms' of the agreements.

[1147] The umbrella agreements dealt with the contracts at a high level, including NIP and DIP undertakings, performance guarantees and price of the systems. The agreements had schedules, annexures and appendices containing detailed specifications of the individual elements agreed to in the umbrella agreements.

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[1148] The Supply Terms of the umbrella agreements contained the commercial as well as the technical specifications of the products.

[1149] The NIP and DIP agreements contained the obligations of the offerors with regard to the NIPs and DIPs.

[1150] As mentioned, the IONT was led by the independent Chief Negotiator who eventually reported to the Cabinet and sought approval to enter into contracts with the respective suppliers.

[1151] The IONT consisted of the following members:

- Mr Jayendra Naidoo, Chairman and Chief Negotiator
- Mr Llewellyn Swan, CEO of Armscor, who led the technical and DIP negotiating workgroup; he was supported by Mr Chippy Shaik, Chief of Acquisition of the DOD
- Mr V Pillay, Acting Director, Industrial Participation, DTI, who addressed the NIP domain
- Mr Ronald White, Senior Manager, Budget Office of the Department of Finance, addressing the financing domain.

[1152] After conclusion of the negotiating process, a final briefing was presented to the Cabinet on 1 December 1999. The Cabinet authorised the signing of the contracts with the suppliers of the corvettes, submarines, LIFTs, ALFAs and LUHs. The contracts were signed on 3 December 1999.

[1153] In terms of the Armscor Policy, Armscor would solicit offers from prospective main contractors. The main contractors would be responsible to identify all subcontractors and subsystems which they would require to allow them to respond to the RFO. The selection of the subcontractors would be the responsibility of the main contractor.

[1154] Armscor would go through the selection processes of evaluating the responses against the value systems and the preferred supplier would then be submitted to the Armscor Board for approval. Thereafter contracts would be entered into with the selected main contractors.

[1155] As a matter of policy, Armscor does not nominate the subcontractors or subsystems, except in certain special cases. In terms of its policy, Armscor would then by virtue of the contractual relationship with the main contractor, exercise control over the main contractor and would only have an oversight function over the subcontractors.

[1156] One of the special cases mentioned above is where Armscor would require a certain customer's equipment to be used as a subsystem, or where they have some equipment that needs to be integrated into the system or where, for strategic reasons, Armscor would need to prescribe specific types of equipment. For example, where Armscor has secure communication equipment and requires that communication equipment to be integrated into a system, Armscor would nominate that specific equipment.

[1157] If Armscor were to nominate subcontractors or subsystems, it would automatically assume some responsibility towards the performance of the equipment. If the subcontractor or subsystem supplier does not perform and Armscor has nominated them, Armscor would have to assume part of the responsibility for the non-performance. As a matter of policy, Armscor avoids the nomination of a subcontractor or subsystem.

[1158] As stated earlier, according to policy the Armscor Board approves the signing of contracts when funding is available. In the case of the SDPP, funding was not available at time of approval of the contracts and the Armscor Board could not have approved the signing of the contracts. The Armscor Board could not have approved any contracts in the absence of a Financial Authority (FA) from the DOD.

[1159] There was also a deviation from Armscor's normal procedures with regard to the financing of the SDPP. The Department of Finance evaluated the financing component of the offers, a function that falls outside the mandate of Armscor. In the Armscor processes there is no provision for Armscor to solicit financing options from prospective bidders.

[1160] As said, the SDPP contracts were signed on 3 December 1999 after the Cabinet gave approval. According to normal procedure, the Armscor

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(Tender) Board should have approved the signing of the contracts. In the case of the SDPP, the Armscor Board was not involved in the approval of the signing of the contracts.

19.8. Armscor's internal audit reports

[1161] The SDPP process was the subject-matter of two internal audit investigations. The first investigation was carried out over the period 6 to 30 November 1998, while the second report was produced on 21 July 1999.

[1162] The audits were performed at the request of the General Manager: Aeronautics and Maritime to establish whether the process followed during the valuation of the SDPP was proper and transparent. The internal audits were carried out by Mr JG Grobler of Internal Audit, Dr BJ van Tonder and Mr W van der Walt from the Quality Engineering Services Division.

[1163] The audit reports concluded that no evidence was found of improper conduct on the part of any Armscor employee involved in the evaluation of the various proposals. Further, that the reports of the teams that evaluated the technical merits of the proposals were adequate and contained sufficient information to verify the adequacy of the procedures that were followed and the appropriateness of the recommendations made to SOFCOM.

[1164] The first internal audit report concluded that:

- Although the evaluations were not performed strictly in accordance with the provisions of A/PROC/097 (Armscor's procedure for the selection of contractual sources), since the process was influenced by parties outside of Armscor, the basic principles and rationale in determining best value for money were applied
- The MOD Policy for dealing with the SDPP stipulated a multi-tier approach to be followed during the assessment of offers. The policy outlined a three-order evaluation to be performed and according to its constitution, SOFCOM managed the second order evaluation

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- Some of the technical managers indicated during the audit that the strict separation of industrial participation details from the technical offers created a situation where it was difficult to assess the technical merits of important subsystems since these would be sourced in South Africa and the detailed data was only available to the DIP Team during the initial assessment. In a few cases they were also concerned about the feasibility of some DIP offers and felt that they had more intimate knowledge of the capability of local industry in this regard than the DIP Team, and would therefore have appreciated an opportunity to provide additional input to the DIP Team
- The calculations of the Military Performance Index were verified by hand calculations based on data included in the reports, and were verified to within a few percent in all cases except for the submarines. Mr JG Grobler of Internal Audit confirmed the accuracy of the calculations made for the submarines proposal during a further investigation
- On instructions of SOFCOM, all final offers were evaluated and no offeror was excluded for non-compliance with any critical requirements. All offers were considered to meet the Defence Force's minimum technical requirements
- The MOD policy for dealing with International Defence Equipment Offers, dated 8 August 1997, stipulated a multi-tier approach to be followed during the assessment of offers. The policy outlined a three-order evaluation to be performed and while SOFCOM managed the second order evaluation, no first order evaluation in terms of the policy had been performed. It is uncertain whether some other first order evaluation had been performed that could account for the change of the final decision regarding the LIFT, taking into account the consolidation of the evaluations of the LIFT programme carried out by SOFCOM.

[1165] The second internal audit report concluded that even though a number of concerns existed regarding the procedures followed, the role of

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programme teams, accountability, and actions by parties outside of Armscor, no evidence was found to indicate gross misconduct within Armscor with regard to the execution of work up to that point.

[1166] The report further stated that the negotiations were conducted professionally and with integrity.

[1167] The applicable policy at the time, A/PROC/097, indicated that the evaluation team should be led by Armscor officials, that the evaluation reports should be signed in terms of the delegations by the designated people within Armscor's structures. In the SDPP process, in some cases the reports were not signed by Armscor officials but by SANDF officials. The corvettes and submarines evaluation reports were signed by SA Navy officials.

[1168] In terms of the Armscor process, any offeror who did not meet all critical requirements should be excluded from further evaluation. In the case of the SDPP, as far as the LIFT programme was concerned, EADS and Dassault (Mirage 2000) did not offer any financing option, which was a specific requirement of the RFO. Under normal procedures any offeror who did not supply the required information as stipulated in the RFO, would be excluded from the evaluation process, but the EADS and Dassault offers were not excluded. They were evaluated on the instructions of SOFCOM.

[1169] In re-examination, Mr Griesel was referred to Policy Document VB1000, the implementation date of which was 20 April 1994. He said this document was designed as a general policy for the management of the Category 1 matériel acquisition process.

[1170] The next document he referred to was the KB 1000 Policy Document, an Armscor document. The implementation date thereof was 1 May 1995, and it was dealing in general terms with the Armscor Acquisition Policy.

[1171] He was referred also to Armscor's Policy Document KP 021 that came into force on 1 June 1993. It is titled 'Practice for the request of proposals, quotations, submissions and orders'. The next document he

referred to was Policy Document A/PROC/097 which came into effect on 1 November 1997. This document establishes the practice for the selection of contractors in a multi-source offer.

[1172] A multi-source offer would be where offers are solicited from more than one prospective bidder and a method should then be in place to evaluate the offers received from the multiple prospective bidders to eventually arrive at a preferred bidder.

[1173] Mr Griesel referred to DOD Policy Directive 4/147 of 2 July 1997 that deals with international defence equipment offers in the MOD. This policy directive refers to an Appendix A, paragraph 1 of which reads as follows:

'1. Policy Decision: The process whereby international government to government defence equipment offers are dealt with in the Department of Defence and ARMSCOR is to be in accordance with this policy directive which includes the MOD Policy in Appendix A.'

[1174] Other policy documents he referred to were MODAC 1, 2 and 3. He also referred to the Defence Review and in particular paragraph 71 which deals with tender adjudication value analysis. It reads as follows:

'All tender adjudication for armaments will be based on the value analysis methodology and procedures. This value analysis, methodology and procedure will be formulated jointly by members of the DOD (DOD Acquisition Division) including ARMSCOR and organized industry. The value analysis system per project must be approved and supported by the Secretary for Defence and DAPD.'

The value analysis system should not be used to exclude previously disadvantaged contractors and should not limit national strategic considerations which can override technical performance parameters. This value analysis system must be above reproach and should not be a subjective analysis.'

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[1175] Armscor's policy, which was valid at the time, indicated that Armscor would be responsible for the generation of value systems and that Armscor would be responsible for the signing off of the evaluation reports. It allowed for participation of members of the Defence Acquisition and Procurement Division in the evaluation teams.

[1176] Therefore, although the Defence Review indicated at the time that the responsibility for the approval of the value systems resided with the Secretary for Defence, Armscor's own policies and practices still provided for Armscor to be responsible for that.

[1177] As a result, there was tension between the two spheres of authority.

[1178] Mr Griesel read paragraphs 1, 2 and 3 of Appendix A to DOD Policy Directive 4/147:

- '1. Several international defence equipment offers have been presented to the MOD and others have been proposed.*
- 2. These international defence equipment offers fall outside the scope of existing acquisition policy, and specific policy for such international defence equipment offers has to be established.*

AIM

- A. To provide MOD Policy guidelines and management procedures for dealing with foreign initiated, international government to government defence equipment offers relating to armament acquisition for the SANDF, that are to be integrated with an interdepartmental coordinating and decision making structure.'*

[1179] In his experience as an employee of Armscor and then as Acting General Manager of Acquisition within Armscor, prior to the SDPP he had never been involved in an acquisition similar to the SDPP, nor had Armscor been involved in a similar acquisition.

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[1180] The above policy was specifically designed for the SDPP programmes. It does not affect non-government supported single-product proposals. There were other programmes being executed concurrently with the SDPP, and they followed the normal Armscor policies and procedures that were not affected by the MOD policy.

[1181] He referred to the minutes of the special AASB meeting held on 8 July 1998. As stated earlier, members of SOFCOM were invited to the meeting and they made a presentation on progress with the international offers. The Chief of Acquisition briefly reviewed the process and the establishment and approval of the value system, the appointment of the evaluation teams prior to the evaluation, and the integration of the results of four independent evaluations per equipment undertaken by SOFCOM. SOFCOM accepted a modified equation prior to integration, for example, 'Ranking = Technical + IP + Financing' (with each evaluation contributing one third to the final ranking).

[1182] Paragraph 30 of the minutes of the meeting reads as follows:

'The AASB notes the progress and resolves not to make any pronouncement on what was presented; however the Minister of Defence and the members of the AAC must be advised of the progress.'

[1183] He also referred to the minutes of a special AAC meeting held on 13 July 1998. Various persons were invited to the meeting, including members of SOFCOM, the Minister of Trade and Industry and officials from Armscor, the DTI and so on.

[1184] The meeting considered the overall summary of consolidated results co-presented by the co-chairpersons of SOFCOM. The minutes of the briefing session concludes by stating:

'The information used during the briefing is preliminary; and coupled to its sensitivity, is not included herewith; but is available to AAC members for perusal, from the SOFCOM secretary. The

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

[1185] The evaluation results referred to were the detailed results compiled by the respective project teams and presented to SOFCOM on 1 and 2 July 1998. Those were the results used for the consolidation of the inputs from the various project teams. A costed option was used. The results clearly contained the functionality evaluation or the military evaluation, the two IP evaluations and the financing evaluation per project.

[1186] After 2 July 1998 there was no further SOFCOM meeting.

20. Mr Robert Maxwell Vermeulen

[1187] Mr Vermeulen is currently employed by Armscor as a Programme Manager in the Naval Systems Division.

[1188] He obtained a National Higher Diploma: Electrical Engineering (Light Current) from the Cape Peninsula University of Technology in 1976 and a Certificate in Systems Engineering in 1985 from the University of Pretoria. In 1995 he obtained a Certificate in Programme Management from the latter University.

[1189] He joined the SA Navy in 1976 and worked on several navy projects, the most notable of which was the design and build of the *SAS Drakensberg* and the modernisation of the Daphne class submarines.

[1190] He joined Armscor in 1990 and has been involved with Navy related acquisition projects throughout his career at Armscor, in the capacity of a Programme Manager.

[1191] From 2000 to 2007, he was deployed in Germany as the Programme Manager for the submarine acquisition project (*Project Wills*). On his return from Germany, he was deployed at the Simon's Town office where he is currently based and is involved with the programme for the replacement of the hydrographic survey vessel. This particular project is currently in the definition phase.

[1192] Before, during and after the SDPP he was employed by Armscor

[1193] His involvement with the submarine acquisition process commenced in 1996 at the time when the SA Navy learnt that the existing second-hand Upholder class submarines of the British Royal Navy were up for sale. The SA Navy was using Daphne class submarines bought from France in the early 1970s. In the mid-1990s they were reaching the end of their economic lifespan and they were becoming extremely expensive to maintain. They had to be replaced.

[1194] An IPT, comprising of SA Navy and Armscor representatives, was established in 1996 when the Navy became aware of the availability of the Upholder class submarines. He was a member of the IPT in his capacity as Armscor Programme Manager.

[1195] The IPT was made up of both Armscor and Navy members. It was headed by a Project Executive that consisted of the DOD Project Officer, in this case a Navy Project Officer, as well as an Armscor Programme Manager, who in this case was him.

[1196] The Programme Manager was appointed for both cardinal and non-cardinal projects. The Programme Manager has various responsibilities, the most salient of which was to manage the acquisition process in terms of Armscor procedures and ultimately to deliver a product system to the client. In the case of Navy projects, the Navy has always reserved the right to appoint a project engineer, who formed part of the Project Executive and would be responsible for all technical matters. Engineering changes always had to be approved by the Navy project engineer. Apart from the project engineer, a number of specialists were appointed to a project, depending on the nature of the project. In the case of *Project Wills* there were, amongst others, an ILS Manager, a Combat Suite Manager and a Platform Manager. Basically all the engineering disciplines would be addressed by specialists. The project engineer was appointed from the Naval Engineering Service in Simon's Town. The Project Officer was responsible for level 6 (the user

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system) and the Programme Manager for level 5 (the product system, which ultimately had to interface and integrate with the Navy's user system).

[1197] The IPT engaged the UK Ministry of Defence to investigate the feasibility of procuring the Upholder vessels as a suitable replacement for the Daphne class submarines that had reached the end of their designed operational life cycle.

[1198] It was put to him that there were people who argue that the SA Navy should have purchased the British Upholder submarines instead of going for the expensive SDPP programme where the country ended up spending billions to acquire submarines.

[1199] He pointed out that the Upholder class submarines were designed in the late 1970s and that they were hardly used. So they were relatively new. In his view, it was a blessing in disguise that the SA Navy did not acquire the Upholder submarines, because the Upholders were, *inter alia*, approximately two-and-a-half times the size of a Daphne submarine, and this would have had a big impact on the facilities in the dockyard in respect of accommodating them, and there would have been a huge compatibility problem with those submarines. Furthermore, the actual price that they established when they went out on RFI was in fact not cheaper than the price of a number of the new submarines that were available in the market place. Lastly, at some stage of the bidding process, the UK pulled out and said that the Upholder submarines were being sold to the Canadian Navy. According to his knowledge the Canadians never utilised the Upholder submarines and they were in the process of acquiring new submarines. The reservations mentioned above were shared by other members of the IPT.

[1200] The Upholders would have presented serious challenges to the SA Navy if they had gone ahead and procured them as a single source bid, as was the original intention before the SDPP process.

[1201] On 19 August 1996, the SA Navy produced a combined Naval Staff Target, Staff Requirement and interim Study Report. The Staff Target is the first formal document that initiates the project. It addresses concepts and

provides an overview of the Navy's requirements. The Staff Target is made available to Armscor, who familiarises itself with the requirements of the Navy. The Staff Target is a high level document that eventually progresses towards a Naval Staff Requirement, which consists of a functional user requirement as well as a logistic user requirement. The Naval Staff Requirement is a far more detailed document than the Naval Staff Target.

[1202] Subsequent to the approval of the White Paper on Defence in May 1996, the submarines acquisition programme became part of the overall SDPP. This entailed that the IPT was to evaluate the acquisition of new diesel-electric submarines as well as the second-hand Upholder class submarines as a viable means of replacing the ageing Daphne class submarines. This became *Project Wills*.

20.1. Selection process

[1203] On 23 September 1997, an RFI was sent to about 17 countries identified by the Minister of Defence. The RFI was prepared by Armscor and released through the office of its Chairperson. The letters containing the RFI were all-embracing and covered all the product systems that were included in the SDPP. A letter was also sent to the Canadians so that they could also consider supplying other products, not necessarily only the submarines. The closing date for receipt of responses was 31 October 1997. The letter was sent to the countries concerned via their respective embassies or High Commissions. The covering letter was signed by the Minister of Defence. Six submarine-related responses were received from the following foreign suppliers:

- Ready-built/Second-hand Upholder class submarines – UK MOD
- DCN International – France
- Rubin Engineering Bureau – Russia
- German Submarine Consortium – Germany
- Fincantieri – Italy
- Celsius Kockums – Sweden.

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[1204] On 14 October 1997, a value system for the evaluation of the RFI responses for *Project Wills* was prepared by the SA Navy.

[1205] An evaluation of the RFI was done on 18 November 1997, utilising the RFI value system. This exercise established whether the bids met the requirements of the Naval Staff Target. The results of the RFI evaluation were contained in an SA Navy report dated 18 November 1997. The report was compiled by the appointed SA Navy Project Officer at the time and was approved by the designated Chief of Naval Staff Plans at the time. Mr Vermeulen participated in the adjudication process, which involved the scoring of the technical value system. Once the preferred supplier had been announced, the negotiation phase followed immediately, and he played a leading role in that exercise with regard to the product system.

[1206] After the evaluation of the responses received to the RFI, a shortlist was drawn and in February 1998 an RFO was sent to foreign suppliers of the following types of submarine:

- Ready-built/Second-hand Upholder class submarine – UK MOD
- Scorpene submarines – DCNI – France
- S1600 Sauro submarines – Fincantieri – Italy
- Class 209 Type 1400 MOD submarines – GSC – Germany
- Type 192 Gotland submarines – Celsius Kockums – Sweden.

[1207] A three-month response period was allowed for the RFOs and it was during this time that the UK Ministry of Defence informed the SA Navy that they were selling their Upholder class submarines to Canada and that they were therefore pulling out of the bidding process.

[1208] Mr Vermeulen was appointed Programme Manager for the acquisition of the submarines at that time. In this capacity he compiled the RFO document that was submitted together with associated annexures to the Armscor Procurement Secretariat for their approval and distribution to the identified shipyards. The RFO was approved on 2 March 1998.

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[1209] The RFO included a number of annexures, amongst others the Defence Industrial Participation (DIP) requirements and a submarine requirements specification that were approved on 10 February 1998 by the Chief of Naval Staff Plans at the time.

[1210] Apart from contractual and formatting requirements, the main body of the RFO addressed the terms and conditions applicable to technical requirements, industrial participation and financing.

[1211] The main function of the RFO was to provide potential bidders with the required instructions and guidelines so as to solicit offers that were all to the same standard and format and included the same level of information, so as to facilitate a cohesive comparison process and to obtain the requisite level of detail for the establishment of a contract baseline. It was also easier to evaluate if the format of all the bidders was the same.

[1212] Generally, it is the responsibility of the Programme Manager to compile the RFO documentation. In drawing the document he relied on the expertise from various divisions within Armscor, for instance the DIP division, to provide him with a detailed document that spelt out the requirements for DIP.

[1213] The members of the IPT provided inputs as well. For instance, one of the important annexures to the RFO was the submarine requirement specifications. This document was written by the appointed Navy Project Engineer, so he would rely on the Navy to give him the essential functional specification that had to accompany the RFO. The functional specification was traceable to the Naval Staff Requirement and the Naval Staff Target as the Navy's original requirement at a concept level. A functional specification is a more detailed specification. Thus, the first objective of the RFO was to ensure a cohesive response from the bidders while the second was to give the bidders an indication of the level of details that was required.

[1214] At the RFO stage, offers for submarines were received from the following foreign suppliers:

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- DCNI – Scorpene – France
- GSC – Class 209 Type 1400 MOD – Germany
- Fincantieri – S1600 Sauro – Italy
- Celsius Kockums – Type 192 Gotland – Sweden.

[1215] The technical evaluation followed shortly thereafter over the period 18 to 20 May 1998.

[1216] Once the offers were received from the Procurement Secretariat of Armscor, they made sure that they went to the appropriate institutions for consideration. For instance, there would be a section allocated to DIP, and that volume would go directly to the DIP division for consideration. The technical specification volume would stay with the IPT division and it would be their function to adjudicate and evaluate. There would at this stage be a number of teams adjudicating and evaluating various aspects of the RFO. His team concentrated only on the military value evaluations.

[1217] As stated earlier, the technical value system had to be approved and submitted to the officials prior to receipt of the offers.

[1218] The technical evaluation of the offers was done using the RFO value system prepared on 26 March 1998. The value system was approved on 12 May 1998 by Mr Shamin Shaik (Chief of Acquisition), Rear Admiral Anthony Howell (Director: Naval Acquisition) and Vice Admiral Robert Simpson-Anderson (Chief of the SA Navy).

[1219] At that stage, Mr Shaik had been appointed as Chief of Acquisition of a newly formed division under the Ministry of Defence, known as the Defence Acquisition and Procurement Division (DAPD). Mr Shaik had a number of directors reporting to him from the Navy, Air Force and Army respectively.

[1220] Mr Shaik also played a role in SOFCOM.

[1221] Mr Vermeulen's role in regard to the technical evaluation was to assist in the evaluation of the responses by applying the parameters and

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weighting criteria as contained in the approved RFO value system. In terms of the RFO value system, the offerors essentially had to respond to three aspects of the RFO, namely the RFO itself, integrated logistic support (ILS) and technical performance. During the evaluation, they focused more on the support aspects. The ILS was equated to 67,51%, the submarine product requirement to 25,95% and the RFO requirement to 6,54%. Technical performance of the submarine would involve the actual characteristics of the submarine itself, such as its performance. The evaluation of the technical performance of a submarine is based on the value system used for the RFI evaluation, except that the assessed categories had been reduced from 11 to 8. The logistic type implications had now been included in the ILS matters. It should be remembered that at the RFI stage they also had an RFI value system, and they built on that. In other words, they did not start afresh but looked at the RFI value system and how it worked. They introduced some improvements to it, based on the experience they had gained during the RFI phase. When considering technical military value, they looked at the RFO, ILS and technical performance.

[1222] The development of the submarine value system was undertaken by the project team consisting of Commander AJC Reed (Project Officer), Mr GW de Muynk (Project Engineer) and Mr RM Vermeulen (Arm Scor Programme Manager). The submarine value system applied during the RFO evaluations was approved jointly by Chief of the Navy and the Chief of Acquisition.

[1223] The evaluation team for top level values was the team involved in the submarine Military Value (RFO vs. ILS vs. Product, as well as the RFO Value System). The team consisted of Commander AJC Reed, Mr GW de Muynk, Mr RM.Vermeulen, Mr D Erasmus (Arm Scor Logistics), Mr A Jordaan (Arm Scor Command and Control) and Mr C van der Merwe (Submarines Design Authority Representative).

[1224] The evaluation team for ILS values consisted of Captain J Rabe (Comsflot), Commander R Martin (Logistics), Messrs GW de Muynk, RM

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Vermeulen, D Erasmus (Armcor Logistics), A Jordaan, H Zietsman (Head of Submarine Design Authority) and C van der Merwe.

[1225] Another evaluation team dealt with submitted offers. It consisted of the following people: Rear Admiral (JG) AN Howell (Director Naval Acquisition -he was also the moderator), Commander AJC Reed, Messrs H Zietsman (Acting Project Engineering), RM Vermeulen, C van der Merwe, D Erasmus, A Jordaan, G Dirkson (Submarine Design Representative) Captain Rabe and Commander N Marais (SMDA Weapons Electrical Specialist).

[1226] He was in all the teams because of his position as Programme Manager.

[1227] The RFO Evaluation Report was compiled by Captain Reed (Submarine Evaluation Team Leader and Representative of the Defence Acquisition and Procurement Division). It was moderated by Admiral Howell, acting in his capacity as Director Naval Acquisition.

[1228] From the above it appears that Admiral AN Howell, besides being a member of the evaluation team, moderated the Evaluation Report and Commander AJC Reed, who was also a member of the evaluation team, compiled the Evaluation Report. The RFO Evaluation Report contained the military value that was submitted to SOFCOM for consideration and consolidation.

[1229] The RFO system is an adjudication tool designed to ensure that an objective, 'forced' decision-making process takes place. To this end senior submarine user specialists were utilised to assist the IPT in establishing a comprehensive list of parameters which, through a systematic comparison process, were each assigned a relative importance or weight factor.

[1230] The shortlisted bidders were required essentially to respond to three overarching aspects of the RFO, namely:

- i. The RFO response element of the RFO value system (referred to as the engineering management component), which carried a

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- weight factor of 6,54%. This aspect typically addressed the following:
- a. draft engineering management plans;
 - b. statement of compliance to the SA Navy submarine requirement specifications;
 - c. acceptance test procedures; and
 - d. comprehensiveness of the product system price breakdown.
- ii. The ILS element of the RFO value system carried a weight factor of 67,51%. The major elements of this component included but were not limited to the following:
- a. support and test equipment;
 - b. maintenance planning;
 - c. supply support (depot and on-board spare parts provisioning);
 - d. technical documentation, including manuals and drawings; and
 - e. training and training equipment.
- iii. The Submarine Product Performance Element of the RFO value system carried a weight factor of 25,95%. This aspect incorporated the functional characteristics and requirements of the submarine. Significant aspects have been listed as displacement, speed, endurance, diving depth, indiscretion ratio, manoeuvring and control, combat system characteristics, acoustic/non-acoustic sensors, survivability and compatibility with the Navy User System.

[1231] The relative high importance attached to the ILS component of the RFO value system was attributed to the fact that emphasis was placed on the support of the submarines as opposed to their performance. The RFI results had previously revealed that the configuration and performance characteristics of the respective submarines offered by the bidders were very similar and that all of the submarine types on offer had met the minimum requirements as specified by the SA Navy.

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[1232] Both the RFI and RFO had value systems. The RFI value system served to eliminate bidders that did not show the potential to go to the next phase. On the other hand, the RFO value system was used for adjudication in order to make a decision regarding the preferred supplier.

[1233] Mr Vermeulen participated in the technical evaluation of the offers using the RFO value system. The technical evaluation built up to the military value. The military value is essentially the scoring of technical performance and when the price is brought into consideration it became a military value. With regard to the technical evaluation, three overarching categories were broken down into smaller elements. The three categories were the response to the RFO, the ILS elements and then the submarine product itself.

[1234] The ILS is very much an inherent part of the submarine product system. Without a comprehensive ILS one would not be able to run these submarines for very long. Examples of elements that form part of the ILS are the following: all the technical manuals, training and spare parts.

[1235] As stated earlier, MOD Policy Directive 4/147 played a significant role in the evaluation process. It assisted or directed the functions of the technical evaluation team in as far as the RFO value system was applied in adjudicating the offers of the remaining four bidders. The policy introduced three layers of adjudicating teams. The three tiers were the upper tier (Cabinet level), middle tier (SOFCOM level) and the lower tier (DAPD/IPT level). The Cabinet level was where strategic considerations were taken into account, and the SOFCOM level was where the consolidation of the Best Value took place. Best Value is the aggregate of the Military Value Index, the Industrial Participation Index and the Financial Index.

[1236] At the lower tier, representatives of the Defence Acquisition and Procurement Division calculated the normalised Military Value Index contained in the RFO Evaluation Report. The IPT as a whole was involved with the application of the value system in respect of the scoring implementation and the determination of the pre-normalised results, that is, the technical performance or the basic results. As a technical team they

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were involved only in the lower tier. A similar procedure was followed in each of the individual SDPP acquisitions. As stated earlier, as the technical team, they were concerned with the technical evaluation, looking at the military value, focusing on the three components, namely RFO, ILS and the product requirements. At the same level, there were other teams looking at the finances and industrial participation. The latter team was divided into DIP and NIP.

[1237] In the normal Armscor process, their recommendations would go straight to the Armscor Board with a recommendation for the appointment of a preferred supplier.

[1238] After the IPT had finalised the scoring of the value system, the results were compiled into an RFO Evaluation Report. This report was written by the Project Officer for the submarine project and moderated by the Director Naval Acquisition, both of whom had been seconded at that stage to the Defence Acquisition and Procurement Division. That report had a recommendation with the Military Value Index in it.

[1239] Admiral Howell and Commander Reed moderated the results from the IPT before handing them to SOFCOM, at the middle tier, for consolidation of the results in order to determine the Best Value. The moderators moderated only the results of the technical performance of the submarines. In order to determine the Best Value, SOFCOM added the three indices, namely the Military Value Index, the Industrial Participation Index and the Financial Index. SOFCOM prepared a report of the results from the various IPT and made its recommendations to the upper tier body.

[1240] The basic results contained the moderated scores, which were then normalised in a process in which the values are divided by the price, with the one scoring highest in the ratio receiving a point score of 100 and the others a percentage against that winning score. This exercise was used to determine the Military Value Index.

[1241] The results were consolidated in a SA Navy Report dated 25 June 1998. This report was compiled by the appointed SA Navy Project Officer at

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the time and was moderated as stated earlier by Rear Admiral Anthony Howell, whose designation at that stage was Director Naval Acquisition, and Commander Reed.

[1242] The performance results of their team were reduced to writing. The RFO responses were considered and scored. The score in this category ranged from 1 to 5, where 1 essentially indicated that the requirements were not met; 2 would indicate that the requirements were met, in other words the bidder met the minimum requirements in the specification; 3 meant that the bid met the requirements substantially better than the minimum requirement; and it went on to 5, which meant exceptionally better. It is important to note that 2 indicated that the bid met the requirement of the RFO and that the RFO response category was allocated a weight of 6,75 %.

[1243] All four bidders scored 2 or more. In the RFO Response Value, the various shortlisted bidders scored as follows:

- DCN – France: 3%
- GSC – Germany: 4,66%
- S1600 – Italy: 3,56%
- Kockums – Sweden: 3,26%

[1244] The next category was the ILS value. The ILS specialists took a decision that this category should be scored out of 10 because they felt that if they scored the bidders out of 10, they would be able to score with greater accuracy. In this category the scale was 1 to 10 with 5 as the minimum requirement.

[1245] The scores allocated in this category were as follows:

- DCN – France: 38,94%
- GSC – Germany: 33,03%
- S1600 – Italy: 48,03%
- Kockums – Sweden: 34,16%

[1246] The Type 209 submarine that the Germans had offered was an export submarine and the German Navy did not use that type of submarine. The

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German shipyard did not have a good knowledge base of supporting the Type 209 submarines. Their expertise did not necessarily lie in the area of supporting these submarines. That explains why they performed poorly in this category.

[1247] On the other hand, Fincantieri of Italy had a good knowledge of their product and they knew what would be required in terms of on-board spares and depot-based spares and they provided an abundance of information in this regard; and they were scored accordingly.

[1248] The next part of the value system was the Submarine Product Value. Various aspects of the submarines such as speed, acceleration and diving time were scored. The outcome of the scores was very close. As far as performance was concerned, there was very little to differentiate them.

[1249] As stated earlier, the submarine product constituted 25,95% of the weight.

[1250] The scores of this part were as follows:

- DCN – France: 22%
- GSC – Germany: 22,6%
- S1600 – Italy: 23,2%
- Kockums – Sweden: 23%

[1251] The Combat System was also scored as follows:

- DCN – France: 2,32%
- GSC – Germany: 2,33%
- S1600 – Italy: 2,35%
- Kockums – Sweden: 2,24%

[1252] The next category scored was the Combat Output. It is one of the main categories of submarine performance. Various capabilities, such as the number of tubes and the reloads, the torpedoes themselves and what type of torpedoes the tubes would be compatible with, were looked at. Other

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factors that were considered included the stealth characteristics, survivability and design maturity.

[1253] In this category the scores were as follows:

- DCN – France: 2,10%
- GSC – Germany: 2,12%
- S1600 – Italy: 2,25%
- Kockums – Sweden: 2,03%

[1254] The next category looked at was stealth. The Swedes came first, followed by the Germans, the French and finally the Italians.

[1255] Survivability was the next category to be considered. The Italians came first, followed by the Swedes, the Germans and the French at number 4.

[1256] Another category was design. Here the Germans came first, followed by the Italians and the Swedes (who had the same percentage), and lastly the French.

[1257] The next category to be looked at was growth. In this category they were evaluating the potential for growth with respect to items like electrical power, auxiliary system and the databus. They wanted to make certain that the submarine could be modified during its lifespan of 30 years. In this category the Italians came first, followed by the Germans and Swedes who scored same, with the French last.

[1258] The next category was standards. Here they looked at various standards that the shipyards were using in design, shock vibrations, and so on. It was important that the on-board system had to be compatible. In this category all the bidders scored the same.

[1259] Redundancy was also considered. In this category they looked at issues like the number of diesel engines of the submarine, whether it could still operate if it lost an engine, and whether there were back-up systems in

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place for the submarine to continue operating. The bidders again scored the same.

[1260] Habitability was also considered. This portion deals with the facilities available on the submarine, and the level of comfort the submariners would have on the particular submarine. The French came first, followed by the Italians, the Swedes and lastly the Germans.

[1261] All the attributes that were evaluated as mentioned above related to performance.

[1262] The total score, consisting of the RFO response score, the submarine performance score and the ILS value score were prepared. The total scores of these three indices informed the Submarine Military Value. This exercise indicated that Fincantieri of Italy scored a total of 74,7%, the DCN Scorpene submarine of France scored 64%, the Kockums Type 192 submarine of Sweden also scored 64%, and the GSC submarine of Germany came last with a score of 60,2%. The above scores indicated that all the products offered met the Navy's specifications, in other words, they met the minimum requirements.

[1263] As a final step in this evaluation process, contract price was brought into the picture. The German Submarine Consortium price was R4,3 billion, the next bidder was Fincantieri of Italy with a price of R5,132 billion, followed by DCN Scorpene of France at R5,241 billion and lastly the Kockums Type 192 submarine with R5,5 billion.

[1264] In terms of Armscor's normal evaluation process, they would first determine whether the Navy's requirements have been met and only then look at the price. All the submarines met the minimum requirements. If it was not for price, any of the four bidders could have been the preferred bidder.

[1265] Based on the results of the four bidders mentioned above, and if the Armscor process was followed, he as Programme Manager would have recommended GSC as the preferred bidder. This is based on the fact that

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they had met the Navy's requirements and were 18% cheaper than their nearest rival, which in Rand terms would amount to R799 million.

[1266] Risk is a very important factor, and from the results of ILS, GSC did not perform well. This problem he would have attended to during the negotiations phase. He would during negotiation phase put measures in place to mitigate the risk.

[1267] In the SDPP process, the next step was that the Project Officer and Admiral Howell compiled the RFO Evaluation Report in which the normalisation of the scores took place to make them compatible with the other indices, namely the financing indices and the IP indices. In the RFO Evaluation Report it was recommended that the GSC bid offered best value for money in terms of the technical performance of the submarine.

[1268] SOFCOM gave instructions on how to go about establishing the Military Value, which is inclusive of the scores as well as the price. As a result, the RFO Evaluation Report would have taken price into account.

[1269] Having determined the basic scores, Mr Vermeulen's role in the selection process came to an end. Later, he learned that GSC had been selected as the preferred supplier.

[1270] Industrial participation has two components, namely NIP and DIP. The latter can in turn be divided into two components, namely DIP and 'direct' DIP. The latter is directly related to the submarine product while DIP could impact any other application within the Defence Force, for example ammunition for the army. He was interested in the direct DIP because it had a direct influence on the support of the submarine.

[1271] According to the guidelines, the Military Value to be applied is the total score divided by the total price. The bidder who scored highest would receive 100 points with the others then measured against the percentage of that winning score.

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[1272] A certain formula was used to determine the Military Performance Index. In terms of the formula, the results of the three indices were divided by the costs. The results that emerged from those calculations propelled the Germans to the first position, followed by the Swedes, the Italians and the French.

[1273] The negotiation phase was entered into with GSC in November 1998 and it concluded in June 1999. As a Programme Manager he was directly involved in the negotiation phase at the technical level, specifically with regard to the submarine product system.

[1274] They had to negotiate with GSC in order to achieve a contract baseline which would enable the seller and purchaser to enter into a contract. That would entail the establishment of all the contractual terms and conditions.

[1275] One of the issues discussed was the contractual milestones. A master production plan was also attended to.

[1276] The preferred bidder would provide a production plan and they would tailor that together with the preferred supplier. A quality assurance plan and acceptance test procedures would be discussed at that level.

[1277] The main purpose was to arrive at a mutually acceptable contract baseline. All the necessary documents had to be in place, as the next activity was the production phase. GSC did not offer sufficient ILS and consequently during the negotiations, as Programme Manager, they concentrated on ILS.

[1278] The other teams were negotiating the DIP terms, NIP terms and financial terms. These were the lower tier of negotiating teams. The first tier of the negotiations was managed by the IONT, whose responsibility it was to arrive at a completed Umbrella Agreement. The Umbrella Agreement consisted of several lower level documents, namely the Supply Terms, DIP Terms, NIP Terms and Financial Terms.

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[1279] The IPT of which he was a member addressed the Supply Terms Agreement, which was a speciality type contract that addressed the submarine product system. One of the important annexures of the Supply Terms Agreement was the technical specifications.

[1280] Following the signing of the contract on 3 December 1999 between the Government of South Africa and the German Submarine Consortium for the acquisition of the three Class 209 Type 1400 MOD submarines, certain members of the IPT, including the Project Officer and the Armscor Programme Manager (Mr Vermeulen), were deployed to Germany and based at the two GSC shipyards in Kiel and Emden for the duration of the production phase.

[1281] During the production phase, and in accordance with the established contract/product baseline, the three submarines were constructed and on-board equipment was installed, integrated and set to work.

[1282] Certain acceptance tests of some of the items were performed in Germany, while the acceptance tests of items produced locally took place in South Africa before the items were shipped to Germany for integration. Where German or other foreign suppliers provided equipment, factory acceptance tests would be executed at their respective premises before the equipment or items were delivered to the shipyard.

[1283] Once a vessel was constructed and certain tests had been executed, Sea Acceptance Trials followed. There were a total of 46 Sea Acceptance Tests for the first submarine and 45 for each of the other two. The first submarine was the *SAS Manthatisi*, and the other two are *SAS Charlotte Maxeke* and *SAS Queen Modjadji*.

[1284] He was aware that 40 other countries use various versions of the German Type 209 submarine. It is one of the most successful export submarines ever produced.

[1285] The IPT Project Executive (the Project Officer and the Programme Manager) were reporting quarterly to a Maritime Projects Steering

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Committee. The Maritime Projects Steering Committee was jointly chaired by the Director Naval Acquisition and Senior Manager: Armscor Naval Systems Division.

[1286] The submarines were formally handed to the Project Officer and Programme Manager. The commissioning of the first two submarines took place in Germany. *SAS Manthatisi* arrived at Simonstown in April 2006 and *SAS Charlotte Maxeke* and *SAS Queen Modjadji* in April 2007.

[1287] Mr Vermeulen was referred to DIP and he replied that that area is divided into DIP and direct DIP. The latter, in which he was involved as stated earlier, related to industries which directly impacted the submarine. He said direct support was successful and that GSC met their commitments. He referred to SA companies that manufactured some of the submarine components or items, and companies to which technology was transferred. He referred, for example, to a South African company based in Pretoria that manufactures components for Allack Periscope and Optronic Must, Siemens SA which manufactures switchboards for the electrical distribution system, and a SA company that is involved in software development. He also referred to some of their employees who received intensive on-the-job training at the respective German shipyards.

[1288] He further referred to Grintek Communications, a local company which manufactures and installs all the on-board external communications system for the submarine. They also provide ILS elements associated with the external communications systems such as technical handbooks, training and spare parts.

[1289] SAAB Avitronics is a Cape Town-based company. They manufacture, install and integrate the on-board electronics support measures (ESM) system. It is an electronic warfare system on-board the submarine.

[1290] In respect of direct DIP, GSC met their commitments.

[1291] He believes that the product supplied to SA by GSC is a very good product.

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[1292] Under cross-examination he stated that during the RFO process he was involved in preparing the value system, and, insofar as the parameters needed to be considered, he worked with, amongst others, submarine user specialists and ILS specialists.

[1293] Once the offers were received, his role continued and he assisted in scoring together with the rest of the IPT.

[1294] The RFO Value System was required to provide inputs that could be used to select a preferred supplier, taking into account the other components, namely the Military Value System (in which process he was involved), the IP Value System and Financing. After this exercise, they made inputs to SOFCOM, to enable the latter to make relevant recommendations.

[1295] He confirmed that the Value System was approved and adopted on 11 and 12 May 1998. The Value System was compiled by the then Project Engineer, Mr Gregory de Muynk, who was employed as a civilian by the Navy, in the Naval Engineering Section.

[1296] He confirmed that the three elements of the technical evaluation that constituted the final score were the RFO response element, the ILS element and submarine product performance element.

[1297] The Military Value Index formed a third of the final evaluation scores as calculated by SOFCOM, the others being NIP, DIP and Financing.

[1298] He further explained that, in the normal course, if Armscor processes were followed when evaluating offers, they would take into account the Navy's requirements, the functional specifications, and then the price. They would determine which of the offers was cheaper, and then make the recommendation directly to the Armscor Board of Directors. They would thereafter have entered into negotiations with GSC, whose offer met the Navy's specifications at a lower price than the other offerors.

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[1299] In the negotiations that would follow, risks would be outlined, particularly relating to logistics and they would formulate a strategy to deal with the identified risks.

[1300] During re-examination, Mr Vermeulen stated that in general all the submarines evaluated were good products and they were all acceptable to the Navy.

[1301] In its offer, the GSC specified a combat suite produced by a German-based company, known at the time as SDN Atlas, but now as Atlas Electronic. It was part of the scope of supply and once this combat suite had been accepted as a direct DIP application, the supplier formed a partnership with locally based Cybicom Atlas Technologies where a substantial amount of knowledge transfer took place to make the combat suite locally supportable.

[1302] Mr Vermeulen had regular meetings with various stakeholders. He gave feedback together with the Project Officer to the Project Control Board. An issue raised during these meetings was the possibility of considering an alternative combat suite on the basis that we should be considering a local combat suite as opposed to the German-based combat suite that was provided in the offer by GSC.

[1303] At that stage, they were in the negotiation phase, so he was in a position to deal directly with GSC, as they were negotiating the contract baseline. Based on the instructions he received from the Project Control Board, he approached GSC and requested them to do a comparison between the combat suite they had offered in their bid and that of a locally-based combat suite supplied by a company called African Defence Systems.

[1304] They duly carried out the project comparison study and reported their findings. They pointed out that there was a technical risk because of a problem concerning the integration of African Defence System's product, which was in fact a French combat suite, with a portion of local components. The local combat suite was essentially a Thomson CSF combat suite. They

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found that there would be a high risk in integrating the system because it had never been fitted to a Type 209 submarine before.

[1305] Another issue was that in fact there was no local combat suite. They were comparing two foreign combat suites, one being French and the other a German system. It was estimated that the full development of the French combat suite in drawing up the detailed design package for integrating the system into the Type 209 submarine would add a further 10 months of detailed design time.

[1306] Furthermore, they estimated that this would cost an additional R100 million to R200 million to further develop the system.

[1307] Based on the above findings, the Project Executive (which included him) presented to the Project Control Board a strong recommendation that they should stick to the SDN Atlas combat suite, which was in the offer of GSC. Their recommendations were accepted by the Project Control Board.

21. Mr Byrall Smith

[1308] Mr Smith joined the SA Navy in 1976, where he worked in various capacities. He was employed as a Design Engineer, Naval Constructor, and Senior Engineer. Between 1983 and 1989 he was the Chief of the Engineering Design Bureau and Project Engineer.

[1309] In 1989 he joined Armscor as Programme Engineering Manager. Between 1992 and 1999 he was Programme Manager, Manager Technology Projects and Office Manager.

[1310] From 1999 to date he was Senior Technical Manager, Senior Programme Manager, Technology Transfer Manager and Manager Maritime Technology Projects. As Technology Transfer Manager he worked across all the maritime projects, namely submarines, corvettes and maritime helicopters. In that role he assisted his DIP colleagues in the execution of the DIP agreements with specific focus on technology transfer.

[1311] In November 1998 his functions as Programme Manager for *Project Sitron* were taken over by Mr Fritz Nortjé, who was part of his team and

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looked after the combat suite element of the project. During the period that Mr Smith was Sitron Programme Manager the focus was mainly on the ship platform. The combat suite activities followed after November 1998.

[1312] Mr Smith obtained the following qualifications: B Eng (Mechanical) in 1975 from the University of Stellenbosch; Masters in Science Ocean Engineering and Post-graduate Diploma in Submarine Design, University College London, in 1978; Post-graduate Systems Engineering Diploma, 1981, University of Pretoria, and Senior Naval Command and Staff Course, SA Naval Staff College in 1986.

[1313] He was employed by Armscor as Programme Manager for the corvette project from its inception in 1992 until the completion of the evaluation phase of the patrol corvette platform in November 1998. He was involved in a number of cardinal naval acquisition projects since the late 1970s, and over the past 23 years in the capacity of Programme Manager. He was employed by Armscor as a Programme Manager before, during and after the SDPP.

[1314] The original idea, which emerged in the early 1990s, was to execute the corvette programme in three parts, namely a contract for overseas ship platforms; contracts for the local combat suite systems; and another contract for the maritime helicopters. The vessel integration was to be done by the SA Navy in conjunction with Armscor. The bulk of the available funding was allocated to the ship platforms. The idea was to obtain ship platforms that would last at least 30 years and populate them with an inexpensive and largely local combat suite of modest capability, with a view to upgrading in the future.

[1315] In 1995, *Project Sitron* was deferred in order to allow the White Paper on Defence as well as the Defence Review process to be completed. From 1992 onwards until the deferment in 1995 they issued an RFI and drew a shortlist of Bazan of Spain and Yarrow of the UK. The German Frigate Consortium (GFC) was not shortlisted. The GFC was not shortlisted because it did not meet the requirements that were specified at the time.

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[1316] He could not recall Bazan of Spain ever being identified as the preferred supplier. The process never went beyond the RFI stage. If the RFO was ever sent out at that stage, he as Project Manager would have known about it, or compiled it.

[1317] After the project was deferred in 1995, approval was given to launch a technology retention programme in order to maintain the combat suite technology base in the local industry, in anticipation of the corvette programme being revived.

[1318] During 1996 and 1997 it became evident that the capability to integrate the complete vessel and more particularly a modern combat suite did not exist to a sufficient extent in the local industry. The envisaged Programme Contracting Model was changed to a single main contractor responsible for the complete vessel. This move was necessary in order to reduce risks.

[1319] The corvette acquisition re-opened in September 1997 when it saw the light of day under the auspices of the SDPP initiative.

[1320] When the corvette programme was resumed in 1997, offers for the complete vessels excluding the maritime helicopters were solicited and certain local combat suite subsystems and companies were specified by the SA Navy as 'nominated systems'.

[1321] The acquisition process was termed a corvette programme, but was later reclassified as a frigate program. A corvette is slightly smaller than a frigate.

[1322] Local development and funding of the combat suite continued until the Vessel Contract Baseline (VCBL) was established. The incorporation of the combat suite element into the VCBL was therefore subject to negotiation after the identification of the preferred bidder for the ship platform.

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21.1. Request for Information (RFI)

[1323] When the corvette project commenced in September 1997 under the auspices of the SDPP initiative, Armscor issued an RFI to at least seven foreign embassy offices.

[1324] The Armscor Procurement Secretariat received expressions of interest from the defence industry players, specifically in respect of the corvette platforms.

[1325] The evaluation of the responses was executed at Naval Headquarters from 3 to 9 November 1997 under the leadership of the then Project Officer, Captain Jonathan Kamerman. Captain Kamerman was seconded to the Secretary for Defence by the SA Navy, to lead the acquisition process against an RFI Corvette Military Value System that was approved prior to receipt of the proposals.

[1326] Price and costs played a significant role in the SDPP as early as the RFI stage. Some of the countries that the RFI was directed to were the self-same countries that also submitted their RFIs in 1995, for example France, Spain, the UK, Germany (Shipyard Blohm+Voss and not GFC, as the latter consortium was apparently formed at a later stage), Italy and Denmark.

[1327] During the SDPP process, the RFI process had its own value system.

[1328] He referred to a document titled 'Project Sitron: Corvette Military Value System', dated 21 October 1997. It was compiled by the Project Officer for *Project Sitron*, Captain JEG Kamerman, signed by the responsible authority, Commander AN Howell, and approved by the Chief of the Navy, Admiral RC Simpson-Anderson on 21 October 1997.

[1329] As stated earlier, the RFI was in the initial stages and had its own value system. The introductory part of the RFI Value System reads as follows:

- '1. Aim: *The aim of the Patrol Corvette Military Value System is to enable the evaluation of international offers for the Patrol*

Corvette Vessel elements as solicited by the Minister of Defence on 23 September 1997 in order to:

- (a) eliminate those offers that are militarily unacceptable to the SA Navy; and*
- (b) achieve a relative figure of merits (FOM) for the military value for each of the acceptable offers.*

2 Scope: *Although it is expected that the offers for the Patrol Corvette element will be made at the Vessel level, i.e. for complete ships including their Combat Suites, the Combat Suite Element has been fully and identically specified and costed by the SAN to all contenders. The scope of this value system is therefore primarily aimed at evaluating the offered Ship Platforms.'*

[1330] Mr Smith played a role when the technical team was looking at the technical side of the evaluation. They did not look at industrial participation or financial options. They concentrated on the corvettes' performance. This value system was primarily aimed at evaluating the offered ship platforms. The Navy had specified the local subsystem for each of the contenders, who had exactly the same specifications for the combat suite as well as a ceiling amount which they would include as a fixed item.

[1331] The RFI value system had two parts, namely the Critical Performance Filter and the Relative Military Performance Evaluation. The latter involved the corvette offer plus the acquisition cost. Once a bid passed the Critical Performance Filter, it moved to the Relative Performance Evaluation and a score would be determined. Then the price is brought into the equation and the Military Value is established. The Military Value was achieved by dividing the evaluated raw score by the total acquisition cost that gave the Figure of Merit, which is the Military Value. At this stage it was the RFI responses that were evaluated.

[1332] The above process sought to eliminate offers that were not acceptable to the military and to determine the Military Value for each of the offers. Price came into the picture at this stage and was required for

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budgeting purposes. As stated earlier, Mr Smith played a role in the Military Value process where, *inter alia*, they were looking at the ship platform in the context of its Integrated Logistics Systems.

[1333] At the time of the SDPP, the corvette project had been going on for about five years. A lot of information had already been gathered, which probably explains why a lot of information was required at the RFI stage.

[1334] Military Value refers only to technical value and has nothing to do with financial options and industrial participation. As a Programme Manager and a member of the Integrated Project Team they were only interested in the issues pertaining to the Military Value.

[1335] The Corvette Military Evaluation Team consisted of the following experts, naval officers and civilians, seconded from Armscor, to assist the SA Navy:

- Captain (SAN) JEG Kamerman (Chairperson) – operational and overall aspects
- Captain (SAN) J C Visser – logistics and overall engineering aspects
- Cdr K Watson – naval architecture and overall design aspects
- Lt Cdr SJ. Scheepers – machinery systems aspects
- Lt Cdr Egan Fowler – combat suite integration aspects
- Mr B Smith – costing aspects – full acquisition costs
- Mr F Nortjé – combat suite integration aspects
- Mr D Erasmus – logistics aspects
- Commander GF Filmalter – overall hull and machinery aspects.

[1336] Mr Smith's primary responsibility was to extract the costing aspects from the information that was provided in response to the RFI. Costing aspects were the full acquisition costs of the ship platform. The Evaluation Team was not the Integrated Project Team, but a team put together for evaluating RFI responses. Virtually all the members of the Evaluation Team were members of the Integrated Project Team.

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[1337] The RFI Value System is the same Value System that was utilised during the RFO process.

[1338] As far as the submarines were concerned, the RFI process was eliminated and there was no relative Figure of Merit or Military Value. The Military Value, at the RFI stage, appeared only in the corvette programme.

[1339] The Military Evaluation process was carried out in two parts. The first part was the Critical Programme Filter. The bidder that met the critical requirements went to the second part of the evaluation, namely the Relative Performance Evaluation. In the first part there were no scores; the scores were found in the second part of the evaluation. As stated earlier, the first purpose of the RFI evaluation was to eliminate offers that were unacceptable to the Navy, essentially to achieve a shortlist of manufacturers who could participate during the RFO process. Six countries or shipyards responded to the RFI. Their responses were analysed, from which the following emerged:

- Canada – Their proposal was poor and it was impossible to evaluate the bid.
- France – Documentation received from them was very limited in detail but able to be evaluated. The proposal had limitations.
- Germany – They offered two products, the GFC Meko 200 and the MEKO A200. Documentation received from them was outstanding. Detail and quality was virtually at a contract baseline level and followed the requested specification response exactly. The proposal by Germany was complete.
- Italy – Documentation received was extremely limited.
- Spain – The Bazan 590B was offered. Documentation received was very thorough and complete, although the CODAG option was not costed.
- UK – The GEC Marine F300 design was offered. Documentation received was very limited and generally poor except for the Integrated Logistic Support systems-part that was good and only the CODAG option was costed.

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[1340] The Corvette Military Evaluation Report dated 14 November 1997 recorded, *inter alia*, the following:

'Corvette Military Performance Scores

10. *The above proposals were evaluated for their military performance in association with the criteria and weighting of Part 2 of the Value System to obtain a weighted score out of the maximum possible 1040 points ... The total results are summarized in the table below. Acquisition costs do not feature.*

SERIAL NO	COUNTRY	DESIGN	SCORE out of 1040 POINTS
1	Germany	GFC MEKO A200	843
2	Germany	GFC MEKO 200	820
3	Spain	BAZAN 590B	750
4	UK	GEC F 3000	628
5	France	DCN LAFAYETTE	570.'

The above scores related to the technical performance of the ship platform.

21.2. Acquisition costs

[1341] Paragraph 16 of the Evaluation Report dealt with the acquisition costs. It stated that the acquisition costs of the offers were calculated for the ship platform, combat suite and integrated logistic support elements. Costs relating to all bidders were the same, and the only variable was the ship platform, the duties related thereto and the exchange rate.

[1342] The overall acquisition costs per offer were as follows:

SERIAL NO	COUNTRY	DESIGN	TOTAL VESSEL COST TO STATE
1	Spain	Bazan 590B	RM3 257
2	Germany	GFC MEKO A200	RM3 780
3	Germany	GFC MEKO	RM3 780
4	France	DCN LAFAYETTE	RM3 982
5	UK	GEC 3000	RM4 233

21.3. Corvette Military Value

[1343] Paragraph 18 of the Evaluation Report dealt with the Military Value. It stated that the Military Value was obtained from the performance/cost ratio

of the evaluated offers. For the purpose of valid calculation only the basic ship platform cost was considered, as the performance evaluation was confined to the technical evaluation of the various ship platforms offered, the combat suite being an identically specified and costed SA Navy prescription. The resultant order of merit after the Figure of Merit (or Military Value or Military Index) was normalised to 100 was as follows:

Serial No	COUNTRY	DESIGN	SHIP PLATFORM SCORE	SHIP PLATFORM COST	SCORE/COST RATIO	FOM
1	SPAIN	BAZAN 590B	750	RM1 863	0,40	100
2	GERMANY	GFC MEKO A200	843	RM2 385	0,35	88
3	GERMANY	GFC MEKO 200	820	RM2 385	0,34	85
4	BRITAIN	GEC F3000	628	RM2 839	0,22	55
5	FRANCE	DCN LAFAYETTE	570	RM2 588	0,22	55

[1344] The Report concluded as follows on the relevant criteria:

'(a) Military Performance

(i) The German GFC MEKO A200 had the best military performance of all the designs offered.

(ii) German MEKO and Spanish 590B designs were markedly superior in military performance to the British F3000 and the French LAFAYETTE designs.

(iii) All five designs evaluated were technically acceptable to the SA Navy, but considerable design work would be necessary on the British and French designs before they would be suitable.

(b) Military Value

(i) Military Value is the raw score of the Military Performance divided by acquisition costs. The Spanish Bazan 590B had the best Military Value as the most cost-effective patrol corvette offered; being excellent value for money.

(ii) *The German GFC MEKO offers were very good value for money, scoring close second and third to the Spanish offer.*

(iii) *The British GEC Marine F3000 and French DCN LAFAYETTE offers were poor value for money.'*

21.4. Request for Offers (RFO)

[1345] On 13 February 1998, the Armscor Procurement Secretariat issued an RFO to the four shortlisted manufacturers and suppliers of corvettes.

[1346] Mr Smith was instrumental in the compilation of the main RFO document that was submitted, together with relevant annexures, to the Armscor Procurement Secretariat for distribution to the shortlisted ship manufacturers. He prepared the main document, and inserted to the main document other documents he obtained from others, for instance the Industrial Participation portions that came from the DTI and DIP Division, while the Finance Team also made their contribution. The bulk of the main document written by him was based on Armscor's standard practices. The RFO Value System was similar to the RFI Value System. Some of the clauses thereof read as follows:

'1.1 OVERVIEW

1.1.1 The Request for Final Offer addresses the final part of the Offer Preparation Phase for the acquisition of four Patrol Corvette Vessels for the South African Navy.

1.1.2 The Patrol Corvette Vessels include two main hardware elements:

- The Ship Platforms and their Integrated Logistic Support*
- The Combat Suite Systems and their Integrated Logistic Support.*

1.1.3 This Request for Final Offer (RFO) has its primary purpose the solicitation of Offers which comply with the

requirements as detailed herein and the selection of the most beneficial Offer in terms of -

- *The supply of the four Vessels which include the Ships Platform and the Combat Suite, and their Integrated Logistic Support;*
- *Industrial Participation; and*
- *Financing Arrangements.*

1.1.4 The Offer must include a complete definition of the offered Ship Platform element. A ceiling budget has been set at RM1 470 (one thousand four hundred and seventy million Rand) for the Combat Suite element and it is envisaged that the final definition and specification will be agreed during the Negotiation Phase before incorporation in the Vessel Contract Baseline. Allowance must also be made in the Offer for Prime Contractor responsibility.

1.1.5 The intention is that there will be a teaming arrangement between the selected preferred CONTRACTOR and the South African COMBAT SUITE CONTRACTOR to form a VESSEL CONTRACTOR to supply the integrated Vessel and their Integrated Logistic Support as a complete operational system...

1.2 REQUEST FOR FINAL OFFER (R.F.O.)

1.2.1 The scope of this R.F.O. includes the specification, design, production, testing, delivery and final acceptance of the four (4) Vessels and their Integrated Logistic Support.

1.2.2 COMBAT SUITE CONTRACTOR It is envisaged that the COMBAT SUITE CONTRACTOR will be a South African industry consortium wherein Altech Defence Systems (ADS) plays a leading role, co-responsible for the overall design, integration and supply of the Combat Suite element.

1.2.3 *VESSEL CONTRACTOR: The VESSEL CONTRACTOR is the Prime Contractor for the supply of the vessels including their Integrated Logistic Support. ...*

2.16 *OFFER EVALUATION*

2.16.1 *The Offers will be evaluated in terms of the Specific Value Systems covering each aspect of the Offer which in combination will determine the preferred VESSEL CONTRACTOR.*

2.16.2 *The minimum qualification for evaluation are the Critical Technical Requirements in Section 3, the minimum Industrial Participation requirements in Section 4 and the Critical Financing criteria in Section 5. Failure to meet these minimum requirements may render an offer ineligible for consideration.'*

21.5. *Corvette Military Value System*

[1347] On 11 May 1998, the 'Project Sitron: RFO Corvette Military Value System' as prepared by the SA Navy and approved by the Chief of the Navy and the Chief of Acquisition, came into force. The RFO Military Value System addressed mainly the technical aspects of the offers, excluding the industrial participation and financing elements.

[1348] As stated earlier the RFO Value System is similar to the RFI Value System.

21.6. *Evaluation process and recommendation of the preferred bidder*

[1349] During the evaluation process the evaluation teams had to operate separately and independent of each other.

[1350] The evaluation process required the establishment of four evaluation teams that would submit their scores to a committee known as the Strategic Offers Committee (SOFCOM) under the chairmanship of Chief of Acquisition of the DOD, Mr Shamin (Chippy) Shaik, and the General Manager: Aero Maritime of Armscor, Mr H de Waal Esterhuyse. The Committee included representatives of the DOD, the Department of Trade and Industry and the

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Department of Finance. Informed by the evaluation elements, the four teams were:

- the Technical Defence Team;
- the Defence Industrial Participation Programme Team;
- the National Industrial Participation Programme Team; and
- the Finance Team.

[1351] Offers were received from the relevant equipment manufacturers and in certain cases a number of design variants were proposed. The technical evaluation followed shortly after receipt of the offers over the period 12 to 29 May 1998. Mr Smith was responsible for communicating to the Finance Team the acquisition costs he had extracted from the various offers. As part of the technical evaluation team he would put the extracted costs in tabular form, inform only the Project Officer, and from there pass the information to the Finance Team.

[1352] The technical evaluation was carried out by a Navy evaluation team under the leadership of then Captain Jonathan Kamerman, with the Director Naval Acquisition, Rear Admiral (JG) Anthony Howell, acting as moderator and the Chief of Acquisition, Mr Shamin Shaik, as coordinator between the Military, Industrial Participation and Financing teams when the need arose. The results of the Technical evaluation were contained in the Corvette Military Evaluation Report of 25 June 1998, compiled by Captain Kamerman.

[1353] The corvette project followed a slightly different process in terms of the RFO process. The initial step was the RFI process, which was the elimination process and led to the shortlist. The next step was the sending of the RFOs, consisting of a two-stage process in the case of the corvettes. It was known as Part 1 and Part 2. Part 1 was a Critical Minimum Performance part and Part 2 the ensuing evaluation. When they went on an RFO, the request was for the complete vessel, and the amount allocated for the combat suite was set. The SA Navy identified the local company that would provide the combat suite.

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[1354] When the corvette project was deferred in 1995, they received authorisation to carry on with the development of the combat suite with local industries. There was a technology project, *Project Suvecs* that was started in 1994 to support the local industry so that it could stay alive and develop a combat suite, until the final decision on ship platform was made.

[1355] Once the decision was reached on the preferred contractor for the ship platform, they negotiated for the incorporation of the local combat suite into the ship platform to form a vessel, which then led to a vessel contract baseline.

[1356] As stated earlier, Mr Smith's specific involvement was to extract the relevant total acquisition costs from the offers and to convey them to the Finance Team. The costing information was also communicated to the Project Officer but not to the rest of the Military Evaluation Team. He was also allowed to interact with the DIP Evaluation Team for clarification of the technical aspects.

[1357] The offers were ranked as follows:

- i. German GFC MEKO A200
- ii. German GFC MEKO 200
- iii. Spain Bazan 590B
- iv. UK: GEC F 300
- v. France: DCN Corvette

[1358] The *Project Sitron* Military Evaluation Report, dated 25 June 1998, listed documents that were perused prior to its preparation. One of those documents was the RFO.

[1359] Paragraph 2 of the report read as follows:

'Aim. The aim of the evaluation was to assess the Final Offers for their Military Value as one of the three criteria of the overall value system that includes Industrial Participation and Financing Value, in order to recommend a preferred Corvette option to the political level.'

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[1360] As stated earlier, the RFI Value System and the RFO Value System were similar, with minor differences. The process followed in evaluating the offers was almost the same as the one followed during the RFI process. The Report recorded the following:

21.6.1. Corvette performance scores

[1361] The proposals were evaluated for their military performance in accordance with the criteria and weighting in Part 2 of the Value System, to obtain a weighted score out of the maximum possible 1080 points.

[1362] The overall results were as follows:

Offer	Score	Ranking
Germany : GFC MEKO A200	810,5	1
Germany : GFC MEKO 200	790,0	2
Spain : Bazan 590B	766,6	3
UK: GEC Marine F3000	644,9	4
France: DNC Patrol Corvette	618,3	5

[1363] It should also be noted that all contenders improved their proposals since the RFI round due to the technical discussions held between the shipyards and the SA Navy from January to April 1998. However, the ranking order remained the same as during the RFI process, with the German offers clearly having the best military performance.

21.6.2. Corvette costs

- *Life cycle costs:* Life cycle economy was measured as a major part of the performance evaluation, without a significant difference between the offered designs. This was to be expected as the ships were all designed to the same SA Navy specification and have identical combat systems and crew.
- *Acquisition costs:* The acquisition costs of the offers were calculated for the ship platform, combat suite, Integrated Logistic Support and prime contractor elements. All duties, taxes and surcharges that accrued to the RSA exchequer were also calculated and were included. All costs were reduced to Rand values at the exchange rate applicable on 25 May 1998, as supplied by the Finance team.

[1364] The overall acquisition costs per offer were as follows:

Offer	Total cost (RM)	Total cost (US\$M)
Spain : Bazan 590B	4 333,1	851,9
UK: GEC Marine F3000	4 915,0	966,3
Germany : GFC MEKO 200	4 929,8	969,9
Germany : GFC MEKO A200	4 984,1	979,9
France: DNC Patrol Corvette	5 373,2	1 056,4

[1365] Due to various factors the total cost of the corvette acquisition had increased by an average of 10% since the RFI phase.

21.6.3. Corvette Military Value

[1366] The Military Value was obtained from the performance/cost ratio of the evaluated offers by dividing the raw score by the total project acquisition costs in Rand. The resultant Order of Merit after the Figures of Merit were normalised to 100 was as follows:

Offer	Score/1080	Total costs (RM)	Military Value Normalised
Spain : Bazan 590B	766,6	4 333	100
UK: GEC Marine F3000	810,5	4 984	91,9
Germany: GFC MEKO A200	790,0	4 930	90,6
Germany: GFC MEKO 200	649,9	4 915	74,7
France: DCNI Patrol Corvette	618,3	5 373	65

[1367] The Naval Board was presented with the Military Evaluation results on 18 June 1998 and it ratified the results. Although the Figures of Merit were closer than in the RFI phase, the ranking remained the same.

[1368] The report concludes by stating that the German GFC MEKO A200 had the best Military Performance of all the designs offered. The Spanish Bazan 590B had the best Military Value as the most cost-effective patrol corvette offered, being excellent value for money.

[1369] The German GFC MEKOs were very good value for money, scoring close second and third to the Spanish offer. As the MEKO A200 was a more cost-effective solution than the MEKO 200, it was recommended that only the MEKO A200 be included in the final consolidation of offers at SOFCOM level. The British GEC Marine F3000 and French patrol corvette offers were relatively poor value for money. The Value Systems mentioned or stipulated

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that ADS would be involved in the combat systems of the ships because historically they have been involved in the development of a combat suite over a period preceding the deferment of the project in 1995.

[1370] He was aware that at some stage Thompson CSF purchased shares in ADS and that ADS later sold some of those shares to Nkobi Holdings. He referred to various local companies that emerged as a consequence of technology transfer and DIP programmes. Some local engineers were placed overseas for lengthy periods to develop and enhance their skills in the field of submarine combat suite software. He also referred to other technology transfer programmes.

[1371] In terms of the specifications for DIP, at least 60% of the combat suite had to come from local sources.

[1372] Under re-examination he said he did not know why the Navy wanted to determine a Figure of Merit at the RFI stage. The calculation of a Figure of Merit was based on the ship platform costs.

[1373] He confirmed that the received offers were distributed to the programme teams only after the approved Value System was lodged with the Armscor Procurement Secretariat.

22. Mr Fritz Nortjé

[1374] Mr Nortjé is currently employed by Armscor as a Programme Manager. He was employed by Armscor before, during and after the SDPP acquisition.

[1375] He obtained a BSc (Engineering) (Electrical) degree from the University of Pretoria in 1971 and the Certificate of the Advanced Executive Programme from the University of South Africa in 1981.

[1376] He worked for Armscor from 1971 to date, except for four years that he worked for other companies. He served Armscor in various capacities over the years and in 2000 was appointed Project Manager for the Navy's frigate project. From 2000 to 2004 he was stationed in Hamburg, Germany

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during the platform build, and from 2004 to 2008 at the Naval Base in Simon's Town during the outfitting and acceptance of the combat suite.

[1377] He stated that his statement should be read in conjunction with the statement of his colleague, Mr Byrall Smith, who was the Programme Manager for the corvette project (*Project Sitron*) since its inception in 1992 until the completion of the final evaluation phases in November 1998, but before the evaluation and final selection processes of the combat suite.

[1378] Mr Nortjé was involved with the project in a subordinate role from April 1994 until November 1998, functionally reporting to the Divisional Manager and the Programme Manager of *Project Sitron*, Mr Byrall Smith. In November 1998 he was appointed Programme Manager for *Project Sitron*.

22.1. Background: the SDPP in relation to the corvettes

[1379] When the project started in 1992, the contracting philosophy was still in the old style where Armscor would place several separate contracts for an overseas platform and for the individual combat suite sub-systems, both locally and overseas. In this scenario, Armscor and the SA Navy would be the authority carrying the integration risk, although the services of an integration contractor to do the actual work were foreseen. In this process, a detailed platform-requirement specification was generated, and development contracts were initiated for a number of local sub-systems for the combat suite.

[1380] The combat suite is a collection of interconnected sub-systems consisting of sensors and weapons under the control of the combat management system, representing the defensive and fighting capabilities of the ship. The combat suite is the fighting part of the ship.

[1381] The local major sub-systems did not entail development ab initio. They were either adaptations of products previously delivered to the SADF during the 1980s or further refinements of products developed under several previous technology contracts. A few 'Military-off-the-shelf' ('MOTS') combat suite elements from overseas were also envisaged where sufficient local

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capability did not exist. A reduction in the defence budget impacted negatively on the local defence industry.

[1382] Over the years the South African defence industry has developed certain capabilities in strategic areas that were of interest to the combat suite of the corvettes, and the DOD through Armscor had invested in a number of local companies to foster and develop these strategic capabilities. When they embarked on the project to acquire the patrol corvette for the SA Navy, the intention, *inter alia*, was to make maximum use of local industry capabilities to the extent that it was affordable and made good business sense. At the same time it was realised that the local industry did not have the capability to cover all the equipment involved in the combat suite and that there would be a need to source some of the sub-systems from overseas. The latter sub-systems were the STAR (Surveillance Target Acquisition Radar), which fulfils the function of the main radar on the ship, the Surface-to-Surface Missile (SSM) and the Hull Mount Sonar (HMS), which is an acoustic sensor mounted underneath the ship.

[1383] With regard to the combat management system, which is the main integrative tool of the combat suite, they realised that they might require overseas assistance as the local industry was not sufficiently developed to a point where it could deliver the sub-system without such assistance.

[1384] There were four parts of the combat suite that were involved in some controversy. The first was the combat management system (CMS). The allegation was that the product was sourced from a foreign company or that the foreign company had replaced a local company to supply the system. His view was that the foreign company had actually complemented the capabilities of the local company and there was transfer of knowledge to the local company.

[1385] The second was the databus or information management system (IMS). A local company was involved in the early days of the project, but during the negotiations phase, it was decided in the interest of cost saving, to use the product of an overseas company.

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[1386] The third and fourth parts were at a lower system level, called the System Management System (SMS) and the Navigation Distribution System (NDS) respectively.

[1387] At the beginning of 1995, Armscor was ready to proceed with acquisition in terms of *Project Sitron* but the Government deferred the project to allow the Defence White Paper and the Defence Review to be finalised before any further acquisition could be made.

[1388] In order to retain and further foster the local combat suite capability, a technology retention project (*Project Suvecs*) was launched and funded from the DOD research and development budget. Like its predecessor, *Project Diodon*, *Suvecs* consisted of small contracts issued to a number of local companies on a year-to-year basis over a five year period. The idea was that possibly by the time *Project Sitron* got underway, the local companies could be considered as worthy contenders. More than R250 million was invested in local combat suite capabilities.

[1389] Between 1995 and 1997, it became evident that the capability to integrate the complete and more specifically a modern combat suite did not exist to a sufficient extent in local industry and that it was desirable to form some partnership with an experienced foreign combat suite contractor to bolster the local integration capability, regarded as a strategic capability.

[1390] They regarded transfer of technology and the survival or development of the local defence industry as very important. They strived where possible to make maximum use of the local defence industry in order to support it.

[1391] The envisaged project contracting model was therefore changed to that of a single main contractor responsible for the complete vessel, but the project had to be undertaken in such a manner that the local South African industry would still play a significant role in the supply of combat suite elements and in the combat suite integration, in order to utilise and expand the local industry.

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[1392] This approach would facilitate technology transfer to the South African local industry for future benefit of the country. It was in accordance with various DOD and Armscor policy documents.

[1393] When the project resumed in 1997 the view was that there should be a 'main contractor' contracting model where Armscor and the SA Navy would carry little or no risk. It was envisaged that an experienced overseas shipbuilder would form a suitable teaming arrangement with the local industry to enable a single 'integrated' main contractor for the entire integrated vessel.

[1394] During October 1998, the Project Control Board adopted certain 'Principle Concepts', some of which read as follows:

- '14. The contracting model shall be based on the principle of a single point of accountability per project. This entails the acquisition of the platforms (ships and Submarines), combat suite elements and integrated logistic support, as one project from a single Prime Contractor per project.*
- 15. The development and maintenance of a local logistic support and integration capability is of strategic importance to ensure the through life supportability of the vessel. The technology transfer of overseas expertise to the RSA shall be pursued to the maximum benefit possible...*
- 16. Preference may be given to the procurement of defence products and services from local suppliers, providing such procurement represents good value for money.'*

[1395] Paragraphs 1.1.1 to 1.1.5 and 1.2 of the RFO read as follows:

- 1.1.1 The Request for Final Offer addresses the final part of the Offer Preparation Phase for the acquisition of four Patrol Corvette Vessels for the South African Navy.*
- 1.1.2 The Patrol Corvette Vessels include:
The Ship Platforms and their Integrated Logistic Support.*

The Combat Suite Systems and their Integrated Logistic Support.

- 1.1.3 *This Request for Final Offer (RFO) has as its primary purpose the solicitation of Offers which comply with the requirements as detailed herein and the selection of the most beneficial offer in terms of the supply of four Vessels which include the Ship Platform and the Combat Suite elements, and their Integrated Logistic Support; Industrial participation; and Financing Arrangements*
- 1.1.4 *The offer must include a complete definition of the offered Ship Platform element. A ceiling budget has been set at Rm1470 ... for the Combat Suite element and it is envisaged that the final definition and specification will be agreed during the Negotiation Phase before incorporation in the Vessel Contract Baseline.*
- 1.1.5 *The intention is that there will be a teaming arrangement between the selected preferred CONTRACTOR and the South African COMBAT SUITE CONTRACTOR to form a VESSEL CONTRACTOR to supply the integrated vessels and their Integrated Logistic Support as a complete and operational system.*
- 1.2 *COMBAT SUITE CONTRACTOR: It is envisaged that the COMBAT SUITE CONTRACTOR will be a South African industry consortium, wherein Altech Defence Systems (ADS) plays a leading role, co-responsible for the overall design, integration and supply of the Combat Suite element.'*

[1396] In paragraph 2.10 the RFO stated the following:

'ALTERNATIVE OFFERS

- 2.10.1 *OFFERORS may submit an alternative offer not strictly in accordance with the requirements, or an alternative offer to satisfy a requirement, provided that ...'*

[1397] Paragraph 2.21 dealt with the contracting model:

'CONTRACTING MODEL

2.21.1 SINGLE POINT OF RESPONSIBILITY

The BUYER intends procuring the Vessels which include the Ship Platform and Combat Suite elements and Integrated Logistic Support as one Programme from a single Prime Contractor (VESSEL CONTRACTOR) who will be totally responsible for the activities of his sub-contractors. The OFFEROR shall include as part of his Offer, details to demonstrate how the following Programme requirements will be met.

2.21.3 That he is willing to enter into an appropriate teaming arrangement with the COMBAT SUITE CONTRACTOR and that clear lines of accountability for technical and commercial matters are defined.'

[1398] In November 1998 the Cabinet announced that GFC had been selected as the preferred supplier of corvettes. The IONT was appointed to negotiate with the preferred suppliers in order to finalise affordable contracts.

22.2. Negotiations

[1399] During October/November 1998, Mr Nortjé was appointed Programme Manager. He had to oversee the negotiation phase and the subsequent execution of the project. The negotiations commenced in November 1998 and terminated in December 1999.

[1400] The IPT of this project consisted of the SA Navy Project Officer, Captain Jonathan Kamerman, who was the official team leader and other members. Several technical specialists from Armscor and the SA Navy assisted as and when their services were required. Similar IPTs were established for the other acquisition projects forming part of the SDPP.

[1401] There were two levels of negotiations. The first level involved the IONT under the chairmanship of Mr Jayendra, Naidoo who negotiated with the preferred suppliers to establish umbrella agreements for each of the

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product systems in the SDPP. The umbrella agreements covered all aspects of the contracts, including the technical, financial and industrial participation terms and conditions.

[1402] The second level of negotiations involved the respective IPTs, who negotiated with the suppliers, addressing issues such as contractual terms and conditions relating to the relevant product system, while also addressing the technical specifications and pricing to form the Supply Terms.

[1403] During the negotiations the IPT reported regularly to the Project Control Board, chaired by the DOD and consisting of senior representatives of both the DOD and Armscor on any issues relating to the contract.

[1404] The Project Control Board consisted of the following permanent members:

- Chief of Acquisition (Chairperson)
- Chief of the Navy
- Chief Executive Officer Armscor
- Director Navy Acquisition
- General Manager Acquisition
- Project Director, and
- Senior Manager Maritime.

[1405] In the negotiation phase the IPT's responsibility was to establish a Vessel Contract Baseline in which, amongst others, the following objectives were to be met:

- The final definition, specification and price of the combat suite
- A mutually acceptable set of technical specifications addressing the entire corvette product system, including the Integrated Logistics System (ILS)
- A mutually acceptable set of contractual milestones
- The Supply Terms Agreement

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22.3. The platform

[1406] During the negotiation phase the detailed technical specifications of the platform and machinery as well as the specifications of the combat suite were addressed, largely in parallel, with much emphasis on a complete integrated vessel. Logistical aspects and technology transfer were also dealt with. Terms and conditions were attended to after the technical phase.

[1407] Regarding the platform two noteworthy developments arose in respect of the gearboxes and the main diesel engine.

[1408] It is worth noting that originally the Blohm+Voss DIP business plan provided for RENK's participation in supplying the gearboxes, which in turn would have involved Gear Ratio, a local company. Later Blohm+Voss, in their revised business plan replaced RENK by MAAG, and the latter offered less attractive DIP provisions compared to those offered by RENK.

[1409] The IPT was requested by the DIP Team to investigate whether gearboxes from the German company RENK would also be suitable, because RENK apparently already had a working relationship with the local company Gear Ratio and thus could offer attractive DIP opportunities. After receipt of relevant technical information from both companies, the technical specialists in the IPT evaluated both gearboxes.

[1410] The scores generated after the evaluations were extremely close and as a result the IPT indicated that there were no technical grounds to prefer either above the other.

[1411] Mr Nortjé referred to paragraph 7 of the minutes of the Project Control Board meeting of 6 October 1999, which reads as follows:

'SITRON – Gearboxes: Since both the MAAG and RENK gearboxes complied technically with the requirements the project officer recommended that the decision as to which gearboxes to acquire should be based on the DIP evaluation. DIP Manager presented the DIP evaluation and pointed out that from a DIP point of view it is clear that the RENK option should be selected.'

... The PCB ratified the selection of the RENK gearboxes for Project SITRON...'

[1412] Thus GFC was persuaded to use RENK's gearbox and after they indicated their agreement, the gearbox supplier was changed from MAAG to RENK at no extra cost. As appears from the above-quoted paragraph, the selection of RENK gearboxes was approved at higher level authority.

[1413] The PCB was of the view that the key issue was compliance with the technical baseline and where both gearboxes met this baseline, preference would be determined by DIP-related issues.

[1414] The negotiations relating to the price of the gearboxes took place between the main contractor GFC and its subcontractors. The change of gearboxes did not affect the price that was to be paid for the platform.

[1415] As far as engines were concerned, the main diesel engines in the form offered by the German company MTU were sufficient to meet the ship performance specifications. The IPT negotiated to obtain bigger and more powerful engines from the same supplier at no extra cost. The bigger engines had various obvious advantages over the ones that were offered. MTU engines, derivatives of which were also used for electric power generation, were the SA Navy's engines of choice, having had decades of satisfactory experience with them in their existing ships.

22.4. *The combat suite*

[1416] The SA Navy documents described the patrol corvette combat suite as

'a modern, LAN-based naval combat system with a distributed processing architecture, making extensive use of commercial off-the-shelf (COTS) technology...'

The Combat Suite consists mainly of sub-systems developed or under development by South African industry, in addition to some items of equipment from the SA Navy inventory; and three major sub-systems to be acquired from foreign suppliers.'

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[1417] As mentioned in the RFO documentation, specifically in the SA Navy's nomination document, there were three combat suite elements or sub-systems that were to be procured from overseas sources via a competitive bidding process, namely the Surveillance and Target Acquisition Radar (STAR or main radar), the Surface-to-Surface Missile (SSM) and the Hull Mounted Sonar (HMS). User Requirement specifications were compiled by the SA Navy for each of these, while value systems were compiled under the guidance of various Armscor specialists.

[1418] The SA Navy documents further stated that the patrol corvette suite elements should mainly be sourced locally. The documents indicated that the primary local company nominated to integrate the combat suite element at a system level was Altech Defence Systems (ADS). The major local suppliers of the sub-systems included ADS, Denel, Reutech Defence Industries (RDI) and Grinaker Electronics Limited (GEL). The three major sets of equipment to be acquired 'off-the-shelf' from foreign suppliers were the already-mentioned Surveillance and Target Acquisition Radar (STAR), Surface-to-Surface Missile (SSM) and Hull Mounted Sonar sub-systems. These sub-systems had not yet been finally selected and would be subject to a project study. ADS was nominated as the combat suite contractor. It became the main contractor for the combat suite, but not the main contractor for the entire vessel.

[1419] Competitive bids relating to the sub-systems to be sourced overseas were obtained via GFC and subsequently evaluated under the guidance of Armscor specialists.

[1420] The STAR was awarded to a Thomson-CSF subsidiary with no risk costs to the IPT, the SSM was awarded to Aerospatiale (now part of EADS), and the HMS was awarded to Thomson Marconi Sonar, who in turn sourced the hydrophones and transducers as well as the hydrophones array—a critical component—from South Africa.

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[1421] There was no controversy over the foreign elements of the combat suite. The process of selecting the three major sets of equipment to be sourced overseas was competitive.

[1422] The SA Navy nominated ADS to supply about 19 of the sub-systems of the combat suite; GEL Avionics to supply about 12 sub-systems; CCII Systems to supply the Information Management System (IMS) and as an alternative supplier of radar consoles. There were other suppliers nominated to supply some of the sub-systems.

[1423] Most of the combat suite negotiations concentrated on the IPT acting as a facilitator between the main contractor and local combat suite industry.

[1424] The quoted price of the individual elements of the combat suite had escalated significantly since the initial estimates made by the IPT. This was largely due to unexpectedly high prices quoted to the GFC by local industry, as well as the layered provisions for risk introduced by GFC as main contractor.

[1425] First, there was a risk provision from the main contractor on the combat suite contractor (Thomson/Thales/ADS), with the combat suite contractor adding a further risk provision on all the combat suite elements. With the mentioned risks the SA Navy was in danger of having to reduce the combat suite functionality quite significantly in order to be within the budget.

[1426] The problem was eventually solved by devising different contracting models. The combat suite contractor formed a consortium with the shipbuilder and the resultant main contractor then comprised German, French and South African components, thus completely eliminating one layer of risk provision. The cost reduction realised amounted to roughly R650 million, in 1998 Rand values.

[1427] Furthermore, at the next contracting level the DOD agreed to enter into a limited risk-sharing agreement regarding some of the individual combat suite elements, eliminating another layer of risk provision and thus effecting a further saving of roughly R385 million in 1998 Rand values.

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[1428] The total cost reduction amounted to roughly R1 billion at the expense of some reduction in functionality, without unduly compromising the critical functionality of the system, which was acceptable to the SA Naval Board.

[1429] In the final configuration, the main contractor consortium consisting of GFC—comprising Blohm+Voss and HDW and their commercial house, Thyssen Rhein Stahl Technik—was responsible for the platform, and ADS, later Thales South Africa Systems, in conjunction with Thomson Naval Combat Systems—later Thales Naval—were responsible for the combat suite, with the entire consortium jointly and severally responsible for the fully integrated vessel system. The main contracting consortium, collectively known as the ESACC (Europe South Africa Corvette Consortium), thus retained the full integration risk and interfacing risk, together with the full risk of the integrative sub-systems (the combat management system, databus and main radar) where the DOD was not prepared to share the risk.

[1430] The sub-systems for which the DOD accepted performance and time-scale risk came to be known as 'Part C' sub-systems, simply as an administrative means to distinguish them from others. The decision to accept risk-sharing was approved by both the SA Naval Board and the Project Control Board.

[1431] The effect of these arrangements was that the main contractor was indemnified against delays and/or inadequate technical performance by the 'Part C' contractors without negating the interface and integration liability of the main contractor.

[1432] The SA Navy was not prepared to accept risk in the central, core integrative elements or sub-systems, namely the main surveillance radar, the combat management system and its closely associated databus, because the eventual collateral damage that could result was seen to be too high.

[1433] In order to further save costs, it was considered necessary to effect a modest reduction in the scope of supply without materially affecting the

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essential functionality of the combat suite. These reductions were also approved by both the SA Naval Board and the Project Control Board. Some of those reductions were the following:

- the surface-to-surface missiles from 32 to 16
- the SAMs from 16 to eight per ship, while maintaining a 16 cell launcher for each ship
- eliminating the so-called 'Fifth combat suite' that would have served as a permanent integration test bed.

[1434] Later in the project, when the National Treasury's budget model generated surplus money, the opportunity was utilised to restore some of the scope of supply that was reduced during the negotiation phase.

[1435] As far as the combat suite negotiations were concerned, it is worth noting that every 'nominated' local contractor did eventually participate in the project, albeit to lesser extent than originally thought.

[1436] Approximately three-quarters of the number of elements of the combat suite were built in South Africa, representing in monetary terms about 60% of the combat suite price.

[1437] It is appropriate to deal with one of the combat suite elements called the Information Management System (IMS) or databus. It collects, transports and distributes digital data in bulk, using a central communication infrastructure. CCII Systems was the company nominated to supply this equipment.

[1438] During the course of the negotiations, as indicated earlier, because cost was one of the most important factors they tried to drive the cost low in many areas. One way of doing that was to investigate whether there were alternatives.

[1439] In the case of the IMS (the databus), an offer was made for an alternative databus that carried a considerably lower price, with the risk in the hands of the main contractor. The company that produced the alternative databus was Detexis. Its product was called Diacerto.

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[1440] Initially, Thompson/ADS—as the combat suite contractor—was a subcontractor to GFC, but in time they decided to form a consortium, which eliminated one layer of the risk mentioned earlier.

[1441] They both took responsibility for the entire vessel and as they carried the risk and full liability for all the sub-systems and equipment, they had the right to select subcontractors. The risk provision was reduced and consequently the cost to the customer as well.

[1442] As stated earlier, Armscor/DOD initially nominated CCII Systems to provide the IMS, but because of certain considerations, like risk and costs, it was decided to look at the alternative proposal put forward by the main contractor. Since the alternative proposal resulted in the lowering of costs it was resolved to accept the IMS produced by Detexis. The four main considerations that informed the decision to accept the Detexis IMS were price, risk, costs and responsibility.

[1443] Before the decision to utilise the databus of Detexis was implemented, the Project Control Board discussed the matter at its meeting of 24 August 1999. The Board decided that the cost-effective option should be the route to follow. This effectively eliminated CCII Systems' IMS, and the Detexis equipment was taken as the preferred equipment.

[1444] The decision of the Project Control Board on this point was consistent with the position of the AAC, namely that where possible the least expensive option should be the preferred one.

[1445] The DOD and Armscor were prepared to share the risk with the main contractor as far as certain subsystems were concerned. This was the case where the Navy was of the view that the risks were manageable. As far as other sub-systems were concerned, such as the combat management systems (CMS) and the associated databus (IMS), the Navy was unwilling to assume equipment risk irrespective of who the supplier was. As a result, equipment risk for the CMS and IMS remained with the main contractor.

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[1446] In the final configuration, GFC was responsible for the platform and ADS (now Thales South Africa Systems) in conjunction with Thompson Naval Combat Systems (later Thales Naval) for the combat suite, with the entire consortium jointly and severally responsible for the fully integrated vessel system. The consortium, ESACC, also assumed the integration risk. In other words, ESACC retained the full integration risk and interfacing risk together with the full risk of the integrative sub-systems, CMS, databus and main radar.

[1447] As stated earlier, CCII Systems was the nominated company to supply the IMS databus, but ADS offered an alternative databus and the risk position and price swayed the decision in favour of the Detexis Diacerto.

[1448] Later they discovered that Detexis had experience in the French Navy and that the IMS the SA Navy was getting was a derivative of the databus used by the French Navy.

[1449] There was also controversy relating to the Systems Management Systems of the combat suite. CCII Systems was unhappy that that particular sub-system remained with ADS. CCII Systems was of the view that the System Management System should have been sourced from them.

[1450] The System Management System was one of the lower level and strategically less important items of the combat suite in the integration part. ADS had been working on that item and as part of the technology retention programme that they were funding, ADS was originally nominated as the potential supplier of the System Management System.

[1451] They were unhappy about the price quoted by ADS, and they decided to investigate the possibility of sourcing competitive offers from other suppliers. CCII Systems then came into the picture. The competition was initiated by the IPT but executed via GFC and not via ADS.

[1452] The competition was purely on price. CCII Systems added to their offer other conditions that were not acceptable. In the end, the price quoted

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by CCII Systems was much higher than that quoted by ADS. ADS was then nominated as the supplier of the System Management System.

[1453] Another sub-system where there was some controversy, was the combat management system. ADS, which was nominated, had certain expertise in this area, built up over years of interaction and having had contracts with the SA Navy on various aspects. ADS was inexperienced though in the active side of the combat management system where the relevant information was analysed by a computer, like the threat and the severity thereof, and then activating the weapons or at least recommending which weapons needed to be activated.

[1454] In their view it was going to be advantageous to ADS to have an experienced partner from whom to obtain knowledge transfer and thus expand the local capability in a crucial area of integration.

[1455] To his knowledge, ADS and Altech were actively looking for partnerships with various overseas combat suite contractors. Thompson took over ADS in 1999 only.

22.5. Management

[1456] As we have seen, the contract was formally signed on 3 December 1999 between the Government of South Africa and ESACC for the acquisition of four Meko class A200 ships.

[1457] The entire project was guided by the project team's programme plan, which is a high level yet comprehensive road map for the execution of the project. The plan was supported by various other management plans, some of the important ones being the following:-

- Quality Management Plan
- Configuration Management Plan
- Risk Management Plan
- Vessel Integrated Support Plan
- Security Plan, and
- Training Plan.

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[1458] In many cases the contractors were contractually obliged to deliver their own detailed plans from these high level plans, and to create further plans as required, for example, detailed Test and Evaluation Plans, Management Plans, Quality Assurance Plans, Configuration Management Plans and an extensive hierarchy of detailed Acceptance Test Procedures at various levels.

[1459] The contract was further guided by a cascade of specifications, notably by detailed build specifications for the platform and a high level technical specification for the combat suite, supported by a large number of sub-system specifications at level 3, including comprehensive interface specifications.

22.6. Execution

[1460] A number of joint project team members, including the Project Officer and the Armscor Programme Manager, were seconded to Germany and based at the two GFC shipyards situated in Hamburg and Kiel for the duration of the production phase of the platforms.

[1461] During and after the production of each platform, various tests were conducted in accordance with the approved test procedures, both at sub-system level at the premises of sub-contractors and at platform level at the shipyard and at sea.

[1462] The same procedures were followed for the combat suite, which was mainly build in Cape Town, Gauteng and partly in France. Installation, setting-to-work and extensive sea trials were executed in Simon's Town.

[1463] In parallel with the production of the four corvettes, all ILS deliverables had to be generated and/or reviewed and/or accepted. Throughout the production phase, the joint project team and GFC team members participated in regular progress and technical meetings.

[1464] The JPT's project executive, consisting of the Project Officer and the Programme Manager, were also required to report on a quarterly basis to the Maritime Projects Steering Committee. Apart from reporting on detailed

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milestone progress, the project executive was also required to report on aspects such as the project's risks and the abatement thereof.

[1465] In conclusion, Mr Nortjé stated that the frigates received by the SA Navy were capable vessels with 'long legs' and speed when required. They are the perfect vessels for our local conditions and the country received good value for the money spent on these vessels.

23. Mr Jacobus Gerhardus Grobler

[1466] Mr Grobler obtained a BCom (Accounting) degree from the University of Pretoria in 1986, a BCom (Honours) from UNISA in 1987, and qualified as a Chartered Accountant in 1989. In 1997 he obtained an MBL degree from UNISA, and an MCom (Taxation) from the University of Pretoria in 2004.

[1467] He was employed by Armscor from July 1990 to date in its Financial Department. From 2008 to date he was appointed General Manager Finance.

[1468] Two internal audits dealing with the SDPP were conducted between November 1998 and July 1999. At the time of the audits he was the Senior Manager: Internal Audit and a member of the audit team.

[1469] The first internal audit was conducted between 6 and 30 November 1998 and the second between 17 June and 14 July 1999.

[1470] Armscor's Internal Audit Division is mandated to provide independent, objective assurance and consulting services designed to add value and improve Armscor's operations. The most important responsibilities of the Audit Division include the following:

- Conducting financial audits
- Developing and implementing flexible audit plans based on appropriate risk assessment principles
- Assisting in the investigation of significant suspected fraudulent activities within Armscor and subsequently notifying Armscor's Management and the Audit Committee of the results of such investigation

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- Conducting special investigations at the request of Management.

23.1. Audits conducted by external auditors

[1471] The Audit Division compiles the annual audit plan. The audits are performed in co-ordination with external auditors appointed from time to time and the Auditor-General.

[1472] In order to minimise duplication, the Audit Division, the Auditor-General and the external auditors would agree on the areas which should be covered by each of them. Areas covered by the Auditor-General and/or external auditors would be excluded from the portion of the audit investigation covered by the Audit Division. The audit plan would also make provision for the ad hoc audit requests. Once the audit plan is compiled, it is submitted to the Audit Committee for approval.

[1473] As required by the relevant legal provisions, the accounts of Armscor had to be audited annually by a registered accountant and auditor.

[1474] At the relevant time, in order to comply with the applicable legal provisions, Armscor's financial statements were audited by external auditors (KPMG Inc and Gobodo Inc) for purposes of expressing an opinion on the financial statements.

23.2. Audit of the SDPP acquisition

[1475] Where an ad hoc audit request is made by Management, the Senior Manager: Internal Audit is accountable to Management in respect of that request.

[1476] As stated earlier, the first internal audit was conducted between 6 and 30 November 1998. The audit was conducted as a consequence of an ad hoc request submitted to the Audit Division on 12 October 1998 by the General Manager: Aeronautics and Maritime, Mr H de W Esterhuysen.

[1477] The Audit Division's mandate, in this regard, was limited to ensuring that the recommendations communicated to the AAC by SOFCOM were 'based on an accountable tender evaluation process'.

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[1478] The scope of the request was for the Audit Division to perform an audit on the evaluation process followed by:

- The evaluation teams in respect of the LIFT, ALFA, LUH, MH, the corvettes and the submarines
- The evaluation teams in respect of the DIP
- The Finance Committee evaluation team (FINCOM)

[1479] In conducting this audit, it became necessary for the audit team to review the role played by Armscor's Procurement Secretariat throughout the procurement process.

[1480] As the matters to be investigated in the first Internal Audit were broader than financial matters, the members of the audit team appointed to conduct the first internal audit (and subsequently the second internal audit) were drawn from both the Audit Division and the Quality Engineering Services. The audit team comprised of:

- Senior Manager: Internal Audit, Mr JG Grobler
- Senior Manager: Quality Engineering Services, Dr BJE Van Tonder
- Chief Engineer: Quality Engineering Services, Mr W van der Walt

[1481] When the ad hoc audit request was made, it was understood by the Audit Division that the ambit of the request was such that an in-depth and lengthy investigation was not required, given the advanced stage at which the SDPP acquisition was at the time the request was made.

[1482] The ad hoc request for the first internal audit was submitted to the Audit Division at the time when:

- The evaluations in respect of each programme had been completed by the respective evaluation teams
- The final evaluation reports had been prepared by the respective evaluation teams (save for the evaluations reports in respect of the LIFT and ALFA)

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- The final evaluation reports in respect of the LUH, MH, corvettes, submarines and FINCOM had already been signed (however the final evaluation reports of the LIFT and ALFA had not been signed at the time the audit was concluded)
- The evaluation reports and results in respect of each programme had already been presented to SOFCOM, and
- These evaluation results had already been submitted to the AAC.

23.3. First internal audit methodology

[1483] The documents used to conduct the first internal audit were the documents that had been provided to SOFCOM ('source documents').

[1484] The source documents mainly consisted of:

- LIFT Contenders: Evaluation Report dated June 1998
- Presentation of ALFA Evaluation Results dated June 1998
- SAAF Light Utility Helicopters: Final Response Evaluation Results for February 1998 Request for Offer dated 25 June 1998
- *Project Wills*: Submarine Evaluation Report dated 25 June 1998
- International Equipment Offer Evaluation: Corvette Military Evaluation Report dated 25 June 1998
- Defence Industrial Participation : Assessment Results Defence Package Deal dated 26 June 1998
- International Defence Equipment Proposals: Financing Evaluation Report dated 29 June 1998

[1485] In respect of the Procurement Secretariat, the findings reached by the audit team were largely based on interviews with the relevant officials.

[1486] In addition to the source documents, interviews were conducted with the team leaders and some members of the respective evaluation teams. Names of persons interviewed were mentioned in paragraph 1 of the audit report. The interviews were an integral part of the investigation process, although no minutes were kept by the audit team.

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[1487] Once the audit team had gathered sufficient information to make a finding, each member gave input on the aspect of the audit conducted by such member in order to facilitate preparation and finalisation of the audit report.

[1488] The first audit report was signed by each member of the audit team and issued in January 1999. On 21 June 1999 he presented a summary of the findings of the first internal audit to the Audit Committee.

23.4. First internal audit findings

[1489] As far as the accountability of the evaluation processes was concerned—although for a number of reasons in some cases certain evaluation processes were not performed strictly in accordance with Armscor's procedures—the audit team found *'no evidence of any improper conduct on the part of any ARMSCOR employee involved in the evaluation of the various proposals.'*

[1490] As far as the LUH, corvettes and submarines processes were concerned, the audit team noticed certain shortcomings and made recommendations to remedy the shortcomings. The identified shortcomings did not compromise the evaluation results in any significant manner.

[1491] As far as the LIFT and ALFA were concerned, the audit team was assured that proper evaluation processes were followed after certain information they had requested was supplied to them.

[1492] The report further noted that:

'The final decision regarding the LIFT contractor cannot be accounted for based on documentation supplied to the SOFCOM. However it is recognised by the auditors that this decision was taken at a higher level and thus falls outside the scope of the present audit.'

[1493] The audit report also noted certain concerns regarding the manner in which the DIP proposals were evaluated. The report further recommended

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that three DIP teams should compile activity reports where their activities were described and justification for specific decisions was given.

[1494] Lastly, the audit report noted that FINCOM and the Procurement Secretariat performed their functions in accordance with the relevant procedures but recommended that the minutes of FINCOM and the files of the Procurement Secretariat be stored in a certain manner.

23.5. Second internal audit

[1495] On 24 May 1999, the Management Board requested the Audit Division to conduct a follow-up internal audit on processes followed since the announcement of the preferred suppliers by the Cabinet in November 1998. At the time of the above-mentioned request, the various umbrella agreements with the preferred bidders were being negotiated and the technical and DIP evaluation teams were in the middle of conducting evaluations at sub-system level.

[1496] The audit team understood the processes followed by programme teams and other parties involved in the SDPP. The audit was requested to ensure accountability and transparency in the handling of various aspects of the various programmes.

[1497] Prescribed Armscor practices and generally accepted commercial best practices were to be used as benchmarks.

23.6. Second internal audit methodology

[1498] The second internal audit was conducted at the time when a number of documents that would have been relied upon for the purposes of the audit had not yet been finalised. As a result the audit team was forced to rely on interviews to conduct this audit.

[1499] After the audit team had gathered sufficient information to make a finding, each member of the team gave input on the aspect of the audit conducted by such member. The interim audit report, after its preparation, was signed by each member of the audit team and was issued on 3 August 1999. The Second Audit Report was submitted to Management. On 1

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December 1999, Mr Grobler presented to the Audit Committee a summary of the audit team's interim findings as contained in the second internal audit report.

23.7. Second internal audit findings

[1500] With regard to the evaluation processes applied at sub-system level, various concerns were raised by the audit team. The main concern related to the procedures used by the preferred suppliers when dealing with their potential sub-contractors at sub-system level. The preferred suppliers followed their own evaluation procedures and some of them were not to the same standard as Armscor's procedures.

[1501] Some of the observations made by the audit team were the following:

- *LUH*: Agusta followed its own procedures for obtaining and evaluating tenders from potential subcontractors. The project team made inputs regarding the suitability and capability of tenderers and other possible local suppliers.
- *Corvettes*: The project team, consisting of Armscor and SAN personnel, became closely involved with the selection and evaluation of equipment and subcontractors for the combat suite to address value for money and affordability. Offers for the sub-systems were received via the consortium and not directly from the tenderers. Value systems were applied by the same team that had developed them.
- *LIFT*: The report stated that '*[c]hoice of subcontractors was mostly left to BAe with final approval by the programme (sic) team. BAe retains final responsibility for total systems.*'
- *Submarines*: The project was initially managed by a joint Client Project Team (CPT), consisting of the Programme Manager, Project Officer and Project Engineer. Initially the three CPT members participated in all negotiations, but later not all members could attend. Initially the representatives of GFC were mainly from their marketing team, but later technical personnel were also involved.

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[1502] Despite the concerns raised by the audit team, the report stated that even though a number of concerns existed regarding the procedures followed, the role of project teams and accountability and actions by parties outside Armscor, no evidence was found that would indicate misconduct on the part of any Armscor personnel.

23.8. Special review by the Auditor-General

[1503] To the best of his recollection, a third internal audit was to be conducted by the Audit Division following the conclusion of the various umbrella agreements.

[1504] During the period September 1999 and September 2000, the Auditor-General conducted its annual audit on the Special Defence Account and General Defence Account activities, which audit included an investigation into the SDPP acquisition.

[1505] A Special Review Report of the Selection Process of the SDPP for the Acquisition of Armaments was issued by the Auditor-General on 15 September 2000.

[1506] In the light of the investigation by the Auditor General, the Audit Division, in consultation with the Audit Committee, abandoned the third audit in order to avoid duplication of work between the Audit Division and the Auditor-General.

[1507] On 4 October 2000, the Special Review Report was tabled in the Audit Committee for consideration.

[1508] An investigation into the SDPP was conducted jointly by the Auditor-General, the National Director of Public Prosecutions and the Public Protector. The Audit Committee was kept updated on the progress of this joint investigation.

[1509] At the Audit Committee meeting of 13 June 2002, the Committee was informed that among the findings made by the Joint Investigation Team, was that none of the Armscor employees and/or officials was implicated in any wrongdoing with regard to the SDPP.

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[1510] In conclusion Mr Grobler stated that despite the fact that they had limited time to conduct both the first and second internal audits, the Auditor-General did not note any material deviations that differed from the findings of the first and second audit reports.

[1511] Lastly, the findings of the Joint Investigation Team confirmed that none of the Armscor employees and/or officials was implicated in any wrongdoing with regard to the SDPP.

24. Mr Cornelius Johannes Ferreira

[1512] Mr Ferreira obtained a BSc (BEng) Electronic degree from the University of Stellenbosch in 1978 and an MBL from the University of South Africa in 1985. He commenced his engineering career with Barlows Electronic Systems in Midrand in 1979, where he was involved in various electronic projects for the Defence Force. In 1982, he was with the SAAF as a systems engineer on the Mirage F1. His main task was to supply technical and system expertise on the Mirage F1 navigation and weapon delivery systems.

[1513] In 1988, he joined Armscor as a Programme Manager in the Aircraft Division, responsible for the Cheetah (Mirage III modification) programme. He managed the closure phase of the Cheetah D programme. He worked on other projects and in 1995 returned to the Aircraft Division to participate in the evaluation of the new fighter and trainer aircraft as offered in the Strategic Defence Alliance with specific emphasis on the logistics.

[1514] Later, when the SDPP was initiated, he was part of the team that was involved in the evaluation process of both the LIFT and the ALFA. He was also the Programme Manager of the LIFT Programme.

[1515] Since 2000, he had been the Armscor Programme Manager for *Project Winchester*. He was responsible for the acquisition of the Hawk LIFT. He is still employed by Armscor as a Senior Manager and Programme Manager of the Hawk Programme.

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[1516] The acquisition of the aircraft systems was in a sense unique in that it involved a single RFP to all potential bidders, with a single potential contractor providing an integrated and certified system, including the equipment, support system and training. Accordingly, each potential contractor was expected to supply a statement confirming that its aircraft offering met all the specifications and safety requirements of the SAAF.

[1517] The Project Ukhozi Control Council was established in October 1995 and its constitution approved on 25 March 1996. The Integrated Project Team regularly reported to the Ukhozi Control Council, which was responsible for the overall programme strategy, approval of the evaluation process, and serving as interface between the Joint SAAF/Armcor Project Team and the Document Control Centre, amongst others.

[1518] In the early 1990s the SAAF strategy made provision for the replacement of the Impala Aircraft with an AFT (*Project Ukhozi*) and the replacement of the Cheetah with a medium fighter aircraft (*Project Kambro*).

[1519] *Project Ukhozi* was for the replacement of the ageing fleet of Impala MkI and MkII aircraft with a multi-mission jet trainer, capable of effectively bridging the training gap between the Astra basic trainer and the Cheetah C medium fighter and its replacement. At the time, the Astra was the basic trainer, then the Impala Mk I, a dual-seat, the MkII, and the Cheetahs and F1s that were medium fighters.

[1520] The Impalas were reaching the end of their lifespan and needed to be replaced. Initially, therefore, *Project Ukhozi* was for the replacement of the Impalas with an advanced fighter trainer (AFT). The Cheetah aircraft were to be replaced under *Project Kambro* that would have been initiated around 2005 only, as the plan was to remove the Cheetahs from service by about 2012.

[1521] The SAAF Staff Target 2/94 of 25 July 1994 for the acquisition of the AFT as replacement for the Impala MkI and MkII, was approved by the Minister of Defence on 18 October 1994. Approval was granted in Staff Requirement 2/95, which provided more information, and funds were

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allocated and approved for the project study. On 22 May 1995 an RFI was sent out to suppliers identified for the AFT. After the evaluation process, a shortlist of potential suppliers was compiled for receiving and RFO.

[1522] Armscor continued with the project study and submitted the shortlist to the Ukhozi Control Council which submitted it in July 1996 to the AASB for approval that would enable Armscor to issue an RFO. They had a budget for the proposed acquisition.

[1523] On 20 March 1997, the AASB approved a recommendation by the Ukhozi Control Council to delay the project by 12 months. The decision to delay was revised at the AASB meeting of 17 April 1997 and it was decided to postpone the project until the Defence Review was completed and funding obtained. The RFI for the AFT programme fell away since the study report prepared earlier was no longer applicable to the new SAAF requirements.

24.1. Project Ukhozi – ALFA

[1524] On 5 August 1997, due to budgetary constraints, the SAAF proposed a new strategy for satisfying its requirements for fighter aircraft. The new fighter strategy involved the change from a three-tier to a two-tier fighter programme.

[1525] On 19 September 1997 the COD approved the continuation of the SDPP and resolved to include the ALFA programme.

[1526] On 29 September 1997, Armscor issued an RFI for ALFAs to the countries selected by the AAC to participate in the SDPP. The Staff Target and the Staff Requirement served as the technical basis for the drafting of the RFI. The RFI contained DIP, NIP and technical requirements. (In November the SAAF reverted to the three-tier system and introduced the Lead-In Fighter Trainer).

[1527] The evaluation of the ALFA RFI was in accordance with the military value as defined for the second order evaluation value system.

[1528] Ten potential contender responses were received and evaluated against a value system that applied to the RFI. Three contenders were

shortlisted for the supply of the aircraft. In February 1998, the SAAF revised Staff Target 2/94 and Staff Requirement 2/95—the ALFA Staff Target and Requirements—to include the reintroduction of the LIFT. On 6 March 1998 the AAC approved the updated Staff Target and updated Staff Requirement for *Project Ukhozi*, which now included the LIFT component in the aircraft acquisition.

[1529] The SAAF was looking for 60 dual-seat and 32 single-seat aircraft.

[1530] The revised *Project Ukhozi* programme was aimed at replacing the Cheetah C and D, Mirage F1 and Impala MkII with a modern, economical Advanced Light Fighter Aircraft. (The Mirage F1 was phased out in 1997 while the Impala fleet would have been phased out from 1997 to 2004 and the Cheetah C and D from 2012 to 2016.)

[1531] On 28 February 1998, the AAC approved an RFO for distribution to the three shortlisted suppliers to solicit offers for the ALFAs, The AT 2000, Mirage 2000 and the Gripen were recommended for receipt of an RFO.

[1532] At the end of the recommendation the following was noted:

'All three above aircraft are considered acceptable to satisfy the SAAF's requirement for an Advanced Light Fighter Aircraft subject to the risks being covered contractually and by Government-to-Government Agreement.'

[1533] The ALFA RFO was issued to the shortlisted suppliers on 14 February 1998 with a closing date of 14 May 1998. The RFO was based on actual requirements as contained in the URS, a much more detailed document than the RFI. The Cheetah aircraft was serviceable beyond 2008 and the delivery of the single-seat aircraft could be phased in over a longer period with the first delivery to start during 2008 and final delivery in December 2012.

[1534] The responses received from the three contenders were evaluated against a final value system. The main contractor was the selected offeror for the ALFA system. The main contractor would have the total contractual

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responsibility for the execution of the ALFA system acquisition programme and would be the formal interface with all the subcontractors. Armscor did not communicate with the subcontractors. If they were unhappy about the performance of the aircraft, they complained to the main contractor and the latter had to resolve the issue with the subcontractors.

[1535] The RFO stated that communication would be between Armscor and the offeror. Contracting would also not be done via any agent and/or representative of the offeror.

[1536] The responses received from the offerors were split into three parts, namely, the technical part, the DIP and NIP parts, and the financing part. Each part of the proposals was referred to the relevant team. The Integrated Project Team completed the evaluation of the RFO by the middle of June 1998. As stated earlier, the ALFA programme was aimed at acquiring an Advanced Light Fighter System to replace the Cheetah C, the Cheetah D, the Mirage F1 and the Impala MkII.

[1537] It should be mentioned that the value system for the ALFA was accepted after the closing date for the submission of the RFOs. Armscor issued an instruction that the RFO proposals should not be distributed until the value system had been signed off. The proposals were kept by the Procurement Secretariat of Armscor until the value system was approved. The results of the ALFA RFO, based on the second order military value, were presented to SOFCOM during the first week of July 1998.

[1538] Given the limited evaluation time afforded to the technical evaluators, the final project study report documenting the full evaluation process was only completed by mid-September 1998. This report recommended a ranking based solely on the military value of the shortlisted aircraft types. These aircraft satisfied the requirements of the ALFA. The Ukhozi Control Council meeting of 8 June 1998 approved the ALFA evaluation report and made appropriate recommendations to SOFCOM.

[1539] SOFCOM accepted the military value technical score results and consolidated them with the other evaluation results, namely the NIP, DIP

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and financial evaluation results. SOFCOM presented the consolidated scores to higher bodies and ultimately to the Cabinet. The shortlisted ALFAs were the following: Gripen, AT2000 and MIR2000. The Gripen came first in virtually all categories of the value system, such as military value, programme management, engineering plan, military functionality, logistic support system, mission and training support system and operational support system. The Gripen was found to be the best aircraft for the SAAF.

[1540] The military values counted one-third of the total scores, the DIP and NIP another third and financing also a third.

[1541] The Gripen was found to have the lowest programme risk, followed by the Mirage 2000 and then the AT2000. The latter had the highest risk factor. Once the scores were presented to SOFCOM, the IPT's involvement in the evaluation process of the SDPP came to an end.

[1542] SOFCOM managed the comprehensive selection process until the Cabinet announced the preferred suppliers on 18 November 1998.

[1543] From 18 November 1998 to 31 October 1999, the IPT was revived to assist the IONT in negotiating the supply terms agreements with the preferred supplier for the Gripen ALFA. The IONT negotiated the umbrella agreements, whilst the IPT negotiated the Supply Terms.

[1544] The acquisition plan for *Project Ukhozi* was concluded within budget and the relevant agreements were signed on 3 December 1999. *Project Ukhozi* (Gripen) stretched over a period of 12 years with deliveries of the dual-seat aircraft taking place from 2008 and 2009 until early 2012.

[1545] The acquisition contract was split into three tranches. Tranche 1 included nine dual-seat aircraft; tranche 2 included some additional spares to support tranche 1; and tranche 3 included 19 single-seat Gripens. In terms of the supply terms for the Gripen, there was an option to pull out of tranche 3 at no cost by 31 March 2004.

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[1546] On 3 December 2003, the Cabinet approved the continuation of tranche 3 as well as the incorporation of required additional functional changes, some of which were included in the Gripen Supply Terms as options. The Cabinet also approved that up to two single-seat Gripen aircraft could be cut to fund the required functionality, including the integration of the short range missile selected by the SAAF. The reduction of the aircraft from 28 to 26 was confirmed by the AAC on 20 May 2005.

[1547] During 2007 it became apparent that SAAB would not be able to deliver the full contracted functionality with the scheduled aircraft deliverables and certain amendments to the contract were effected.

[1548] To date, the Gripen is at its contractual functional baseline and there is no more development taking place on the aircraft.

24.2. Project Winchester – LIFT

[1549] On 17 November 1997, the SAAF Command Council confirmed the requirement for a three-tier fighter training system and resolved that *Project Winchester* should continue in order to satisfy the LIFT requirement.

[1550] On 16 March 1998 the AAC approved Staff Target 1/98 and Staff Requirement 1/98 for *Project Winchester* with the instruction to consider leasing the aircraft as an option. The project also had to be brought in line with *Project Ukhozi* and be concluded within the SDPP time scales.

[1551] *Project Winchester* was for the replacement of the ageing fleet of Impala MkI and MkII aircraft with a robust, cost-effective jet trainer and fighter trainer, referred to as the LIFT, capable of effectively bridging the training gap between the Astra basic trainer and the ALFA.

[1552] The LIFT was primarily a trainer aircraft but was required to perform collateral operational missions. The LIFT fleet had to be operational by January 2005, by which time the current Impala fleet would have been phased out. The LIFT fleet had a lifespan of 35 years and had to be in service from the year 2005 up to and including the year 2040.

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[1553] Based on the User Requirement Specifications, Armscor prepared an RFI for the acquisition of the LIFT aircraft.

[1554] Mr Ferreira was involved in the preparation of the RFI. He was engaged in both programmes from their inception to the time of contracting. He was a member of the LIFT Integrated Project Team until the final selection was made.

[1555] The layout of the LIFT RFI was the same as that for the ALFA, with some difference in the detail. The LIFT RFI document, unlike the ALFA's RFI, required information about the supplying company's structure, financial information, annual reports, and so on.

[1556] The IPT provided the military value as defined for the second-order evaluation value system.

[1557] On 3 February 1998, the Ukhozi Control Council approved the issuing of RFIs to identify suppliers for the acquisition of the LIFT. The Ukhozi Control Council advised that the RFI process had to be managed and considered for inclusion in the SDPP.

[1558] In using the LIFT RFI to identify suppliers who could satisfy the LIFT requirements, the Project Team took into account the results of the *Project Ukhozi* interim AFT Project Study Report referred to earlier.

[1559] The RFI was sent to all countries that were originally approached for proposing an ALFA, with Russia, the Czech Republic and Switzerland added to the list. About 20 contenders were sent RFIs.

[1560] The objective of the LIFT RFI was to obtain information from prospective suppliers in respect of aircraft systems that could satisfy the LIFT requirements. A value system was compiled in order to enable Armscor to make a final selection of the aircraft and suppliers who would be eligible to receive RFOs.

[1561] Twenty suppliers were identified through the LIFT RFI process. The LIFT RFI evaluation results were presented to a special Ukhozi Control

Council meeting on 24 April 1998. On 30 April 1998, a further Ukhozi Control Council meeting took place and in that meeting the recommended LIFT shortlist was approved. It was decided that only suppliers of aircraft with a military value of above 60, based on the value system, would receive an RFO. It was also decided that the shortlist would be tabled at the AAC meeting to be held on the same day for approval.

[1562] The shortlist was tabled at a combined AASB/AAC meeting the same afternoon, where it was approved that RFOs should be sent to the following contenders for the LIFT system:

AASB/AAC APPROVED CONTENDERS		
COUNTRY	SUPPLIER	AIRCRAFT
CZECH REPUBLIC	AERO VODOCHODY	L159
ITALY	AERMACCHI	MB339FD
ITALY	AERMACCHI	AEM/YAK 130
UNITED KINGDOM	BRITISH AEROSPACE	HAWK 100

[1563] On 12 May 1998, an RFO was issued to the shortlisted suppliers. On 18 May 1998 SOFCOM was briefed on the LIFT contender evaluation process, including that the evaluation process had been compressed to permit consideration of the LIFTs' being included in the SDPP. Also during May 1998 the SAAF issued a User Requirement Statement for *Project Winchester*. Proposals were received from the shortlisted suppliers on 15 June 1998. These shortlisted suppliers were evaluated on the LIFT RFO value system.

[1564] The IPT completed its evaluation of the offers received by the end of June 1998 and presented its results to the Ukhozi Control Council (table on the next page).

[1565] The Hawk 100 had no major risk. It had the lowest risk element of all the contender aircraft. The major risk factor associated with the MB339 was that the engines might not be available or economically maintainable over the intended service life.

[1566] Despite its high risk factor, the calculations that took risk into account, placed the MB339 first, followed by the HAWK 100 and then the others.

RFO Evaluation Results for the LIFT

<u>MILITARY VALUE INDEX</u>	
MB339FD	73
L159	65
Hawk 100	64
AEM/YAK 130	47

<u>PROGRAMME MANAGEMENT</u>		<u>ENGINEERING MANAGEMENT</u>		<u>TRAINING A/C FUNCTIONALITY</u>		<u>LOGISTIC SUPPORT</u>	
MB 339FD	87	MB 339FD	89	L159	69	MB 339FD	82
Hawk 100	76	Hawk 100	69	Hawk 100	64	L159	77
AEM/YAK 130	63	AEM/YAK 130	27	MB 339FD	61	AEM/YAK 130	66
L159	61	L159	9	AEM/YAK 130	36	Hawk 100	58

[1567] During the evaluation process, the Minister of Defence instructed that financial constraints should not be an overriding consideration in the evaluation and selection process. (This aspect is reverted to below under 'Project Winchester – Project study report'.)

[1568] The IPT, at the request of SOFCOM, presented its technical results on 2 July 1998 to SOFCOM for consolidation. SOFCOM accepted the military value technical score results and consolidated them with the other evaluation results, namely the NIP, DIP and financial results. SOFCOM presented the consolidated scores to higher authorities.

[1569] The evaluation indicated that all four contenders satisfactorily met the SAAF technical requirements but the Aermacchi AEM/ YAK 130 could not meet the URS time scales, it was a high-risk option still under development, and a twin engine aircraft. The Aermacchi 339FD, Aero Vodochody L-159 and BAE Hawk 100 were all evaluated and found to be suitable LIFT aircraft.

[1570] The interim project study phase concluded that the military order of merit according to the approved military value system, excluding cost but including the risk abatement moderated value, was Aermacchi MB339FD, BAE Hawk 100 and Aero Vodochody L-159. However, all three contenders were acceptable to the SAAF. SOFCOM accepted the results and added the other evaluation results to the military values for presentation to the Cabinet.

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[1571] On 18 November 1998, the Cabinet approved BAE as the preferred LIFT supplier with the Hawk 100. From 18 November 1998 to 31 October 1999, the IPT negotiated the Supply Terms and conditions of the LIFT acquisition with BAE Systems.

24.3. Project Winchester – project study report of November 1998

[1572] Amongst others, the project study report dealt with cost effectiveness. After taking all factors into account, the evaluation team came to the conclusion that on the basis of the risk moderated military value the MB339FD came first, followed by the L159, then the Hawk and lastly the AEM/YAK 130. The report stated the following:

‘MB339FD: The MB339FD has the highest Risk Moderated Military Value and the lowest Programme Cost, and therefore has the highest cost effectiveness. With a Programme Cost approximately half that of its competitors, the cost effectiveness margin is significant, 48% above its closest competitor.

On this basis the MB339FD is an obvious preferred option and rank no. 1 on the preference list...’

[1573] The report further noted:

‘L159: ... the Risk Moderated Military Value for the L159 is below that of the HAWK 100 but because the Programme Cost for the L159 is lower, it represents a higher cost-effective than the HAWK 100. The L159 is therefore ranked second on cost-effectiveness and is proposed as the first alternate offer after the MB339FD.’

[1574] As far as the Hawk 100 was concerned, the report stated the following:

‘HAWK 100: The HAWK 100 is a well-proven aircraft that has gone through several development phases but still has some growth options, had a large quantity produced and still is in production, and has a large client base. It represents the lowest risk of all the options. It is also the most expensive contender

with a Programme Cost more than double that of the MB339FD. On cost effectiveness it is rated third and is therefore considered the second alternative offer to the MB339FD after the L159.

Because of its higher performance, including a transonic capability when clean and in a dive, the HAWK 100 presents a larger training envelope than the MB339FD.'

[1575] It was also noted that the MB339FD family of aircraft was probably approaching the end of its production run. Towards the end of the SAAF's intended service life of 30 years it could become very expensive to operate the MB339FD if it was no longer in production and if the operators have phased out or were phasing out their MB339 aircraft.

[1576] The Report further stated that

'[d]uring this AASB/AAC meeting [of 30 April 1998] the Minister of Defence once again reiterated that the shortlist decision should not be based on an unsubstantiated cost limit that could prevent the SAAF and the industry from sustaining or improving on their current technology base as they move into the 21st century.'

[1577] The report noted that the evaluation team took into account this request by the Minister of Defence not to make cost the only consideration when recommending a LIFT contender for the final selection. SOFCOM has also requested the Project Team to submit a recommended rank order based on risk moderated military value only, that is, excluding any cost consideration.

[1578] The ranking in order of preference based on the risk moderated military value only, indicated that the MB339FD came first, followed by the HAWK 100, the L159 and the AEM/YAK 130 respectively.

[1579] The Integrated Project Team, at the request of SOFCOM, presented its technical results to SOFCOM on 2 July 1998 for consolidation. SOFCOM accepted the military value technical score results and consolidated them

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with other evaluation results, namely the NIP, DIP and financial evaluation results. SOFCOM presented their consolidated results to higher authorities.

[1580] The *Project Winchester* LIFT Project Study Report of November 1999 was re-issued after the announcement of the preferred supplier.

[1581] On 19 July 2000, Mr André Kok, the Armscor's Programme Manager on both programmes during the negotiation phase, drafted a memorandum in response to certain questions raised by SCOPA. In the memorandum, he stated the following, amongst others:

'2.1 The first time it was minuted that the LIFT evaluation should not take cost into consideration was when the LIFT RFI evaluation results were presented to a Special Ukhozi Control Council Meeting ... on 30 April 1998.

2.2 On 5 May 1998 the approval by the combined AASB/AAC on 30 April 1998 of the recommended shortlist was presented to the Ukhozi Control Council. At this meeting it was minuted that the reason why the recommendation to the combined AASB/AAC was not based on cost-effectiveness was because it was felt that the cost-constraints for the inclusion of the LIFT into the Strategic Defence Packages should be determined by the AAC ...

2.3 At a Special SAAF Command Council meeting ... held at SAAF HQ on 29 June 1998, the LIFT recommendation to be presented to the SOFCOM was formulated and approved ...

With regard to preparing two recommendations the following two decisions were minuted:

Paragraph 3.3

A separate recommendation is required where cost is not taken into account as per the request from the Minister of Defence.

Paragraph 3.6

The final recommendation gives two alternatives, the first alternative (A) being the most cost effective solution based on achieved Military Value for the aircraft taking into account the associated risk and the cost of the aircraft system.

The second alternative (B) does not take the cost of the aircraft system into account and is therefore the recommended aircraft based on the achieved Military Value with its associated risk.'

[1582] Paragraph 2.1 and 2.2 above related to the RFI phase and paragraph 2.3 to the RFO phase.

[1583] As a member of the evaluation team, he could confirm the statement contained in the Auditor-General's report that in the LIFT programme the MB339FD could have been acquired much cheaper whilst also meeting the SAAF's requirements.

[1584] The non-costed option was not consistent with the approved value system. The value system required that the military value of performance should be divided by cost to arrive at the military value index. The non-costed option was a deviation from the value system that was approved and agreed upon.

[1585] He was referred to paragraph 5.14.10 of the Auditor-General's report and he agreed with the statement that read as follows:

'The relevant bodies with authority should make proper recommendations to ensure that the Cabinet does not have to decide on the best acquisition options as was said by the AAC. This in a sense meant that the acquisition process for LIFT was a fruitless exercise.'

[1586] He further stated that the final decision was based on other factors that were not put forward by the Project Team.

[1587] He was referred to statements contained in some of the publications dealing with the SDPP. He refuted some of the allegations contained in the

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publications, but agreed that as far as the technical evaluation was concerned, the Hawk 100 was not ranked first in the evaluation process, even when costs were excluded.

[1588] He was also referred to a statement made by some authors, to the effect that the Cheetah was a much more competent combat aircraft than the Gripen, but he disagreed. He pointed out that the Cheetah aircraft had to be replaced because they were nearing the end of their economic lifespan. While the lifespan of the Cheetah could have been extended beyond 2012, it would have been very costly.

24.4. Supply Terms

[1589] From 18 November 1998 to 21 October 1999, the Integrated Project Team negotiated the supply terms and conditions of the LIFT acquisition with BAE Systems, which was the preferred supplier. Following the selection of the Hawk a detailed baseline was negotiated with BAE Systems.

[1590] The Hawk 100 was initially offered with the Rolls Royce Adour Mk871 engine, with the Allied Signal F124 as an option. Ultimately the Rolls Royce engine was chosen, although the engine was not the Adour Mk871 but an Adour 951 that was offered as a replacement engine by Rolls Royce. The latter engine was the most advanced and cost effective. We have only dual-seat Hawk aircraft.

[1591] As a member of the Integrated Project Team, he was involved in drafting the Supply Terms of both the Hawk and Gripen aircraft systems.

[1592] According to his understanding the main contractors had the right to select the subcontracts. If at a later stage the main contractor desired to bring other subcontractors on board, the main contractor would have to clear the matter with Armscor.

[1593] Under re-examination he testified that the outcome of the RFO evaluation was that as far as the technical evaluation was concerned, the MB339 came first in both instances, where military value cost effectiveness was taken into account and where it was not.

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[1594] The only difference in the ranking after the two evaluation methods were applied, was that the Hawk 100 had moved up from third to second place and had displaced the L159, which was second when costs were taken into account. In the non-costed scenario, the L159 moved from second to third spot. Mr Ferreira pointed out that Mr André Kok, who was referred to earlier, was his colleague and that he supported him on both programmes as the Armscor Programme Manager during the negotiation phase up to the point where the contracts were signed.

[1595] He confirmed that the first time that it was minuted that the LIFT evaluation should not take cost into consideration, was when the LIFT RFI evaluation results were presented to a special Ukhozi Control Council meeting on 30 April 1998, where he was present.

[1596] SOFCOM was presented with both costed and non-costed evaluation results. The non-costed option was prepared as requested by the Minister of Defence.

[1597] During the negotiations phase, the SAAF together with the Integrated Project Team, made certain recommendations about the functionality of both aircraft systems. The idea was to save costs and remain within budget. With their proposals, they managed to achieve that objective, but at the same time to keep or incorporate in the aircraft system the capabilities that were deemed crucial by the SAAF. The Gripen was a much more efficient aircraft than the Cheetah.

25. Mr Johan Odendal

[1598] Mr Odendaal obtained a BEng (Metallurgy) degree from the University of Pretoria in 1981, a BEng (Hons) (Physical Metallurgy) from the same University in 1986 and a BEcon from the University of South Africa in 1998.

[1599] He began his career at Lyttleton Engineering as an Engineer-in-Training. He joined the SA National Defence Force in January 1982 and Armscor in March 1987 as a Project Manager.

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[1600] From 1999 onwards he was the Project Manager responsible for the development and procurement of a new Light Utility Helicopter (LUH) for the SAAF. He is currently still employed by Armscor as a Senior Manager Technical in the Aero Systems Division.

[1601] In the LUH programme he was responsible for the technical negotiations of the contract, overseeing the development and production of the LUH, including the technicalities, finances and personnel involved.

[1602] His evidence related to the LUH acquisition, which formed part of the SDPP. This included the adjudication process with regard to the scoring of the technical value system, the negotiating phase from a technical point of view and overseeing the acquisition of the LUH. The preferred bidder was selected prior to his involvement in the LUH acquisition programme.

[1603] He was informed that Colonel Viljoen had testified that he drew the first version of the User Requirement Statement in 1994. There were several iterations of the User Requirement Statement, and version 5 was the one that was approved in March 2000. He confirmed the testimony of Colonel Viljoen on this point.

[1604] On 16 May 1996, Staff Target 03/95 of 29 January 1996 was approved for the replacement of the Alouette III fleet of aircraft that was operated by the SAAF since 1962. The programme was designated *Project Flange*.

[1605] He explained that the Staff Target was a summary of the operational requirements, the function of those requirements, gaps in the existing equipment and how those gaps could be remedied. The Staff Requirement is a detailed description of the user requirements. The acquisition plan contains information on equipment to be procured, risks associated with the procurement of the specific equipment, timescales and financial issues. The User Requirement Statement is a detailed function and logistic requirement specification.

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[1606] The Staff Target is an obligatory document. The approval of the Staff Target is followed by the project study by the Integrated Project Team, comprised of DOD, SAAF and Armscor representatives.

[1607] As in other acquisition projects, the project study included the evaluation of possible contenders for purposes of the LUH and was based on a process of establishing the operational and support requirements of the SAAF, and Armscor's contractual requirements.

[1608] An RFI was issued on 17 July 1996—prior to the SDPP—to all identified possible suppliers. This was the first RFI. The purpose of the RFI was to determine whether the suppliers had a product that would satisfy the requirements of the SAAF and whether the suppliers were interested in participating in the acquisition programme.

[1609] The RFI was issued to the following 16 companies with their products:

- Agusta – Italy
- Bell Helicopter Textron – USA
- Eurocopter SA – France
- HAL (Hindustan Aeronautics) – India
- Kamov – Russia
- Mc Donnell Douglas Helicopter Systems – USA
- Mil – Russia
- Sikorsky Aircraft – USA
- WSK PZL Swidnik – Poland
- Comair Sales – Russia
- National Airways Corporation – South Africa
- Bell Helicopter Textron Canada – Canada
- Moscow Aircraft Production Organisation – Russia
- Denel Aviation – South Africa
- Court Helicopters – South Africa
- Kazan Helicopter Plant – Russia.

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[1610] He confirmed that the document titled 'MOD Policy for dealing with international defence equipment offers in the MOD' was used to put into operation the interim process that would be used solely for the purpose of acquiring the government-to-government packages like the SDPP under consideration. The LUH acquisition process was guided by this policy. The SDPP process superseded the standard Armscor procurement process.

[1611] Due to the inclusion of the LUH as part of the SDPP, the project study phase was restarted and a second RFI dated 29 September 1997 was issued to nine countries included in the SDPP. The second RFI contained the User Requirement Statement for the supply of the LUH and included provisions for Defence Industrial Participation (DIP), National Industrial Participation (NIP) and Financing to cater for all aspects related to the package. For the second RFI, Staff Target 03/95 again served as the technical basis for the LUH User Requirement Statement.

[1612] A response evaluation and procedure for the second RFI was drawn up by members of the IPT and approved by the relevant authorities. The evaluation model or value system was designed for the evaluation of the second RFI's responses and took into account requested information as well as the User Requirement Statement as deduced from the Staff Target. The outcome of the evaluation model was a ranking of the options available in terms of a military value index.

[1613] Only three companies, namely, Agusta (Italy), Bell Helicopter Textron (Canada) and Eurocopter International responded to the second RFI, and they were all shortlisted. Agusta offered the A109 SAAF, Bell Helicopter the Bell 427 and Eurocopter the EC635. The same three companies had earlier also responded to the first RFI.

[1614] The report of the IPT dealing with the evaluation of the RFI responses indicated that the responses of the three shortlisted companies were of an acceptable quality and each complied with the mandatory criteria.

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[1615] The report further indicated that through the application of the value model discriminatory and cost factors, the relative military value Figure of Merit (FOM) ranking of the proposals were:

- A109 first with an FOM of 0,96
- EC635 second with and FOM of 0,77
- Bell 427 third with an FOM of 0,61

[1616] The report further stated that it recorded the results of the LUH Response Evaluation Model as applied to the three responses to the LUH RFI that was issued as part of the technical package that accompanied the ministerial letter of 23 September 1997 regarding the Strategic Defence Alliance.

[1617] Mr Odendal further testified that the RFO phase evaluation, where more detailed information was requested, resulted in the same ranking of the three bidders.

[1618] He reiterated that the specific directive for the SDPP did not replace any other existing policies and procedures. This was not a normal process, but a government-to-government process. Besides the DOD, other government departments were involved.

[1619] After the approval of the RFI evaluation results, it was approved that they issue RFOs to three companies, with 13 May 1998 as the closing date for the responses.

[1620] In the opening section of the RFO it was stated that the SAAF required a fleet of 61 new, technologically advanced LUHs to replace its ageing Alouette III helicopters. The RFO also requested offers for a quantity of 50 and 40 helicopters respectively.

[1621] Clause 2.4 of the RFO further stated that Armscor reserved the right to enter into negotiations with any prospective contractor regarding the prices proposed or any other terms or conditions of the offer.

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[1622] Provision was made for the industrial participation requirements and financing requirements.

[1623] In the spare price list of the RFO the Pratt & Whitney 206 engine is mentioned. The fact that the Pratt & Whitney engine was mentioned did not prohibit the offeror from offering another type of engine, but purely to enable a comparison to be made on a fair basis with respect to logistical cost for the different suppliers.

[1624] A response evaluation model for the RFO, dated 22 May 1998, was duly approved prior to the opening of the proposals.

[1625] Technical evaluation of the RFO responses determined the military value of each of the proposed systems.

[1626] In order to arrive at the military FOM, the operational effectiveness index is divided by the lifecycle cost index.

[1627] Members of the evaluation team did individual evaluations of the proposals and prepared individual score sheets. A risk analysis was done and risk adjustments proposals were developed by members of the evaluation team. It was important to understand the risk surrounding each one of the proposals.

[1628] The evaluation of the RFOs issued in February 1998 was completed by mid-June 1998. The Executive Summary of the evaluation report contained the following:

'Proposals for a Light Utility Helicopter System were received from Agusta (A109LUH) in Italy, Bell Helicopter Textron (M427) in Canada and Eurocopter (EC635) in France/Germany. All three proposals are of acceptable quality and enabled successful application of the value model. Through application of the value model discriminatory and cost factors, relative normalised Military Figure of Merit (MFOM) ranking of the proposals are:

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- *Agusta A109 LUH ranked first with an evaluation MFOM of 100*
- *Eurocopter EC635 ranked second with an evaluation MFOM of 69*
- *Bell M427 ranked third with an evaluation MFOM of 57 ...*

Initial system acquisition cost, call costs, excluding management costs for a product system of sixty helicopters are:

- *Agusta A109 – US\$ 423M*
- *Bell M427 – US\$ 462M*
- *Eurocopter – US\$ 503M*

The programme risk attached to all three proposals were judged by the evaluation team to be normal and acceptable (The Bell and Eurocopter proposals carry a marginally higher risk than the Agusta proposal)."

[1629] The Agusta proposal was both technically the best of the three and also cost the least of the three.

[1630] The results of the industrial participation evaluation and the financial evaluation were done and the three results were combined. The results were presented to SOFCOM at a meeting held during the first week of July 1998.

[1631] SOFCOM was a coordinating committee appointed on 7 April 1998 by the AAC, which was established by the Minister of Defence to assist in the management and execution of the DOD functions in the SDPP acquisition. SOFCOM consisted of representatives of the DOD, the Department of Trade and Industry, the Department of Public Enterprises and Armscor.

[1632] All the programmes were coordinated by SOFCOM up until the Cabinet's decision was announced on 18 November 1998 as to the identity of the preferred suppliers.

[1633] The project team was not further involved until the decision to proceed with the SDPP.

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[1634] As indicated earlier, the RFO mentioned 60 helicopters, but at some stage the bidders were requested to provide information about 60, 50 and 40 helicopters. In all cases the Agusta LUH proposal was the cheapest compared to the prices offered by the other bidders.

25.1. Contract negotiations

[1635] During the period 18 November 1998 to the end of October 1999, the IPT was once again involved in the acquisition process, negotiating the supply terms agreement with Agusta as the preferred LUH supplier for the A109 LUH, under the auspices of the International Offers Negotiating Team (IONT).

[1636] The IONT was negotiating the umbrella agreement and financing agreements at a high level, while the programme teams were negotiating technical details with the respective suppliers in order to finalise the configuration of each of the equipment types while remaining within a predetermined cost ceiling

[1637] Due to affordability the number of helicopters was further reduced by Cabinet from 40 to 30.

[1638] Paragraph 4.4.19 of the RFO reads as follows: *'Describe any performance growth options of the LUH that are currently available or that are under development.'*

[1639] In the initial proposal the Agusta A109 LUH was initially offered with the Pratt & Whitney 206 engine, which was certified on the A109 Power. However, in the Agusta response to the RFO it was indicated that the slightly more powerful Pratt & Whitney 207, which was certified, or the Turbomeca Arrius 2K2, which was not certified as it was still under development, could also be integrated into the Agusta A109 LUH.

[1640] In the RFO evaluation report, paragraph 5.3 reads as follows:

'5.3 ENGINE CHOICE

Engine choice between Pratt and Whitney and Turbomeca was not considered as part of the proposal evaluation. As

prescribed in the RFO the proposal evaluation was done for a helicopter fitted with a Pratt and Whitney PW206 engine. The reason for this was to have a common baseline for all three products (the Bell M427 is available with a Pratt and Whitney engine only).'

[1641] The evaluation team found that regardless of which engine was installed it would not change the ranking of the bidders for the helicopter system.

[1642] By the time the proposals were submitted, the Pratt & Whitney 207 engine was not yet certified, but by the time the successful bidder was announced the engine had been certified by the Civil Aviation authorities.

[1643] When the proposal was made by Agusta, the Turbomeca Arrius 1B1 engine was available and certified by the appropriate authorities, but they were talking about a new engine, which they called the 2B2.

[1644] When the negotiations phases started, Turbomeca changed the designation of the engine to 2K2, to draw a distinction because the 2B2 was suitable for some Eurocopter helicopters, while the 2K2 would be an engine with interfaces suitable to the Agusta LUH.

[1645] Negotiations relating to the best engine in terms of cost and functionality and all other parameters were done only after the selection of the preferred bidder. The engine choice between Pratt & Whitney and Turbomeca was not considered as part of the proposal evaluation.

[1646] The project team had to deal with the question of the engine. The negotiations about the engine had to be conducted between the project team and the supplier of the helicopter, not the engine supplier. This was so because the engine had to be integrated into the aircraft by the aircraft supplier. They were buying an aircraft system and not components thereof. They had to ensure that the chosen engine was supported by the helicopter manufacturer.

[1647] Subsequent to their selection as the preferred supplier, Agusta was requested by the Integrated Project Team to provide a comparative study of both engines. Their report concluded:

- The expected technical performance of the two engines were similar
- The additional cost to Armscor to acquire and integrate the Turbomeca Arrius 2K2 engines into the Agusta A109 LUH would amount to an additional US\$3,8 million
- No extra costs with respect to the Pratt & Whitney 207 engines were applicable
- The expected operating cost of the Pratt & Whitney engine would be marginally lower than that of the Turbomeca engine
- The Turbomeca engine represented a higher risk as it still had to be developed and certified
- Agusta recommended the Pratt & Whitney engine as it represented the lowest risk to the programme and offered a comprehensive local repair and overhaul capability
- Agusta stated that they would support either selection decision, provided that the additional cost with respect to the Turbomeca would be borne by the client.

[1648] During negotiations, the additional cost of US\$3,8m mentioned above was reduced to approximately US\$2,7million.

[1649] A final 'Response evaluation model for engine selection', dated 2 May 1999, was on 1 June 1999 approved by the Chief of the SAAF, the Chief Executive Officer of Armscor and the Chief of Acquisition of the DOD. The response evaluation model was sent out only to Agusta. The evaluation team was not dealing with the subcontractors.

[1650] The evaluation team had several meetings with Agusta officials in order to clarify certain issues relating to the engines.

[1651] With regard to the value system, the only information that was considered during the evaluation was the information formally received via

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Agusta, namely formally documented trade-off study reports and clarification letters. Only these items were allowed to be considered for the evaluation of the technical merit of the proposals for the two engines.

[1652] When assessing the Turbomeca engine, two technical experts at the CSIR were consulted by some members of the technical team. The experts pointed out, amongst others, that Turbomeca was a reputable company and they were capable.

[1653] After the evaluation of the engines a report was prepared. This report indicated that the Pratt & Whitney 207 had the highest military Figure of Merit (100 points against 90 for Turbomeca) and that there would be additional cost and risk with respect to the Arrius 2K2.

[1654] The results were presented to the Helicopters Programmes Control Board (HPCB). With the DIP and NIP evaluation results added, the Arrius 2K2 had the highest overall score.

[1655] After several meetings, the HPCB decided that the risk associated with the Arrius 2K2 could be sufficiently covered by contractual guarantees. The Arrius 2K2 was subsequently included in the contract baseline.

[1656] On 3 December 1999, after various negotiations, a contract was concluded for the supply of 30 helicopters together with their logistic support. NIP and DIP were also included.

[1657] The total programme value approved by the Cabinet was R1 989 million as at March 1998, at a Rand/US\$ exchange rate of R6,25. This amount was the total cost of the programme. The project and the contract were managed in accordance with Armscor's standard principles and procedures.

[1658] To mitigate risks, Agusta was contracted to be the main contractor with the responsibility to develop and deliver an integrated helicopter system with its associated logistic support. Agusta was solely responsible for its subcontractors and suppliers, including South African companies.

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[1659] The cost of the programme as approved by the Cabinet had not been exceeded and more than R50 million at March 1998 monetary value had not been utilised. The programme budget was reduced accordingly.

[1660] The first helicopter was delivered in August 2005 and the last in August 2009. Twenty three of the 30 helicopters were produced locally.

[1661] Substantial liquidated damages of approximately R75 million were applied due to the delay in the delivery of the equipment.

[1662] Various other countries have bought the A109 helicopter with the same configuration as the ones purchased by South Africa, including the engine. Other countries chose the same engine as the one in our A109 LUH.

[1663] Local industry has also benefitted from the acquisitions of the LUH through DIP. South African subsystems, such as the communication system, electronic warfare protection system and observation system included in the LUH are sold to other countries.

[1664] Mr Odendal was referred to page 375 of the JIT Report, and in particular to paragraph 14.1.13 that reads as follows:

'The Acquisition Policies and Guidelines of the DOD and ARMSCOR, as well as the Defence Reviews, stipulate that the primary responsibility for the selection of subcontractors rest with the main supplier. However, ARMSCOR was not precluded from contracting subcontractors directly if this proved to be more cost effective. ARMSCOR did, in fact nominate and select subcontractors for the supply of engines for the LUH and the gearboxes for the Corvettes.'

[1665] In his comment to this paragraph he said that he did not think that it was correct. In the case of the LUH, Armscor was given the option to choose between two different engines, which they did. The option was part of the initial offer by the contractor and Armscor exercised its right to opt for one of the engines after taking into account all the relevant factors pertaining to the two engines.

[1666] He confirmed the evidence of Mr Griesel that Armscor's policies and practices were used during the execution of the SDPP process. He also confirmed the following statement of Mr Griesel:

'The distinction with the SDPP was that each product system (save for the Corvettes which were to incorporate the 'nominated' local combat suite into the foreign main contract) was essentially for existing, foreign-designed and developed weapon system products that required certain adaptations or modifications to meet the unique South African requirements. It was accordingly necessary to adapt and interpret VB1000 so that it was integrated with a foreign procurement programme of this nature.'

[1667] He pointed out that cancellation of the contract was not an option to consider. If the contract were cancelled, the SAAF would be left without critical equipment, which it might take about 10 years to replace, and the costs would be much higher.

[1668] If the contracts were cancelled, the operational capability of the SAAF and virtually all arms of service will be negatively impacted upon because of the lack of capability that the LUH provides to the defence force. Cancellation of the contract would be disastrous for the defence force, particularly the SAAF.

[1669] In concluding his evidence Mr Odendal said:

'Following a competitive bidding process and the evaluation of the tenders in accordance with approved Value System the contract for the LUH was awarded to the bidder that offered the lowest price and best technical solution.'

[1670] The acquisition was concluded within budget and in accordance with the contractual technical specifications.

[1671] Under cross-examination he testified that the RFO and the evaluation report made provision for the reduction of the number of helicopters to be

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purchased from 60 to 50 or even 40. The reduction of the number of helicopters from 40 to 30 was not expected to change the outcome of the relative ranking of the cost. It was clear to them that even if the number of helicopters was reduced. Agusta's proposal remained the cheapest.

[1672] Initially, the contract made provision for 40 helicopters, 30 to be purchased immediately with the option to add another 10 at a later stage. At the time it was the intention of the DOD to proceed with the purchase of 10 additional helicopters should further funding become available. The 10 additional helicopters were never purchased because of lack of extra funding. The other bidders were not approached to quote for 30 helicopters as it was not deemed necessary.

[1673] In re-examination he testified that the bidders were aware that the quantity of helicopters could change from 60 to 50 or to 40. He also mentioned that it was made clear that the main contractor would be the single point of responsibility for all aspects of the programme.

[1674] It was standard practice in dealing with such a complicated system to have a single contractor responsible for delivering a complete system. The responsibility for supplying a complete system rested on the main contractor.

[1675] As the main contractor, Agusta bore the duty to appoint its various subcontractors. Armscor never objected to any particular contractor, including the main contractor's preferred subcontractors.

26. Mr Casparus Johannes Hoffman

[1676] Mr Hoffman obtained a BCom degree (Financial Accounting) from the University of Pretoria in 1971. He is a registered member of South African Institute of Professional Accountants and a registered tax practitioner.

[1677] He was employed by Armscor in various capacities from 1979 to 2007, when he retired. When he resumed his employment with Armscor he was appointed as Manager: Financial Accounting and from 2003 until his retirement in 2007 he was the Financial Director and an executive member of the Armscor Board of Directors.

[1678] He is currently a tax consultant in private practice.

26.1. Involvement of the Finance Department

[1679] Prior to the SDPP, the involvement of the Finance Department in the procurement of equipment by Armscor for the DOD did not include the financing aspects. The equipment to be procured by Armscor was financed by the DOD through the Special Defence Account via a committed budget for a specific financial year. Prior to placing an order for the procurement of any equipment, Armscor would receive a financial authority from the DOD.

[1680] Mr Hoffman was responsible for the Finance Department of ARSMCOR. During this period they were not involved in the financing activities, as the funding was provided by DOD.

[1681] The Finance Department played a role in the procurement process by looking at the financial contracting conditions as well as the price. After the purchase contract was signed, the Finance Department was responsible for ensuring that payments were made in line with the contracting conditions and that the financial authority was not exceeded.

26.2. SDPP process

[1682] He understood that one of the aspects of the SDPP that made it unique was that a committed budget for financing the equipment to be purchased did not exist within the DOD. It was required that bidders should provide for financing in their offers.

[1683] The request for final offers sent to bidders contained a financing requirements section which set out the matters relating to finance that the bidders had to address in their offers. Each of the RFOs had a section dealing with 'financing requirements'.

[1684] His team, the Finance Evaluation Team, was responsible for the criteria that went into the RFOs. The team was established by a directive issued by Lt General PO du Preez and dated 28 October 1997. Mr Hoffman was designated leader of the team. The other members of the team came

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from the DOD Financial Division, the Department of Finance, the DTI, Armscor bankers and Armscor's Audit Division.

[1685] The available minutes indicated that the first meeting of this team took place on 10 November 1997. According to the minutes, the weighting of the discriminating criteria of a financing value system was discussed. The final outcome of that meeting was the weighting used in the evaluations conducted by the team later on.

[1686] The four discriminating criteria identified were cost of finance, cash flow, hidden costs and financial soundness. The weight to be given to the respective criteria was also discussed with financial soundness being allocated 10% and the other three criteria 30% each.

[1687] As the team leader he had to ensure that the team was governed in accordance with good norms. During the execution of their task, they interacted with the bidders, and on many occasions they had to go back to the bidders to get clarity on certain aspects and to get more information.

[1688] On 19 May 1998, after consultation with the team members, he issued evaluation instructions to all members of the team. These instructions were to guide them in assessing the financial proposals received from bidders as part of their final offers.

[1689] The instructions set out the value system, including the critical and discriminating criteria that were determined for the financing proposals. They also set out the relative weighting of each aspect as determined by the team. Evaluation sheets were also issued to the team with the instructions.

[1690] On 20 May 1998 he sent each member of the team the complete set of financing proposals.

[1691] During the evaluation process they discovered that a number of offerors did not qualify in terms of the critical criteria. They approached SOFCOM for guidance.

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[1692] SOFCOM made certain proposals, which they implemented, and then continued with the evaluations. After completing their evaluations, he signed their 'Financing Evaluation Report' on 29 June 1998 and they submitted it to SOFCOM at a meeting of 1 and 2 July 1998. This report was a summary of the team's work.

[1693] It was a relatively detailed document. Besides the names of the team members, it contained the procedure followed by the team, evaluation aspects and weights, critical and discriminating criteria and more.

[1694] The results of their evaluations emanated from all the score sheets, after they were normalised, as follows:

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
CORVETTES	UNITED KINGDOM	GEC	F3000	100	1
	GERMANY	GFC	MEKO 200	79	4
	GERMANY	GFC	MEKO A200	79	4
	FRANCE	DCN	PATROL CORVETTE	90	2
	SPAIN	BAZAN	590B	84	3

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
SUBMARINES	GERMANY	GSC	209 1400 MOD	100	1
	FRANCE	DCN	SCORPENE	93	2
	ITALY	FINCANTIERI	S1600	87	3
	SWEDEN	KOCKUMS	TYPE 192	78	4

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
MARITIME HELICOPTER	UNITED KINGDOM	GKN WESTLAND	SUPER LYNX	100	1
	FRANCE	EUROCOPTER	COUGAR AS 532 SX	90	2

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
ALFA	UNITED KINGDOM	SAAB/BAE	JAS39 GRIPEN	100	1
	GERMANY	DASA	AT2000	-	-
	FRANCE	DASSAULT	MIRAGE 2000	-	-

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
LUH	FRANCE	EUROCOPTER	EC 635	100	1
	ITALY	AGUSTA	109	97	2
	CANADA	TEXTRON	BELL 427	68	3

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PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
MAIN BATTLE TANK	UNITED KINGDOM	VICKERS	CHALLENGER 2E	100	1
	FRANCE	GLAT	LE CLERC	79	2

PROJECT	COUNTRY	COMPANY	PRODUCT	NORM RATING	RANKING
LIFT	UNITED KINGDOM	BAE	HAWK	100	1
	ITALY	AERMACCHI	MB339FD	92	2
	ITALY	AERMACCHI	KOCKUMS TYPE 192*	90	3
	CZECH	AERO VODOCHODY	L159	69	4

*The reference in the LIFT results to Kockums should probably have been to AEM/YAK 130.

[1695] According to the minutes of the SOFCOM meeting of 1 and 2 July 1998, the Department of Finance presented an undated report on the affordability of the different packages. The Department of Finance compiled the report in response to a request from their team, but that report had no effect on the work and findings of the team.

[1696] He pointed out that in the Auditor-General's findings on the SDPP for the period ended 31 March 2000, the only finding relating to their team was that there were some arithmetical errors. However, the Auditor-General noted that the errors had no effect on the final results.

[1697] He also referred to Armscor's internal audit reports and pointed out that none of the reports made any adverse or negative findings relating to their team. He further pointed out that one of the reports noted that the financing evaluation was performed according to an approved, written procedure and a value system that had been filed with the Acquisition Secretariat prior to the evaluation.

[1698] After delivery of their report his involvement in the SDPP came to an end.

[1699] As far as he knew, after they presented their financing evaluation report of the SDPP, the actual financing of the SDPP was conducted by the Department of Finance.

[1700] Mr Hoffman was of the view that their team had carried out their task both timeously and effectively.

27. Mr Henderich de Waal Esterhuysen

[1701] Mr Esterhuysen holds a number of qualifications, including a Bachelor's Degree in Engineering, an Honours in Mathematics and Thermodynamics and a Master's Degree in Aeronautics.

[1702] After completing his Master's Degree in 1968, he joined the Council for Scientific and Industrial Research (CSIR) for a period of three years.

[1703] He joined Armscor in 1971 and after working in various capacities left the corporation in 1998. At the time of his leaving, he was General Manager: Aeronautics and Maritime. He is currently a consultant in aerospace-related activities.

[1704] He pointed out that the constitution of the AAC stated that the Minister of Defence had the final authority on all acquisition matters and the right to refer decisions on acquisition programmes to the Cabinet.

27.1. SOFCOM

[1705] On 7 April 1998, the Secretary for Defence issued a letter to the SANDF Chiefs of Services and Armscor, informing them that the informally constituted SDP Management Committee—chaired by Lt General du Preez—would be replaced by a formally constituted Management Committee.

[1706] Attached to the letter was the draft SOFCOM constitution and rules, stating that SOFCOM's role would be to:

- Execute direct instructions from the MOD and COD
- Manage the enrolment of DOD and Armscor Project Team members
- Co-ordinate the involvement of nominated state Departments
- Report to the COD and to the external forums
- Conduct the second order evaluation of competing offers and submit the recommendations to the COD

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[1707] The draft SOFCOM constitution indicated that the latter had a mandate to communicate with and submit recommendations directly to the COD and the Ministerial Committee (IMC), referred to in the draft mandate as 'external fora'. There was no recorded evidence indicating that the mandate was discussed at any SOFCOM meeting.

[1708] At all times during his involvement with SOFCOM and its predecessor Management Committee, it was his understanding that SOFCOM (and the Management Committee) were coordinating committees with no decision-making powers.

27.2. SOFCOM work session – bidder selection

[1709] A SOFCOM work session took place on 1 and 2 July 1998. This workshop was also the final SOFCOM meeting. Mr S Shaik was in the chair and Mr KP Hanafey from Armscor co-chaired.

[1710] SOFCOM consisted of 12 members: two from the SAAF, one from the SA Navy, two from Armscor, two from the Defence Secretariat, one from the DTI, one from the Department of Finance, one from the SA Army and the above-mentioned chair and co-chair.

[1711] Also present at the work session were two representatives from the DTI and two from Armscor as co-opted members.

[1712] The introductory part of the minutes read as follows:

'1. The Chairman welcomed all members and co-opted members, noted the apologies of Mr H De Waal Esterhuysen and Col. C. Pfeiffer; and briefly addressed the administration of each member's data pack handed out at the meeting against signature, which contains classified information. The DIP information is to be treated as commercially sensitive. The NIP information will only be presented to the Ministers Forum (AAC); however a combined DIP/NIP result has been provided to the SOFCOM Chairpersons.

...

SUBMARINES

...

13. *The Chairman addressed the top level value system and advised that the formula should be Best Value = Technical + Industrial Participation + Financing at a 1:1:1 ratio.*

...

16. *The BAe NIP offer is significant compared to their DIP offer...*

LIFT

29. *The two options that must be provided are:*

- (a) an option including acquisition cost; and*
- (b) an option excluding acquisition cost ...*

CONSOLIDATION

31. *Top level formula:* ... *The Chairman emphasizes the importance of showing the values of the three evaluation domains in a progression which culminates in a best value of military value + IP value + financing value.*

32. *Presentations.* *The Chairman advises that the consolidated results will be presented to:*

- a. a special AASB to which the Directors General of the Departments of Finance and Trade and Industry will be invited, followed by*
- b. a special AAC attended by the involved Ministers. This presentation will expand on the Industrial Participation offered, and is scheduled for 13 July 1998.'*

27.3. SDPP progress reports

[1713] On 8 July 1998, a Special AASB meeting took place. The meeting was attended by 10 members of the AASB, two invited members of the DOD, the DG of the DTI, the Defence Secretary and SOFCOM members. Mr PD Steyn chaired the meeting. The purpose of the meeting was for

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SOFCOM to make a presentation to the AASB about the report on the progress made with the international offers.

[1714] The report of SOFCOM was presented by the Chief of Acquisition. Paragraph 2(b) of the minutes stated as follows:

'2. Chief of Acquisition briefly reviewed the process stressing ... the integration of the results of four independent evaluations per equipment undertaken by the SOFCOM ... the SOFCOM accepted a modified equation prior to integration i.e. RANKING = TECHNICAL + IP + FINANCING. (Each evaluation contributing one third to the final ranking.)' The ranking of various bidders for various programmes was mentioned.

[1715] As far as the LIFT programme was concerned, there were two rankings. In the 'Cost Option Ranking', the MB339FB came first followed by the Hawk and in the 'Non Cost Option Ranking' the Hawk came first followed by the MB339FB.

[1716] Paragraph 27(d) of the minutes read as follows:

'The decision by the AAC during the 30 April 98 briefing on the shortlist of offers required the project team to consider a solution taking cost into account and a solution where cost was not taken as a deciding factor.'

[1717] On 16 July 1998 there was another meeting of the AASB. At this meeting, the LIFT programme was again discussed. The minutes of this meeting, at paragraph 6, stated the following:

'Chief of Acquisition contends that the AAC instruction to adopt a visionary approach that involves major international companies in the LIFT acquisition, resulted in the generation of two options in the evaluation team and SOFCOM recommendations.'

[1718] After a lengthy debate the chairperson advised that from the DOD perspective only the costed option could be considered and that the AASB

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supported the option that took cost into consideration. He further said that the MB339FB as evaluated met the SAAF preference within the envisaged 'SAAF Fighter Training System' required by the SAAF.

27.4. Special AAC meeting – 13 July 1998

[1719] Members of the AAC present at a special AAC meeting on 13 July 1998 were Mr J Modise (Chair), Messrs R Kasrils, PD Steyn, RF Haywood, S Shaik (Secretary) and General S Nyanda (Chief of the SANDF). Various other persons attended the meeting as invitees, including Mr A Erwin (Minister of Trade and Industry).

[1720] The co-chairpersons of SOFCOM presented the overall summary of the consolidated results. In the consolidated results of the LIFT programme, both the costed and non-costed options were presented. As mentioned earlier, in the costed option the MB339FB came first followed by the Hawk, and in the non-costed option the Hawk was first followed by the MB339FB.

[1721] The merits and demerits of the two aircraft were discussed. The chairman emphasised that this was an initial report and that the process must continue. He added that the gathering of further information relating to the LIFT programme was supported.

[1722] The Deputy Minister of Defence indicated that there was a need for the Minister to be apprised thoroughly of the process and information leading to the presented preference. This would empower the Ministers to discuss the issue confidently with the Cabinet colleagues, for example.

28.5. Council of Defence meeting

[1723] On 21 August 1998, the COD held a meeting. Present at the meeting were the Minister of Defence, the Deputy Minister of Defence, the Secretary for Defence, the Chief of the SANDF, the Executive Chairman of Armscor and Brigadier General KWM Snowball (Secretary).

[1724] Mr Shaik briefed the Council of progress with the SDPP programmes. As far as the LIFT programme was concerned, he mentioned the cost

implications of both aircraft and that the AASB recommended the cheaper option, namely the MB339FB.

[1725] The Secretary for Defence mentioned that the Hawk had better performance, although more costly, and consequently his view was that the cheaper option should be recommended.

[1726] The Minister remarked that the availability of funds was secondary and other factors needed to be taken into account.

[1727] No decision was taken about which LIFT aircraft should be recommended. The minutes at paragraph 7.3.24 read:

'The Minister said the political decision needed must not revolve about the operational aspects of the aircraft... that is part of our recommendation. Government must decide if they want to enter the European market and if so, through which partner. The defence industries of the world are forming consortiums. If we are not part of one of these consortiums our aircraft industry will be lost.

He said we must not prejudge – let the politicians decide.'

27.6. Ministerial briefing on 31 August 1998

[1728] At a ministerial briefing on 31 August 1998 the following members were present:

- Mr T Mbeki - Deputy President (Chairman)
- Mr J Modise - Minister of Defence
- Mr A Erwin - Minister of Trade and Industry
- Ms S Sigcau - Minister of Public Enterprises
- Mr R Kasrils - Deputy Minister of Defence.

[1729] A number of other persons were invited, namely Messrs PD Steyn (Secretary for Defence), Z Rustomjee (DG of Trade and Industry), R Haywood (Chairperson of Armscor), S Shaik (Chief of Acquisition), L Swan (CEO of Armscor), H Esterhuyse (General Manager, Armscor) and V Pillay (A/Director, Trade and Industry). The co-chair of SOFCOM, Mr S Shaik,

made a slide presentation of the SOFCOM findings on the SDPP and the evaluation results.

[1730] There were five versions of minutes, all purporting to be a recordal of the discussions that took place at the meeting and decisions taken at the meeting. The minutes were almost identical with the exception of issues highlighted below.

[1731] One set of the minutes was supposed to be signed by Mr Shaik and Mr Mbeki but there was no indication that they were ever signed by them. Another set of minutes of the same meeting was prepared and signed by Mr Esterhuysen. Under the heading 'Decisions taken', paragraphs 11 and 13 differed from the same paragraphs of the third set of minutes prepared by Mr S Shaik and signed by Messrs Shaik, Kasrils, Erwin, Modise and Ms Sigcau.

[1732] Paragraphs 11 and 13 of the latter minutes read as follows:

'11. After a discussion it was decided by the Ministers present that the Hawk (Option B) should be recommended as the preferred Option. This decision to recommend the Hawk was based on National Strategic considerations for the future survival of the Defence Aviation Sector and the best teaming up arrangements offered by the respective bidders. Strategically important Industrial Participation programmes offered with the best advantage to the State and Local Industries was also a determining factor in the final recommendations for the preferred bidders per program.

13. The following bidders per programme were recommended for final consideration:

- (a) LUH – Agusta 109 (Italy)*
- (b) ALFA – SAAB JAS Gripen (Sweden/UK)*
- (c) ...*
- (d) Corvette – GFC Meko A200 (Germany)*
- (e) Submarine – GSC 209 1400 MOD (Germany)*
- (f) LIFT – Bae HAWK (United Kingdom).'*

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[1733] There was another version of the minutes, signed by Mr Shaik only, in which paragraphs 11 and 13 were almost identical to the same paragraphs of the minutes that were signed by the Ministers mentioned earlier.

[1734] On 25 September 1998, Mr Shaik addressed a letter to the Minister of Defence and enclosed a draft copy of the minutes of the briefing which was held on 31 August 1998. The letter stated, *inter alia*, that comments from all members of the special ministerial briefing were being solicited.

[1735] On 2 October 1998, the Minister of Defence addressed a letter to Deputy President. In the letter the Minister indicated that he enclosed the minutes of the meeting held in Durban on 31 August 1998.

[1736] Paragraphs 11 and 13 of the minutes signed by Mr Esterhuyse only read as follows:

'11. After a discussion it was decided that both the Hawk (Option B) and the MB339FB (Option A) should be investigated further with the view of structuring an industrial alliance between the country supplying the aircraft and the South African Aerospace Industries.

Both countries will be requested to submit further information in this regard.

...

13. The following bidders per programme were recommended for final consideration:

- (a) LUH – Agusta 109 (Italy)*
- (b) ALFA – SAAB JAS Gripen (Sweden/UK)*
- (c) ...*
- (d) Corvette – GFC Meko A200 (Germany)*
- (e) Submarine – GSC 209 1400 MOD (Germany)*
- (f) LIFT – Bae HAWK (United Kingdom) and MB339 (Italy).'*

[1737] In his evidence, Mr Esterhuyse indicated that the issues mentioned in paragraphs 11 and 13 of the minutes he had signed, were never discussed

at the special briefing on 31 August 1998. After the briefing session, he had left with some of his colleagues.

[1738] When Mr Shaik came to him with the draft minutes to sign, he read the minutes and pointed out to Mr Shaik that paragraph 11 was incorrect and that in fact no decisions were taken during the meeting. Mr Shaik told him that a further discussion took place after Mr Esterhuysen had left, and that was when decisions were taken.

[1739] His understanding of the SDPP process was that there were three separate teams that evaluated the technical aspects, financing aspects and industrial participation respectively. The findings or results of the teams' evaluations were presented to SOFCOM at its workshop held on 1 and 2 July 1998. SOFCOM then integrated the findings.

[1740] These findings were presented to the AASB, the AAC and the COD for purposes of information. This was followed by the presentation to the Ministerial Committee (IMC) on 31 August 1998.

[1741] Since he was not aware of any formal SOFCOM mandate and in view of the fact that no AAC or COD recommendations were presented to the Ministerial Committee, his view at the time was that the Ministerial Committee presentation was for information only.

[1742] The Ministerial Committee accepted the presentation of the Chief of Acquisition as the final recommendation and supported the procurement of the SDPP.

28. Mr Johannes Bernhardus de Beer

[1743] Mr de Beer obtained the following educational qualifications: National Diploma in Explosives Technology, Technikon Pretoria (1982); BSc (Mechanical Engineering), University of Pretoria (1987); MSc (Engineering Management), University of Pretoria (1998).

[1744] He has been employed by Armscor in various capacities from 1983 to date.

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[1745] From 1995 to 1998, he was the Project Manager for the production/upgrade of the Rooikat armoured combat vehicle within the Armoured Systems Division. In 1998 he commenced training as countertrade/offset manager in the Defence Industrial Participation (DIP) Division (until 2003). Between 2003 and 2011 he was the Project Manager for aircraft upgrade in the Aircraft Division. From 2011 to date he has been the Project Manager in the Command and Control Division for normal procurement type programmes.

[1746] He said that his evidence would be relevant to DIP from the compilation of the Request for Proposals to contracting and initial implementation of the SDPP.

[1747] He testified that offset and countertrade were instruments of international business, based on government procurement. They were refined within the domain of trade of military equipment to a specialised skill, namely industrial participation. Offset, countertrade and industrial participation were utilised by both developed and developing countries, for example, Denmark, Sweden, Belgium, the United Kingdom, Spain, the UAE and South Korea.

[1748] Besides these countries, there are others that also actively participate in industrial participation or even offsets and countertrade in various forms.

[1749] He looked at the World Trade Organisation (WTO) Agreement and found that South Africa was not a party to the Agreement, nor did it have observer status. This means that South Africa was not bound by the WTO Agreement.

[1750] The WTO recognises countertrade agreements between countries in certain circumstances. Countertrade is permitted when the development, financial and trade needs of developing countries are taken into consideration. It is recognised that particularly the least developed countries might need the instrument to safeguard their balance of payments, to promote or develop their domestic industries or to encourage economic development.

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[1751] The aim of offset, countertrade and industrial participation was primarily derived from economic considerations, intended to partially offset the negative effect of outflow of currency as a result of government acquisitions and procurement from foreign-based companies where the required product systems and specific devices were not locally available. The concept of offset was also aimed at the transfer of knowledge and skills in order to uplift the local defence industry.

[1752] Offset and countertrade were implemented by Armscor's Countertrade Division—now known as the DIP Division—in the late eighties through formal agreements between the Countertrade Division and the foreign obligor. At the time, no form of industrial participation had yet been implemented by any other government department or parastatal in South Africa.

[1753] It was important for Armscor to look at offsetting the negative outflow of foreign currency in satisfying the specific requirements of the South African Defence Force. In the Armscor environment the practice of countertrade went back as far as the 1960s. At that stage, a foreign supplier was obliged to include participation of a local industry player.

[1754] Between the period 1988 and 2000, Armscor's portfolio of countertrade agreements amounted to R5,4 billion—excluding the SDPP—and the agreements were successfully completed.

[1755] The countertrade agreements lead to long-term arrangements between the foreign supplier and the local defence industry, the benefits of which were still in existence today.

[1756] It is worth noting that the countertrade agreements concluded by Armscor between 1988 and 2000 were initially based on a 'best effort' basis, which encouraged foreign suppliers to engage in business with the local industry. Three categories of businesses were allowed, namely project-related business (predecessor to direct DIP); defence-related business (predecessor to indirect DIP); and commercial business (similar to what is now known as the NIP).

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[1757] Investments, technology transfer, export sales, and local sales were allowed in terms of those agreements for purposes of claiming credits, which would then offset the obligation. No multipliers were allowed.

[1758] The countertrade agreements signed after the adoption of the NIP Policy in 1996 did not include the so-called 'commercial business' category.

28.1. Introduction of the National Industrial Participation (NIP) Policy in September 1996

[1759] The NIP Policy was approved by the Cabinet on 1 September 1996. With the approval and adoption of the NIP Policy, which was applicable to all government departments (including the DOD), and given Armscor's role as the procurement arm of the DOD, a decision was taken by Armscor to adapt its countertrade policy to support the NIP Policy and ensure that Armscor's countertrade policy focused solely on defence-related acquisitions.

28.2. Aim and rationale of DIP

[1760] Generally the aim and rationale of DIP is, as far as it is practically possible, to make a contribution to the independence of the local defence industry, primarily focusing on the maintenance and advancement of South Africa's defence industrial capabilities.

[1761] A policy document relating to DIP, A-POL-6100, was approved on 28 July 1997. According to this internal Armscor policy, DIP became applicable to all defence/military acquisitions and procurement contracts with a value of \$2 million or more, whereas NIP was applicable in addition to DIP when the contract value was \$10 million or more.

[1762] Paragraph 1.1.5 of A-POL-6100 stated that

'it is the policy of the DOD, fully underwritten by Armscor, that all defence purchases abroad with a contract value of USD10 million or more will be subject to an 80% obligation, which is to be split proportionally between national (30%) and defence (50%) industrial participation programmes. Furthermore all defence contracts, placed abroad, valued USD2 million and more are subject to a DIP obligation of up to 50%.'

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[1763] In the case of the SDPP, the percentage was increased to be 50% for NIP in addition to the 50% for DIP, so the total obligation was 100%.

[1764] Armscor was responsible for the execution and management of the DIP agreements or DIP terms with the foreign suppliers for 50% of the contract value or whatever percentage was agreed to with the foreign suppliers. The 50% in terms of the NIP Programme was administered and managed by the DTI.

[1765] According to A-POL-6100, the main objectives of DIP were the following:

- Retention and where possible creation of jobs
- Establishment of a sustainable and economic defence industry with strategic logistic support capabilities
- Promotion of defence exports of value added goods
- Promotion of technology transfer and joint ventures
- Provision for a sustainable local defence industry capacity.

[1766] Paragraph 3.2 of A-POL-6100 provided that the principles of DIP were the following:

- *Price*: the DIP obligation must not result in an increase in the purchase price of the product
- *Mutual benefit*: the DIP activities must make good business sense for the foreign supplier and be beneficial to the local defence industry and the South African economy at large
- *Sustainability*: DIP activities must be economically and operationally sustainable and must support the main objectives of the MOD and DIP programmes in general. They must be sustainable for at least five years
- *Causality*: the foreign supplier must demonstrate to Armscor that DIP activities were caused by the foreign supplier as a direct result of a DIP agreement.
- *Responsibility*: the responsibility for fulfilment of any DIP obligation lies with the foreign supplier.

[1767] As mentioned earlier, the DIP Division was initially known as the Countertrade Division. Certain amendments to the policy were introduced on 11 February 2002 in order to bring the DIP Policy in line with new terminology—for example, ‘countertrade’ was replaced by the term ‘Defence Industrial Participation’.

28.3. Standard DIP role players and their functions

[1768] A-POL-6100 stipulates the key role players in any defence/military acquisitions and procurement contracts, as well as their functions. The role players are the following:

- *The DTI:* the IP Secretariat of the DTI is responsible for the non-defence-related industrial participation (NIP) portion of projects emanating from acquisition and procurement programmes—when and where applicable—in accordance with the provisions of the NIP Policy. Armscor and the DOD are not involved in this process.
- *The DIP Division* is responsible for all defence-related industrial participation projects emanating from acquisition and procurement programmes. The DIP Division is responsible and accountable for the process of managing and controlling all aspects related to DIP, from contracting to completion.
- *The DIP Manager* is responsible and accountable for managing the DIP Division and its resources, for maximising DIP opportunities and attending to the full process of DIP negotiations and the subsequent DIP contract management process. The DIP Manager is expected to provide the Armscor Programme Manager at the latter’s request with the DIP documents and provisions for inclusion in the RFI and RFO as and when applicable.
- *The Armscor Programme Manager* is responsible for ensuring that all RFI and RFO documentation with a potential foreign content value of \$2 million and more includes specific instructions to prospective suppliers regarding NIP—where applicable—and DIP prescriptions. Up and until a tender is awarded, the Programme Manager and DIP Manager work as a team.

- *The DIP Committee*, which was established by the DIP Division, is responsible for, *inter alia*, assessing all DIP proposals. The DIP Committee is also responsible for approving all DIP proposals and DIP credit claims. The Committee usually consists of representatives of the DIP Division, financial and legal experts and the Chief Acquisition Officer of the Defence Secretariat (acting as co-chair).

[1769] For acquisitions and procurements of \$2million and more but less than \$10million only DIP applies, but when the value is \$10 million and more, both DIP and NIP apply. Where DIP applies, the DIP Division will compile the DIP guidelines and submit them to the acquisition technical team for inclusion into the RFI or RFO as a separate section.

[1770] The received offers (in respect of the DIP section), will be evaluated by a team within the DIP Division, supported where necessary by team members from outside the DIP Division but within Armscor and the DOD.

[1771] After approval of the preferred bidder by the Armscor Board of Directors, the DIP business plan would be finalised together with the DIP agreements. The business plan would be approved by the Armscor Board of Directors prior to or together with the main agreement (the 'Supply Terms').

[1772] After approval of the Supply Terms, the foreign obligor may start with the execution of the business plan concerned and DIP management and monitoring would take place until final discharge of the DIP obligation.

28.4. Process flow of DIP and how it is inter-related with NIP under the SDPP

[1773] When the contract value is expected to reach the NIP threshold of \$10million, the DIP Division would liaise with the DTI to provide the NIP requirements for inclusion, also as a separate section, in the RFI and RFO.

[1774] Armscor would place a NIP obligation of 30% on all foreign suppliers where defence/military acquisition and procurement contracts have a value of \$10million or more, in addition to DIP obligations of up to 50%.

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[1775] In the case of the SDPP, the DIP and NIP obligations were stipulated to be at least 50% in each case. The 50% was in excess of the standard obligation for NIP in terms of the NIP policy.

[1776] Once the NIP offers were received by the DIP Division, these offers were distributed to the DTI for evaluation, and by agreement on the date of completion, the DIP Division would in collaboration with the DTI combine the IP factor at equal weight for inclusion into the overall IP score for each offer received. This IP score would thereafter be provided to the acquisition team for the compilation of a final score per bidder and for the purposes of determining the preferred bidder.

[1777] The NIP agreement and the relevant business plan would be approved by the DTI, and confirmation thereof forwarded to the DIP Division that was responsible for communication with the acquisition technical team.

[1778] After both the DIP Division and the DTI IP Secretariat had completed their evaluations of the respective projects offered by the bidders, the evaluations would be discussed by both teams. There would be a moderation process and an IP Index would be determined for each of the bidders, which was then submitted to the higher authority. The IP index together with the military index and financial index would be used to determine the preferred bidders for the respective programmes.

28.5. Implementation of DIP during the RFI and RFO phases of the SDPP

[1779] During the RFI phase of the SDPP acquisition, the potential suppliers were informed about the industrial participation policy (DIP and NIP) and the obligations they might incur.

[1780] The DIP guidelines containing the DIP requirements were issued to all potential foreign suppliers as part of the RFI and RFO phases. The DIP guidelines consisted of the following documents:

- The National Industrial Participation Programme
- A pro forma Memorandum of Defence Industrial Participation Agreement

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- A Defence Industrial Participation Confirmation by Bidder form
- The format for DIP business plans
- The format for the DIP Target Planning Schedule
- Generic evaluation guidelines.

[1781] The pro forma DIP Agreement contained various definitions of words and terms used in the agreement. Amongst others, it provided that 'DIP Credit' meant the actual amount for each DIP activity approved by Armscor to be credited to the seller (offsetting against the DIP commitment or DIP obligation).

[1782] Direct DIP included those activities that were directly related to the products and related equipment, material or services that were the subject of the main agreement, and might include the supply of logistic engineering software and other related support, and also the transfer of technology.

[1783] Indirect DIP meant activities related to products manufactured by or purchased from or services rendered by Armscor or defence-related industries in South Africa.

[1784] The DIP guidelines contained a form called the 'DIP confirmation by bidder form'. This form was also used during the evaluation process. It contained statements regarding the split (percentages) between DIP and the NIP proposals measured against the stated required thresholds of 50% each, split between direct and indirect DIP. The form also stated that no multipliers would be considered by Armscor in determining any form of DIP credit.

[1785] It was made clear to the bidders that Armscor was not involved with the NIP obligations and that the bidders—if successful in their bids—would have to negotiate, finalise and sign the IP agreement with the DTI before signing the main agreement.

[1786] The DIP guidelines also contained a 'Format for DIP Business Plans.' This format was generic and was supplied as part of all the different RFOs, but the percentages required for direct DIP would usually be 20 to 30% of

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the total DIP offered, with the balance being apportioned to indirect DIP. The percentages could vary depending on the perceived local capability for a specific product system. For instance, in the case of the corvette product system—based on the platform price—a minimum of 10% direct DIP was required for the platform, and for the combat suite a direct DIP portion of 60% of the combat suite price. The reason for the relatively low percentage required as direct DIP on the value of the corvette platform was that at the time the South African shipbuilding industry was small and dwindling. Little possibility existed for military-standard qualified products for military vessels to be obtained from the local market.

[1787] The DIP obligation had to be discharged over a seven-year period.

[1788] All the bidders were provided with the generic evaluation guidelines. Armscor was not involved in the appointment of local suppliers. This was the responsibility of the seller. Armscor only played a facilitating role by making foreign obligors aware of what local companies could offer.

28.6. The DIP value system

[1789] The DIP value system was a collection of aspects and factors that were taken into consideration when assessing the value of the DIP proposals received. This process was based on the following:

- The DIP Policy and procedures
- Evaluation Guidelines/DIP guidelines
- pro forma DIP agreements
- pro forma business plan, and
- the weighting philosophy.

[1790] When evaluating bids, two sets of criteria were considered, namely the mandatory or critical elements and discriminatory elements. Normally if a bid complied with critical elements, it entered the next phase of evaluation where discriminatory elements were evaluated. Some of the elements considered for scoring purposes were investments, transfer of technology and empowerment. Job creation was regarded as important although it was not a scoring element.

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[1791] Various DIP evaluation teams were established. Mr JJ van Dyk, Head of the DIP Division, was the DIP team leader, with Mr S Shaik (Chief of Acquisition) acting as auditor and moderator for the DIP process

[1792] The DIP and NIP indices were collated within each of the different programmes, normalised and submitted for moderation within the industrial value index, which eventually formed part of the overall SDPP value system.

[1793] The witness further said the following:

'Mr Shaik (Chief of Acquisition) and Mr Alan Hirsch (DTI) would discuss and agree on the respective evaluation done by Armscor DIP Division and the Industrial Participation Secretariat of DTI before it was collated by Armscor DIP Division into a combined input—the Industrial Index.'

[1794] In his view, auditing the scores was to ascertain whether or not the evaluation teams applied the evaluation instructions correctly, and whether numbers were correctly collated and correctly summarised.

[1795] After the selection of the preferred suppliers, the DIP Division entered into final negotiations with the preferred suppliers to finalise the DIP terms and conditions and the DIP business plan, which formed the contract baseline.

[1796] Armscor was not involved in the selection of sub-contractors.

28.7. Evaluation of the SDPP with reference to the DIP

[1797] During the evaluation, it turned out that not all the bidders had complied with the mandatory elements, a critical requirement. They were supposed to be disqualified. Legal opinion was obtained and the matter was submitted to the chairperson of SOFCOM, who approved the recommendations that clarification should be obtained from the bidders so that all the bids could go to the next stage of the evaluation. That was done and all the bids went to the next stage of evaluation.

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[1798] The next stage of evaluation involved the 'discriminating' elements. Various elements of the bid were looked at. After finalising them, the DIP evaluation results were submitted to the combined DIP/NIP committee for consolidation into the IP Index and prepared for presentation at a SOFCOM meeting.

28.8. Consolidated DIP and NIP evaluation ranking

[1799] The bids were evaluated and thereafter ranked. This involved only the discriminatory elements, which were scoring elements. The results were as follows:

- *LIFT*: There were four competitors. BAE Systems' Hawk (UK) came first and its IP was recommended. It was followed by the Aero Vodochody L159 (Czech Republic), the YAK 130 (Italy/Russia) and the Aermacchi MB339 (Italy) in that order.
- *LUH*: There were three competitors. Agusta A109 (Italy) came first, followed by Eurocopter EC 635 (France) and then Bell Textron (Canada).
- *ALFA*: There were three competitors and the BAE Systems/SAAB JAS39 Gripen (UK and Sweden) came first, followed by the DASA AT2000 (Germany) and the Dassault Mirage 2000 (France).
- *Corvettes*: There were four competitors. GFC Meko A200 (Germany) came first, followed jointly by Bazan Nacional 590B (Spain) and DCN Internal Patrol Corvette (France) with the same score, and GEC Marconi Marine F3000 (UK).
- *Submarines*: There were four competitors. GSC 209 1400 MOD (Germany) came first, followed by DCN International (France), which was followed by Kockums (Sweden) and Fincantieri (Italy).

28.9. The value of DIP and NIP offers as evaluated, based on original equipment quantities as on 20 November 1998

[1800] All the offers were evaluated in terms of value for DIP and NIP. The results of the evaluations were submitted to the Inter-ministerial Committee.

[1801] The following table contains a summary of the evaluations:

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Projects	Projected equipment quantities	Projected cost (RM)	Projected total IP (DIP + NIP) (RM)	Projected no of jobs	Contracted equipment quantities
Corvettes	4	6 001,25	16 007,00	10 153	4
Submarines	4	5 212,50	30 274,00	16 251	3
LUH	61	2 168,75	4 685,00	4 558	30
LIFT	24	4 728,13	8 580,00	7 472	24
ALFA	38	10 875,00	48 313,00	23 195	28
Maritime Helicopter	6	787,50	2 720,00	2 536	0
TOTALS		29 773,13	110 575,00	64 165	

[1802] The above-mentioned report or document was apparently prepared by or on the instruction of Mr JJ van Dyk, head of the DIP Division of Armscor and was sent to Mr S Shaik, Chief of Acquisition in the DOD, under cover of a letter dated 20 November 1998.

[1803] The report indicated, *inter alia*, that the projected total cost of the equipment was R29,773 billion, the projected total IP (DIP and NIP) was R110,575 billion and about 64 165 jobs were projected.

[1804] The maritime helicopter project was not contracted concurrently with the other projects and the costs, IP values and number of jobs was reduced.

[1805] A new table indicated the adjusted numbers excluding those for the maritime helicopters.

Projects	Projected equipment quantities	Projected cost (RM)	Projected total IP (DIP + NIP) (RM)	Projected no of jobs	Contracted equipment quantities
Corvettes	4	6 001,25	16 007,00	10 153	4
Submarines	4	5 212,50	30 274,00	16 251	3
Light Utility Helicopter	61	2 168,75	4 685,00	4 558	30
Lead-in Fighter Trainer	24	4 728,13	8 580,00	7 472	24
Advanced Light Fighter Aircraft	38	10 875,00	48 313,00	23 195	28
TOTALS		28 985,63	107 855	61 629	

[1806] The IP values as shown were derived from the evaluation results of DIP and NIP. In order to arrive at Rand values, the following exchange rates

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were used: \$1 = R6,25; €1 = R6,50 and £1 = R10,00. These exchange rates were used to calculate values in Rand throughout the DIP contract management period.

[1807] As can be seen from the above table, the adjusted projected costs of the equipment were about R28 985,63 million, projected IP R107,885 billion and the projected number of jobs was 61 629.

[1808] When referring to the projected number of jobs, Mr de Beer said that they were in fact job opportunities within the DIP contracts as offered by the foreign contractors and for the period that those contracts were expected to run. The projected number of NIP jobs was extracted from the business plans submitted to the DTI by the obligors.

28.10. Negotiations and DIP contracting

[1809] As a result of certain errors they had noticed, the results for the respective projects had to be recalculated. The recalculated evaluation results for the LIFT programme indicated that when the Military Value Index, Industrial Participation Index and the Financing Cost Index were combined, the Italian MB339FD was ranked first, followed by the UK Hawk with the Czech Republic and Italian YAK 130 in third and fourth place respectively.

[1810] In the above-mentioned ranking the 'costed' best value was utilised. This was the ranking originally presented to SOFCOM. The 'non-costed' option that was introduced at a later stage changed the rankings and the Hawk then came into the first position. The non-costed option affected only the Military Value Index.

[1811] To arrive at the DIP commitment, the cost of the project had to be considered.

[1812] The re-calculated results indicated that as far as the ranking of the corvettes was concerned, GFC came first, followed by Bazan (Spain) and then the French and UK products.

[1813] Submarines and ALFA recalculations ranked the companies that were the selected preferred bidders first.

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[1814] In the evaluation of the corvettes, GFC was allocated four additional points in their DIP category because of the increased NIP commitments. This was done by the DIP Division. If this was not done, Bazan of Spain would have ranked first and GFC second.

[1815] In his view, the NIP activities should have been transferred to the DIP Division, and then re-evaluated on the basis of the DIP value system before any points were allocated.

[1816] In the case of GSC also, they were allocated an additional four points for their DIP score because they also had increased their NIP offer, but they still would have ranked first without the additional points.

[1817] The allocation of the additional four points to GFC and GSC took place when Messrs Alan Hirsch (DTI) and S Shaik (Chief of Acquisition) were auditing the evaluation results.

[1818] The DIP Division planned the negotiations of the DIP agreement and the associated DIP business plans. The DIP negotiating team and their planning was approved by Mr L Swan (CEO of Armscor) and Mr Shaik on 12 January 1999.

[1819] Mr JJ Van Dyk was nominated as the chief DIP negotiator and Team Leader and Mr JB de Beer was the DIP Contracts Manager. Four other members were appointed to the team.

[1820] Later, the IONT was appointed and the DIP negotiating team acted in support of the IONT.

[1821] The eventual DIP terms as negotiated did improve on the original draft DIP agreements as included in the RFO. The DIP terms of all the contracts were to a large extent generically the same. The main differences could be ascribed to the unique nature of the different projects (for example, the corvette platform and combat suite were regarded as separate entities with two separate DIP business plans).

[1822] The DIP and NIP negotiated commitments and guarantees contained in the 'Affordability of Defence Procurements' report dated August 1999 was presented to the Cabinet. A summarised version thereof, compared with the original offers, is contained in the following table.

SUMMARY OF NIP AND DIP NEGOTIATED COMMITMENTS

	Project	NIP (US\$1,00 = ZAR6,25 in 1999 terms)			Total DIP (RM)	NIP performance guarantee	DIP performance guarantee
		Investments (RM)	Gross export (RM)	Local sales (RM)			
	Corvettes	4 375	16 625	Included	2 899	5% of contract price	Part of performance guarantee in Supply Terms. Proportion of unfulfilled obligation.
	Submarines	6 242	10 669	1 629	1 139	10% of contract price (Performance & NIP)	5% of DIP commitment
	LUH	1 153	2 926	720	1 410	10% of contract price	5% of DIP commitment
	MH	658	2 453	Included	576	Not discussed	Not discussed
	LIFT1	2 000	2 500	4 500	3 125	10% of contract price	5% of DIP commitment
	LIFT & ALFA	12 500	32 500	Included	9 302	10% of contract price	5% of DIP commitment
Final negotiated offers	TOTAL (incl ALFA)	24 928	65 173	2 349	15 326		
Original offers	Cabinet Nov 1998	25 336	56 204	17 861	11 176		
	Resultant	Less (reduced quantities ordered)	More	Less (reduced quantities ordered)	More	Due to changes in equipment quantities.	

[1823] From the table it appears that the total DIP commitment as negotiated came to a figure of R15,326 billion and the NIP to R24,92 billion. The DIP

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commitments achieved after negotiations were 27% higher than those contained in the original offers, despite the reduction in equipment quantities. The actual NIP and DIP commitments of suppliers were each 50% of the contract price.

28.11. Measures put in place to manage the implementation of the DIP obligations by the obligor.

[1824] The DIP terms contained measures put in place by the DIP Division to monitor, manage and control execution of the obligations as contracted with the foreign suppliers.

[1825] The DIP contract management process involved a permanent DIP Manager reporting to the Divisional Manager and the DIP Committee about the DIP contract management and the progress in respect of the submission of DIP claims. The DIP claims, supported by documentary evidence, had to be submitted by the foreign obligor to the DIP Manager.

[1826] The DIP Manager was obliged to independently obtain written confirmation from the local beneficiaries that the claim was indeed supported. Claims that were regarded as meeting the requirements were submitted to the DIP Committee for approval.

[1827] Where necessary, DIP terms could be amended at any time in accordance with the provisions of the DIP terms. Such amendments could arise, for instance, where the value of the DIP obligation was increased or reduced, or DIP activities or beneficiaries were substituted.

[1828] Within the SDPP context, a total number of 111 local companies were included in the DIP business plans, with a combined value of R14,4 billion in 1999 economic terms, and representing about 50% of the combined contract value of R29 billion (in 1999 economic terms).

[1829] The discharge of the obligations initially varied between seven to nine years. This period was subject to amendment mostly as extensions granted in the Supply Terms or occasioned by delays on the part of local industry to perform.

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[1830] The DIP obligations were actively managed by both the foreign obligors, the South African defence-related industry and Armscor, to the point where the performance figures as at 31 March 2013 indicated 93,83% completion. The value of claims approved amounted to R14,2 billion (in 1999 economic terms).

[1831] The DIP values as contracted and the performance of the obligors as at 31 March 2013 are depicted by the table below.

PROJECT	OBLIGATION	ACTUAL PERFORMANCE (31 MARCH 2013)	PERFORMANCE vs OBLIGATION
Corvettes	470 482 689	321 258 660	68,28%
Submarines	179 405 233	179 405 233	100%
LUH	190 987 395	190 987 395	100%
Hawk	680 341 667	680 341 667	100%
Gripen	808 049 501	808 049 501	100%
TOTALS	2 329 266 485	2 180 042 456	93,83%

[1832] From the table above it appears that GSC, Agusta, BAE Systems and BAE/SAAB had fully performed in terms of their DIP obligations. GFC has performed 68,28% of its DIP obligations. Part of the reason for the latter's failure to perform in full, was that one of their combat suite foreign contractors failed to perform in full. The platform portion of the obligations had been fully complied with.

[1833] Under the DIP programme no penalties had to be invoked.

29. Mr Pieter Daniel Burger

[1834] Mr Burger obtained a BAdmin degree from the University of Pretoria (1983), a BAdmin (Hons) from the University of South Africa (1990) and a Management Development qualification again from the University of Pretoria.

[1835] He joined Armscor on 1 April 1999 as a manager at GEROTEK, a subsidiary of Armscor. From 1 May 2003 to December 2008 he was Manager: Defence Industrial Participation, responsible for maritime related acquisition projects. He has been Acting Senior Manager: Defence Industrial Participation since 2009.

[1836] The DIP Division has an internal working instruction for managing the claims process. The instructions are contained in a document entitled 'Procedure for Management of DIP Claims' dated 8 October 2002. The provisions that specifically relate to DIP are contained in the umbrella agreement and DIP terms. All the DIP terms contained similar provisions, dealing amongst others with National Policy and DIP commitments, DIP activities and DIP calculations.

[1837] Armscor was not a party to the DIP contracts concluded between the obligor and the local beneficiary company, and had no influence in the manner in which the obligations contained in the DIP contracts were performed by the obligor. Armscor did not interfere with the arrangements in terms of the DIP contract between the obligor and the local beneficiary company. Where for whatever reason the obligor was unable to perform its DIP obligations toward the identified local beneficiary company in terms of the DIP contract, the applicable mechanisms as contained in the DIP terms would be applied to ensure that either the DIP obligations were successfully discharged or that the appropriate penalties, if necessary, were applied.

29.1. *DIP terms contracted for under the SDPP*

[1838] In the SDPP process, the following DIP terms were concluded and included as appendices to the relevant umbrella agreements:

- *Submarines*: DIP terms concluded with GSC for a DIP obligation value of €175 200 423.
- *Corvette/frigate (platform and combat suite)*: As mentioned by other witnesses the acquisition of the corvettes consisted of two parts, namely the platform and the combat suite. Although the acquisition was divided into two distinct parts, the provisions of the acquisition are set out in one umbrella agreement. In respect of the DIP terms, two separate DIP terms were concluded, one relating to the platform and the other to the combat suite. Each of the DIP terms were managed as separate DIP obligations. The platform DIP terms were concluded with GFC for a DIP obligation

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value of €88 123 584. The combat suite DIP terms concluded with Thompson CSF were for a DIP obligation value of €371 322 167.

- *Hawk (LIFT) and Gripen (ALFA)*: DIP terms concluded with BAE were for a DIP obligation value of \$680 314 667 for the Hawk and \$808 049 501 for the Gripen. One set of DIP terms was concluded although two separate sets of records were kept to distinguish between Hawk and Gripen DIP activities.
- *Light Utility Helicopter (LUH)*: DIP terms concluded with Agusta for a DIP obligation were valued at \$190 987 395.

[1839] The DIP terms were concluded in either US\$ (Hawk, Gripen and LUH) or euro (corvette and submarine). For reporting purposes the values were converted to ZAR at the fixed-base exchange rates for 1999 of R6,25 to the US Dollar and R6,40 to the euro.

[1840] The measurable deliverables at activity level were set out in annexures to the DIP terms. Such activities were first identified in the categories of direct DIP and/or indirect DIP. They were further identified in any of the following sub-categories applicable to direct DIP and indirect DIP:

- Exports (indirect DIP sales)
- Investments (including equity investment, joint venture, loan interest benefit, marketing support and other transactions)
- Local industry participation (direct DIP sales)
- Loan interest
- Technology transfer
- Other activities.

[1841] The DIP obligations were merely monetary values that were discharged by the obligor by demonstrating to Armscor the actual benefit accruing to the local defence industry through the categories mentioned above. The actual value of these activities was credited against the DIP obligation as approved by the DIP Committee.

[1842] The manner in which DIP credits were granted was by way of the claims process, where obligors claim the value of an activity in terms of the

DIP terms and if approved by the DIP Committee, the DIP obligation was reduced accordingly.

[1843] DIP terms could be amended at any time in accordance with the provisions of the DIP terms. Amendments were an integral part of the DIP contract management process and were usually necessitated by factors such as:

- Changes to the planned scheduling of activities
- Changes in the actual values of activities as compared to the proposed values of activities
- Changes to the local beneficiary companies
- Non-viability of proposed activities and technical matters.

In the case of the DIP terms, amendments took place at activity level.

[1844] One of the important functions of the DIP Manager was to ensure that performance of the DIP obligations by the obligors were managed and monitored. The DIP terms set out the DIP milestones and the discharge schedules for each of the DIP obligations.

29.2. DIP performance and discharge: DIP obligation completion as at 31 December 2013

[1845] The DIP obligations in respect of the Gripens, the Hawks, the LUH and the submarines had all been fully complied with. After the obligors had complied with their obligations, Armscor addressed letters to the obligors as follows:

- On 14 December 2007, Armscor wrote a letter to MAN Ferrostaal in regard to its portion of the GSCs DIP obligation. In the letter it was pointed out that according to Armscor's records, MAN Ferrostaal had successfully completed its portion of the indirect DIP. The letter further stated that '[a]ccording to our records an over achievement of €474 083 has in actual fact been registered.'
- On 25 November 2008, a letter was addressed to GFC confirming that DIP credits to the value of €88 123 584 were achieved and that the remaining portion of the guarantee could be cancelled.

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- On 30 April 2009, a letter addressed to GSC confirmed that GSC had discharged its DIP obligation of €175 200 423.
- On 24 August 2009, a letter was addressed to Agusta confirming that the latter had completed both the DIP and NIP commitments that arose from the supply of 30 A109 helicopters.
- On 22 February 2012, a letter was addressed to BAE Systems confirming that the Hawk/Gripen DIP obligation to the value of \$680 341 667 for the Hawk portion and \$808 049 501 for the Gripen portion had been achieved.

[1846] In respect of the corvettes, the value of the DIP obligations was R2,9 billion. To date, only R2 billion had been discharged, leaving a balance of R932 million worth of DIP obligations that must still be performed. The outstanding value of R932 million related to the missiles system portion of the corvette combat suite. The explanation for the outstanding value is as follows:

- When the DIP terms were first concluded, Thompson—which later became Thales Naval France ('TNF')—was responsible for the performance of the DIP obligations for the corvette combat suite, including the missile system.
- The French company MBDA Missile Systems (MBDA), as a sub-contractor to TNF, supplied the missile systems for the corvettes as provided for in the Supply Terms.
- Through an agreement between TNF and MBDA, TNF held the latter responsible for performing a portion of the DIP obligations. In terms of the agreement, MBDA's portion of the combat suite obligation was R1,2 billion of which only R239 million relating to direct DIP was discharged.
- When TNF had successfully completed its DIP obligations in June 2009, the remainder of MBDA's portion of the direct DIP obligation had not yet been completed. As a result, in 2009 the remaining MBDA's DIP obligation was formally split from the initial combat

suite DIP terms concluded with TNF, and separate DIP terms were concluded directly between Armscor and MBDA.

- MBDA was granted an additional seven years from 2009 to discharge the outstanding obligation. The said obligation must now be discharged by the end of March 2016.

[1847] The total values of commitments were never altered.

[1848] As part of managing the discharge of the DIP obligations, the DIP Division used a system—the DIP System—on which all the monetary values and transactions were captured. All information generated from the DIP System was audited as part of Armscor's annual auditing cycle by both internal and external auditors.

[1849] Mr Burger referred to a table that he drew, which indicated that the total DIP obligation of all obligors was R14,557 billion and that the DIP obligation carried out at 31 December 2013 amounted to R13,625 billion, totalling to 93,59% of the total DIP obligation.

[1850] The conversion rate used to arrive at the figures mentioned in the previous paragraph was, as indicated earlier, US\$1 = R6,25 and €1 = R6,40.

[1851] He also referred the Commission to the following table:

DEFENCE INDUSTRIAL PARTICIPATION
CATEGORIES OF DIP – ORIGINAL COMMITMENT vs ACHIEVED VALUES

TYPE OF DIP	INITIAL COMMITTED VALUE (ZAR)	CURRENT ACHIEVED VALUE (ZAR)
Sales and exports	10 727 235 358	9 375 765 240
Technology transfer	3 726 917 080	3 982 070 071
Investments	103 763 095	267 430 041
TOTAL	14 557 915 532	13 626 265 352

[1852] The table indicates, *inter alia*, that R103,763 million of investments were committed and that R267,430 million was actually invested in the South African economy.

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[1853] As mentioned earlier, one of the obligors (MBDA) has not fully complied with its obligation. If it did, the amount of actual investments might be higher than R267,430 million.

[1854] From the information that they received from 80% of the local beneficiary companies, 11 916 jobs were created or retained. About 20% of the local beneficiary companies did not respond to the enquiries about jobs created or retained.

[1855] Although Armscor, through the DIP Division, did not continue to monitor any DIP activities after all the DIP obligations had been discharged, through interaction with the local defence industry it was clear that some of the DIP projects were still continuing to benefit the local defence industry and the economy in general.

[1856] In conclusion, Mr Burger stated that in his capacities as DIP Manager and currently Acting Senior Manager he believed that the DIP programme had achieved its intended objectives. The anticipated benefits did materialise.

D. INTERNATIONAL OFFERS NEGOTIATING TEAM (IONT)**30. Mr Jayendra Naidoo**

[1857] Mr Naidoo was appointed Chief Negotiator on 9 December 1998, representing the Deputy President. He reported directly to the then Deputy President and the Ministers' Committee (IMC).

[1858] Usually, he would meet with the Deputy President prior to each meeting of the Ministers' Committee and brief him on progress, critical issues for consideration and so forth, and obtained feedback in preparation of meetings.

[1859] He also met separately with each of the Ministers who were members of the Ministers' Committee prior to each Minister's Committee meeting to brief them on progress and to understand their views on the relevant issues. It was generally the case that each Minister was concerned with matters that affected his or her portfolio.

[1860] At times he met with heads of the relevant departments or advisors to Ministers or had additional meetings with the Ministers. He also had numerous discussions with various interest groups, including trade unions and business associations.

[1861] His term of office as Chief Negotiator ended on 3 December 1999 after the contracts were signed with the respective defence armaments suppliers. However, he remained involved with certain matters regarding the finance contracts until they were completed and signed towards the end of January 2000. That marked the end of his participation in the IONT.

[1862] His core function was to chair the negotiations with the preferred bidders and to direct and lead the IONT to achieve the desired outcomes in respect of an agreed affordable package.

30.1. Establishment and terms of reference of the Negotiating Team (NT) and Affordability Team (AT)

[1863] On 20 November 1998, the Minister of Trade and Industry convened a meeting to discuss issues relating to the composition, mandate and objectives of a negotiating team. Representatives from the DOD, the DTI and the Department of Finance, and he, were invited to the meeting.

[1864] A terms of reference document was drawn up and approved by the Ministers' Committee on 20 January 1999. The NT was required to negotiate an achievable funding requirement and an affordable package with the preferred suppliers which would result in final contracting.

[1865] The negotiating team was to negotiate and conclude an affordable set of contracts which satisfactorily combined the technical, industrial participation and financial imperatives.

[1866] The team consisted of representatives of the DOD, Armscor, the Department of Finance and the DTI, and was chaired by him.

[1867] The terms of reference provided that the team members would each concentrate on their own sphere of responsibility, namely the Department of Finance representatives on finance, DTI representatives on NIP, Armscor

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representatives—supported by the DOD representatives—on DIP and technical/supply areas.

[1868] The full negotiating team became the vehicle for the bulk of direct negotiations with the preferred bidders, except for the technical area that was largely left to Armscor and the DOD, provided that they did not exceed the cost approved by the Cabinet in 1998. The whole negotiation of the NIP terms was conducted by the full team. Initially the Chief Negotiator and the Department of Finance were engaged in the finance negotiations, but subsequently they were concluded by the Department of Finance assisted by the DOD.

[1869] The negotiating team consisted of the following: Mr ML Swan, CEO of Armscor, Mr R White, Senior Manager in the Department of Finance, Mr S Shaik, Chief of Acquisition in the DOD, Mr V Pillay, Director for IP in the DTI, Dr P Jourdan, Deputy Director General of the DTI and Mr J van Dyk, Senior Manager, DIP Division of Armscor.

[1870] The negotiation team was supplemented by project teams of the DOD and Armscor that were responsible for matters relating to selection and pricing of the defence equipment.

[1871] Department of Finance staff assisted in the financial modelling and analysis and staff within the DTI helped with analysis of the proposed NIP projects.

[1872] Because of the complex nature of the negotiations, White and Case, an international legal firm, was engaged to assist with the drafting of contracts, and Warburg Dillon Read, an internationally respected London Investment Bank, was contracted to support the team in negotiations with the banks and export credit agencies.

[1873] On 6 April 1999, after considering a report by the negotiating team, the Ministers' Committee agreed to establish a separate team to investigate issues relating to the affordability of the packages.

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[1874] The Affordability Team members were Mr Roland White of the Department of Finance, Dr Paul Jourdan of the DTI, Mr Chippy Shaik of the DOD and the witness. The team was to operate under the strictest confidentiality and their brief was to evaluate the overall economic, fiscal and financial impact of the procurement. The primary focus was on the timing and need of the defence equipment, the economic benefit of the industrial participation and the fiscal and financial risks.

[1875] The Affordability Team was to prepare alternative scenarios for consideration by the Ministers' Committee to enable the Committee to make a recommendation about the scale and nature of the procurement.

[1876] The Affordability Team was supported by Dr Stephen Gelb, a prominent economist, Mr Clive van Horen, the IDC and the Bureau of Economic Research at the University of Stellenbosch.

[1877] In addition, a consortium of three US consulting firms specialising in steel-market analysis, attached to Warburg Dillon Read of London, were contracted to provide reports on the viability of the three steel projects proposed as part of the offset arrangements for the GSC, GFC and LUH packages respectively.

30.2. Assessment of the negotiating position

[1878] The project comprised 30 separate major activities that had to be conducted in parallel.

[1879] The initial scope of the work was as follows: six sets of contract negotiations with each of the separate defence armaments companies. Each contract would comprise of three separate sub-contracts dealing with supply of equipment, DIP terms and NIP terms. Associated with each contract was a separate finance contract to be negotiated with an international bank.

[1880] There were also negotiations with four different export credit agencies in the United Kingdom, Sweden, Germany and Italy.

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[1881] In addition there was an exercise in investigating affordability, which included a macro-economic modelling analysis as well as analysis of the major NIP projects proposals.

[1882] The Negotiating Team's main objective was to reduce the cost of the package and ensure that the DIP and NIP commitments were both substantial and solid.

[1883] The outstanding issue of affordability raised the possibility that the purchase of any one of the equipment types could be reduced in number from the original tenders, or even cancelled. This became the main source of bargaining leverage for the NT against the preferred bidders. In addition, the defence industry was in a global downturn, which created a window of opportunity for South Africa.

[1884] A comparison of prices on defence equipment was also conducted by the Affordability Team and it showed no evidence of SA paying a premium to international prices for comparable equipment. However, there were inevitable limitations on comparisons where the underlying specifications of equipment were not the same.

30.3. Changes proposed to improve NIP system

[1885] The DTI's industrial participation system for non-defence projects, established during 1998, was a relatively untested system. The DIP system was in operation much earlier. After scrutinising the DTI's NIP system, they were of the view that it had certain shortcomings that needed to be corrected.

[1886] After obtaining a mandate from the Minister's Committee, the Negotiating Team introduced certain amendments to the NIP system that required the preferred bidders to improve their offers significantly above the tender requirements. The amendments were effected with the agreement of the preferred bidders.

[1887] The tender requirements for DIP and NIP were each equivalent to 50% of the contract price, measured in accordance with the rules of the

respective industrial participation programmes of the DOD and DTI. In their bids, the tendering companies were required to present business plans for projects that would fulfil their NIP and DIP obligations. Some of the preferred bidders presented a large number of projects with inflated potential in their business plans, but committed to delivering no more than the required 50%.

[1888] The NIP system, as used to evaluate the tenders in November 1998, allowed suppliers to meet their obligations through a combination of actual economic activity, such as investments, exports and sales. The NIP system awarded suppliers with Rand value credits for investments, exports and sales with multipliers for exports, PDI equity participation, training and technology innovation.

[1889] The November 1998 the Cabinet decision reflected an industrial participation performance in excess of R100 billion, even though the actual Rand value amount committed did not exceed R30 billion for DIP and NIP combined.

[1890] The Negotiating Team concluded that the administrative requirements of such a system in the context of a programme as large as the SDPP would place a high level of stress on the DTI and was also likely to lead to limitations in respect of transparency and public oversight.

[1891] With the consent of the DTI, the Negotiating Team proposed amendments to the NIP system for the purpose of the SDPP to avoid exaggeration of benefits. A revised system was agreed for the SDPP, based only on investments, export and sales on a basis of one Rand for one credit; all the multipliers as envisaged in the existing NIP system were eliminated.

[1892] On 15 September 1999, Mr Naidoo made a presentation at a Cabinet meeting. The presentation contained the amended method of calculating credits proposed by them. The Cabinet took decisions based on their presentation and the contracts were approved on 1 December 1999. The new methodology of calculating NIP credits was therefore endorsed by the Cabinet. The same presentation was made to the Ministers' Committee on 31 August 1999 and then again on the eve of the Cabinet meeting.

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[1893] The Government policy on NIP that was in existence prior to the SDPP remained the policy of Government with regard to non-defence NIP. It was only in respect of the SDPP with the approval of the Minister's Committee and the Cabinet, that the terms of the NIP policy were changed and incorporated into the contracts.

[1894] At the Minister's Committee meeting, one of the issues discussed was the tranches approach relating to the aircraft.

[1895] In negotiations with the preferred bidders, the Negotiating Team targeted a minimum ration of 1:1 between NIP plus DIP investments and the contract price, with exports and sales additional. In all cases, these amounts were to be assessed over a period of seven years. In some contracts a portion of the export commitments were 'front-loaded' into the first 4 years in order to improve the overall national balance of payments situation during that phase of the procurement.

30.4. The legal framework

[1896] There were two agreements with regard to each defence equipment package. There was an umbrella agreement with the supplier that was signed by the Minister of Trade and Industry and the Minister of Defence. This was an agreement between Armscor and the defence supplier.

[1897] The umbrella agreement had three subsidiary agreements on supply terms, DIP and NIP respectively.

[1898] In conjunction with each agreement between Armscor and a supplier, there was a loan agreement between the Government represented by the Minister of Finance and a bank.

30.5. Finance contracts

[1899] As stipulated in the RFO, each offer for the supply of military equipment was accompanied by a financing package to fund the purchase of equipment by the South African Government.

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[1900] The original finance offers from all of the preferred bidders provided finance for 100% of each contract in the form of foreign-currency offshore loans, consisting of:

- Export finance officially supported by the Export credit agency of the supplying country (ECA loans), and
- Foreign commercial credits at normal market rates and terms (commercial loans).

[1901] The ECA loans covered up to 85% of the imported value of each contract. In every case the export credit agency required the borrower to pay the balance of 15% from its own resources as a down-payment. It was expected that this would be funded in hard currency from the commercial loans offered at LIBOR plus a substantial margin based on South African risk.

[1902] The ECA-guaranteed credits provided the most favourable foreign currency borrowing terms, significantly better than what would be available to South Africa in the commercial markets. They also had the least impact on the availability of credit for other South African borrowers, including the Government.

[1903] Commercial credits amounted to about 15% of the financing package originally on offer. The use of these credit lines would have a significant impact on South Africa's future offshore borrowing ability.

[1904] The overall objective of the Negotiating Team was to reduce costs, mitigate the impact on Government's future borrowing ability and reduce exchange rate risks.

[1905] In respect of the finance negotiations, the Negotiating Team's special objectives included:

- Raising ECA loan coverage to cover the total imported content of the packages
- financing local sub-contracts with ZAR raised in the normal course of business by the Treasury

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- achieving the best currency and interest rate options on offer for all other ECA loans; and
- reducing bank margins and fees.

30.6. Cost of packages

[1906] Cost estimates presented to the Cabinet in August 1999 included a number of items in addition to the tender price of the actual equipment as provided by the suppliers. The costs as presented to the Cabinet in November 1998 had not taken into account all the costs. The complete list included:

- Statutory costs such as freight, insurance and taxes
- project management costs incurred by the DOD and Armscor in administering the procurements
- financing costs for deferred payments to suppliers to optimise cash flow
- premiums payable on all loans backed by export credit agencies' and
- escalation costs to cover inflation in supplier countries future years.

[1907] The cost estimates were done on two different bases. The one assumed a Rand exchange rate fixed at the August 1998 rate, to calculate a nominal or 'cash' price, which is the cost as if a single payment were to be made at the date of signing.

[1908] The other cost-estimate basis calculated the real cost, by taking account of the expected rate of depreciation of the Rand exchange rate over the repayment period, as well as the 'inflation differential' between South Africa and supplier countries over the period. All foreign currencies were converted to Rand at an estimated foreign exchange rate closely linked to the 'forward rates' for the Rand prevailing in the financial markets at the time of estimation. The results were then discounted back to 1999 prices. In the presentation of costs to the Cabinet, both the nominal cost (cash price) and

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the real cost (using the forward exchange-rate curve and discounting back to 1999) were included.

[1909] The cost on a cash price was R29,9 billion as announced at the time of the Cabinet decision in September 1999.

[1910] In the contract to purchase there was no provision for interest. Interest provisions were contained in the loan agreements.

30.7. Affordability Report

[1911] The affordability study had two objectives. The one was to assess the macro-economic, fiscal and financial impacts of the expenditure on armaments. The issue addressed in this respect was whether the procurement would create undue pressure on South Africa's overall economic performance (as measured by GDP growth), employment levels, external economic position (as measured by the current account deficit of the balance of payments) and the Government's financial position (as measured by the fiscal deficit and public debt). In analysing this question the impact of different levels of total expenditure was analysed, with correspondingly different levels of offset commitments.

[1912] The other objective of the affordability study was to analyse the risks involved in the procurement. A number of procurement risks were identified.

[1913] The affordability study defined 'affordability' in terms of the capacity of the economy to absorb the overall costs of the exercise, as well as the possible increase in cost levels which might occur if the associated risks were experienced. Affordability was not defined in terms of the concept of 'opportunity cost', namely the possible alternative uses of the funds for meeting other policy objectives.

[1914] The affordability report presented the implications of different expenditure options, including the implications of various risks at the respective expenditure options.

30.8. Risks

[1915] Risks identified included an increase in domestic interest rates upon the announcement of the packages; non-performance of the offset commitments; more rapid depreciation of the Rand exchange rate than assumed in the costing; and an external economic shock.

[1916] In assessing the interest rate risk, two possibilities were considered. The first was a high-risk scenario, that is, a large shock was presumed to occur in the wake of the announcement of the expenditure. In this scenario, the financial markets would react strongly to the increased public expenditure on the grounds that the increase would prevent government from meeting its fiscal deficit targets, thus destroying its growing credibility with bondholders. The resulting panic reaction would lead to large capital outflows, rapid exchange rate depreciation and a possible large interest rate hike if the outflow continued. The interest rate hike would in turn depress domestic economic activity.

[1917] There was a corresponding low-risk scenario for the interest rate, which assumed a small but positive rise in the rate, resulting from little reaction to the announcement but a small increase in the international risk premium on South African Government bonds.

[1918] The economic impact modelling exercise included both high- and low-risk scenarios as regards the interest rate. The Affordability Team consulted with SA Reserve Bank officials and with Warburg Dillon Read in assessing the relative probabilities of the two risk scenarios. The consensus view was that the low risk scenario was more likely than the high risk scenario, even at the higher expenditure levels, and this was reported in the presentation to the Cabinet. In retrospect, this view had been borne out by events.

[1919] Two types of NIP risk were identified, namely contract risk and market risk. Contract risk refers to the failure of offset commitments to materialise due to suppliers' inability or failure to deliver on their commitments.

[1920] The Affordability Team undertook research from which it emerged that the record of delivering on offset commitments was mixed, and included

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both significant successes as well as significant failures in securing offset commitments. A key issue in determining success or failure was the capability of the buyer to monitor the process.

[1921] Success was associated with strong follow-up organisation and with the ability on the part of the buyer to develop alternative projects when initial proposals faltered.

[1922] Recommendations on all of these issues were incorporated into the Affordability Team Report.

[1923] Contract risk was also addressed via the performance guarantees that were improved during the negotiations from 5% to 10%. Ten per cent of the contract value was a substantial penalty. They did not succeed in increasing the guarantee in the case of the corvettes. They were not too disturbed, because what the corvettes offered, were the most matured projects and therefore had the least risk; they were happy to leave the guarantee at 5%.

[1924] Market risk in relation to the NIP commitments related to the failure of projects to deliver once investments had been made, due to unfulfilled expectations regarding market size, production costs, profitability, available technology, and so on. The Affordability Team commissioned two independent assessments of some of the large offset projects proposed by some of the preferred bidders. Reports thereof were attached to the Affordability Team Report.

[1925] The economic modelling exercise included both high and low risk scenarios for the NIP projects.

[1926] The modelling exercise also explicitly included an assessment of the impact of more rapid depreciation of the Rand than had been assumed in the cost calculations. In order to assess the additional fiscal costs that would be incurred, the modelling exercise looked at the impact on the economy of an external economic shock due to factors unrelated to the procurement

itself. This was to assess whether the procurement would negatively impact upon the economy's capacity to absorb such shocks.

30.9. Conclusions of the modelling exercise

[1927] The modelling exercise took account of expected inflation and exchange rate depreciation. It focused on three possible expenditure levels, namely low, medium and high, each combining different levels of procurement of the various defence systems. These three expenditure levels were analysed in conjunction with the two interest-rate risk scenarios and the two NIP-commitment risk scenarios, so that a total of 12 different scenarios were examined. In each scenario about a dozen key economic variables were calculated over an eight-year time horizon, with four of these variables—namely GDP growth, the fiscal deficit, the current account deficit on the balance of payments and the employment impact—being the main focus. The performance of all variables was related to a baseline scenario that assumed that no procurement took place.

[1928] The broad conclusion was that the impact of the procurement would be more or less neutral over the eight-year period, even at the highest expenditure level if the high risk scenario were avoided in relation to both interest rate and NIP commitments. The interest rate and the NIP commitments were two critical issues to be closely monitored.

[1929] If both risks materialised, the modelling exercise predicted that the macro-economic costs would become significant.

30.10. NIP commitments

[1930] Compared to the commitments in the tender submissions, the NIP commitments were improved by over 100%. A certain degree of flexibility was permitted whereby local sales could be a substitute for exports and in certain cases, indirect DIP for export sales. However, no substitution of the investment commitment was permitted.

[1931] Initially, the suppliers had committed to deliver NIP projects equal to 50% of the contract value. After they had negotiated with the suppliers, the latter committed to NIP projects equalling 100% of the contract value.

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[1932] The overall DIP commitments were valued at R15,3 billion, which included direct participation in the equipment procurement (R4,6 billion), technology transfer (R3,1 billion) and indirect DIP via foreign suppliers engaging South African defence companies (R7,6 billion). All the contracts referred to the NIP implementing system to take responsibility for the programme. This allowed the Minister of Trade and Industry to establish a suitably resourced mechanism to deal with the programme.

30.11. Loan packages

[1933] After extensive negotiations the need for commercial loans was completely eliminated. Export control agency finance could be used for all the imported content, including down-payments in respect of imports.

[1934] To different degrees, the non-UK agencies matched the attractive options offered by the UK's Export Credits Guarantees Department. As a result, the ECA loans included options to select different currencies and, with the exception of the German offer, a range of interest options. The ECA premia were to be financed from the ECA loans for all packages. Bank margins and fees were reduced.

[1935] The Finance Team was extremely pleased with these outcomes and was of the view that they were largely unprecedented, especially for defence spending.

[1936] The terms achieved with the export credit agencies and banks have substantially improved the financing in terms of cash flow and exchange risks as well as producing substantial savings for the South African Government.

[1937] In conclusion, Mr Naidoo stated that the IONT has managed to secure an outcome that was affordable for the Government and the Ministers were satisfied with the outcome.

[1938] Under cross-examination he stated that at the Minister's Committee meeting of 31 August 1999, he presented the Affordability Report, a combined report of the negotiating team and the affordability team, both of

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which he had chaired. All the calculations of the economic model and all the results of the negotiations were collated into this report.

[1939] As a result, the Ministers had all the extracted information before they took the decisions. The Affordability Report did not single out any option as the best one, but made Ministers aware of the available possible options. It contained all the relevant facts that Ministers had to take into account before making a decision.

[1940] All the risks that the teams identified were spelt out together with measures that could be put in place to mitigate the identified risks. Tranches were also mentioned in the report.

[1941] The consequence of a possible cancellation and down-sizing of the quantities of some of the equipment were spelt out in the report.

[1942] Besides the Affordability Report various other documents and annexures, including the reports of the analysts, were made available to the Ministers.

D. INTER-MINISTERIAL COMMITTEE (IMC)**31. Former President Thabo M Mbeki**

[1943] In 1994 Mr Mbeki was appointed as one of the Deputy Presidents of the Republic of South Africa. He served in the position up to the middle of 1999. After the 1999 elections, he was elected President of the Republic of South Africa.

[1944] During the SDPP process, an Inter-ministerial Committee (IMC) was formed and he became Chairperson of the Committee. His role was mainly supervisory. The main function of the IMC was to provide executive oversight over the SDPP process.

[1945] When they came into Government in 1994, they realised that the SANDF required additional equipment. They also realised that the previous Government was on the verge of signing a contract to buy four corvettes for the Navy from Spain. A decision was taken not to proceed with the

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acquisition of the corvettes, but rather to examine the needs of the SANDF and thereafter decide how to satisfy its needs.

[1946] The White Paper on Defence, which was basically Government policy, followed. It was discussed in the Cabinet and then forwarded to Parliament. The Defence Review followed and was also approved by Parliament. Thereafter, the acquisition process followed.

[1947] When deciding to proceed with the acquisition of equipment, other needs of society were also taken into account. They had to balance the need to acquire equipment for the SANDF with other Government priorities.

[1948] Some of the equipment of SANDF had become obsolete and had to be replaced in order to enable the SANDF to carry out its constitutional and legislative mandate.

[1949] After the Cabinet took a decision to proceed with the acquisition of armaments for the SANDF, various structures were put in place in order to implement the decision.

[1950] These structures ultimately reported to the IMC, which in turn reported to the Cabinet. Recommendations of the respective structures came first to the IMC. The IMC and the Cabinet took decisions as a collective. Recommendations by the IMC to the Cabinet were not recommendations of any member of the IMC but the recommendations of the collective.

[1951] Decisions taken by the Cabinet were the decisions of the collective and not decisions of any particular Minister. Final decisions about the SDPP were taken by the Cabinet.

[1952] He recalled that at one of the IMC meetings they received recommendations on which equipment to purchase. As far as the trainer aircraft was concerned, there were two options. They decided that the Hawk was a better option, as the Hawk had certain advantages which the Italian trainer lacked. As the Hawk was more expensive, they decided that they

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would put in place measures to see how they would manage the cost implication attached to their decision to purchase the British rather than the Italian trainer. The recommendation of the IMC was ultimately adopted by the Cabinet.

[1953] In November 1998 the Cabinet approved the preferred suppliers for each of the equipment types, and thereafter the Cabinet requested that matters relating to affordability should be investigated. The affordability report was received as were various other reports.

[1954] When the Cabinet was finally satisfied that it had attained an affordable contracting position, it took a decision in December 1999 to proceed with the acquisition. This decision authorised the signing of the contracts with the preferred bidders.

[1955] It was not necessary for the Cabinet to secure Parliament's approval prior to authorising the signing of the contracts. Parliament was informed about the funding of any project through the national budget which must be approved by Parliament.

[1956] Under cross-examination Mr Mbeki stated that there was no need for Government to have obtained permission to proceed with the acquisition. The procedure was that Parliament was informed about expenditure on a yearly basis through the national budgets, followed by departmental budgets. The only body which had the authority to make firm decisions about the preferred bidders was the Cabinet. The Cabinet had the powers to accept, amend or reject any recommendation that came from the lower structures.

[1957] The IMC made their recommendations to the Cabinet. In turn, the IMC received recommendations from lower structures and the IMC had the power to accept, amend or reject the recommendations from the lower structures.

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[1958] He was not aware of any evidence that indicated that any member of the IMC or the Cabinet acted improperly as far as the selection of preferred bidders was concerned.

[1959] He was appealing to those who said that the preferred bidders were selected as a result of unlawful conduct on the part of any member of the Cabinet, to come forward and give the Commission the relevant evidence.

[1960] People who have been talking about corruption in this procurement process must come and testify before the Commission. Their allegations of corruption must be tested in public. The allegations of corruption in this procurement process were sustained for several years without any evidence being produced to support the allegations.

32. Mr Ronald Kasrils

[1961] Mr Kasrils was Deputy Minister of Defence from 1994 to 1999. From 1999 to 2004 he was Minister of Water Affairs and Forestry and from 2004 to 2008 Minister of Intelligence Services.

[1962] As Deputy Minister of Defence he was neither a member of the Cabinet nor one of the Inter-Ministerial Committee (IMC), a sub-committee comprising Cabinet members.

[1963] Apart from the general assistance he provided the Minister, the main function assigned to him by the Minister was that of assisting in the establishment of a modern, inclusive national defence force. This entailed the development of policy and interacting with top military officials, Parliament and so on.

[1964] The primary challenge, among others, was to integrate the statutory forces of the apartheid era and the non-statutory liberation forces into a new, restructured and transformed national defence force.

[1965] One of the important elements of the transformation agenda was the alignment and rationalisation of the structures of the defence force and the cohesiveness of the members of the defence force.

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[1966] It was important for the defence force to have the capability and capacity, sustained by appropriate resources and equipment, to support their assignments at home and on the continent. The transformation of the defence force required the introduction of new equipment since the boycott and sanctions campaign against the former apartheid regime had largely left the country's armed forces with obsolete equipment.

[1967] He was a member of the COD and the AAC, both chaired by the Minister. Both structures gave guidance to the DOD as far as the acquisition of defence equipment was concerned. At times, in the absence of the Minister, he would chair the meetings, but no decisions could be taken in the absence of the Minister.

[1968] The Defence Review was approved by both the Cabinet and Parliament in May 1998.

[1969] He referred to the minutes of a meeting of the COD that he attended, held on 9 February 1998. According to the minutes, when discussing the government-to-government offers, the following was recorded:

'Mr Haywood reminded the Council that the Minister of Trade and Industry had recommended that a meeting between the various ministries involved in the package deal be held before the final letters went out to countries on the short list. Although the Minister and Deputy Minister of Finance could not be present, a very successful meeting was held with Mr Alec Erwin and the team. Industrial participation has now become a key aspect with a 100% (50% military and 50% industry) being required.'

[1970] There were discussions about how the SDPP should be funded and the possible offsets. Government was trying to find an appropriate manner of funding the various packages. The funding of the SDPP was going to be outside the Defence budget, and was going to be by Government. The acquisition in terms of the SDPP was modest.

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[1971] He was aware that the Minister of Finance and the Minister of Trade and Industry were tasked with investigating how the competencies within their departments could best support the strategic intent of the Cabinet regarding the SDPP. Issues of cost and/or affordability and industrial participation were critical to the deliberations of the Cabinet. In the result, the Minister of Finance dealt with matters relating to financing the SDPP while the Minister of Trade and Industry dealt with the National Industrial Participation Policy.

[1972] The MODAC policy document was applicable to the acquisition of defence equipment generally, but not to the SDPP, which were used in 1998 as a special mechanism driven by the National Executive.

[1973] Departmental policy documents such as MODAC did not negate or invalidate the overall control function of the Minister of Defence as the executive authority whose decisions were ultimately final.

[1974] Mr Kasrils said he visited various countries where he met with government officials and military officers. He inspected some of the armaments manufactured in the respective countries. He also visited the United Kingdom, specifically with the intention of viewing and forming an opinion about the Hawk 120 jet fighter/trainer from British Aerospace. It had specifications as a LIFT aircraft that was of interest to South Africa. The dual functionality of the Hawk appealed to the Minister and him in that it could serve as a trainer and at the same time be utilised for combat operations.

[1975] He also had an opportunity to visit Sweden to investigate the Gripen JAS39 jet fighter, manufactured by SAAB. This aircraft had a cockpit similar to that of the Hawk, so that a pilot who had trained on a Hawk could more readily adapt to the Gripen. He discussed with the Minister his observations of the Hawk and the Gripen JAS39.

[1976] He understood that the Minister and his colleagues in the IMC were aware of the additional cost of trainer aircraft. He believed that they deliberately decided on the Hawk because in the long term its cost was expected to be more advantageous owing to the compatibility of the Hawk

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and Gripen JAS39, and the added advantages with regard to our country's transformation agenda and trainer-fighter safety.

[1977] The investigation conducted included comparing the Hawk and Gripen to the Aermacchi, an Italian aircraft with which the old defence force was more familiar, particularly as this aircraft had helped to produce the Impala fighter jet on which the old SADF had relied.

[1978] The strategic discussions of the various fighter aircraft options touched on the value of opening up new partnerships within the defence industry whilst strengthening the solid relationships South Africa had with its traditional trading partners in the United Kingdom and Europe.

[1979] He was referred to the various purported minutes of the special ministerial briefing of the Deputy President on 31 August 1998. He said that the minutes he had signed together with his colleagues, properly reflected their deliberation and the decisions taken on that particular day. He confirmed that his colleagues also signed the same minutes that he had signed. He remembered that Mr Shaik approached him with the first draft of the minutes, he suggested certain additions to the draft and after the additions were included in the minutes, he had signed them. His other colleagues were given the first draft by Mr Shaik and once the final draft was produced, they also signed the minutes.

[1980] Mr Shaik, who made the presentations at the meeting, was probably requested by the Minister to prepare the minutes of the meeting.

[1981] He had not received the draft minutes prepared by Mr Esterhuysen.

[1982] Under cross-examination he stated that he preferred the Hawk, amongst others because it had a cockpit instrument panel that was similar to that of the light advanced fighter aircraft. After training to fly the Hawk, a trainee would find it relatively easier to upgrade to the Gripen.

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[1983] At the time when Mr Steyn resigned, he had a good relationship with him. He asked him reasons for his resignation, and Mr Steyn replied that he was resigning for personal reasons relating to his family.

[1984] At all times, his colleagues, members of the COD and the AAC, were quite clear why they preferred the Hawk. In their view, preferring the Hawk would have had a positive impact on the economy and would have made it easier for trainees to fly the Gripen. The other advantage which impressed them was the dual function of the Hawk. Moreover, the Hawk was utilised by various air forces in the world; the Indian Defence Force recently had bought 80 of them. Over the years the Hawk has proven itself to be sustainable, durable and desirable. The same could not be said about the MB339.

[1985] They were aware that the Hawk was much more expensive, but it had much more to offer.

[1986] At the special AAC meeting of 13 July 1998, SOFCOM made a presentation on the LIFT programme with a cost option ranking and a non-costed option ranking. The results of the evaluations of the different equipment were presented to the AAC.

[1987] The AAC was convened after the COD meeting of 21 August 1998. This was borne out by the minutes of the COD meeting where at the end of paragraph 7.3.26 the following appeared: *'The AAC was waiting to convene after closure of the Council meeting'*.

[1988] After the meeting of 21 August 1998, a recommendation would have been made to the Cabinet for the final decision.

33. Mr Mosiuoa Lekota

[1989] Mr Lekota is the President of the Congress of the People political party and a former Minister of Defence in the National Executive headed by then President Thabo Mbeki. He served as Minister of Defence from 17 June 1999 up to 25 September 2008.

[1990] Prior to his appointment as Minister of Defence he was a member of the National Executive Committee of the African National Congress, Premier

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of the Free State (1994 to 1996), and Chairperson of the National Council of Provinces (1997 to 1999).

[1991] After his appointment as Minister of Defence he assumed the responsibilities assigned to that portfolio and joined the Inter Ministerial Committee (IMC). His functions included giving effect to the 1998 decision of the Cabinet to pursue the objectives of the Defence Review by, *inter alia*, equipping the SANDF to enable it to carry out its mandate.

[1992] During the period that he was Minister of Defence discussions and decisions within the DOD on SDP packages were inclusive, well-thought through and above board in every respect. Proper and well-motivated recommendations from the DOD and those made at the IMC were framed within the context and guidelines of the Defence Review.

[1993] When the issue of a decision to continue with tranches 2 and 3 regarding further Hawk and Gripen procurement was brought up, he applied his mind to the matter and recommended that tranches 2 and 3 be proceeded with. He referred to the minutes of the IMC meeting of 31 August 1999 where amongst others the re-introduction of the Gripen aircraft as a tranching option was discussed, and its implications for the SAA fighter capability. The team proposed three tranches of both Hawks and Gripen.

[1994] He was not aware that Admiral Kamerman was granted permission by Admiral Mudimu to take up employment with TKMS.

[1995] Under cross-examination he stated that the ANC had never benefitted from the SDPP. He was not aware of any information indicating that the ANC had benefitted from the SDPP.

34. Mr Trevor Manuel

[1996] Mr Manuel was a Minister and member of the National Executive from 1994 to 24 May 2014. From May 1994 he was Minister of Trade and Industry and in 1996 he was appointed Minister of Finance, a position he held until 2009. From 2009 until 24 May 2014 he was Minister in the Presidency in charge of the National Planning Commission.

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[1997] He served on the Inter-ministerial Committee that was established to oversee the SDPP, in his capacity as Minister of Finance.

[1998] In November 1998 the Cabinet took a decision to procure armaments in terms of the SDPP. This was a policy decision and one that was grounded in the constitutional mandate conferred on the National Executive by section 85 of the Constitution.

[1999] After the Cabinet decision of November 1998, he was tasked to ascertain the most practical, efficient and affordable method of servicing the financial obligations that were anticipated in acquiring the armaments in terms of the SDPP.

[2000] He interacted with the Financial Negotiation Working Group (FNW) and the IONT that was appointed to investigate and gather relevant data and material on the budgetary implications and general affordability of the SDPP. They in turn worked closely with national and international financial advisers.

[2001] As Minister of Finance it was his duty to oversee and sign the relevant loan agreements that Government was prepared to enter into with respect to the SDPP. With the National Treasury he also monitored and reviewed the expenditure on the SDPP on a regular basis and effected the necessary payments in accordance with established National Treasury procedures.

[2002] It was also his task to liaise with the DOD and Armscor and oversee 'the spend on SDPP expenditure commitments' within a particular budgeting cycle to ensure that all payments made in respect of the SDPP were in accordance with the allotted budget.

[2003] Spending on the SDPP was at all times within the budget envelope that Parliament approved every year.

[2004] On 18 November 1998 the Cabinet resolved to accept the DOD's recommendation of the preferred suppliers for the SDPP and it tasked the DOD, the Department of Finance (now the National Treasury), the

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Department of Public Enterprise and the DTI with the further conduct of the matter.

[2005] The decision of the Cabinet was an in principle one that required a further investigation of the merits of the presentation made by the DOD. On 25 November 1999, and after an affordability review had been concluded and negotiations with identified suppliers embarked on, the Cabinet approved the procurement by the DOD in terms of the SDPP.

[2006] Executive decisions that were consequent on the implementation of the Cabinet decisions of 18 November 1998 and 25 November 1999 were scrutinised in Parliament.

[2007] The November 1998 decision of the Cabinet to enter into negotiations with the preferred bidders in the SDPP committed Government to investing about R29,9 billion in the SDPP. The intention was that the Special Defence Account of the DOD would carry the cost of the SDPP.

[2008] The financial feasibility of this commitment by the Cabinet to the SDPP was informed by various reports of task teams and structures whose duty it was to advise on these matters. Together with other members of the IMC they interrogated these reports.

[2009] At a technical level, the force design, force levels, armaments, equipment and related capacity issues were and continued to be the preserve of the Defence Force. The National Treasury was one of the departments that had a constitutional obligation to ensure that any funding intended for the SDPP was affordable and budgeted for.

[2010] The National Treasury is responsible for budget provision and financing through taxation or debt. These functions are performed by different branches of the National Treasury that must and in fact did interrogate issues of affordability and associated risks.

[2011] In discharging its affordability function and its responsibilities arising from objectives of promoting fiscal prudence, the National Treasury arranged

for a detailed Affordability Study to be undertaken. Since the National Treasury did not have all the requisite skills in-house, it outsourced some of the detailed macro-economic modelling required to give the IMC and the Cabinet an informed and well-researched view on the risks and benefits of implementing the SDPP.

[2012] The affordability exercise looked at various risks factors, including possible rapid and significant rise in interest rates, the introduction of previously unanticipated macro-economic risks, high inflation, inability to service debt, and so forth.

[2013] The Affordability Report assisted the National Treasury in performing its functions efficiently. Despite the onerous responsibilities of Government with respect to its broader governmental objectives, the National Treasury was able to produce the first-ever fiscal surplus within a decade of the commencement of SDPP. To some extent the success in our financial and fiscal planning was attributable to the role that the National Treasury played in ensuring that the DOD's spending did not increase beyond 1,7% of GDP over the term of the SDPP. During the apartheid era, defence spending was about 4,5% of GDP. The 1,7% of GDP was significantly below the international norm, especially for developing countries.

[2014] The Defence Expenditure as appropriated by Parliament included financing from both revenue and foreign loans negotiated specifically for the acquisition of armaments for the SANDF.

[2015] Mr Manuel further said that it was important to note that although the annual budget was tabled by the Minister of Finance, it was in fact a decision of the Cabinet. All ministries made an input. The decisions taken on allocations to various departments were policy-laden and fell within the parameters of section 85 of the Constitution.

[2016] The National Treasury went to great lengths to ensure that Government could borrow at the most favourable terms and that the loan agreements could be restructured or the loans redeemed or repaid earlier than anticipated.

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[2017] There were two sets of contracts, namely the supply terms that were signed by the Minister of Defence and financing contracts, which fell within the sphere and scope of the Minister of Finance. All sovereign debt was the responsibility of the National Treasury and the Minister of Finance dealt with it in his or her department.

[2018] In conclusion he stated that he was convinced that the selected package was affordable and within Government's 'fiscal envelope'.

[2019] The various court actions that were instituted against him failed because the courts were satisfied that his conduct and the decisions taken were consistent with the mandate conferred on him.

[2020] In his view, cancellation of the loan agreements would have a serious negative impact on our country or economy. It would negatively impact on South Africa's credit rating and credit facilities obtained in the global credit markets. There could also be 'a run' on bonds issued by the Treasury and held by international institutions, not only in relation to government bonds, but state-owned entity bonds as well. South Africa's credit-worthiness would be in jeopardy.

[2021] Under cross-examination Mr Manuel said that the Cabinet did not require the approval of Parliament to proceed with the SDPP. Parliament had an oversight role over all actions of the Cabinet and it normally carried out its oversight role through various established committees, for example SCOPA.

35. Mr Alexander Erwin

[2022] Mr Erwin is a consultant. He was appointed Deputy Minister of Finance and served as such from 1994 to 1996 and as Minister of Trade and Industry from 1996 to 2004. In 2004 he was appointed Minister of Public Enterprises until he left office in September 2008.

[2023] He served in the Cabinet sub-committee referred to as the Inter-Ministerial Committee (IMC), established to oversee the SDPP. He was a

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member of the IMC in his capacity as Minister of Trade and Industry. He was also a member of 'Disputes Panel' of the World Trade Organisation.

[2024] In the DTI, ministerial decisions were made on the basis of submissions prepared by officials of the Department and signed by the Director-General or his/her deputy. Submissions presented to him by his subordinates with regard to the NIP Policy and the NIPP would invariably be related to a policy choice, as opposed to any specific administrative detail on a particular aspect.

[2025] DTI officials negotiated the offsets in an effort to:

- Stimulate economic growth and development
- Promote investments and in particular foreign direct investments with broad spin-offs that would improve the socio-economic circumstances of the population; and
- Generally enhance South Africa's ability to change the economic landscape that the democratic Government inherited.

[2026] The NIP was located within the broader economic policy of Government and more particularly within the industrial policy of that period.

[2027] The mechanism for implementing the SDPP was developed in the 1996 White Paper on Defence, the Defence Review of 1998, the NIP Policy and its operating guidelines, the NIPP and related policy documents.

[2028] The IMC was established in 1998. Its members were appointed to have oversight over the SDPP process. It comprised the following members: Deputy President (later President) Thabo Mbeki (Chairman); The Minister of Defence (initially Minister Joe Modise, later Minister Mosiuoa Lekota); the Minister of Finance, Minister Trevor Manuel; the Minister of Public Enterprises Minister Stella Sigcau, then Minister Jeff Radebe and him, the Minister of Trade and Industry.

[2029] The purpose of the IMC was to exercise oversight over the SDPP and to coordinate the different line-function ministries within the SDPP. In their

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capacity as members of the National Executive, they also represented the collective views of the Cabinet.

[2030] Depending on their mandate from the Cabinet, the IMC took final decisions on certain issues, but on key issues defined by the Cabinet's mandate they reported back to the Cabinet.

[2031] As Minister of Trade and Industry he had executive responsibility for the NIP Policy and took accountability for providing guidance on the use of the NIPP as a tool for advancing the social-economic imperatives of Government.

[2032] As far as the SDPP was concerned, the focus of the Cabinet was, *inter alia*, on using the industrial policy of Government to broaden participation in the economy by enabling investment and promoting trade and enterprise development.

[2033] Though the primary objective of the SDPP was to enhance the capabilities of the Defence Force in the discharge of its constitutional and legislative mandate, the Cabinet formed the view that it was in the best interest of the country to harness the opportunities for economic growth and development presented by these procurement packages.

[2034] Various structures reported to the IMC. Their reports were considered and where appropriate, recommendations would be made to the Cabinet. One of these structures was the IONT, which played a primary role in negotiating the best terms and conditions for the contracting parties.

[2035] The most critical element of the exercise undertaken by the IMC was to give effect to the policy choices of the Cabinet. In taking decisions, the members of the IMC gave content and effect to the objectives of the industrial policy of Government and of the NIP Policy as adopted by the Cabinet on 30 April 2007.

[2036] As the executive authority of the DTI he was acutely aware of the imperative of leveraging the opportunities created by Government's

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procurement programme to sustain South Africa's economic growth, leverage foreign direct investment, create jobs, and more. The SDPP seemed to present the appropriate opportunity to put Government's industrial policy imperatives and strategies to the test.

[2037] The primary policy decisions relating to the SDPP were taken at Cabinet level. Thereafter the IMC used its discretion to give effect to those policy choices; some variations to the terms and conditions agreed to in contracts were made, as attested in the use of multipliers and the use of three criteria in the final contract negotiations. The context for these variations was the ability of parties to a contract to vary the terms thereof if both agreed to the variation and gave effect to the amendments of the terms of the contract.

[2038] The IONT had to address a wide range of issues. Its task included verifying with the obligors that the projects that they were offering did meet the criteria of 'additionality', sustainability and 'causality'. In the process they had to deal with the large number of projects across a wide range of the nine criteria.

[2039] The IONT advised that having to take into account the nine criteria was complicating negotiations and causing delays in trying to ascertain whether the proposed projects could comply with the nine criteria. It therefore recommended that they should restrict it to three of the criteria, namely investment, local sales and exports. The matter was discussed by DTI officials and thereafter the IMC accepted the IONT recommendations.

[2040] The nature and structure of the NIPP allowed the obligors to change the projects that they offered. They could substitute one project with another over time. The actual package of projects was not a contractual matter, it was the total obligation that was contractual and that was never varied. The variations that occurred in the NIPP were essentially variations around the details of the package of projects.

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[2041] Mr Erwin further testified that as they proceeded with the implementation of the NIPP, many lessons were learnt and with hindsight they might have done some things differently.

[2042] Around 2004 they contemplated some adjustments to their policies. In 2012 a new policy was introduced, which focused on direct participation as opposed to indirect participation. This was similar to DIP where procurement was used to try and develop the defence industry capacity to a higher level.

[2043] In the NIPP they were dealing with what were essentially industrial policy issues as opposed to the precision of contractual obligations that characterised the purchase of equipment and the financing contracts.

[2044] DIP related to investments within the defence industries. Its objective was to increase the industrial and competitive capacity of the defence-related industries. NIP had a much wider objective, though, as it was applicable to most parts of the economy.

[2045] The new policy was an attempt to introduce an overall coherent approach to the utilisation of Government procurement as an instrument of industrial policy and in order to be more effective, it focused around the sectors within which procuring takes place.

[2046] It is evident from the NIPP that it involved a process of engagement with the private sector, which is to all intents and purposes a form of commercial negotiation. Industrial participation was not used to justify a decision to purchase equipment. What is central to commercial negotiation is the concept of leverage, which implies that mechanisms are used to optimise the desired objectives.

[2047] The interactive process involved in the implementation of the NIPP was effectively two related processes namely the reaching of agreement on projects, on the one hand, and where required by circumstances, a mutually agreed variation of the recorded contract, on the other.

[2048] This process was inherent in all large and complex commercial contracts. In this process, as far as projects were concerned, the DTI did point the obligors in certain instances in particular directions. As a policy choice they allowed the obligors to reach the required credits without depending solely on investment, export and local sales. The agreements negotiated by the IONT did not override the overall policy objectives of the NIPP or the larger NIP Policy. If they had stuck to the three criteria mentioned in the contracts it would have taken them much longer to find projects and that might not have been to the benefit of our country.

[2049] The policy choice they made was to allow obligors to reach the required credits without depending solely on investment, export and local sales. This in all likelihood did make it easier for the obligors to reach their targets but it did not reduce the targets. It only altered their means of achieving them. From the DTI's point of view it allowed them to try and achieve the full range of their industrial policy objectives, to which they gave a higher priority.

F. OTHER GOVERNMENT DEPARTMENTS

I. THE NATIONAL TREASURY

36. Mr Andrew Donaldson

[2050] Mr Donaldson testified that from December 1996 until December 2000 he was employed as Chief Director: Financial Planning in the Budget Office Division of the Department of Finance and the National Treasury. In January 2001, he was appointed Deputy Director-General and head of the Budget Office in the National Treasury, and acting head of the Public Finance Division. From 2004 until October 2013 he served as head of the Public Finance Division.

[2051] The SDPP was initiated before the Public Finance Management Act 1 of 1999 (PFMA) came into effect. Financial and fiscal matters were governed by the Exchequer Act 66 of 1975 at the time. They fell under two separate departments, namely State Expenditure and Finance. The PFMA, which came into force on 1 April 2000, repealed the Exchequer Act.

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[2052] With effect from April 2000, the former Departments of Finance and State Expenditure merged to form a single department, known as the National Treasury. Its responsibilities were, *inter alia*, to promote the national government's fiscal policy framework and co-ordinate macro-economic policy; co-ordinate intergovernmental fiscal and financial relations; manage the budget preparations process; and exercise control over the implementation of the annual national budget, including any adjustment budgets.

[2053] The National Treasury and its predecessor Departments of Finance and State Expenditure were not responsible for procurement decisions pertaining to the SDPP and were not the contracting parties. The procurement agreements were the responsibility of the DOD and Armscor; loan agreements were their responsibility. The financing aspects of the procurement were managed by National Treasury and its predecessors.

[2054] His involvement with the SDPP mainly entailed the following:

- Advising the Director-General and Minister of Finance on the budgetary implications of the SDPP
- Representing the Department of Finance on the Management Committee (SOFCOM) for the evaluation of the international offers
- Participating within the Department of Finance in the preparation of the August 1999 Affordability Report and providing associated advice to the Minister of Finance
- Monitoring and reviewing the expenditure incurred and SDPP expenditure commitments for the purposes of the annual budgets and adjustment budgets, in consultation with the DOD and Armscor.

[2055] He was appointed to represent the Department of Finance on SOFCOM.

36.1 Overview of the role of the National Treasury

[2056] The National Treasury and its predecessor departments played the following roles in the SDPP:

- Officials from the Departments of Finance and State Expenditure, in consultation with the DOD, monitored and evaluated the budgetary implications of the envisaged procurement programmes and participated in the deliberations of the Management Committee – SOFCOM – established in 1998 to oversee the evaluation of bids.
- Officials of the Department of Finance participated in the Financing Evaluation Committee (FEC), which assessed and scored the financing proposals submitted by bidders, for the purpose of selecting the preferred bidders.
- Officials from the Department of Finance served on the Finance Negotiation Workgroup (FNW), which was constituted to assist the IONT in negotiating foreign exchange loan agreements with foreign banks and in negotiating financial aspects of the procurements with the suppliers and related parties.
- Officials from the Department of Finance and State Expenditure were involved in assessing the affordability, economic, fiscal and financial impact and risks of the procurement. This included:
 - Preparing initial costing and risk assessments in November 1998 and March 1999
 - Compiling a more comprehensive Affordability Report that was presented to the Ministers' Committee in August 1999
 - The three documents were prepared at different times but they covered similar issues in increasing depth and increasing detail. The third report was much more detailed report than the first two reports. The full costs were taken into account.
- Officials of the Department of Finance and subsequently the National Treasury managed the export credit and loan facilities associated with the SDPP, and debt repayments to foreign banks.
- Together with officials of the DOD and Armscor, the National Treasury annually revised the estimates of expenditure on the SDPP, including expenditure already incurred, amounts required to be appropriated through the annual Appropriation Act and

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adjustments appropriations and projected expenditure still to be incurred.

[2057] As far as the agreements with the preferred suppliers were concerned, officials of his department were involved only with financial aspects of those agreements.

36.2 The procurement process and assessment of financing offers

[2058] In May 1996 Parliament approved the Defence White Paper. The White Paper proposed a comprehensive Defence Review of the SANDF, including its defence posture, functions, force design, structure and weaponry.

[2059] The Defence Review Report followed and was presented to Parliament on 22 May 1998 for approval. It was also presented to the Cabinet. It recommended that the military cut staff and modernise its weaponry, and identified an urgent need to purchase arms for the SA Navy and the SA Air Force. It recommended the purchase of the following equipment: four corvettes, four submarines, 32 medium fighter aircraft, 16 light fighter aircraft and 12 combat support helicopters.

[2060] The Defence Review did not include details of the projected costs or the financing of the recommended acquisition or the names of bidders or preferred bidders or suppliers of the equipment.

[2061] Officials of the Department of Finance and State Expenditure undertook a review at that time of the financial implications of the Defence Review.

[2062] A Medium Term Expenditure Framework (MTEF) sectoral review of defence spending was undertaken in 1997 to assist in advising the Ministers. It recommended that defence spending should be stabilised at around 1,5 percent of GDP.

[2063] Following approval by the Cabinet of the Defence Review, the DOD initiated a process for acquisition of the defence equipment to give effect to the desired SANDF force design.

36.3 Establishment and mandate of the Financing Evaluation Team (FET)

[2064] The DOD initiated a formal process for the evaluation of the bids. SOFCOM, which reported to the Minister of Defence, was formed and he served on that committee together with a representative of the Department of State Expenditure.

[2065] The evaluation process was conducted by three sub-committees, each dealing with one aspect of the evaluation process. There was a sub-committee dealing with Military Value, another with Industrial Participation and the last with financing offers of the various bids.

[2066] The FET consisted of officials from the DOD, the Department of Finance, Armscor and specialists from ABSA Bank.

[2067] The FET first met in May 1998. They resolved to perform two tasks, namely:

- To evaluate the structure and soundness of the various financing proposals submitted by the bidders. The results of this financial analysis of the bids were recorded on Financing Evaluation Scoring Sheets provided by Armscor. Financing evaluation Instructions were also sent to the FET members by Armscor.
- The second task was to conduct a fiscal analysis of the affordability and budget-impact of the proposals. To this end, the FET produced a report titled 'Availability of Funding for Procurement of Defence Equipment', which was adopted by the Minister of Finance on 30 June 1999.

[2068] This report provided a preliminary assessment of the level of funds that would be available to the DOD over the next 20 years for spending on the proposed acquisition programme.

[2069] The FET's Availability Funding Report sought to quantify the funds that would be available to the DOD for the SDPP on the assumption of zero per cent real growth in the overall level of defence spending and taking into account a desired personnel, operating and capital spending ratio of

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40:30:30, to be phased in over a period of six years. At the time, acquisition of equipment and other spending of a capital nature comprised 9% of defence spending.

[2070] The suggested affordability limit, including provision for inflation of about 5,5% a year, amounted to R1,4 billion in 2001/02, rising steadily to R4,5 billion in 2018/19. This was as 'a set of initial estimates'.

36.4 Negotiations with the preferred bidders

On 18 November 1998, following a presentation by the DOD, the Cabinet approved the Department's recommendations of preferred suppliers for six armaments packages. Procurement of army battle tanks was discontinued. The Cabinet resolved that the DOD, Department of Finance, the DTI and the Department of Public Enterprises should proceed with further detailed negotiations with the preferred bidders in order to achieve affordable agreements. The Cabinet's decision was not a final one to procure, but to enter into negotiations, recognising that there was still affordability and other issues that needed to be finalised.

[2071] In reaching its decision, the Cabinet relied on the preliminary cost estimates presented by the DOD.

[2072] The following tables contain an extract from the recommendations made by the DOD:

RECOMMENDATION (PREFERRED BIDDERS)			
PROGRAMME	COUNTRY/PRODUCT	QTY	PROGRAMME COST
Corvette	GERMANY (GFC MEKO A200)	4	Rm 6001,25
Submarine	GERMANY (GSC 209 1400 MOD)	3	Rm 5212,50
Utility helicopter	ITALY (AGUSTA 109)	40	Rm 2168,75
Maritime helicopter	UNITED KINGDOM (SUPER LYNX 300)	4	Rm 787,50
Trainer aircraft	UNITED KINGDOM (BAE HAWK 100)	24	Rm 4 728,13
Fighter aircraft	SWEDEN/UK (JAS39 GRIPEN)	28	Rm 10 875,00
TOTAL PROGRAMME COST			Rm 29 773,13

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INDUSTRIAL PARTICIPATION OVER 7 YEARS PER PROGRAMME						
	PRODUCT	COST	INVESTMENT	EXPORTS	LOCAL SALES	NO OF JOBS
1	Corvette	Rm 6 001,25	R 2 112m	R 2 109m	R11 786m	10 153
2	Submarine	Rm 5 212,50	R 6 262m	R22 950m	R 1 062m	16 251
3	Utility helicopter	Rm 2 168,75	R 431m	R 2 847m	R 1 407m	4 558
4	Maritime helicopter	Rm 787,50	R 268m	R 227 m	R 2 225m	2 536
5	Trainer aircraft	Rm 4 728,13	R 2 552m	R 4 566m	R 1 462m	7 472
6	Fighter aircraft	Rm 10 875,00	R14 387m	R26 481m	R 7 445m	23 195
	TOTAL	Rm 29 773,13	R26 012m	R59 180m	R25 387m	65 000
COST->		IP->		JOBS->		
R29 773M		R 110 000m		65 000		
MACRO OVERVIEW						
PROJECT	COST	TOTAL IP	JOBS			
Corvette	Rm 6 001,25	R16 007m	10 153			
Submarine	Rm 5 212,50	R30 274m	16 251			
Utility helicopter	Rm 2 168,75	R4 685m	4 558			
Maritime helicopter	Rm 787,50	R2 720m	2 536			
Trainer aircraft	Rm 4 728,13	R8 850m	7 472			
Fighter aircraft	Rm 10 875,00	R48 313m	23 195			
TOTAL	Rm 29 773,13	R110 000m	65 000			

[2073] It can be seen from the above-mentioned recommendations that the preliminary cost estimate was R29,773 billion, with estimated IP at R110 billion and an estimated 65 000 jobs to be created.

[2074] The acquisition proposals presented by the DOD were accepted and approved by the Cabinet. It was subsequently decided that the maritime

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helicopter procurement would be conducted separately and it was therefore excluded from the SDPP.

[2075] When advising the Minister of Finance on the affordability of the envisaged armaments procurement the Department of Finance prepared a submission that drew attention to the substantial difference between the total costs of the proposed procurement and the Department of Finance's projection of funds available to the DOD in their budget.

[2076] The Cabinet appointed the Ministers' Committee to lead the acquisition process and to achieve affordable agreements. The members of the Cabinet sub-committee were the Deputy President and the Ministers of Trade and Industry, Finance, Public Enterprises and Defence.

[2077] The Ministers' Committee appointed the International Offers Negotiating team (IONT) to negotiate the best possible terms on the cost of the procurement, the value of the industrial participation offered by the preferred bidders and the terms of the loans to fund the packages.

[2078] The IONT was an inter-departmental team, comprising of five members, namely Mr Jayendra Naidoo, who led the IONT as chief negotiator, the Chief of Acquisition in the DOD, Mr Chippy Shaik, the CEO of Armscor, Mr Llewellyn Swan, the Acting Director: Industrial Participation in the DTI, Mr Vanan Pillay, and Senior Manager in the Budget Office of the Department of Finance, Mr Roland White.

[2079] Three negotiation workgroups were constituted by the IONT for the purposes of engaging in and concluding the negotiations with various parties involved in the procurement. The workgroups were the following:

- the Finance Negotiation Workgroup (FNW) led by Mr White
- the Military/technical Negotiation Workgroup led by Mr Shaik; and
- the Industrial Participation Workgroup, led by Mr Pillay.

[2080] The reporting structure of the IONT provided that the Chief Negotiator reported to the Ministers' Committee and directly to the Deputy President as required. The negotiating team reported to the Ministers' Committee and

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liaised with the Monitoring Committee consisting of the DDGs of the DTI, Department of Finance and the DOD, including the advisor to the Minister of Defence.

[2081] The FNW consisted of personnel from the Department of Finance. All consultants and advisors on the FNW reported to the Senior Manager: Budget Office in the Department of Finance and communicated with the IONT through him.

[2082] The mandate of the FNW was the following:

- To assess the affordability of the procurements, including measures to increase affordability, and to formulate proposals to be made to the IONT and the Ministers' Committee. (That was a continuation of the work that had already been done within the Department of Finance on affordability, budget implications and more specifically to formulate proposals for the IONT and the Ministers' Committee.)
- To assess the economic implications of various aspects of the proposed procurements and formulate proposals.
- To define the most appropriate way of financing the procurement of the strategic packages. (The Finance Department did not assume that they would necessarily use the loan offers that were offered by the bidders. The offers were first assessed before deciding to proceed with them and in some cases the FNW undertook to negotiate improvements in the terms and conditions of those loan offers.)
- To assess the economic implications of various aspects of the proposed procurements and formulate proposals.
- To undertake the actual negotiations with suppliers in respect of the financial aspects of the procurements.

36.5 The role of the FNW in the SDPP negotiations

[2083] The principal task of the FNW was to seek the most favourable possible financing arrangements for the SDPP procurements. This was

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achieved through negotiating the loan terms offered by five international banks and export credit agencies of supplier countries, and through identifying cost reductions associated with the scheduling of drawdown payments to the suppliers.

[2084] One of the important objectives they wanted to achieve was to adapt the terms and conditions of the loan agreements to suit South Africa's needs and to fit the loans within their broader debt management strategy. Considerable effort was put in to ensure that the loan agreements were cost-effective and that they were judged to be good value for money as borrowing instruments.

[2085] The FNW was involved in direct negotiations with the suppliers only on financial matters. Technical, DIP and NIP negotiations were concluded by Armscor/DOD and the DTI respectively.

[2086] The schedule for the drawdown of payments by the banks to the suppliers was part of the supply terms. The schedule for the drawdown of payments from the loans was structured according to the delivery dates and milestones reached over the term of the manufacturing process. If the armaments were not delivered on those dates, penalties applied.

[2087] The IONT and the FNW, through negotiations with the various parties concerned, achieved their intended objectives. Financial aspects and risks of the SDPP were properly assessed. The terms of the loans were improved during the course of the negotiations. In some cases the export credit agreements were increased in scope.

[2088] There were attractive terms offered by The UK Export Credit Agency, a government department. They were able to take some of the terms as reference costs and achieved similar favourable costs in other agreements. In some cases, they achieved longer terms of the loans, in some cases lower interest rates and in some cases an option to fix rates or to vary them, depending on their perception of trends and international interest rates and the relative advantages of different borrowing instruments.

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[2089] They succeeded to negotiate favourable borrowing terms and the ultimate result was a set of agreements in which the cost of borrowing was brought down to the range of 5 to- 7% as compared to their earlier estimates of 10 to 12%.

[2090] The terms achieved with the Export Credit Agencies and the banks substantially improved the financing in terms of cash flow and foreign exchange risks and have produced substantial savings for the borrower.

36.6 The Affordability Report

[2091] In March 1999 the Ministers' Committee decided to obtain an additional affordability study report of the preferred SDPP bids (as amended through the negotiations process). It appointed an 'Affordability Team' from the Departments of Finance and State Expenditure to evaluate the overall macro-economic, financial and fiscal risks and impact of the SDPP.

[2092] The team was also requested to prepare alternative scenarios for consideration by the Ministers' Committee to assist in its decisions on the scale and financing of the procurement.

[2093] The assessment came up with a scenario where the procurement of aircraft was divided into three 'tranches' - an initial tranche of 12 lead-in trainers and nine advanced fighters; a second tranche of 12 lead-in trainers and a third tranche of 19 advanced fighter aircraft.

[2094] The Affordability Team presented its Affordability Report to the Ministers' Committee in August 1999. This was a much more detailed report than the previous reports.

36.7 The revised cost estimation

[2095] The Affordability Report drew particular attention to the likelihood of cost escalation associated with foreign exchange rate movements. It estimated the total cost of the procurement, including the full three procurement tranches, at R36 482 million in 1999-prices adjusted for forward foreign exchange rates, and R25 364 million if the second and third tranche options were not exercised.

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[2096] The review broke down the costs between the three-tranches scenario. That was one of the ways in which, during the negotiations phase, the possibility of a lower overall cost procurement was provided for. A more comprehensive set of cost estimate was taken into account.

[2097] Project management costs, statutory costs and the like were updated and a more complete set of costs was set out. The Affordability Team cost estimate was higher than:

- The DOD and Department of Finance's earlier estimate of R29 773 million in November 1998, based on the preferred bidders' 'best and final offers' as presented to the Cabinet in November 1998; and
- The Department of Finance's estimate of R31 443 million in March 1999 as set out in 'Defence Strategic Packages: An Assessment of the Potential Fiscal Impact' (March 1999).

[2098] The reasons for the higher estimate in August 1999 were provided in the Affordability Report, and some of them can be explained as follows:

- The August 1999 estimate was based on 1999 contract prices (in 1999 actual Rand costs), as opposed to the 1998 prices used for the November 1998 estimates.
- Whereas the November 1998 estimate was based primarily on the tender or bid prices, the August 1999 estimates took into account more complete costs of the procurement, which included costs of the equipment, statutory costs, project management costs, financing costs and cost increases associated with the projected depreciation of the Rand against other contract currencies.

[2099] The most significant difference between the August 1999 cost estimate and the earlier estimates lay in the treatment of foreign currency denominated costs. The November 1998 and March 1999 estimates were 'constant price' costs, based on the then prevailing exchange rate of R6,25 to the US\$, and before taking into account escalation associated with inflation. For the purposes of the August 1999 estimates, inflation-related

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escalation was also ignored, but future foreign currency cash flows were converted into Rand at forward exchange rates estimated for the period concerned.

[2100] The August 1999 cost estimates took into account the projected depreciation of the Rand, which substantially raised the cost estimate as compared to the earlier estimates based on constant 1998 prices.

[2101] The profile of cash flows changed considerably between March 1999 and August 1999 as a result of the negotiations process, the effect of which was a reduction of the projected interest costs.

[2102] The Affordability Report identified various risks, such as interest rate risks, risk of under-performing by NIP and DIP obligors, possible failure of NIP and DIP projects, and the risk of adverse Rand/forex movements and the depreciation of the Rand. Other financial and fiscal risks were also identified.

[2103] The Affordability Report provided the Ministers' Committee with a comprehensive overview of the costs of the envisaged arms procurement programme, with a strong emphasis on risks associated with adverse economic circumstances.

[2104] Mr Donaldson further stated that the following was worth noting:

- The Affordability Report was compiled at a time of considerable economic and financial uncertainty, in the wake of the 1998 East Asian crisis. It placed considerable emphasis, therefore, on economic and financial risks, while noting that the envisaged procurement would be incurred and financed over a lengthy period.
- The Affordability Report did not deal with the military value or defence modernisation benefits of the procurement programme.
- While noting the anticipated benefits and risks associated with the NIP and DIP offset proposals, the Report did not rely on these proposals as a source of financing or revenue.

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- For macroeconomic modelling purposes, NIP benefits were partially discounted in recognition of the uncertainty of the benefit flows.

[2105] Informed by the Affordability Report and taking into account the relevant military benefits and industrial participation considerations, the Ministers' advice to the Cabinet, and the Cabinet's subsequent decision were to proceed with the procurement. The initial procurement committed the Government to the 'first tranche' procurement only. After 2002, in the context of an improved economic, financial and fiscal outlook, the full three tranche procurement was confirmed.

*36.8 The procurement decision and its cost to budget**36.8.1 Budget disclosure of arms procurement costs*

[2106] The initial projected costs of the arms acquisition programme were disclosed in the February 1998 National Expenditure Survey, tabled in Parliament at the time of the 1998 Budget. At this stage the contracts were not yet finalised.

[2107] As submitted to the Cabinet in November 1998, the projected costs were stated as R29,773 billion in 1998 Rand for the purchase of four corvettes, three submarines, 40 utility helicopters, four maritime helicopters, 24 trainer aircraft and 28 fighter aircraft.

[2108] The 1999 National Expenditure Survey stated that the total expenditure of the armaments was estimated at R29,773 billion and further that:

'The procurement programme will extend over about 15 years. Expenditure will be accommodated within the Defence budget over this period. Negotiations are currently in progress to finalise the terms and conditions of these acquisitions with an affordable expenditure programme.'

36.8.2 The procurement decision

[2109] Following the Affordability Report and the recommendation of the Ministers' Committee, the Cabinet decided to reduce the amount of arms to be procured as follows:

- It reduced the number of LUH from 40 to 30
- It excluded the procurement of maritime helicopters from the SDPP
- It split the aircraft packages, LIFT and ALFA, into three procurement 'tranches', thus allowing for later decisions in respect of tranche 2 (12 Hawks) and tranche 3 (19 Gripens).

[2110] On 15 September 1999 the Cabinet decided to procure the following equipment through the SDPP, as reflected in the following table:

SA NAVY	QUANT	PRICE (R million) 1999 Rand
Submarines (German Submarine Consortium)	3	5 354
Corvettes (German Frigate Company, Thomson-CSF and ADS)	4	6 917
AIR FORCE		
Light Utility Helicopters (Agusta)	30	1 949
Aircraft Tranche 1:		
Lead-in Fighter Trainer Aircraft (Hawk) (British Aerospace)	12	7 110
Advanced Light Fighter Aircraft (Gripen) (SAAB and British Aerospace)	9	
TOTAL: Including aircraft tranche 1		21 330
Aircraft : Tranches 2 and 3		
Tranche 2: Lead-in Fighter Trainer Aircraft (Hawk) (British Aerospace)	12	8 662
Tranche 3 : Advanced Light Fighter Aircraft (Gripen) (SAAB and British Aerospace)	19	
TOTAL: Including aircraft tranches 1, 2 & 3		29 992

[2111] The Cabinet announced that the initial tranche 1-cost of the procurement was R21,3 billion over eight years (in 1999 prices, at a fixed exchange rate of R6,25/\$1) or R23,1 billion (taking into account prevailing forward forex rates.) It was noted that including the option to procure additional equipment in tranches 2 and 3 (which option was to be exercised

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by not later than 2004), would raise the cost by R8,7 billion to about R30 billion over 12 years at a fixed exchange rate, or to R35,1 billion assuming forward forex rates. These contract costs excluded price escalations associated with inflation.

[2112] These commitments were announced in the 1999 Medium Term Budget Policy Statement. They were also set out in the February 2000 Budget Review and the 2000 National Expenditure Survey. In the 2000 Budget, R2,8 billion was added to the 2000/01 Defence allocation and R3,8 billion to the 2001/02 allocation in order to provide for the additional costs that could not be accommodated within the Defence 'baseline' vote. In both the Budget Review and the National Expenditure Survey it was explained that actual outlays in subsequent years would be affected by exchange rate movements and that budget allocation would need to be adjusted accordingly.

36.8.3 The cost to budget of the procurement decision

[2113] From the 2000/01 fiscal year, the cost of the SDPP was provided for on the Defence Appropriation Vote. By agreement between the National Treasury and the DOD a rising share of this cost was met from the Defence 'baseline' allocation.

[2114] This share was determined as the difference between the Treasury's forward estimates of the Defence expenditure baseline and a projection of its ongoing expenditure commitments. The balance required to meet the costs of the SDPP was provided for in a supplementary allocation.

[2115] The supplementary allocation increased from R2,8 billion in 2000/01 to R5,7 billion in 2002/03, and amounted to R35,9 billion over the 2000/01 to 2009/10 period. Thereafter the Defence baseline fully accommodated the SDPP expenditure and no further supplementary allocations were made.

[2116] The costs of the procurement were approved by Parliament annually through its appropriation of funds for the Defence vote. Although the appropriation is for a single financial year, the submission of the Main Appropriation Bill to Parliament each year is accompanied by detailed three

year expenditure estimates referred to as the Medium Term Expenditure Framework.

[2117] It is important to note that Parliament did not approve the total cost of the SDPP upfront. South Africa's current budget law and procedures do not provide for the appropriation of funds over a multi-year period. However, in recognition of its magnitude and the long-term nature of the SDPP, the National Treasury has since 2001 published the full projected expenditure on the programme per year, taking into account contract price and exchange rate movements.

[2118] From 2001 to 2008 the full projected expenditure on the programme per year was published. With effect from 2009 the projected expenditure was not published in the annual budget documents as the procurement no longer extended beyond the three-year MTEF period and no longer required supplementary budget allocations. The procurement programme was expected to be concluded in the 2013/14 year.

[2119] The table below, taken from the DOD's Adjusted Estimates for 2013/14, sets out the most recent estimates of overall expenditure on the SDPP, and also shows SDPP expenditure as a percentage of the total adjusted estimate of defence spending each year, and defence spending as a percentage of GDP.

R Millions	2000/1	2001/2	2002/3	2003/4	2004/5	2005/6	2006/7
Defence spending	13 910	15 922	18 844	19 800	19 411	22 670	23 902
% of GDP	1,5%	1,5%	1,6%	1,5%	1,3%	1,4%	1,3%
SDPP spending	2 901	4 223	6 342	5 864	4 502	6 331	4 537
% of Defence spending	20,8%	26,5%	33,7%	29,6%	23,2%	27,9%	19,0%
	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
Defence spending	26 291	27 899	31 325	30 442	34 349	37 888	40 658
% of GDP	1,3%	1,2%	1,3%	1,1%	1,2%	1,2%	1,2%
SDPP spending	3 678	2 767	3 248	219	634	1 098	322
% of Defence spending	14,0%	9,9%	10,4%	0,7%	1,8%	2,9%	0,8%

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[2120] The total expenditure on the SDPP as reported above, from 2000/01 to 2013/14, amounted to R46 666 million. This expenditure was accommodated within an overall Defence budget that remained moderate relative to GDP (1,5% or less in all years except 2002/3).

[2121] The annual cash flows over the period 2000/02 to 2013/14, amounting to R46,7 billion, when discounted by the GDP deflator index, totalled approximately R30,8 billion in 1999 prices. This was just less than 3% more than the original contract price in 1999 terms. The difference is mainly accounted for by the substantial depreciation of the Rand in 2002, which resulted in a temporary increase in the real Rand cost of the imported components. The 2002/03 fiscal year was the year in which SDPP expenditure peaked as a share of the defence budget.

[2122] During the years in which SDPP expenditure was highest (2001//02 to 2007/08), the budget deficit did not exceed 2,7% of GDP, and in 2007/08 a budget surplus of R20,4 billion was recorded. Subsequent to the 2008/09 recession, the budget deficit increased substantially, but SDPP expenditure accounted for approximately 2% and less thereafter.

[2123] Cumulative SDPP expenditure amounted to R46,7 billion by the end of 2013/14. Cumulative SDPP loan debt increased to a peak of R30,8 billion at the end of 2007/08, amounting to 5,3% of gross loan debt. In subsequent years, SDPP loan repayments exceeded drawdowns, bringing the cumulative SDPP loan debt to an estimated R16,9 billion at the end of 2013/14, which was 1,1% of gross loan debt.

[2124] The total nominal or cash outlays were substantially higher than the original contract price of R30,0 billion. The cause of the difference is the inflation related price escalation provided for in the procurement contracts and exchange rate movements.

[2125] The SDPP was a substantial procurement programme and it raised affordability concerns at the time it was negotiated. Its costs were spread over a 14-year period and it has not resulted in a material increase in overall defence expenditure as a percentage of GDP.

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[2126] During the years of substantial SDPP expenditure, the overall budget balance moved from deficit into surplus.

[2127] Loan facilities associated with the foreign currency denominated expenditure in the SDPP formed part of Government's loan debt.

[2128] Expenditure on the SDPP as accounted for in the appropriation accounts of the DOD and financed through the National Revenue Fund amounted to R46,7 billion ending 2013/14. The loan facilities associated with this expenditure extended beyond this date. The loan facilities were not for the DOD's account and were not accounted for as defence expenditure. They formed part of the financing activities of Government which were the responsibility of the National Treasury. As with all sovereign debt obligations, the servicing and repayment of the SDPP loans were a first charge against the National Revenue Fund.

36.9 Loan agreements with foreign banks

[2129] On 25 January 2000, the Minister of Finance concluded the loan agreements with foreign banks in respect of the SDPP. At that stage the PFMA was not yet in force, and so the Minister's authority to conclude the loan agreements was derived from the Exchequer Act. The subsequent authority to manage these financing facilities was derived from section 66(2)(a) read with section 71 of the PFMA.

[2130] The Strategic Arms Procurement loan agreements mentioned below were entered into and signed off by the Minister, binding the National Treasury as the borrower and four international banks as the lenders:

International bank	Amount
Barclays Capital, London	\$2 500 000 000
Commerzbank (7062)	€611 884 680
Commerzbank (7061)	\$846 339 546
Société Générale	€188 068 000
Medio Credito Centrale	\$199 778 887

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[2131] These agreements governed the Export Credit Agency (ECA) loan facilities that were negotiated and agreed upon to finance the imported components of the SDPP. The terms and conditions of the loans were stipulated in the respective loan agreements.

36.9.1 AKA Commerzbank (7062): corvette platforms

[2132] An AKA Commerzbank loan agreement was entered into for the purchase of four corvette platforms. The total amount was €611 884 680. It was split into four tranches of €152 971 170 each.

[2133] In terms of the supply contract the amount due was fully paid to the suppliers. An amount of €45 704 674 was not drawn from the loan and the loan agreement amount was reduced by this sum.

[2134] The loan had been in repayment mode since 2003 and the last redemption payment would be due in April 2014. As at 31 March 2014 an amount of R5 603,3 million had been repaid under the loan facility. The outstanding amount still to be paid amounted to an estimated R146,3 million.

36.9.2 Société Générale: corvette combat suite

[2135] A Société Générale loan agreement was entered into for the purchase of four combat suites for the corvettes at the contract price of €188 068 000, including price adjustments and credit insurance premiums. An amount of €4 749 252 was not drawn and consequently the initial amount was reduced.

[2136] The loan had been in repayment mode since 2005 and the last redemption amount was due in May 2014. As at 31 March 2014 an amount of R1 736,9 million had been repaid under the loan facility.

[2137] The outstanding amount still to be paid was estimated at R217,3 million.

36.9.3 AKA Commerzbank (7061): submarines

[2138] An AKA Commerzbank loan agreement was entered into for the purchase of three submarines, with a total contract price of €846 339 456. The loan amount was split into three tranches with amounts of €280 360

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793, €289 765 696 and €276 213 058 respectively. An amount of €29 919 750 was not drawn from the loan and the loan agreement amount was reduced by this sum.

[2139] The loan had been in repayment mode since 2006 and the last redemption amount would be due in July 2016. As at 31 March 2014, an amount of R6 683,9 million had been repaid under the loan facility. The final payment was due in July 2016. The outstanding amount still to be paid is about R2 698,1 million.

36.9.4 Barclays Capital, London: Hawk and Gripen aircraft

[2140] A loan agreement was entered into with Barclays Capital for the purchase of 24 Hawk and 28 Gripen aircraft. The loan amount was split between a British portion of £695 million for the Hawks and a Swedish portion of SEK6,4 billion for the Gripen. The total amount of the loan was divided into several tranches, with each tranche representing a specific milestone in terms of the supply contract. The total loan amount added up to about \$2,5 billion.

[2141] The drawdown period for this loan facility ended on 30 September 2012 after which no further drawdowns were made.

[2142] Since then the effective date of the loan agreement was repackaged and restructured to allow for more flexibility in respect of interest rate and currency options. Due to the options available, cost savings occurred as the options were used to minimise risks associated with interest rates and foreign currency exposures.

[2143] The loan facility had been in a repayment mode since 2005 and would continue until October 2020. As at 31 March 2014 an amount of R11 437,2 million had been repaid under the loan facility. The outstanding amount still to be paid amounted to about R9 120,0 million.

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36.9.5 Medio Credito Centrale : Light Utility Helicopters

[2144] A loan agreement with Medio Credito Centrale was entered into for the purchase of 30 light utility helicopters, at a contract price of \$199 778 887.

[2145] An amount of \$93 778 887 was drawn from the loan facility. There was a clause in the loan agreement stipulating that the borrower had the right to terminate the loan agreement if the facility was not fully drawn after the 69th month from the date of signing the agreement.

[2146] On 25 January 2006 a decision was made to terminate the loan agreement as the loan amount was not fully drawn.

[2147] The fully-drawn amount of R560 153 180 was repaid. The remainder of the contract price was then paid as a direct payment to the supplier from the budget of the DOD. The total amount of this loan of \$199 million had been paid in full.

36.10 Management of the Supply Terms and loan agreements

[2148] The loan agreements were managed by the National Treasury through the Asset and Liability Management Division.

[2149] Loan agreements cover the following aspects: contract price; fees payable; the splitting of the contract price into different tranches related to certain deliverables; foreign currency payable; interest rates; repayment dates; prepayment and other general conditions.

[2150] The supply terms or supply agreements related to the delivery and manufacturing of the equipment by the suppliers or sellers. They were managed by Armscor and the DOD.

[2151] The supply terms cover the following aspects: description of the products; spares; ground support equipment and services to be delivered; contract price; conditions of payment; passing of ownership; acceptance and delivery conditions and dates; liquidated damages for late deliveries; warranty and intellectual property rights.

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[2152] Armscor and the National Treasury worked together through an agreed process to ensure that when a milestone was reached for delivery, payment was effected to the suppliers as stipulated in the respective agreements.

[2153] Every drawdown from the loans and payment made to the suppliers was managed according to the respective loan agreements and supply terms.

36.11 Payments

[2154] The total capital repaid as at 31 March 2014 amounted to R26 021,4 million, which was about 68% of the amount drawn. An amount of R10 148,9 million had been paid in interest thus far.

[2155] As at 31 March 2014, an amount of R12 181,7 million still had to be paid as capital and R2 663,3 million in interest. The all-in costs of the loans (capital plus interest), actual and projections, as at 31 March 2014 amounted to R38 203,2 million (capital) and R12 838,2 million (interest). Fees paid, such as management, commitment and legal fees, amounted to R211,2 million.

36.12 The role of the National Treasury in the SDPP

[2156] The role of the National Treasury in the SDPP included the following:

- It advised the Cabinet on the cost, budgetary, affordability and risk considerations associated with the SDPP
- It assisted in evaluating the financing proposals submitted by bidders and scored them for the purpose of the selection of preferred bidders
- It assisted in negotiating foreign exchange loan agreements with foreign banks and in negotiating financial aspects of the procurements with suppliers
- It managed the export credit and loan facilities and associated interest and debt repayments to foreign banks; and
- It revised and published the expenditure on the SDPP annually, taking into account contract price escalation and exchange rate

movements. Detailed expenditure projections for the programme were presented to Parliament annually in the Budget Review and Estimates of National Expenditure.

[2157] In conclusion, Mr Donaldson pointed out the following:

- In November 1998 the Cabinet approved the procurement of a certain amount of equipment at an estimated total programme cost of R29 773 million (in 1998 prices).
- Following negotiations with preferred suppliers and a review of affordability considerations, the Cabinet approved the procurement of a lesser number of armaments in September 1999, at a total cost of R29 992 million (1999 prices).
- The total nominal expenditure (total cash outlay) on the SDPP between 2000/01 and 2013/14 had been R46 666 million.
- The main reasons for the difference between the Cabinet-approved estimated 1999 cost and the nominal total expenditure were inflation-related contract price adjustments and the depreciation of the Rand against the SDPP suppliers' or contract currencies.
- Discounting the total nominal expenditure of R46 666 million by the GDP deflator index to 1999 prices, yielded an estimated cost of the SDPP in 1999 prices of R30,8 billion.
 - When compared to the Cabinet approved cost estimate in September 1999 of R29 992 million, the real increase in the cost of the SDPP is under 3%. This is mainly a consequence of the depreciated value of the Rand in 2002 and 2003.
 - The costs of the SDPP did not result in an increase in overall defence expenditure as a percentage of GDP, partly because they were spread over a long period.
 - During the years of substantial SDPP expenditure, the overall budget balance moved from deficit into surplus.
- The loan facilities associated with the foreign currency denominated expenditure in the SDPP formed part of

Government's loan debt. Cumulative SDPP loan debt increased to a peak of R30,8 billion at the end of 2007/08, amounting to 5,3% of gross loan debt. In subsequent years, SDPP loan repayments exceeded drawdowns, bringing the cumulative SDPP loan debt to an estimated R16,9 billion at the end of 2013/14, which was 1,1% of gross loan debt.

II. THE DEPARTMENT OF TRADE AND INDUSTRY

37. Dr Phillip Paul Jourdan

[2158] Dr Jourdan testified that he was in private practice as a public sector consultant. He obtained a BSc in 1972 from the University of Cape Town; a BA in 1974 from the same University; a Post Graduate Diploma in Mineral Exploration Geophysics and a doctor of Philosophy in 1990 from Leeds University (with a thesis entitled "Strategies for the Regional Planning of the Minerals Industry in Southern Africa: the case of the SADCC"); as well as a Master of Science, University of the Witwatersrand, with a dissertation entitled 'South Africa's Mineral Beneficiation Industries and the Potential for Mineral-based fabrication Industries'.

[2159] He also completed a variety of other courses in management and economics from other institutions of higher learning.

[2160] In his professional career, he worked from 1975 to 1990 in various capacities in Mozambique, Britain and Zimbabwe, including as research associate, research fellow and minerals economist. He returned to South Africa in 1991.

[2161] From 1995 to 1997 he was Special Advisor to the then Minister of Trade and Industry. From 1997 to 2000 he was the Deputy Director-General of the DTI. He was also part of the IONT for the negotiation of \$4 billion in industrial 'offsets' for state purchases.

[2162] When he was the Deputy Director-General he also dealt with Non-Defence Industrial Participation (NIP) projects as part of the IONT.

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[2163] He left the public sector in 2000 to take up a position as President (CEO) of Mintek. Currently he is the Acting Chairperson of the Coega Development Corporation and a consultant to the DTI on mineral value chain strategies.

[2164] In January/February 1999, whilst working for the DTI, the then Minister (Mr Alec Erwin) appointed him to participate in the IONT. As he understood the Minister, the Minister wanted 'propulsive offsets', in other words investments to propel economic activity and growth. Offsets offer tremendous flexibility in their application to achieve the propulsion of economic activity and growth.

[2165] He referred to various European countries and Saudi Arabia where sales of military equipment were tied to offsets, assisting in economic activity and growth.

[2166] He further testified that as the Department they had identified certain projects as being important for our country, and as part of his functions they were trying to see if they could get an alignment of those projects with the obligors

[2167] As a member of the IONT he worked extensively with Mr Jayendra Naidoo who led the team. As Deputy Director-General he also worked closely with Dr Zavareh Rustomjee, the Director General, who accompanied the IONT on part of their trips to the obligors in the United Kingdom, Germany and Sweden.

[2168] He was not part of the team that evaluated the arms purchase proposals by the bidders but only became involved once the IONT was formed.

[2169] He disputed the evidence of Mr Griesel in so far as it stated that he (Dr Jourdan) was a member of the project team that evaluated the NIP portion of the various bidders. By the time he became involved, the preferred bidders had been designated, although his opinion on some of the specific offset projects might have been sought.

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[2170] The IONT considered the structure of the then existing NIP scheme. They were not happy about certain aspects of the NIP guidelines. The NIP guidelines provided for 'multipliers' in certain categories of projects. If a project fell within a particular category it would receive more than one credit for each unit of currency invested. It was then agreed by all the members of the IONT and the obligors that credit should be given to investments at a 1:1 ratio and for export *sales* only, given proof of 'causality' and 'additionality'. This was later expanded to include domestic sales. These were the only areas where credit would be given. The projects themselves had to be real rather than adapted to achieve credits.

[2171] The focus of the IONT was predominantly on investments because the understanding was that sales would generally follow if the investment was viable. The further benefit of limiting credits to investments and exports was the simplicity of the administration of the process.

[2172] Assessing factors such as job creation, technology transfer, SMME promotion, outsourcing to Previously Disadvantaged Individuals, skills development and affirmative action in determining the extent of credits to be awarded was considered to be complicated and could have led to unintended outcomes.

[2173] There was a great deal of pressure from other government departments to finalise the process as soon as possible. Ferrostaal had cancelled a major project involving a stainless steel plant in Coega just before the signature of the contracts. His view was that if they had sufficient time they could have negotiated other equivalent or better investment projects.

[2174] The view of the IONT was that good NIPs could enhance the affordability of the arms purchases through the fiscal contribution of the NIP investments.

[2175] The IONT prepared a report that was forwarded to the Minister's Committee. In April 1999 the Minister's Committee established a separate team to investigate issues relating to the affordability of the packages. The

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Affordability Team consisted of four members, namely Mr Roland White of the Department of Finance, Mr Chippy Shaik of the DOD, Mr Jayendra Naidoo and himself.

[2176] He had heard from various sources that the decisive factor that 'swung it' in favour of the Hawks being chosen as the successful bid was that the proposal by BAE-SAAB had better NIP projects than that of the Italians linked to the Aermacchi bid.

[2177] After the final negotiations between IONT and the preferred bidders, it was anticipated that the SDPP would generate \$4,3 billion in investments from the NIP projects. The fiscal effect of these investments, once operational, probably would have gone a long way in paying for the arms purchases.

[2178] As part of his duties he had fairly extensive contact with his counterparts in Finland where there had been a successful NIP programme and he discussed with them how best to obtain compliance with the NIP terms. The feedback he received was that the contracts South Africa had concluded were adequate but that instead of insisting on 'performance guarantees' we should rather require that any defaulting companies and all their subsidiaries should be 'blacklisted'.

[2179] The reason for this suggestion was that it was felt that the 5% performance guarantee had already been built into the contract price and therefore it might not serve as an adequate lever to ensure compliance with the NIP obligations. The eventual decision was that rather than 'blacklisting', performance guarantees should be relied upon. He was not involved in the decision.

[2180] He referred to a policy document of the DTI that came into effect on 30 April 1997 and said that the IONT did not agree with the methodology of awarding credits contained in the document. The document stipulated that credits would be awarded in nine specific areas and in certain specified areas double points or credits would be awarded. The IONT was of the view

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that the scheme could be misused by the obligors, could bring about unintended consequences and was too complicated to implement.

[2181] The IONT felt that the scheme should be scrapped and it decided that credits would be awarded on a ratio of 1:1 and only for investments, local sales and export sales. As mentioned above, issues like job creation and assistance to Previously Disadvantaged Individuals would not attract any credits. The obligors agreed to the new methodology of calculating credits as put forward by the IONT.

[2182] His attention was drawn to the fact that the NIP contracts provided for one credit for each unit of currency invested. His recollection was that early in 1999 the IONT had agreed that all multipliers under the old NIPP system would be scrapped. He recalled that Dr Rustomjee was concerned about the removal of the multipliers.

[2183] The view of the IONT was that the targets set for the obligors were fairly onerous yet manageable. If multipliers were to be utilised the targets would require little effort to be achieved. Accordingly, if multipliers were used the targets would have been considerably higher.

[2184] It was suggested to him that notwithstanding the wording of the contracts it was understood by all persons involved and in particular by the DTI that multipliers would be used. He said he did not agree with this suggestion. In his view it was clear that multipliers would not be used as per the final contracts. The multipliers that were provided for in the NIP Guidelines that came into force prior to the SDPP would be catered for by other programmes and schemes, such as affirmative action and the like.

[2185] He had no doubt that the DTI was aware that multipliers had been dropped by the IONT and that a new methodology of calculating credits was introduced by the IONT.

[2186] He further stated that as far as credits were concerned his understanding of the approach of the IONT and the concluded NIP contracts was that an investment had to be made first and only thereafter could credits

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be awarded. This was consistent with the approach for non-SDPP NIP projects. He referred to page 15 of the DTI's NIPP Guidelines (produced prior to the SDPP) where the following was said: *'Business plans/proposals will be evaluated and possible credits will be indicated. Credits will only be awarded upon successful performance.'*

[2187] This was consistent with his understanding of the approach of the IONT and the NIP contracts that were concluded with preferred bidders.

[2188] There was an expectation on their part after the final contracts were negotiated that the SDPP would generate \$4,3 billion in investments from the NIP projects.

[2189] There was a provision to the effect that a project could be changed and substituted by another project if for whatever reason the initial project was abandoned.

38. Dr Zavareh Rustomjee

[2190] Dr Rustomjee testified that he held the following degrees: BSc (Hons) Chemical Engineering; MSc (Industrial Engineering); MPhil (Development Economics); and a PhD in Economics.

[2191] He was appointed Director-General of the Department Trade and Industry on 1 November 1994 and his term expired on 21 October 1999. After the expiry of his term he was engaged as special advisor to then Minister Alec Erwin. His activities did not involve issues related to the SDPP.

[2192] Currently he is an independent consultant focusing mainly on areas of public policy around industry, trade, mining, energy and economic development.

[2193] The National Industrial Participation (NIP) programme formed part of the DTI's policy for leveraging government procurement. The view at the time was that although Government was the largest single purchaser of goods and services in the country, there was no coherent strategy or policy to leverage this in any significant way. Each state institution had its own approach. There was no comprehensive approach.

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[2194] Prior to 1996 the most significant programme that existed to leverage the buying power of the state, and which targeted local procurement and technology transfer, was the offset programme of the DOD, through its procurement agency, Armscor.

[2195] The DTI's view was that this programme did not maximise procurement leverage. The DTI was of the firm view that there should be only one industrial policy.

[2196] The development of the NIP began during 1995 and the programme was endorsed by the Cabinet and came into force on 1 September 1996. The Cabinet approved the NIPP and its operating guidelines on 10 April 1997.

[2197] The NIPP was an attempt to provide a single umbrella programme that covered all of the state's expenditure and at the same time provide guidelines and a mechanism for procuring agencies and entities to leverage their procurements. This programme, according to a Cabinet decision, was obligatory upon all organs of state.

[2198] According to the above policy, when items with an import content of \$10 million or more were procured, 30% of the import content was the seller's obligation that could be fulfilled through generating industrial participation credits.

[2199] With the NIP framework they were looking at leveraging investment in economic activity in the country. The NIP framework was very different from the countertrade/offset approach. It aimed to allow bidders considerable flexibility in discharging their IP obligations, but such obligations could only be fulfilled through the establishment of a registered South African company and over a period of 7 years. These requirements were aimed at ensuring the sustainability of the project to lock the obligor into a long-term relationship with the South African economy on a mutually beneficial basis.

[2200] NIP credits were to be calculated from the annual financial statements of the respective investment made in accordance with the following table:

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OBJECTIVE	METHODOLOGY	FACTOR
Sustainable economic growth	Revenues accumulated over the fulfilment period	\$1 = 1 credit
Export promotion	Export revenues = Additional credits	\$1 = 1 + local content
Job creation	Salaries & wages costs accumulated over the fulfilment period	\$1 = 1 credit
Training & development	Training & development costs accumulated over the fulfilment period	\$1 = 1 credit
SMME promotion	Outsourcing to SMMEs	\$1 = 1 credit
Historically disadvantaged individuals	Outsourcing to HDI SMMEs	\$1 = 2 credits
Investment	Capital outlay or capital injections	\$1 = 2 credits
R&D expenses	All costs	\$1 = 2 credits
Technology transfer	On a case by case basis	\$1 = 1 credit

[2201] The obligor could decide to invest in any project in any sector provided that the DTI approved the investment and that the investment would on an annual basis produce goods, sell them locally or export them, would employ people, would spend money on training and development, would secure from small, medium and micro enterprises, would secure from black-owned firms and women firms, would expend money on research and development, was a foreign company that was involved in the investment and that it would transfer technology to South Africa.

[2202] The nine criteria mentioned above essentially captured the main policy objectives of the DTI. The criteria applied only to the NIPP programme as approved in 1997 and had no application to the SDPP NIP process.

[2203] The obligor was entitled to accumulate credits under each objective.

[2204] Under the SDPP NIP system credits could only be gained in respect of three objectives, namely, local sales, exports and investments. The IONT reduced the objectives eligible for credits from the nine as contained in the DTI policy documents to only the three mentioned above.

[2205] The DTI tended to talk about NIP and not 'offsets'. The latter is a much broader term than NIP. The words encompassed certain components that were almost similar. Industrial participation programmes were generally sustainable whilst offsets were not. Countertrade is one form of offsets, usually related to barter-type arrangements, for example arms for oil type of arrangements.

[2206] As a Cabinet sanctioned policy, NIP was obligatory upon all state institutions. Since the NIP was not a legally binding Act of Parliament there was no sanction if the respective Government Departments ignored the programme.

[2207] The NIP was managed by the Directorate: Industrial Participation and Government Procurement (referred to as the IP Directorate or the NIP Secretariat) within the DTI. The IP Directorate was responsible for tracking tenders; negotiating and concluding the IP agreements evaluating the IP projects and making recommendations to the Industrial Participation Control Committee (IPCC); monitoring and auditing the fulfilment of IP obligations; and providing general logistical and administrative support to the IPCC.

[2208] Decisions on IP agreements, credit obligations and penalties were taken by the IPCC which was made up of the Departments of Finance, Trade and Industry, Foreign Affairs, Defence, Public Enterprises and the purchaser.

[2209] The IPP started in 1997, before the SDPP.

[2210] Prior to the SDPP projects' being finalised the DTI engaged the DOD and Armscor in order to ensure that they had taken the IPP on board. The Defence Industrial Participation (DIP) programme evolved as an integrated part of the NIPP in the case of any defence-related Government procurement where the import content was \$10 million or more. While the NIPP required obligations of 30% of the import value, the DIP required 50% of the import value as a participation obligation. The DIP programme was *'[s]tructured to provide direct support for sustainable indigenous defence related industries in order to maintain strategically essential technologies*

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and capabilities as identified and prioritized by the SANDF.' (Quoted from the Witness Statement, para 18.)

[2211] When the RFI was issued to various countries, they contained the NIP and DIP requirements.

[2212] From late 1997 and during 1998 the DTI IP Directorate was drawn into discussions with potential suppliers to clarify the NIPP and to identify projects that could qualify for IP credits.

[2213] Within the DTI, processes were initiated to test and interrogate the emerging NIP projects with sector directorates and to identify projects aligned to industrial policy and that could be proposed to potential bidders. Bidders' attention was drawn to sectors where there was a need for investments. Lists of projects were drawn and given to potential bidders.

[2214] The DTI had identified 22 project areas that were discussed with the bidders. If bidders identified a project, they would work out with them the question of jobs to be created, exports, and so on. At the time when they were evaluating the projects that the bidders were proposing, they used the nine scoring criteria. At that stage the IONT was not yet in existence and had not yet informed them that they should score the projects only on three of the nine criteria contained in their IPP.

[2215] The DTI NIP scoring schedule was forwarded to SOFCOM.

[2216] The DTI had the right to approve or disapprove a project.

[2217] In the IONT, the DTI was represented by Dr Paul Jourdan and Mr Vernon Pillay. Dr Jourdan was a member of the Affordability Team of the IONT.

[2218] Dr Rustomjee further testified that the DTI agreed with the IONT to reduce the criteria to only three objectives in order to simplify the adjudication process and to remove discretion and unnecessary argument over what would be given credits for. The DTI was comfortable with the change, although there was a slight discomfort that the important industrial

policy objective of employment creation had been left out. The DTI was concerned about potential undesirable consequences of narrowing down the criteria, namely that one could end up with a number of capital intensive projects that still met the obligations but did not necessarily create a lot of employment.

[2219] The view of DTI at the time was that for the respective proposed projects to be sustainable over the discharge period, the bidders could not avoid commitments to the excluded scoring criteria of employment, training, SMME promotion, HDI promotion, research and development and technology transfer.

[2220] The DTI believed that the estimated employment from NIP projects that had emerged from the original bid evaluation scores was realisable. Defence Minister Modise referred to some 65 000 potential jobs in a statement to Parliament in March 1999. This figure had emerged from the original 1998 NIP evaluation of projects proposed by the bidders. The figure of investments mentioned by the then Minister of Defence was a figure that related to the sum total of the industrial participation credits under the nine criteria contained in the DTI policy document.

[2221] Bidders were at liberty to substitute projects with the approval of the DTI.

39. Mr Vanan Pillay

[2222] Mr Pillay has the following academic qualifications: BSc (Chemistry), University of Natal; BCom, University of South Africa; Masters in Engineering Business Management, University of Warwick.

[2223] He was employed by the DTI in March 1997 as a Chief Techno Economist. In 1998 he was appointed as a Deputy Director in the Industrial Participation Directorate (IP Directorate), and in July 1999 as Director in the same Directorate. When he joined the DTI in March 1997, Dr Rustomjee was the Director-General and the SDPP was well underway. He left the DTI in 2002.

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[2224] At the inception of his duties as Deputy Director he was made aware of a broad list of categories of projects that had been approved by the DTI, some of which were of a strategic nature. The DTI wanted to stimulate the economy by getting these projects off the ground.

[2225] The Sector Directorates and the Strategic Projects Section, headed by Dr Paul Jourdan of the DTI, defined the contents of the categories. He coordinated and facilitated this process.

[2226] He explained that the IP Directorate was responsible for managing contracts with an import value of \$10 million or more. According to the NIP Programme, the IP Secretariat required 30% of the imported value as an obligation in terms of the NIPP.

[2227] Prior to the SDPP contracts being signed, a number of projects were submitted by various bidders and evaluated by the DTI. These projects were initially screened by a Business Plan Approval Committee and then brought before a multi-disciplinary external advisory committee, which he chaired. This committee was the IP Control Committee, with members from different investment desks and from the National Treasury.

[2228] The projects were scored at the Senior Management Committee chaired by the Director-General. The scores were then tabled at SOFCOM.

[2229] The SDPP bidders were also entitled to submit projects, provided that the key requirements of industrial participation were met, namely the introduction of investment into the country, the creation of jobs and the generation of revenue.

[2230] In the earlier stages of the SDPP the nine criteria mentioned by other witnesses were considered. Bidders were informed by the DTI that they would get credits on the nine criteria that had existed before the change introduced by the IONT, which was formed after the preferred bidders were identified. At that stage there had been extensive discussions between the DTI and the bidders about the offsets and the credit methodology applicable

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thereto. During these negotiations with bidders 'horse trading' about credits would take place.

[2231] Later, the IONT decided that the total credits would be measured only on three criteria, namely investments exports and local sales.

[2232] Mr Pillay referred to the following spread-sheets dealing with what was offered to the DTI by various preferred bidders.

EQUIPMENT: CORVETTE

COUNTRY	BIDDER	NIP %	INVESTMENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
GERMANY	GERMAN FRIGATE CONSORTIUM	322%	317 472	27%	345	288 600
SPAIN	BAZAN	387%	173 313	65%	984	877 313
FRANCE	DCN INTERNATIONAL	186%	44 236	41%	1634	1 073 208
UNITED KINGDOM	GEC MARINE	48%	11 794	35%	305	180 763

EQUIPMENT: SUBMARINES

COUNTRY	BIDDER	NIP %	INVESTMENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
GERMANY	GERMAN SUBMARINE CONSORTIUM	1223 %	987 700	22%	2073	3 672 000
SWEDEN	KOCKUMS	317%	NOT INDICATED	33%	2219	813 450
ITALY	FINCANTIERI	227%	159 436	45%	923	729 326
FRANCE	DCN INTERNATIONAL	165%	44 236	41%	1634	1 073 208

EQUIPMENT: ALFA – ADVANCED LIGHT FIGHTER AIRCRAFT

COUNTRY	BIDDER	NIP %	INVESTMENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
UNITED KINGDOM	BRITISH AEROSPACE	435%	131 250	15	4096	4 018 500
FRANCE	DASSAULT	49%	7 150	14	583	343 107
GERMANY	DASA	71%	128 841	0	3093	162 892

EQUIPMENT: LUH – LIGHT UTILITY HELICOPTER

COUNTRY	BIDDER	NIP %	INVESTMENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
ITALY	AGUSTA	182%	23 860	0	883	257 383
FRANCE	EUROCOPTER	116%	6 951	13	234	194 544
CANADA	BELL	69%	10 650	32	397	79 761

EQUIPMENT: MH – MARITIME HELICOPTER

COUNTRY	BIDDER	NIP %	INVEST- MENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
UNITED KINGDOM	GKN WESTLAND	180%	2 691	50	508	24 690
FRANCE	EUROCOPTER	138%	15 017	22	435	11 106

EQUIPMENT: LIFT – LEAD IN FIGHTER TRAINER

COUNTRY	BIDDER	NIP %	INVEST- MENTS US\$ '000	PDI OWNERSHIP AVERAGE %	NUMBER OF JOBS	EXPORT REVENUES US\$ '000
ITALY	AERMACCHI	59%	12 613	17.5	282	82 490
UNITED KINGDOM	BRITISH AEROSPACE	142%	78 600	37	833	626 000
CZECH REPUBLIC	AERO VODOCHODY	191%	153 558	50	4929	7 000

[2233] He said that the spreadsheets were compiled by the teams that were established by the IP Control Committee. The team leaders compiled each table and presented them to him. He put the tables together into one format and presented them to the upper management. The spreadsheets contained various pieces of information, including the number of jobs that were going to be created. The spreadsheets were made available to SOFCOM.

[2234] The non-SDPP NIP guidelines that were approved by the Cabinet and were in existence for some time, contained various categories where limited 'multipliers' could be awarded in respect of credits for the respective categories.

[2235] After the establishment of the IONT the question of affordability was raised. The IONT was of the view that South Africa could not afford all the contemplated procurements. All the bidders were made aware of the new methodology of awarding credits introduced by the IONT. The IONT informed suppliers that there would be no multipliers. When asked what he was referring to when talking about 'multipliers', he said:

'I'm referring to the nine criteria, and within the nine criteria, investments had a multiply of two and exports had a multiply of two. So, the entire multiplier mechanism was a two-tier mechanism where you would get credits even in areas which

were not going to be counted by the three criteria that we then specified.'

[2236] The standard guideline for NIP projects that was in place would not apply to SDPP projects. He further said that at the time he was under the impression that the removal of the multipliers was not cast in stone and that there remained a residual discretion to award multipliers.

[2237] Under cross-examination he referred to the NIPP and its guidelines that were approved by the Cabinet in April 1997. The DTI's view was that the NIPP and guidelines should be utilised when dealing with credits. In order to achieve some of the objectives of the DTI incentives might have to be offered to obligors.

[2238] The IONT was not a policy-making forum. It was constituted to finalise the legal agreements with the bidders.

40. Mr Masizakhe Zimela

[2239] Mr Zimela commenced employment with the DTI in July 2001 and was allocated the position of Director Non-Defence Portfolio in the Industrial Participation Secretariat (IPS). The IPS was one of the structures responsible for the management and implementation of the National Industrial Participation Programme (NIPP).

[2240] From July 2001 to 2005 he was a member of the Industrial Participation Control Committee (IPCC) and in 2010 he was appointed chairperson of the IPCC.

[2241] Currently he is the Chief Director: Industrial Participation Secretariat (IPS) and is still serving as Chairperson of the IPCC.

[2242] The IPCC, amongst others, approved business plans, business concepts and credit claims submitted by the various obligors. The IPCC approved credit claims for the whole NIPP.

[2243] Industrial Participation (IP) was also known as 'counter trade', 'offsets' or 'reciprocal trade' in international trade practice and formed part of the

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Government's industrial development strategy geared towards achieving the country's developmental objectives.

[2244] In 1996, South Africa developed its offsets programme known as the NIPP. In terms of Cabinet Memorandum no 10 of 1996 the principle of an IP (offset) policy was approved and the DTI was mandated to develop a national policy. The Cabinet approved the NIP Policy and its operating Guidelines on 30 April 1997.

[2245] For all the SANDF's procurement there were two industrial participation obligations, one being the Defence Industrial Participation (DIP), which is administered by Armscor, and the other the NIPP, administered by the DTI.

[2246] The objectives of the NIP Policy were to:

- ensure sustainable economic growth
- facilitate access to new markets
- encourage Foreign Direct Investment (FDI) in South Africa
- ensure that there is technology transfer to South Africa
- encourage research and development collaborations in South Africa
- contribute to job creation and/or retention
- support economic development of historically disadvantaged communities

[2247] The above-mentioned objectives were interlinked and the development of one may result in the achievement of one or more of the others, for example, foreign direct investment into greenfield projects would certainly result in the creation of jobs and might result in technology transfer, research and development collaboration between multinational companies and South African companies, as well as access to new markets or new trading partners. One investment may result in credits under a number of different categories.

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[2248] Projects to fulfil offset obligations were evaluated and approved by the IPCC of the DTI with the support of the IPS. The monitoring of projects would carry on until the obligor had discharged all the obligations, usually a period of seven years from the time the main purchase agreement was signed.

[2249] Upon being awarded a tender, the NIP obligors are expected to sign an agreement with the DTI, recording their NIP obligations. Obligor are expected to achieve certain periodic milestones, namely 30% of the obligations by year 3, 70% by year 5 and 100% by year 7.

[2250] The business plans submitted by the obligors were interrogated by various DTI structures. Those that met the DTI criteria were approved.

[2251] An obligor was judged by the aggregate value of the credits that the obligor obtained. If the credits obtained did not meet the obligor's total obligations, the obligor could introduce substitute projects.

[2252] If a substitute project was introduced, it had to go through the whole process of evaluation, namely the IPS process, then the ICC process and finally the IPCC process.

[2253] The IPCC considered the business plans. The Committee could approve or reject a business plan, based on the NIP criteria. In appropriate cases a business plan could be approved on specific conditions.

[2254] Upon performance of their business plans, obligors were required to submit claims for credits together with supporting documents. The portfolio managers within the unit were responsible for verifying the claims and submitting them for consideration by the IPCC. The appointment of portfolio manager was based on sectors and not projects. The NIP guidelines set out the crediting methodology used to award NIP credits.

[2255] At the end of the discharge period, if the aggregates or the total value of the credits earned equalled the obligation or exceeded it, the portfolio manager would bring the matter to the IPCC with a request to discharge the

company from the NIP obligation. A recommendation was then made to the Deputy Director-General to send a letter to the obligor, discharging the latter from its obligations.

40.1 NIP obligations under the SDPP

[2256] The NIP obligations under the SDPP were also managed and administered under the DTI's NIP Programme. Although the process of oversight and monitoring was not different from that applicable to ordinary NIP obligations, there were certain important differences, namely:

- The terms of the contract recording the NIP obligations of the obligors under the SDPP were negotiated by various Departments, including the DTI. The NIP obligations had already been reduced to writing and the function of the DTI was simply that of an 'NIP Implementing Mechanism' as it was referred to in the SDPP contract.
- The NIP crediting methodology under the SDPP was different from that under the ordinary NIP. The formula proposed to achieve NIP credits under the SDPP was the following:
 - 1 NIP credit was awarded for each euro or dollar of investments by the investor in the course of establishing and progressing with any project
 - 1 NIP credit was awarded for each euro or dollar earned in respect of local sales of products produced in any project in the NIP project
 - 1 NIP credit was awarded for each euro or dollar of nett export revenues earned by any of the projects in the NIP project.
- The ordinary NIP obligation was determined by calculating 30% of the imported content of the goods supplied, the obligor being required to either equal or exceed credits to the value determined. In the case of NIP obligations under the SDPP the credits required to be achieved were specified in the contract.
- SDPP obligors had to submit a performance guarantee to the value of 10% of their total NIP obligations whereas the

performance guarantee required in terms of the ordinary NIP contract was 5%.

- Unlike the other NIP projects, in the case of SDPP projects the DTI management undertook to carry out a performance review of the SDPP projects and requested the Internal Audit Unit to undertake a strategic performance review of the SDPP projects in order to determine the actual performance of the SDPP projects following fulfilment of their NIP obligations.

[2257] The final audit report on the SDPP projects review was made public.

[2258] As he understood the position, the defence obligors were measured only on three criteria, namely investment, export sales and local sales, and on the contracts there was no performance measurement relating to jobs.

[2259] In some projects they measured the jobs created but their main focus in managing the programmes was on the criteria mentioned in the contracts.

[2260] The number of jobs to be created was contained in the business plans and they were only an estimate. Some of the projects had not yet reached maturity stage at the time when the internal audit of the NIP projects was carried out. The internal audit report was probably prepared in 2012. The report was commissioned on behalf of the Portfolio Committee on Trade and Industry.

[2261] The number of jobs created as contained in the report related to the last time they had monitored the projects. The discrepancy in the number of jobs was between the number in the business plans and the number obtained when they last checked the number of jobs actually created.

[2262] In terms of the contracts they were not required to monitor the number of jobs created, and their focus was on the three performance criteria. The monitoring of jobs created may not have been as consistent as the monitoring of the other three performance criteria mentioned earlier.

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[2263] Mr Zimela referred to package deals and said that those related to projects that the DTI deemed necessary. Once an obligor was persuaded to invest in such projects, they would negotiate with the obligor the credits it would receive for investment, sales and export. In certain appropriate cases the obligor was granted some of the credits upfront. The DTI and the obligor would have agreed to these credits.

[2264] Package deals were more of an exception since they were not part of the NIP Guidelines. In certain instances some of the projects were considered important for achieving particular strategic goals of the Government. In most cases the DTI would have persuaded obligors to invest in such projects.

[2265] As a result of concerns raised by members of Parliament, the Deputy Director- General and the Minister took a decision that they would discontinue the utilisation of package deals.

[2266] His understanding was that the NIP terms should be applied but that the IPS always had a right to apply to the Minister to allow deviations in order to achieve certain strategic objectives of the DTI.

[2267] Mr Zimela was referred to paragraph 2.2.1.1 of the Internal Audit Report, under the heading 'Use of negotiated Credit Packages deals'. The report noted the NIP terms for the defence obligors, and further on stated that:

'IPS and IPCC took a decision to adopt the concept of 'Package Deals' as a strategy to:

- *Direct NIP investments towards industrial areas and sectors, and communities that would traditionally not be favourable to potential investors (NIPP obligated companies);*
- *Compensate those NIPP obligated companies that are willing to invest in industrial areas, sectors and businesses where the return on investment is not attractive, the risk of not earning NIPP credits on revenue is high, the time of*

generating NIPP credits is longer than the required time frames...'

[2268] The report further stated that this resulted in defence obligors obtaining more NIPP credits compared to the investments and sales created or caused by them. The NIPP Terms for the Defence Obligors prescribed that 1 NIP credit would be awarded for 1\$ or 1€ of investment, local sales and net export revenues effected by the obligors.

[2269] The report further stated that the DTI had deviated from the Guidelines.

[2270] In his comments Mr Zimela said that in order to achieve certain objectives and to support certain critical projects that ordinarily would not have been attractive to the obligors, they introduced the concept of package deals or multipliers. His view was that the deviation referred to by the Internal Audit Report was the introduction of the package deals.

[2271] He conceded that the NIP contracts concerned were specific in terms of how credits should be calculated and allocated and there was no provision in the contracts for package deals.

[2272] His understanding had always been that the possibility of a discretion to deviate from the contracts and/or Guidelines always existed, as long as approval had been sought from the Minister.

[2273] He was referred to a portion of the audit report that stipulated the causes of the deviation mentioned above. It reads as follows:

'Package deals were used as the strategy to encourage investment towards industrial areas, sectors and communities that would traditionally not be favourable to potential investor.

- *It was a compensation for those NIPP obligated companies that were willing to invest in industrial areas, sectors and businesses where the return on investment is not attractive, the risk of not earning NIPP credits on revenue is high, the*

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time of generating NIPP credits is longer than the required time frames,

- *The absence of a guiding framework and criteria on how the packages will be granted and the extent of additional credits to be allocated for each credit package.'*

[2274] He agreed with this quotation.

[2275] The witness submitted Annexure F to his statement, a document containing certain figures. According to him, the annexure was developed towards the end of the previous year with the idea of providing the Commission with a much clearer picture regarding the number of projects undertaken by each and every one of the SDPP obligors; the number of jobs created or saved; the total amount of investment (by the obligors themselves and by the other parties); and the total investment credits and sales credits.

[2276] In brief, Annexure F indicated the following:

- *BAE (Hawk and Gripen):* obligation of \$7,2 billion, created 22 422 jobs, 5 768 jobs saved or retained, total actual investments \$665,2 million, actual obligor's investment \$252 million, investment credits about \$2,01 billion, sales credit US\$5,44 billion and total credit of US\$7,457 billion.
- *GFC (corvette platform):* obligation of ±\$2 billion, 2 340 total new jobs created, 920 jobs saved or retained, total actual investment \$173,5 million, actual obligor's investments \$44,4 million, investment credits \$516,7 million, sales credits \$ 1,54 billion and total credits \$2 billion.
- *GSC (submarine):* obligation of €2,8 billion, total new jobs 6 606, 4 889 jobs saved or retained, total actual investments €149,4 million, actual obligors investments €67,6 million, Investment credits €961,3 million, sales credits €2,1 billion and total credits €3,1 billion.
- *Thales (combat suite):* obligation \$652 million, 4 875 total new jobs created, 706 jobs saved or retained, total actual investment

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\$139,6 million, \$62million actual obligor's investments, \$199,2 million investment credits, sales credits \$591,2 million and \$790,5 million total credits.

- *Agusta (LUH)*: obligation \$767,9 million, 2 652 total new jobs created, 258 jobs saved or retained, \$82,2 million total actual investments, actual obligor's investments \$59,9million, investment credits \$184,6 million, \$619,3 million sales credits and \$804 million total credits.

[2277] Annexure F indicated that the various projects under the SDPP created 38 895 jobs (12 965 new jobs and 25 930 indirect jobs), saved 12 541 jobs, and brought \$978 million total actual investments. Actual obligors' investments totalled \$359,2 million.

[2278] Total investment credits achieved amounted to \$2,7 billion, total sales credits to \$7,58 billion and total credits to \$10,309 billion.

[2279] Various projects implemented by the' respective obligors were also mentioned. The above-quoted figures did not include GSC's total actual investment, obligor's investments and investment credits and sales credits, which were not in dollars but in euros, as follows:

- total actual investment €149,4 million
- actual obligor's investments €67,66 million
- investment credits €961,38 million
- sales credits €2,156 billion; and
- total credits €3.117 billion.

[2280] GSC's obligation was €2,85 billion.

[2281] He further testified that the figures for new jobs created were compiled from the figures given to them when they had held meetings with the obligors, and in instances where obligors did not provide them the figures, they would go back to the business plans to extract the figures for jobs created, as there was never a requirement that the obligors should account for the jobs created.

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[2282] The number of new indirect jobs included in Annexure F was an estimate. They used a multiplier of 2 to estimate the indirect jobs. The multiplier was a generally accepted economic formula for estimating indirect jobs.

[2283] They used the expression 'jobs saved or retained' in the case where, without the involvement of the obligor, a company or factory would have closed and employees would have lost their jobs. The figure for jobs saved or retained was the actual number of jobs saved or retained, not an estimate.

[2284] The total actual investments referred to the amount that was invested by the obligor plus the amount that had been invested by other investors. They were the actual amounts invested in the economy.

[2285] The figure for total actual investments represented amounts for which they obtained proof of the investments from the obligors. In instances where they had not received proof of investment, the figures were not included in the total actual investment figure.

[2286] In some cases actual credits were much higher than the actual amount invested. One of the reasons for such difference was that in other cases they had multipliers or 'package deals'.

[2287] Sales credits included both local sales and export sales credits.

[2288] Under cross-examination Mr Zimela said that the obligation of BAE was \$7,2 billion, broken down into \$5 billion for sales and ± \$2 billion for investments. When they measured the performance, they examined whether or not at the end of the period BAE had brought enough projects to meet their obligation of \$5 billion sales and \$2 billion investments or not.

[2289] During the performance reviews of the obligors, they did not look at specific projects, but at the aggregate projects in order to determine whether an obligor had met its obligations or not.

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[2290] Multipliers were not catered for in the NIP contracts, but his understanding was that in appropriate cases and with the approval of the Minister, multipliers could be used.

[2291] The NIP Guidelines made provision for multipliers even in other non-SDPP projects. They have always regarded multipliers and 'package deals' as the same. If a project was not part of the 'package deals', when calculating its credit, multipliers would not feature.

[2292] They received business plans from the obligors and as the approved business plan was being implemented, the obligor would submit requests for credits to the portfolio manager, who would then make recommendations to the IPCC, based on the supporting documents. The IPCC would then, in appropriate cases, grant the credits.

[2293] Performance of the obligors was based on achieving certain investment, local sales and export targets.

[2294] As mentioned, they obtained the figures for jobs created from business plans, the obligors themselves and during site visits at the various premises where projects were carried out. As far as investments were concerned, in the SDPP NIP projects they took into account the amount invested by the obligor and the amount that the obligor caused to be invested. The amount invested by another investor in a particular project, at the instance of an obligor, was also taken into account.

[2295] In order for an obligor to be awarded credits for an investment made by another investor, the obligor had to prove that had it not been for its funding, the project would not have taken off and other investors would not have contributed any funding to the project.

[2296] He further said he thought the Minister could authorise deviations from any DTI policy.

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[2297] In managing and monitoring the SDPP projects, they relied on both the contracts and the NIP Guidelines. The only difference between the NIP Guidelines and the SDPP NIP contracts was the credit methodology.

[2298] With regard to the issuing of credits, with the exception of package deals, they limited themselves to the contracts as the credits methodology contained in the NIP Guidelines differed from the credit methodology contained in the SDPP NIP contracts.

40.2 Multipliers

[2299] There were instances where, because of certain considerations, obligors were asked to invest in strategic projects. In those instances, the IPS negotiated multipliers with the obligors (subject to the approval of the Minister). Under normal circumstances the granting of multipliers for credits would not have been granted.

[2300] The strategic matters considered for the use of multipliers included:

- Risky and commercially unattractive projects developed or proposed by Government. Such projects had significant implications for job creation or the prevention of job losses and were highly unlikely to be funded by the market.
- Important projects for the development of essential skills desperately needed in the economy, and which played a crucial role in developing poorer areas of our country.
- Projects promoting economic transformation, especially promoting the participation of black people in the ownership and control of economic assets.

[2301] In determining the value of the multiplier to be applied, the following factors were considered:

- The potential credits the project was likely to generate over several years
- The potential number of investors

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- Instances where the obligor was the only investor and not likely to receive return on investment; and
- Training projects.

[2302] In some cases obligors invested in projects from which they expected no commercial return. In these instances, higher multipliers were used. Due to the specific nature of projects, multipliers were negotiated on a project-by-project basis and presented to the IPCC for approval. Generally this occurred where the project involved:

- Investment in the form of a grant on which the obligor would not earn a return
- A loan incurring below-the-market interest
- Investments deemed risky and thus less attractive to other investors but important for economic development at a national or regional level; and
- Training projects.

[2303] In the SDPP projects, multipliers were applied only to investments and sales.

[2304] In his view, as far as investments were concerned, South Africa received more than it expected. He further testified that Annexure F indicated that total investment credits were about UD\$2,728 billion, which produced a multiplier of 2.7% to 2.9% when divided by the total actual investment of UD\$978,3 million.

[2305] Looking at the projects as a whole, the SDPP projects as a portfolio performed very well.

[2306] Inside a portfolio it would generally not be surprising to find projects that performed poorly and others exceptionally well. The same applied to the SDPP projects.

[2307] The offset obligations benefitted our country immensely. It was also unusual or unique to have indirect offsets coming from defence procurement

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and benefitting the civilian industry. We have achieved that. Our civilian industries benefitted from offset projects relating to the SDPP.

[2308] As a country we benefitted from investments, jobs were created, exports were generated and more. Even today some of those projects are still generating local and export sales.

[2309] When the total investment in dollars and euros (GSC) is divided by the total investment credits of all obligors, a multiplier of about 3% will be found.

[2310] Mr Zimela referred to a project called 'Package Tourism Project' that was undertaken in Port Elizabeth by one of the obligors. This project created new jobs that were never accounted for. The project caused a large number of tourists from Scandinavian countries to visit Port Elizabeth and other parts of the country.

[2311] He explained when asked how they awarded credits to obligors in certain projects. In awarding credit, they considered each project on its own merits, taking into account NIP agreements, DTI policy and guidelines and in certain appropriate cases, used multipliers after obtaining the approval of the Minister.

[2312] He further testified that earlier when he said that if one took only the dollar denominated investments and actual investment credits, the multiplier was 2,8, but that did not include the GSC obligation that was denominated in euros.

[2313] Looking at the individual obligors, in the case of GSC the multiplier was 6,43, with BAE Systems the multiplier was 3,02, with GFC 2,98, Augusta 2,24 and Thales 1,43. The grand multiplier as said above was 3,35.

[2314] The witness supplied the following table that he had prepared:

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Project Name	Total actual investments	Actual obligor investment	Investment credits	Sales credits	Total credits	Multiplier effect
GSC totals in US\$ (using X-rate – 1.2)	179 287 036	81 192 191	1 153 660 067	2 587 653 162	3 741 313 229	6,43
GSC totals in US\$ (using X-rate – 1.4767)	220 627 638	99 913 757	1 419 674 851	3 184 322 854	4 603 997 704	6,43
GSC totals in US\$ (using avg X-rate – 1.4767)	1 199 014 248	459 179 291	4 148 086 108	10 765 589 641	14 913 675 749	3,46
Grand totals in US\$ (using X-rate – 1.2)	1 157 673 646	440 457 725	3 882 071 324	10 168 919 949	14 050 991 273	3,35
NARRATIVE EXPLAINING THE MULTIPLIER EFFECT						
The above summary sets out to explain the multiplier effect based on the total investments against credits in US\$ terms using two exchange rates, namely an average of €1 = 1,2 US\$ and €1 = 1,4767 US\$ (average yearly rate from 1 Jan 2000 to 1 Jan 2010).						

[2315] The multiplier effects are as follows: €1 = 1,2 gives a 3,35 multiplier effect and €1 = 1,4767 gives a 3,46 multiplier effect.

[2316] When the IPCC and the IP Secretariat assessed a project, they took a broader view, taking into account the criteria mentioned in the NIP Policy and Guidelines. They considered what the project was bringing into the South African economy. One could not look at a project and consider only the three categories where they got credits. The effect of the project on the whole economy should be considered. The DTI was concerned with more than the three categories, which according to the NIP agreements should be the only three criteria to be considered for credits. The DTI, *inter alia*, is concerned with job creation, technology transfer, skills transfer, black economic empowerment, and so forth.

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[2317] Some of the projects undertaken by the obligors were suggested by the obligors themselves and others were proposed by the DTI, taking into account the mandate of the DTI. If the proposed project was initiated by Government, the obligor would negotiate with the DTI a package of credits before it committed funds to the proposed package. Normally the negotiations would have taken place between the obligor and the IPCC.

[2318] When an obligor introduced a locally registered company to undertake a project, the IPCC usually never checked who the directors of the locally registered company were.

[2319] In instances where projects were introduced towards the end of the NIP obligation period, the IPCC would during the negotiations with the obligor, and depending on the business plan, grant the obligor a certain number of sales credits upfront. The DTI designed this procedure because the NIP terms allowed the obligors to bring in substitute projects towards the end of the obligation period. However, the NIP terms had no provision or mechanism to allow an obligor to benefit from sales that would be made after the expiry of the obligation period.

[2320] In order to deal with such sales, the DTI came up with the concept of upfront credits where the company was going to invest money in the project and their sales would eventuate after the expiry of the obligation period.

[2321] In cases where the obligor invested in a fund and the fund manager invested the money in many different projects in the economy, they negotiated a package of sales credits with the obligor, as it would be difficult for them to track each and every small project that the fund would have invested in.

[2322] As far as feasibility studies were concerned, in certain instances the obligor could request and be awarded credits for the funds spent on the feasibility study, while in other instances no credits would be awarded for feasibility studies.

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[2323] First, where an obligor embarked on a feasibility study without first consulting the DTI, and the result of the study was that the project was not viable, the obligor could not claim any credit for the funds expended on the study. Where a feasibility study that was done without the consent of DTI found that project was viable, and obligor invested money in that project, it could claim funds expended on the feasibility study as part of the investment.

[2324] On the other hand, if an obligor undertook a feasibility study at the request of Government, the obligor could claim credits for the funds spent on the study regardless of the outcome of the study. Credits to be awarded would depend on the negotiation between the DTI and the obligor prior to the obligor undertaking the feasibility study.

[2325] In instances where much higher multipliers were applied, like the Magwa Tea Plantation Project where a multiplier of 30 was applied, he explained in detail why such a high multiplier was utilised.

[2326] Under cross-examination he confirmed that they used 'package deals' to implement the NIP agreements that ensued from the SDPP. They negotiated the 'package deals' following approval by the Minister of Trade and Industry. The 'package deals' were utilised for certain identified projects.

[2327] What they used to do was to look at the business plan and the projection of the sales that were going to be generated by the project over a number of years, and on that basis the IPCC would recommend for approval to the Minister a 'package deal' of credits, more especially the sales credits.

[2328] All the obligors, except BAE/SAAB Systems had seven years to fulfil their obligations. BAE had 11 years to do so. As far as he recalled, all obligors had fulfilled their obligations. There was one obligor that still had to prove the actual sales that resulted from the project that was approved as a 'package deal'.

41. Mr Siphon Zikode

[2329] Mr Zikode is the Deputy Director General: Broadening Participation Division, previously known as Empowerment and Industry Development, in the DTI.

[2330] In 1999 he was appointed Deputy Director of the Industrial Participation Secretariat (IPS). He was promoted to Director in the IPS in 2001 and in 2003 to Chief Director. In 2007 he was appointed Acting DDG: Enterprise and Industry Development Division and in 2011 as DDG in the same division, currently known as the Broadening Participation Division.

[2331] He holds a National Diploma in Chemical Engineering (Mangosuthu Technicon), a Post-graduate Diploma in Marketing (UNISA), a BCom in Economics (University of the Witwatersrand) and an MBA Degree from the University of Pretoria.

41.1 Membership of committees

[2332] He served as a member of the Internal Control Committee from 1999 to about 2007. The role of this committee was to approve business concepts.

[2333] He served on the Industrial Participation Control Committee (IPCC). The IPCC approved business plans related to the NIPP and credit claims submitted by the obligors. The IPCC is an inter-departmental committee. He chaired the IPCC.

[2334] The DTI and the UK Government formed a committee called the Joint Industrial Participation Monitoring Committee (JIPMC). The purpose of JIPMC was to ensure that UK companies that had NIP obligations fulfilled their obligations. The JIPMC met every six months to review the performance of the UK obligors.

[2335] He also served on the IPCC Review Meetings that assessed the performance of obligors every six months

[2336] The IPCC assumed the functions of the NIP Implementing Mechanism in terms of clause 2.2.26 of the umbrella agreements. The

purpose of the NIP Implementing Mechanism was to assist the DTI in administering and monitoring the NIP obligations that arose from the SDPP.

[2337] The IPCC is a committee that was established in terms of the DTI Policy and Guidelines to administer the offsets in South Africa.

[2338] DIP had been in existence before the advent of the NIPP. DIP applied only to procurement of defence equipment by the DOD with an imported content of US\$2 million. With the introduction of the NIP, all defence procurement equal to or exceeding US\$10 million became subject to a DIP and NIP obligation. DIP obligations were monitored by Armscor and NIP obligations by the DTI.

[2339] The SDPP obligors had the following NIP obligations:

1. **BAE/SAAB**: US\$7,2 billion distributed as follows:
 - 1.1. US\$2 billion for investment
 - 1.2. US\$ 3,6 billion for export sales
 - 1.3. US\$ 1,56 billion local sales
2. **GFC** undertook to perform NIP activities in accordance with the umbrella agreement and would qualify for NIP credits on the basis of GFC and Thompson NIP terms with an aggregate value of:
 - 2.1. US\$700 million for investments of which US\$ 509 million would be allocated to GFC and US\$ 190 million to Thompson
 - 2.2. US\$2 billion for local sales and nett export revenues of which US\$1,5 billion would be allocated to GFC and about US\$ 461,5 million to Thompson.
3. **GSC** undertook to perform NIP activities in accordance with the umbrella agreement and would qualify for NIP credits in terms of the NIP terms with an aggregate value of ± €2,85 billion made up as follows:
 - 3.1. €960 million for investments,
 - 3.2. €1,64 billion for exports sales and
 - 3.3. €250,6 million for domestic sales.

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4. **Agusta:** US\$797,9 million made up as follows:

- 4.1. US\$ 184,5 million for investments,
- 4.2. US\$ 468,2 million for export sales,
- 4.3. US\$ 115,2 million for domestic sales.

[2340] It was pointed out to him that the total actual investment made by and on behalf of BAE was US\$ 665,286 million and it had received or obtained US\$2 billion credits. He replied that BAE had received more investment credits than their actual investments due to the use of 'package deals' and 'multipliers'.

[2341] The use of multipliers was a crucial tool for the DTI to encourage investors to invest in areas where the DTI felt that it was crucial to direct investment to.

[2342] Consistent with the NIP terms, each obligor submitted credit claims for projects in discharging its NIP commitments. After submission of the claims, the claims would be considered by the IPCC, and the latter would award credits or reject the claims in accordance with the NIP terms. Before the claims were forwarded to the IPCC, they would be considered by the portfolio manager for that particular obligor.

[2343] Each NIP credit claim was required to be accompanied by documentary proof to substantiate the claim, including:

- Copies of all relevant NIP contracts to the extent that they were reasonably required to substantiate the claim
- Financial statements
- Copies of commercial invoices, purchase invoices, bills of lading, and all documentation required by the SA Reserve Bank, certified by the bank.

[2344] In terms of the SDPP agreements with the respective obligors, credits could only be earned in respect of investments, domestic sales and export sales. For most of the obligors, the SDPP agreements provided that they had seven years within which to discharge their obligations. In the case of

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British Aerospace (Operations) Limited the contractual period for the discharge of its obligations was set at 11 years.

[2345] Annexure F, which set out the various projects undertaken by the obligors, was prepared by the IPS led by Mr Zimela.

[2346] Mr Zikode was no longer in the IPS. He left the unit in 2007.

41.2 Package deals – multipliers, multiplier effect and upfront credits

[2347] It was incumbent on the respective obligors to ensure that there were projects that would accrue credits to allow the obligor to discharge its obligations. Package deals arose in order to increase and spread the NIP uptake across all sectors of the economy and to deal with substitute projects. Package deals comprised both upfront credits and multipliers. Credits for investment and sales were awarded simultaneously.

[2348] The reasons for introducing this strategy were the following:

- To direct NIP investments towards industrial sectors and communities that would traditionally not be favoured by NIP-obligated companies, and
- To award additional credits or multipliers to NIP-obligated companies that were willing to invest in strategic industrial areas, sectors and businesses where the return on investment was not attractive and where the risk of not earning NIP credits on revenue was high and the time for generating NIP credits would be longer than the stipulated time frame.

[2349] To expedite the award of NIP credits under the SDPP some of the package deals made provision for upfront credits. These credits were given in advance on the basis of projected sales revenue over a period of time, usually beyond the obligation discharge period. These upfront sales credits were granted simultaneously with the investment credits to complete the package deal.

41.3 Upfront credits

[2350] As they managed the implementation of the SDPP projects they realised that the NIP terms did not make provision for substitute projects that came towards the end of the obligation period. If an obligor was prepared to invest at that late stage in a project that the DTI deemed strategic, that would generate sales beyond the obligation period, create employment and so on, the DTI negotiated with the obligor the credits to be awarded for investment and future sales. The Minister and the DTI officials awarded upfront credits in order to accommodate and be fair to the obligor.

[2351] In order to deal with the late substitute project, they looked at the business plan, the potential it had in terms of sales over several years into the future well after the obligation period was over, estimated the sales and tried to come to an agreed estimate of the future sales of the project with the obligor. After that, the obligor would then be awarded credits for its investment and credits for the future sales. Credits would be awarded after obtaining the Minister's approval. The upfront credits were used only to sales that were going to be generated after the obligation period.

[2352] In their view offsets were a special tool to be used to direct investments into certain priority areas of our economy where it was not easy to attract investors.

[2353] They could not extend the obligation period by many years in order to accommodate future sales of any obligor. If they had extended the obligation period by many years it was going to be difficult to manage the programme.

[2354] When upfront credits were granted, the DTI would demand that the obligor report back to the DTI about the actual realisation of the sales before a performance guarantee was released. The DTI would monitor the sales of the obligor in order to ensure that the anticipated sales were realised.

[2355] The NIPP allowed the offset company to claim investments in the project by its partners as its own investment. In order to determine a figure of multiplier, the total credit was divided by total investment.

[2356] He emphasised the fact that in NIP obligations the commitment was in terms of credits, not projects. The obligor was expected to accrue certain credits in order to discharge its obligations. For example BAE/SAAB's NIP commitments were US\$7,2 billion worth of credits, not the number of projects they intended undertaking. The projects were just a mechanism to achieve the intended credits.

42. Ms Carmela Maria Teresa de Risi

[2357] Ms de Risi obtained a BComm (Marketing) degree from the University of Pretoria, an Honours in Financial Management and a Post-graduate Diploma in Economics

[2358] She started working for the DTI in 1991 until 30 September 2011. She held various positions, including that of Deputy Director: Industrial Participation (Offsets) and by the time she left the DTI, Director.

[2359] She was an Assistant Director since 1996 in a unit called the Industrial Participation Secretariat (IPS). In the latter post she was actively involved in the administration and management of the National Industrial Participation Programme (NIPP).

[2360] In her position as Director: Industrial Participation (Offsets) she was responsible for the management and administration of the Industrial Participation Programme, especially the obligations arising out of defence procurements.

[2361] In 1998 the IPS played an administrative role within the DTI in the evaluation of bids.

[2362] In her view the NIP Guidelines, which resulted from a Cabinet directive, was a framework and the IPCC was granted some flexibility in terms of the guidelines.

[2363] She was involved in the management of the GSC and GFC consortium projects.

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[2364] In administering the SDPP projects multipliers were used, particularly in projects that were of high risk or when there were no returns on the investment.

[2365] The obligors had only seven years in which to fulfil their obligations. In certain instances where it might have been insufficient time for the sales to be generated within the obligation period the IPCC would consider awarding credits upfront.

[2366] The upfront credits were only granted where there was proof that the investment had already been made by the obligor.

[2367] The concept of 'causality' also played a role in the awarding of credits and particularly in applying multipliers. For causality to apply the rule of thumb was that the obligor must have contributed a minimum of 10% in order to be credited for 100% of the total investment and sales or revenue.

[2368] There were cases where other factors could make the 10% higher or lower. The rule of thumb was fairly flexible.

[2369] In conclusion Ms de Risi said that the DTI managed and monitored the NIPP objectively, in good faith and with diligence.

43. Mr Lionel Victor October

[2370] Mr October is the Director-General of the DTI. He was appointed on 1 May 2011. When he joined the DTI in 2001 he was appointed as Chief Director in the IPS. As stated earlier by other witnesses, the IPS is a structure responsible for the management and implementation of the NIPP.

[2371] In 2002 he was appointed to the position of Deputy Director-General responsible for the Enterprise and Industry Development division. In his capacity as Deputy Director General he spearheaded the industrial and enterprise development policies, including the National Industrial Policy Framework and action plans, as well as the development and implementation of Broad Based Black Economic Empowerment legislation.

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[2372] He holds bachelors and honours degrees in Law and Development Studies from the University of the Western Cape and an MSC in Economics from London University.

[2373] He testified that the strategic outcomes that the DTI seeks to achieve are the following:

- To facilitate transformation of the economy with a view to promoting industrial development, investment, competitiveness and employment creation
- To build mutual beneficial regional and global relationships with a view to advancing South Africa's trade, industrial policy and economic development objectives
- To facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth
- To create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner; and
- To promote a professional, ethical, dynamic, competitive and customer-focused working environment that ensures effective and efficient service delivery.

[2374] The NIPP was one of a number of instruments to be utilised in the achievement of these goals. The goals of DTI's mandate and its core objectives were derived from the Department's Industrial Policy Action Plan that was adopted by the Cabinet. As stated earlier by other witnesses the NIPP is one of the important tools which the DTI utilises in order to achieve its objectives.

[2375] In our country NIPP was initially in the civilian sectors. It is now being used to pursue localisation in defence and non-defence industries.

43.1 Benefits realised from the SDPP

[2376] Data compiled by the DTI reveals that since the implementation of the SDPP in 2000:

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- amounts of \$978 386 610 and €149 495 863 were directly invested in our economy
- Local sales to the value of \$1 767 512 604 and €468 049 665 resulting from business projects established as a result of the SDPP were generated
- Export sales to the value of \$3 696 427 056 and €1 774 583 075 were generated
- Total direct jobs amounting to 12 965 were created; and
- Total jobs saved or retained amounted to 12 541.

[2377] The amounts mentioned above were actual investments made in our economy by the obligors themselves as well as amounts the obligors caused to be invested in our economy.

[2378] The figures for local sales and export sales were extracted from the records of the IPS. The figures represented actual sales. The upfront sales that were projected in the 'package deals' were not included in these figures.

[2379] He further testified that the figures for jobs were for direct jobs created and jobs saved. He did not take into account the indirect jobs 'upstream' and 'downstream' resulting from the direct jobs created and saved.

[2380] Saved or retained jobs refers to jobs that would have been lost had there been no investment of the obligor.

[2381] At the time of his testimony there was a new policy to replace the old NIP Policy. The new policy addressed weakness that they identified in the old policy. The new policy emphasised localisation, which would be more beneficial to our economy.

[2382] Other instruments dealing with the question of leveraging procurements have been introduced as a result of lessons learnt through many years of implementation of the NIPP.

[2383] The NIPP as it was then conceptualised, achieved its objectives.

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[2384] He further testified that in 1996/1997 the Cabinet adopted the original policy guidelines to deal with the new NIP Policy Instrument. The guidelines were broad and referred to various objectives, criteria and the like. The policy dictated how contracts dealing with NIP projects should be structured and it applied to SDPP contracts.

[2385] South Africa derived material benefits from the offsets. Although the country benefitted, the policy in place was the best tool then and it achieved its intended purpose.

[2386] He further said that using a conservative multiplier, they found that all the projects produced 26 000 indirect jobs.

[2387] Under cross-examination Mr October said the figure for jobs created was obtained from the business plans and during engagement with the obligors. He further pointed out that it was not a requirement of the programme that job figures had to be provided. Other figures were gathered by them during site visits.

[2388] The initial projections of the number of jobs expected to be created was based on the projects initially submitted by the obligors. Initial projects were 25, but not all of them were proceeded with for a variety of reasons. The contracts allowed projects to be substituted and when that happened, the number of jobs to be created also changed. Initially, the number of jobs to be created was alleged to be about 60 000. The total number of jobs created, saved or retained and indirect jobs created was 51 436, a figure which is not far off the initial projected figure of 60 000.

[2389] As a department they commissioned a number of independent audits of this programme, including the internal audit. Some of the independent audits indicated that the benefits the country achieved from the programme were much more substantial than what the department had indicated. The figures that the DTI gave the Commission were very conservative figures.

[2390] He was asked what legal instrument empowered the Minister to authorise the awarding of multipliers at the time of SDPP projects. He said

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that the NIP Policy that they applied was approved by the Cabinet and as a result thereof the Minister as the executive authority as contemplated in the PFMA had inherent powers to authorise the granting of multipliers. The credit allocation was in the sole discretion of the Minister.

[2391] The system of credits was not an end in itself but a means utilised by the DTI to carry out its mandate. It is a tool the DTI used to get investment into the country, create employment, and so on.

[2392] The policy that was approved by the Cabinet was implemented in 1996/1997 and prevailed until it was amended in 2012. The policy was applied in a flexible manner and it was objective driven. The IONT that negotiated the final contracts with the obligors had no powers to change the NIP Policy.

[2393] The direct benefit that accrued to the country was approximately US\$6,4 billion and €2,4 billion respectively. These figures did not include the DIP benefits derived from these projects.

[2394] At the time of the bidding process, the country was entitled to direct offsets only, but because of the NIP Policy, it also derived indirect offsets. South Africa was at the cutting edge of the indirect offset programme. Very few countries applied a similar programme.

[2395] In re-examination he said that they made a mistake in calculating local sales. Where they stated euros it was an error. The figure should read US\$468 million and not euros. The same applied to export sales. The figures there should be US\$3,69 billion and US\$1,774 billion. The figure of US\$468 million related to the GSC.

[2396] The figures for sales related to both actual sales and deemed sales.

G. SUPPLIERS**44. Mr Klaus Wiercimok**

[2397] Mr Wiercimok is a senior in-house attorney employed by ThyssenKrupp. He was employed by ThyssenKrupp since February 1982. His statement constituted the best evidence available on the subject-matter

being investigated by the Commission and constituted evidence which he was able to supply after considering the records which he had access to as an attorney within ThyssenKrupp and as former Managing Director of Thyssen Rheinstahl Technik (TRT). He held the latter position from 2003 to 2008.

[2398] As their commercial partner, TRT was a member of GFC.

[2399] Mr Wiercimok gave evidence on behalf of ThyssenKrupp Marine Systems (TKMS). TKMS was established in 2005. It took over the activities of the shipyards and trading house which together, as GFC, were contracted to supply patrol corvettes to South Africa.

[2400] The shipyards and trading house which constituted GFC were Blohm+Voss GmbH (Blohm+Voss), Howaldtswerke-Deutsche Werft GmbH (HDW) and Thyssen Rheinstahl (TRT).

[2401] When GFC was selected as the preferred bidder to supply the patrol corvette, it was required to identify a partner for the provision of the corvette combat systems. A consortium was formed to act as the prime contractor for the totality of the patrol corvette offer, with Altech (later African) Defence Systems (ADS) as the primary South African company capable of naval combat system integration with its part-owner at the time, Thomson (later Thales) NCS France. This consortium was eventually named European South African Corvette Consortium (ESACC), which became the prime contractor for the patrol corvette.

[2402] GFC was responsible for the supply of the platform and its integrated logistics support and Thales France with ADS were responsible for producing and integrating the combat systems. All the shortlisted companies stated that if successful they would partner with ADS.

44.1 Blohm+Voss and the SA patrol corvette

[2403] Blohm+Voss first received an RFI in mid-1993 from Armscor for the supply of four patrol corvette vessels to the SA Navy. At that time, the UN and German Government embargoes preventing the supply of defence

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equipment or related information to South Africa was still in force. Blohm+Voss was prohibited from answering the RFI. Blohm+Voss wrote to Armscor declining to participate in the project until the advent of democracy in South Africa.

[2404] In 1994 Blohm+Voss participated in the tender process but was not successful. British and Spanish offers were shortlisted.

[2405] In May 1995 it was announced by the South African Government that the patrol corvette project had been suspended until a new Defence Review had been completed.

44.1.1 Patrol corvette tender phase 1997-1999

[2406] In September 1997, the German Government received an invitation from the SA Government to offer various major items of defence equipment, including patrol corvettes. The German Government passed the invitation to the industry. GFC was formed to provide a German surface naval vessel proposal.

[2407] GFC participated in the tender process. ADS was the primary South African company capable of a naval combat system. The GFC included in its offer that, in the event of it being chosen, it would enter into a consortium with ADS to offer the patrol corvette combat system.

[2408] After the evaluation of the bids GFC was informed that it has been selected as Preferred Supplier for the MEKO A200 patrol corvette for the SA Navy.

[2409] In their understanding, a proper and thorough evaluation of the bids took place. The best value for money was different from the lowest price. The cheapest was not always the best. Various other factors must be taken into account, including international relations and the interests of the country in general.

[2410] Negotiations between the IONT and GFC commenced in early 1999 and continued until September 1999.

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[2411] As the prime contractor, GFC received the URS. GFC then solicited quotations from both local and international suppliers.

[2412] Negotiations for the combat suite commenced in January 1999. GFC and its intended partner ADS negotiated with the IONT Technical Team. In the course of these negotiations, GFC formalised its relationship with ADS as the combat suite integrator. Later in the year, Thales bought a majority stake in ADS and ESACC was formed.

[2413] As ADS was also competing to supply certain items of the combat system, GFC exercised due caution to ensure that the competing bids by other companies were not compromised and a fair evaluation took place.

[2414] On 3 December 1999 the contracts with the SA Government for the supply of four MEKO A200 patrol corvettes were signed.

[2415] The patrol corvette platforms were built by GFC, two at Blohm+Voss in Hamburg and two at Howaldtswerke-Deutsche Werft (HDW) in Kiel. They were sailed to South Africa by the SA Navy.

[2416] The combat systems were integrated onto the ships in Simon's Town by ADS and Thales.

[2417] The MEKO A200 supplied to South Africa to this day remains at the cutting edge of naval technology and is still at the core of the TKMS product portfolio.

44.1.2 Industrial participation (IP)

[2418] Industrial Participation is also known as offset. Offset is practised in over 100 countries worldwide, among them Canada, Norway and Australia, and requires suppliers of defence or other major systems to governments to provide benefit to the economy in the customer country.

[2419] Industrial Participation was divided into NIP and DIP. Amongst others, it was possible to meet the DIP requirement on the patrol corvette fully because of the capabilities of local industry. No fewer than 18 local companies supplied elements of the combat suite, particularly ADS as the

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combat system integrator. The DIP requirement was that at least 60% of the combat system value and at least 10% of the ship platform value should be met by South African companies.

[2420] GFC met its DIP obligations.

[2421] The NIP obligations did not include job creation. The GFC was nevertheless mindful of the need wherever possible in the execution of their NIP contracts or DIP contracts to either create new jobs or to sustain existing ones.

[2422] GFC met its NIP obligations.

[2423] GFC had successfully discharged its contractual DIP and NIP obligations in full and held certification from Armscor and the DTI respectively confirming this.

44.1.3 The GFC's advisers and support in South Africa

[2424] German law and administrative practice prevented the sale of defence equipment to South Africa as long as the UN arms embargo was in place. It also prevented the maintenance of sales and marketing operations by defence equipment manufactures and their commercial partners in South Africa. When GFC entered the bidding process in South Africa, it was entering a territory unknown to it.

[2425] In the experience of TKMS, any major sale, merger or acquisition, whether between private sector entities or between the private and public sectors, was always accompanied by experts in a number of fields, from law, finance, banking, media, public affairs, and so on.

[2426] In the case of SA naval procurement, it was imperative for GFC to identify capacity across these fields with a proven track record in South Africa. Advisers were required to assist in positioning the company's bid in such a manner that it would be capable of convincing the evaluators and decision-makers at all levels. Local knowledge of the procurement process was vital.

[2427] A number of factors motivated the need by GFC to procure top-flight advice and support. With no experience within GFC of doing business with the SADNF, Armscor or the SA government as a whole, it was imperative that advice and the ability to ensure appointments, opportunities to make presentations and in-depth discussions at the appropriate levels be available on an ongoing basis:

[2428] The size and significance of the IP obligations that formed part of the contract made specialist advice in identifying and sometimes also in implementing both NIP and DIP projects necessary.

[2429] Remuneration was agreed with the advisers. The remuneration of the advisers who supported the GFC at all times remained within the norms that were usual in international business transactions of a certain value. However, it was international practice that remuneration details by agreement remained confidential because of their commercial sensitivity within the context of the larger question of pricing.

44.1.4 Allegations against GFC

[2430] It was alleged that GFC, by rejecting the CCII Systems bid to supply the IPMS, acted in a corrupt manner. This allegation was untrue and a complete fabrication.

[2431] In 2006 the State Prosecutor's Office in Düsseldorf conducted a number of raids on TKMS offices and on the homes of some of the company's employees. It was subsequently learned that the prosecutor had opened a docket largely on the basis of two sources of information, namely, media and South African critics of the SDPP, apparently including Ms Patricia de Lille and Mr Terry Crawford-Browne.

[2432] No evidence supporting the allegations made by these South African sources against TKMS, its predecessor companies or its employees, directors or consultants was found. The investigations were closed without charges being preferred.

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[2433] Neither ThyssenKrupp, TKMS, GFC or members of GFC, nor any of their employees, directors or consultants ever made any admission of any corrupt practice that they allegedly were engaged in. Furthermore, no fine was ever imposed in regard to any criminal act allegedly committed by any of the entities mentioned here or by their employees. Nor has the entities or anyone ever been charged or prosecuted on any such charges.

[2434] An allegation was made that GFC had paid the then Chief of Acquisition of the DOD an amount of \$3 million to influence the procurement process of the patrol corvette. This allegation was not true. GFC neither made nor authorised such a payment. The State Prosecutor's Office in Düsseldorf investigated the allegations made against GFC and no evidence was found to support the allegations.

[2435] Before employing Admiral Kamerman, TKMS required that he furnish them with permission from the SANDF allowing him to work for TKMS. Admiral Kamerman produced a letter signed by the then Chief of Navy, Vice Admiral Refiloe Mudimu.

[2436] By choosing naval vessels built by TKMS, South Africa joined 12 other countries worldwide, including five NATO navies and the leading navies in Latin America, Australasia and Asia that are utilising the company's surface vessels.

[2437] Recently another international customer ordered frigates identical to the patrol corvettes that were acquired by South Africa and they were under construction in Germany.

[2438] TKMS continued to support the SA Navy in various maintenance and other technical support roles.

*44.2 German Submarine Consortium**44.2.1 Relationship between TKMS, GSC and Ferrostaal*

[2439] TKMS did not exist when the tendering and contract phase by South Africa for the submarine acquisition between 1997 and 1999 took place. The company came into existence much later.

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[2440] TKMS took over the activities of the two shipyards that were the technical partners within GSC when it was contracted to supply submarines to South Africa. The two shipyards were Howaldtswerke-Deutsche Werft GmbH (HDW) and Thyssen Nordseewerke GmbH (NSW). GSC became the prime contractor for the vessels. One of the submarines was built by HDW in Kiel and two were built by NSW in Emden. Within the GSC, the shipyards had a commercial partner, Ferrostaal. Ferrostaal was responsible for marketing, securing financing support for South Africa and identifying and implementing NIP projects.

[2441] Ferrostaal was and remained a company entirely separate from ThyssenKrupp or its predecessors.

[2442] For a period during the years when it was the GSC commercial partner in South Africa, the company was owned by MAN AG and was named MAN Ferrostaal.

[2443] HDW was not part of either of ThyssenKrupp's predecessor companies (Thyssen AG and Krupp AG) at the time of GSC's South African bid, but NSW belonged to Thyssen at the time.

44.2.2 Submarine tender phase 1997-1999

[2444] In September 1997, after receipt of an invitation from South Africa to offer various major items of defence equipment, the German Government passed the invitation to the industry.

[2445] The GSC was formed to provide a German submarine vessel proposal. GSC responded to the invitation. GSC was then selected as the preferred supplier of the Type 209 1400 Mod submarine.

[2446] Negotiations between the IONT and GSC commenced in early 1999 and continued until June 1999.

[2447] On 3 December 1999 the contracts with the SA Government for the supply of three Type 209 1400 Mod submarines were signed.

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44.2.3 The GSC scope supply

[2448] The submarines were built by GSC, one at HDW in Kiel, which was also the design authority for the submarines, and two in Emden. They were later accepted, commissioned and sailed to South Africa by the SA Navy.

[2449] Construction was on time and within budget.

[2450] HDW has so far built 61 Type 209 submarines, which continue to serve in 13 navies worldwide. This makes the Type 209 submarine internationally the most successful submarine type in service in the modern era.

[2451] TKMS was building two submarines, near-identical to the ones delivered to South Africa, for an international customer who had shortly before exercised an option for the supply of a further two.

[2452] Within GSC, the shipyards were responsible for DIP and Ferrostaal was responsible for NIP.

[2453] The submarines platforms were built in Germany and some of the sub-systems were secured from South African companies.

[2454] CCII Systems were contracted to supply software support for the combat system. Unfortunately CCII Systems was unable to perform to the contractual requirements and its contract was cancelled by the combat system supplier before completion.

[2455] GSC successfully carried out its DIP obligations.

[2456] In the submarines project there was a substantial contribution by South African companies. Examples were the sensor systems by Avitronics (not part of SAAB South Africa), periscopes built by Denel and as mentioned earlier combat system software that was awarded to CCII Systems (as mentioned earlier, the latter contract unfortunately was cancelled because of non-performance).

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[2457] The periscope mentioned above are now being integrated by HDW into the vessels that are sold to Portugal and South Korea.

[2458] GSC's NIP obligation was the responsibility of Ferrostaal.

44.2.4 GSC's advisers and support in South Africa

[2459] The GSC commercial partner Ferrostaal was responsible for all aspects of the tender, negotiation and implementation of the contract.

[2460] Matters relating to the design and construction of the submarines and related DIP were the responsibility of GSC. TKMS was unable to provide the Commission with details on the use of advisers and support services in connection with the tender and the contract to supply submarines to South Africa.

[2461] Mr Wiercimok was not aware of any person or entity convicted in Germany on corruption charges relating to the SDPP.

[2462] Ferrostaal was investigated by the German Prosecutors but the investigation was discontinued and no consequences followed.

[2463] It was put to him that there was an allegation that Mr Hoenings signed bribe agreements with Messrs Tony Yengeni and Shamin Shaik and asked whether he knows anything about those bribe agreements. His reply was that the allegation was investigated by the German Prosecutors and they found no evidence or proof to support the allegation. Their company could also not find any proof to support the allegation.

[2464] Investigations against ThyssenKrupp were discontinued. There was a thorough investigation that took almost two years. No charges were preferred against any person or entity. Nobody was convicted of any wrongdoing relating to the SDPP.

[2465] The advisers they employed would have been able to advise them on how things operated in the country requiring defence equipment. Advisors would also know how to get meetings organised, who the decision-makers were and generally how the process of decision-making at political level

worked. They also advised them what to take into consideration when making an offer.

[2466] In his view, the advisers were not able to directly influence the outcome of a tender process.

45. Mr Simon Edge

[2467] Mr Edge stated that he was a citizen of the United Kingdom and resident there. He came to testify before the Commission on his own volition and was not served with any subpoena that forced him to appear before the Commission.

[2468] He joined Westland Helicopters Ltd in 1974, working in the Product Support Department.

[2469] In 2004 there was a merger between Westland Helicopters Ltd (UK) and Agusta Sr PA of Italy to form AgustaWestland. The offset teams of both companies were joined together. AgustaWestland did not have a subsidiary in South Africa.

[2470] In 2008 he was promoted to Head of Industrial Participation responsible for all Agusta Westland Industrial Participation programmes in Italy and the United Kingdom.

[2471] The persons who were initially involved and who formed the pre- and post-contract teams were no longer in the employ of AgustaWestland. He became directly involved in 2007.

[2472] Some of the evidence that he proposed to give was limited to knowledge which he gained from perusal of documentation made available to him.

[2473] The SAAF required a fleet of approximately 60 new advanced light utility helicopters to replace its ageing Alouette III helicopters. A tendering process was initiated by the DOD, Armscor and the South African Government.

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[2474] Agusta participated in the tendering process. In its offer of the equipment to be supplied, Agusta offered two options in respect of the engine, namely the Pratt & Whitney or Turbomeca engine. The other two competitors whose offers were also evaluated, namely Bell Helicopters and Eurocopter, each offered one option only, namely the Pratt & Whitney and Turbomeca engine respectively.

[2475] The three competitors participated in the process until the final evaluation and announcement of the preferred supplier. They provided the customer full information about the two engines and when the customer decided which engine it preferred, they abided by the decision of the customer. In this case the customer chose the Turbomeca engine.

[2476] Agusta quoted US\$423 million for 60 helicopters. Agusta's price was the lowest compared to that of its competitors.

[2477] Agusta was announced as the preferred supplier and thereafter negotiations ensued. Initially the required numbers were reduced to 40. During the negotiations, due to affordability, the number of helicopters was reduced from 40 to 30.

[2478] At the time, the IPT requested Agusta to provide a comparative study and data of both the Pratt & Whitney and the Turbomeca engines. The study report concluded that the technical performance of the two engines was similar, but that to acquire and integrate the Turbomeca engines into the Agusta A109 LUH would amount to an additional US\$3,8 million.

[2479] The report further stated that Agusta recommended the Pratt & Whitney engine as it represented the lowest risk to the programme and offered a comprehensive local repair and overhaul capability of Pratt & Whitney engines.

[2480] Agusta stated that they would support any of the two engines and after giving Armscor sufficient information about the two engines, Armscor decided to opt for the Turbomeca engines.

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[2481] On 3 December 1999, a contract was concluded for the supply of 30 helicopters together with their logistic support. NIP and DIP agreements, amongst others, were also signed.

[2482] Some of the helicopters were produced overseas and 23 were produced locally.

[2483] During the period 22 March 2007 to 11 June 2009, AgustaWestland received letters from Armscor and the DTI advising them that they had discharged their DIP and NIP obligations. They also received a letter from Armscor indicating that because both the NIP and DIP obligations could be considered as complete or discharged, the bank guarantee that was associated with potential failures could be cancelled.

[2484] As far as the NIP projects were concerned he referred amongst others to a project where they introduced into South Africa machinery for the manufacturing of gold jewellery. So, rather than exporting raw material, finished products were now manufactured in this country. Further projects included manufacturing of steel equipment and other products for the local market and export. These activities were still continuing despite the fact that their NIP obligations had been discharged some seven years before. The projects were still providing employment and export revenue. They were still sound businesses, creating both direct and indirect jobs.

[2485] As far as DIP was concerned, they worked with South African defence and aerospace companies to fully discharge their obligation. About 23 of the 30 helicopters were actually assembled at Denel in South Africa. Moreover, the South African manufactured avionics were fitted to the helicopters they sold to Sweden, Malaysia and others.

[2486] The previous year alone they procured products worth more than €5 million from South African defence and aerospace companies. They have discharged their DIP obligations some time ago. Some of their projects were still benefitting the South African economy.

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[2487] He dismissed as false the allegations made by Messrs Holden and Feinstein to the effect that the selection of the LUH as the preferred supplier was manipulated or was unfair.

[2488] They had a legitimate business relationship with FBS.

[2489] The Turbomeca engine that was fitted to the LUH they sold to South Africa, was also fitted to the LUHs that were sold to the Swedish, Nigerian New Zealand and Malaysian armed forces.

46. Ms Christine Guerrier

[2490] Ms Guerrier is a French citizen, employed as Vice President Dispute Resolution and Litigation for Thales, a company listed on the Paris Stock Exchange. She is employed at the corporate head office of Thales and she works and resides in France. Her work involves responsibility for Thales companies worldwide.

[2491] She has had extensive exposure and experience in the arms procurement process in South Africa virtually since its inception.

[2492] She was aware of the negotiations and the signing of the contract in South Africa from 1998, but at that time she was not involved in any detail at all. She became involved in more detail in 2002 when arbitration relating to technical matters concerning the delivery of the vessels commenced. She gained more knowledge about the SDPP since 2003 when it became her responsibility.

[2493] She had personal knowledge of some of the issues she intended speaking about. Some of the issues she gleaned from the records of the company and information she received from some of her co-workers.

[2494] Many of the executives and officials of the Thales Group who were involved in the procurement process in South Africa had resigned or retired and were no longer in a position to testify on behalf of Thales.

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[2495] Thales SA is involved in the aerospace, defence, security and transportation industries. At present it employs 65 000 people. It is a listed company governed by a mostly independent board of directors.

[2496] In the 1970s the Thales Group or its legacy business at the time had an interest in South Africa. After the United Nations arms embargo against South Africa were instituted, the Thales Group distanced itself from its South African interest.

[2497] From about 1998 the Thales Group became active in South Africa, amongst others through its acquisition of an interest in what was then known as Altech Defence Systems (Pty) Ltd (which later became a Thales controlled entity called African Defence Systems (Pty) Ltd and which is now Thales Defence Systems (Pty) Ltd.

[2498] The Thales Group has interests in South Africa where it employs more than 300 people at present.

[2499] Initially the Thales Group had sales and technical executives involved in South Africa. Their main function was to understand the South African defence environment, to seek opportunities for the Thales Group's products and to establish contacts within the defence community operating in South Africa.

[2500] Through acquiring a shareholding and later all of the shares in ADS, the Thales Group controlled a significant corporate relationship with the South African military establishment.

[2501] A substantial part of the ADS business was originally called UEC, with a focus on naval combat systems technology. When the SDPP began, ADS was the frontrunner and perhaps the only South African company with any capacity in naval combat systems technology.

[2502] After Thales Group had taken over ADS, the capabilities and capacity of Thales Group was such that no other company could match it. The capabilities and capacity of Thales Group became even stronger through

acquisitions or shareholdings it acquired in other companies, for example DCNS and Detexis.

46.1 The South African arms acquisition process

[2503] During 1997 Thales believed that the acquisition of armaments by South Africa would continue and that there were opportunities for the Thales Group to participate in the acquisition process, in particular for the supply of a combat suite used in the corvettes that the SA Navy wished to procure.

[2504] After an invitation to participate in the acquisition process was directed to the French Government (the French Government was at that stage the sole owner of Thales), the Thales Group was invited to provide offers for the naval combat systems equipment the SA Navy sought for purchase.

[2505] Thales became aware that the contracting model envisaged by the South African authorities for the acquisition would be at a prime contractor level only. This meant that whoever supplies the equipment would be responsible for the ship platform, the combat suite and, the integrated logistical support, as well as the integration of all three even when different components were supplied by completely different companies. The prime contractor was to be held liable for any damages that might arise.

[2506] Minimising of risk was one of the important issues Thales considered.

[2507] The Thales Group had extensive experience and expertise in electronics and combat systems.

[2508] Thales became a member of the GFC, although it did not wish to participate in the construction of the vessel platform. The Thales Group and its subsidiaries was the only bidder with a strong South African component in naval systems integration technology experience.

[2509] Under intense pressure from SA authorities to reduce the price a new consortium was formed which saw GFC becoming the prime contractor consortium. While there was internal division of responsibilities (which saw Thales and ADS assuming internal consortium responsibility for the delivery

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and integration of the combat system), there were shared joint and several responsibilities for the prime contractor performance and liabilities. This eliminated one element of risk and resulted in a considerable price reduction.

[2510] After further intense negotiations the SA Government agreed to assume a limited amount of risk and that assisted in the price reduction. Generally price reduces when risks reduces. When one chooses one's own products the risks becomes less. The negotiations removed considerable commercial risks for ADS and Thales and that led to reduction of the price.

[2511] Contracts were later signed. The vessels were subsequently delivered.

[2512] Thales Group had met all its DIP and NIP obligations. This was confirmed by letters from the DTI and Armscor.

[2513] In its letter dated 23 June 2009 to Thales, Armscor confirmed that the company had completed or discharged its NIP and DIP obligations.

[2514] She further testified that no employee of their company was ever convicted of a charge relating to the SDPP.

H. MEMBERS AND FORMER MEMBERS OF PARLIAMENT**47. Mrs Patricia de Lille**

[2515] On 9 September 1999, whilst a member of Parliament representing the Pan Africanist Congress of Azania, Mrs de Lille called for a judicial commission of inquiry to probe the arms acquisition programme and the offsets thereof to determine whether any officials and public representatives were guilty of criminal conduct.

[2516] She made the above-mentioned call because of a certain document that was given to her by certain concerned members of the African National Congress (ANC).

[2517] This document became known as the 'De Lille Dossier'. It contained only allegations and not evidence of wrong-doings. She never claimed that

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the allegations contained in the 'De Lille Dossier' proved any wrong-doing on the part of persons mentioned in the dossier.

[2518] On 25 July 2012 she submitted the 'De Lille Dossier' to the Commission. She added a caveat reading as follows:

'The information was given to me in confidence and I will not reveal the source. I have insufficient personal knowledge regarding the allegations contained therein to assist the Commission by way of oral evidence. I accordingly merely ask for the contents of the Dossier to be investigated'.

[2519] She has attempted on various occasions to get the allegations investigated. She has never accused anybody of being corrupt.

[2520] Two of the allegations contained in the 'De Lille Dossier' led to two successful prosecutions.

[2521] At some stage she considered private prosecution in order to get the allegations investigated.

[2522] She travelled to Germany where she met the equivalent of our NPA. She also went to the United Kingdom where she met officials of the Serious Fraud Office. In Germany she was advised that there was an investigation conducted that had culminated in an admission of guilt and the subsequent payment of a fine by the CEO of Daimler Aerospace in connection with the supply of discounted luxury vehicles to South African citizens. She later wrote a letter to German investigators asking for more information about their investigation. They refused to give her the information she requested, and said that they were prepared to share the information only with an organ of state.

[2523] She refused to reveal the identity of people who gave her the document that formed part of the 'De Lille Dossier' or the document that contained the allegations of misconduct.

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[2524] She also wanted the question of offsets to be investigated because when the arms procurement was announced by the Cabinet, South Africans were told that as a country we were going to invest R30 billion and in return we would receive R110 billion of investments and 65 000 jobs would be created. To date there was no proof that we had received any investments or that any jobs had been created.

[2525] In her statement she tabulated issues which she said she wanted the Commission to investigate.

[2526] During cross-examination she was unable to explain some of the allegations in the 'De Lille Dossier' that she wanted the Commission to investigate. She was asked several questions in order to understand the nature of the allegations in the 'De Lille Dossier' and the origin of the dossier, but she gave one standard answer which read as follows:

'[The] De Lille Dossier contains allegations, which I believe that the government should investigate. I have never claimed that the allegations proved the guilt of any persons mentioned in the dossier'.

[2527] Some of the issues she requested the Commission to investigate, particularly the pricing of the respective equipment, were incomprehensible and she refused to clarify what she wanted the Commission to investigate.

[2528] When asked other questions which she could have answered, she repeated the standard answer referred to above.

[2529] She refused to reveal the identities of people who allegedly gave her the documents that formed the basis of the 'De Lille Dossier' She conceded that she had discussed the armaments acquisition with the late Mr Bheki Jacobs but when asked whether Mr Bheki Jacobs was the source of the allegations in the 'De Lille Dossier', she gave her standard answer mentioned earlier. She refused to confirm or deny that the late Mr Bheki Jacobs was the person who gave her the document that formed the basis of the so-called 'De Lille Dossier'.

[2530] In re-examination her counsel attempted to get clarity on issues that she suggested must be investigated and she gave the standard answer mentioned earlier.

48. Mrs Raenette Taljaard

[2531] Mrs Taljaard is a Senior Lecturer in the Department of Political Science at the University of Cape Town and a Commissioner of the Independent Electoral Commission.

[2532] She was elected a Member of Parliament for the Democratic Party in 1999 and in January/February 2001 became a member of the Standing Committee on Public Accounts (SCOPA).

[2533] She wrote a book on the SDPP under consideration, entitled *Up in Arms*. The book deals with various aspects of the SDPP.

[2534] She detailed her activities as member of SCOPA when the latter body was dealing with issues relating to the SDPP. She then said:

'As the ranking member of the opposition in SCOPA during this process it was required of me to try and ensure that the political party that I represented attracted sufficient media coverage for its work on this matter.'

[2535] She testified about the arms procurement process in the country, referred to other authors who have written about the procurement processes and expressed certain opinions, saying that those were her perceptions of the process that was followed when the armaments were being acquired under the SDPP.

[2536] She testified that the corvette agreement prohibited employees of the DOD who were involved in the assessment of bidders from taking up employment with any of the suppliers. She was aware of at least one person who was employed by one of the successful bidders, contrary to the agreement between the supplier and the DOD. When asked to provide details, she said *'it is not a case again, of which I have personal knowledge. It was an allegation.'*

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[2537] She added:

'It was five allegations that were contained in the documentation. I think the documentation, otherwise known as the De Lille Dossier, relating to a member of the Navy, who was working with the German Frigate Consortium.'

[2538] When asked who the member of the Navy was whom she was referring to, she replied *'Mr Chair, these are allegations.'*

[2539] She testified about various other issues, including policy, and suggested that the Commission should make recommendations on these issues. When asked whether the Commission should make recommendations on policy issues, she said that the mandate of the Commission implied that the Commission should make recommendations on policy issues. When asked what particular term of reference empowered the Commission to make recommendations on policy issues, she said all of them.

[2540] She later said that the naval officer she had referred to was Rear Admiral Kamerman, and she retracted the allegation that he went to work for GFC contrary to the agreement between GFC and the South African Government.

[2541] She testified about her views regarding future procurements and policy issues.

[2542] She was referred to a portion of her book where she claimed that some individuals became wealthy because of this procurement. She was asked to name the individuals but she said she would have difficulty naming specific people. She had no personal knowledge of those names but she was informed by the British Ministry of Defence that Airborne Trust and Red Diamond Trading had received money illegally. She further said what she knew was that they had received money, but she did not know whether the money was received lawfully or not, and the Commission should investigate.

[2543] She was requested to explain various paragraphs in her book and in response she said those paragraphs were not in her written statement but in her book, where she was expressing her opinions. That should not be equated to what was contained in her statement under oath. She further said that expressing an opinion in a book and giving evidence under oath were two different processes.

[2544] In conclusion she stated that even if there might be grounds for cancellation of the contracts it would be incredibly challenging to undo a procurement of this nature, but it was not impossible.

49. Mr David Maynier

[2545] Mr Maynier is a Member of Parliament and since 2009 a member of the Joint Standing Committee on Defence, the Portfolio Committee on Defence and Military Veterans and an alternate member of SCOPA.

[2546] He is also the Democratic Alliance Shadow Minister of Defence and Military Veterans and Deputy Shadow Minister of State Security.

[2547] He did not have personal knowledge regarding many of the topics that he wished to testify on but he would, in the main, rely on certain documents to substantiate his views. Some of the documents he was going to rely on were in the public domain and some of them were given to him in confidence and he was not prepared to reveal the identity of persons who gave him the documents in confidence.

[2548] In his statement and in his evidence before the Commission he said that he wanted to talk about all the terms of reference of the Commission (except term 1.1).

[2549] As far as the utilisation of the equipment was concerned he said: *'The Hawks and Gripen are underutilised by the South African Air Force.'* He then referred to various documents which he said supported his allegation that the aircraft were underutilised.

[2550] He made no reference whatsoever to the evidence and documents presented by the SANDF, particularly evidence and documents presented by

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members of the SAAF. He did not provide any evidence to substantiate the allegations.

[2551] On jobs he said:

'Former Minister of Defence Joe Modise claimed that the SDPP would create approximately 65 000 jobs. However, it now appears that far less jobs were created as a result of the SDPP under the National Industrial Participation Programme and the data is unreliable.'

[2552] He referred to certain documents. He did not refer to any evidence tendered to the Commission by officials of the DTI and Armscor. He did not provide any factual basis to support his allegations. He said that the number of jobs created was much lower than the promised 65 000. He inferred that from documents he alleged the DTI had submitted to Parliament.

[2553] About offsets he maintained:

'Former Minister of Defence Joe Modise claimed that the SDPP would generate approximately R110 billion of 'new' investment of which R26 billion would be made up of direct investment. However, it now appears that considerably less direct investments were made.'

[2554] He referred to two documents to support his assertion. He testified that documents he had access to, suggested that investments realised were far less than what was promised.

[2555] He was referred to the figures compiled by the DTI and presented before the Commission, but he said he could not comment as he did not know how those figures were compiled. He has not analysed the figures, so he could not dispute them.

[2556] BAE invested 19,95 % of their actual investment obligation while GFC invested only 8,73%, GSC 7,27 % and Thales 73,1%.

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[2557] No reference was made to the evidence tendered by DTI and Armscor officials nor did he provide evidence to support his assertion.

[2558] He further said that '[c]ertain National Industrial Participation Programmes and Defence Industrial Participation Programmes appear to have partially materialized or not to have materialised.' He referred to the Denel/Saab Aerospace project and other projects.

[2559] As far as item 1.5 of the Commission's terms of reference was concerned, his statement referred to various documents and his correspondence with General Anwar Dramat, the head of the Crime Investigation Unit. He also testified about his interactions with General Dramat.

[2560] He alleged that various people received questionable and/or improper payments from some of the preferred bidders or the suppliers of the equipment under consideration.

[2561] As far as item 1.6 of the terms of reference was concerned, he referred to an internal investigation allegedly conducted by SAAB and an internal audit report allegedly commissioned by Ferrostaal. He alleged that these documents revealed that many millions of Rand worth of questionable and improper payments had been made to consultants.

[2562] Under cross examination he said he had no personal knowledge of the issues he testified about. His objective was simply to submit to the Commission documents in his possession and ask the Commission to investigate. He conceded that he did not make any contribution about facts that the Commission was investigating. He could not confirm the correctness of the allegations contained in the various documents he handed to the Commission.

[2563] He was referred to a document attached to his bundle, entitled '*Ferrostaal – Final Report – Compliance Investigation – 13 April 2011*,' prepared by Debevoise & Plimpton. At the top left-hand side it was marked as a confidential client-and-attorney communication, and it was put to him

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that the document was improperly obtained by his source. He said that the document was leaked to him.

[2564] He knew all along that the information in the document was confidential. It was possible that it was improperly obtained, but he believed that it was in the public interest to bring the document to the attention of the Commission.

[2565] He further stated that he could not dispute figures presented by DTI witnesses.

50. Dr Gavin Woods

[2566] Dr Woods was a Professor and Director of the Anti-Corruption Centre for Education and Research at the University of Stellenbosch. He retired in 2013. He is a Commissioner of the Public Service Commission.

[2567] He was elected Chairperson of SCOPA in 1999. He served in that capacity until he resigned on 1 March 2002. He resigned as member of SCOPA because he was dissatisfied about the manner in which the investigations of allegations of corruption in the arms procurement were carried out. He was also dissatisfied about the manner in which SCOPA carried out its functions.

[2568] Dr Woods said in his statement: 'My statement consists of a composite range of cornerstone arguments which together indicate a convening burden of probability of corruption having taken place in the SDPPs'.

[2569] During his oral evidence he said: 'There have been no smoking guns, no absolutely conclusive evidence of corruption in the arms deal that has been put into the public domain'.

[2570] He referred to various international institutions which said that there was a larger degree of malpractice in the arms industry. The arms industry was the most secret industry in the world.

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[2571] International investigations that were undertaken, have revealed amongst their wider findings dubious payments to have been made to South African politicians, public officials, arms deal related businessmen and other middlemen.

[2572] Much of his evidence emanated from newspaper articles. He had chosen the newspaper articles carefully and he would deal with those that he believed offered substantive allegations. The newspaper articles that he referred to offer in many cases a fairly compelling picture.

[2573] He referred to various investigations conducted by foreign investigating agencies in their respective countries. When dealing with the German investigations he said:

'I refer to where the office of the public prosecutor in Düsseldorf investigated the GFC and alleged 25 million US dollars paid and which it was said most of it flowed directly to South African officials or members of the Cabinet'.

[2574] When he was asked who the Cabinet Ministers were who might have received payments from the equipment suppliers, he said:

'I have no knowledge of funds having flown to the Cabinet, especially to the President at the time or the Deputy President. I do have some evidence regarding monies having flown to the late Minister of Defence, Joe Modise, but not to other Cabinet Ministers'.

[2575] He later said that he never said that the late Joe Modise received any money, but said that he had received benefits. He repeated that he never said that Mr Joe Modise received any monies as a bribe.

[2576] He referred to the SFO investigation and the alleged SAAB internal investigation. He said SAAB had admitted to paying bribes. The word 'commission' in the arms industry is most often just another word for 'bribe' or 'kick-back'.

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[2577] Many allegations were made regarding dishonesty and corruption in the SDPP. A good number of the allegations appeared to be without foundation, but there were others that could be regarded as substantive allegations.

[2578] He referred to various allegations contained in a number of newspaper articles and other sources. Some of the articles alleged that certain suppliers, such as GSC, have failed to fulfil their offset obligations.

[2579] He referred to other allegations, some of which suggested that certain of the evaluation processes were manipulated. A number of the allegations emanated from correspondence received from Dr Richard Young and newspaper articles. For example: ADS and FBS secured sub-contracts and the process followed to award such subcontracts might have been irregular.

[2580] BAE paid commissions to several people and entities.

[2581] Mr Chippy Schaik manipulated the evaluation of bids in order to unfairly advantage Agusta.

[2582] Bell Helicopters refused to pay a bribe.

[2583] The manner in which the SDPP was undertaken offered many opportunities for corruption due to procedural weaknesses and administrative and oversight failures, particularly in the case of the Cabinet Sub-committee.

[2584] The JIT report pointed out various deviations from the established tender process.

[2585] It was improper that all decisions were made at SOFCOM level.

[2586] Offsets were ill-advised and badly managed. The importance given to the IP component of evaluation criteria of the SDPP was excessive, given the international experience.

[2587] Government in various ways made it difficult for other investigating bodies to discover if anyone had improperly benefitted from the SDPP.

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[2588] Dr Woods did not provide any factual basis to support his allegations.

[2589] There was need for a forensic investigation into who benefitted from the allocation of sub-contracts and who the beneficiaries were that received the NIP-related business.

[2590] Even if evidence of corruption was found, he did not believe it would be viable to cancel the contracts.

[2591] Under cross-examination he said that he had no evidence that suggested former President Mbeki or former Ministers Lekota, Erwin and Manuel were involved in any corrupt activities. He did not have direct evidence of any corrupt activities.

[2592] He could not vouch for the correctness of the contents of the various press articles he referred to. In his testimony he was attempting to build a picture to show the probability of corruption and he never said that there was corruption. He had no personal knowledge of any of the facts that he relied on.

[2593] In addition to newspaper articles and emails, he presented the Commission with his opinions and the inferences he drew from newspaper articles and information he received from other sources.

[2594] It was pointed out to him that some of the press articles and e-mails he relied on contained incorrect facts and he said that he did not know whether all the facts contained therein were correct.

[2595] In his view, the business plans submitted by the obligors to the DTI contained insufficient information. At the same time he said he had not seen the business plans of the obligors.

[2596] During cross-examination by Ms Modise he said that the late Minister of Defence had received money. He referred to a newspaper article that alleged that a certain amount of money (R100 000) was deposited into a banking account of the late Minister of Defence. He further said that the late Minister had acquired shares in Conloq, and added: *'But, to the best of my*

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knowledge, it was not a majority shareholding ... and secondly, it was suggested that he paid for those shares through a loan from a friend in Germany'.

[2597] When asked about evidence that implicated the late Minister in corrupt activities, he said that he had no concrete evidence.

[2598] When asked details about the allegations of corruption contained in his statement and the press articles he referred to, he could not provide the facts to support the allegations of corruption contained in his statement or in the press reports he referred to.

[2599] He conceded that he had not perused or considered the evidence already led before the Commission, and consequently he could not comment on the evidence.

I. INDIVIDUALS**51. Mr Terry Crawford-Browne**

[2600] Mr Crawford-Browne testified that his professional career was that of an international banking specialist and he had been employed as such by Nedbank in Cape Town until 1986.

[2601] When asked about his qualifications, he said: *'I have a university degree but I did not complete my Masters degree. I have had subsequent tertiary education, but I did not complete my Masters degree.'*

[2602] He was asked in which field his degree was and he replied:

'An inter-disciplinary degree from the University of Minnesota in the United States ... which included economics and science and international law and related subjects. I then wanted to do a Masters degree at the University of Witwatersrand. That is why I came to South Africa in 1967. Instead of completing it, I got married.'

[2603] He said the parliamentary Defence Review was conducted between 1996 and 1998 to consider South Africa's defence needs in the light of the

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transition from apartheid. Civil society was involved in the debates that led to the Defence Review and he represented the Anglican Church.

[2604] The 1996 Defence White Paper was premised on the realisation that poverty eradication was South Africa's primary security issue. Fortunately there was no conceivable foreign military threat to South Africa.

[2605] Evidence of the defence officials who stated that the rationale for the armaments acquisition under discussion was the need to replace the obsolete warships and warplanes was incorrect. The real rationale for the acquisition was the anticipated offsets of R110 billion that would create 65 000 jobs.

[2606] The offsets were fraudulent and unconstitutional.

[2607] The armaments were acquired because of the bribes and not because of any defence requirements.

[2608] During 1999 he was approached by ANC intelligence operatives led by the late Bheki Jacobs on behalf of ANC MPs. They informed him that the 'arms deal' was merely the tip of the iceberg of an interlocking conspiracy led by Minister of Defence Joe Modise and the leadership of Umkhonto we Sizwe. They alleged that 'arms deal', oil deals, toll roads, driver's licenses, Coega harbour development, Cell C, diamond and drug smuggling, weapons trafficking and money laundering were all inter-related. The common denominator, they said, was kickbacks to the ANC averaging 10% in return for political protection. The intelligence operatives compiled a dossier that later came to be known as the 'De Lille Dossier.'

[2609] In his budget speech in Parliament on 9 March 1999, when dealing with the arms deal, the late Mr Modise created the expectation that the economy would receive R110 billion of new investment and industrial participation programmes and that 65 000 jobs would be created. What was actually delivered in terms of offsets and jobs must be tested against the expectation created by Mr Modise.

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[2610] After the Commission's terms of reference were announced in 2011, he requested an opinion from Advocate Geoff Budlender SC regarding the constitutionality of the arms deal. The view expressed by counsel was that the offsets failed the requirements of section 217(1) of the Constitution regarding government procurements.

[2611] In his conclusion Advocate Budlender SC stated:

'The procurement contracts in the arms deal were required by law to be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

In the system which was used in these contracts, offsets played a very material role. There is reason to doubt whether such a system is in accordance with those requirements.

If the contracts were not in accordance with those requirements, they were unlawful and invalid. Whether such a contract will be set aside by a court depends on the facts of the case.

If the contracts were marked by bribery or other improper conduct, a participant in the corrupt arrangement cannot receive or retain any of the amounts payable under the contract.'

[2612] Offsets and the arms deal were fraudulent. It was the offsets that drove the bribery and culture of corruption that the arms deal unleashed. Offsets were simply a vehicle to pay bribes and Mr Modise's promised benefits of R110 billion never materialised.

[2613] The draft report of the Joint Investigation Team (JIT) contained 741 pages and the edited version 380 pages. The editing took place during October 2001 in the President's office. The editing diluted disclosures that were highly critical of the arms procurement tendering procedures. The executive summary of the report reads as follows:

'No evidence was found of any improper or unlawful conduct by the Government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of

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certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involvement in their capacities as members of the Minister's Committee or Cabinet.

There are therefore no grounds to suggest that the Government's contracting position is flawed'

[2614] The equipment bought under the SDPP was bought for the bribes rather than any rational defence requirements.

[2615] The acquisition decisions were made by the Cabinet despite the objections of the leadership of the SAAF and the Navy, including the Secretary for Defence, Mr Pierre Steyn.

[2616] South Africa acquired four frigates that were reportedly equipped with defective engines plus an obsolete combat suite and armoury system; three submarines that spent most of the time on the 'hard' at Simon's Town, 50 BAE Hawk and BAE/SAAB Gripen fighter aircraft for which the country has almost no pilots to fly them, mechanics to maintain them or even the money to fuel them.

[2617] The promised 65 000 jobs had failed to materialise. In February 2014 with the release of the Final Internal Audit Report on the offset performance review, the DTI acknowledged that of the 24 audited projects in which 56 531 jobs were promised only 3 815 jobs actually materialised.

[2618] Instead of offset benefits of R110 billion described by the late Mr Modise in 1999, the most recent media estimate is that at best a dismal R6billion in offset benefits actually materialised. Moreover, even this figure must be balanced against the massively negative economic circumstances induced by the arms deal.

[2619] The DTI's progress report to Parliament on the implementation of the Industry Policy Action Plan (IPAP2) for the financial year 2010 to March 2011 contradicted the previous audit reports of the DTI which indicated that the obligors had met their obligations. The offsets projects failed dismally.

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[2620] In the Constitutional Court applications which he had launched, he attached inter alia a 160-page affidavit signed by Mr Gary Murphy of the British Serious Fraud Office and by Colonel du Plooy, formerly of the Scorpions and now the Hawks.

[2621] These affidavits detailed how and why BAE laundered bribes of £115million (R2billion) to secure its contracts with South Africa, to whom the bribes were paid and which bank accounts were credited.

[2622] The British Secretary for Trade and Industry in June 2003 admitted that BAE had paid bribes to secure its contracts with South Africa but she said the commissions (for which read bribes) were within reasonable limits.

[2623] The Joint Investigation Team's report confirmed that GSC came last in the tendering criteria for the submarine contracts, but the exaggerated offset promises placed the GSC first in the overall selection criteria.

[2624] The Ferrostaal consortium won the contract because of its superior offset offer. The consortium agreed to deliver offset spending worth almost £3 billion but it invested only £62 million, which is approximately 2% of £3 billion.

[2625] Offsets were a scam. Months before the supply agreements were signed, ANC whistle-blowers produced boxes of documentation to support allegations of corruption and fraud. The boxes were delivered to Ms Patricia de Lille. Ms de Lille and he (the witness) decided to forward the evidence to Judge Willem Heath for his assessment. Judge Heath advised them that they would make an assessment by January 2000. The witness was later informed that documentary evidence was stolen from the Heath offices.

[2626] A lot of the evidence was acquired from Dr Richard Young, and he might be in a position to talk more about it. The intelligence operatives who gave them the boxes with documents to support the allegations of corruption and fraud were led by the late Mr Bheki Jacobs. Some who were with him have died and the others have left the country. These intelligence operatives

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were the same people who provided the information contained in the De Lille dossier.

[2627] Mr Crawford-Browne referred to the deaths of other people and alleged that he was told how and by whom they were killed. All the people who allegedly made the reports to him were deceased.

[2628] The causes of death as indicated on the death certificates were a fabrication.

[2629] It was not clear why such reports were made to him.

[2630] His informant, Bheki Jacobs, died of cancer at the age of 46 in September 2008 also in highly suspicious circumstances.

[2631] Under cross-examination he evaded answering most of the questions put to him. When he answered, he was talking about issues not related to the question asked. He further said that the SAAF did not need the fighter jets as they had 50 Cheetah aircraft, some of them still in their crates. This clearly showed that there was no justification for buying the aircraft and the frigates from Germany.

[2632] The Hawks repeatedly failed the evaluation criteria.

[2633] He could not substantiate almost all the allegations he made. He also failed to substantiate the allegation that the Hawks and frigates failed the evaluation criteria. He was unable to provide details of people whom he alleged made certain reports to him regarding corruption. In other instances he referred to newspaper articles to 'substantiate' his allegations.

[2634] He further said that the Cabinet during 1995/96 decided that the Hawks would be acquired from Britain, Gripens from Sweden, and the frigates and the submarines from Germany without any evaluation of the bids. The technical people had nothing to do with this decision.

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[2635] He stated that the Commission should ignore evidence tendered regarding the various evaluations as that evidence was not reliable. All the equipment was bought for the bribes and not for their military capabilities.

[2636] He was referred to the evidence tendered by Navy and SAAF officials that contradicted his evidence and he simply said that such evidence cannot be relied upon. In other instances when requested to justify his allegations, he referred the Commission to newspaper articles and also said he was not an expert on the SAAF and Navy issues and that the Commission should speak to Dr Young.

[2637] Mr Crawford-Browne testified that the equipment purchased was not required by the SANDF.

[2638] As far as the offsets were concerned, we were expecting R110 billion and we got only R6 billion and the SDPP resulted in job losses.

[2639] On the morning of 9 October 2014 he sent an e-mail to the Commission and a newspaper journalist based in Cape Town. The e-mail reads as follows:

I have no difficulty with Patricia De Lille denying that she told me that Winnie Mandela was the leader of the ANC MPs who opposed the arms deal. I received that information from other sources.

The real issue is that we managed to keep that secret for 15 years until Judge Seriti forced me, under threat of contempt, to reveal who led those ANC MPs. As Patricia and I well know, the importance of the 'De Lille Dossier' was not its content but the hysteria it evoked in the government and witch-hunt that followed. Patricia has brilliantly used that bizarre document for 15 years to fashion a political career including her present position as mayor of Cape Town. And of course when it came to testifying before the Commission, the De Lille Dossier was revealed as lacking in substance.

I hope that you can give this prominence over the weekend.'

[2640] He further said that he did not get the information about Mrs Winnie Mandela from Ms De Lille, and that he got the information from the late Bheki Jacobs and from two of his associates who were also deceased. All his sources were dead and they could not come and confirm the allegations.

[2641] He was asked whether any threats were directed to him by the Chairperson and he said 'no', but the Chairperson refused him (the witness) giving the Chairperson information in confidence, and instructed him to do so in public.

[2642] The above-mentioned e-mail sent out by him was in response to the statement issued by Ms Patricia De Lille in her capacity as former Member of Parliament that reads as follows:

'I have noted the statement by Crawford Browne relating to the so-called De Lille dossier and I would like to put it on record that I did not tell Crawford Browne that Winnie Mandela was one of the concerned ANC MPs who handed me the documents.'

[2643] When he first saw the De Lille dossier he thought it was the most bizarre document and lacking in substance. The late Bheki Jacobs was the author of the De Lille dossier. He alleged that Mr Modise was poisoned and his death was not caused by cancer. The death certificate might be incorrect if it stated that Mr Modise's death was caused by cancer. The information about the cause of Mr Modise's death was conveyed to him by the late Bheki Jacobs. Everyone and the journalists he met in Cape Town knew that Mr Modise was murdered.

[2644] He received a copy of the bizarre document about 20 minutes after it was given to Ms De Lille. After studying the dossier he realised that it was a bizarre document lacking substance.

[2645] The contact between armaments manufactures and the ANC started in 1980s and that is the time when corruption and fraud started.

52. Dr Richard Michael Moberly Young

[2646] Dr Young is a professional engineer and holds the following degrees. BSc (Eng), University of Natal (1981); MSc (Eng), University of Cape Town (1992); PhD in Engineering, University of the Witwatersrand (1996).

[2647] He worked for various companies as an electronic engineer and currently he is the Managing Director and effective beneficial holder of CCII Systems (Pty) Ltd.

[2648] CCII Systems was involved in certain of the processes for the acquisition of the four corvettes for the SA Navy, in particular the corvette combat suite and the corvette integrated platform management system (IPMS), and also in parts of the conventional submarine and its combat suite.

[2649] In the past, he had come into contact with people who investigated issues relating to the SDPP, as well as foreign investigators, namely German investigators Messrs Martin Fischer and Andreas Brunt, British investigators Mr Garry Murphy and a colleague. He also contacted media investigators, book authors and whistle-blowers.

[2650] In Germany there were at least two investigations, one relating to the submarines and the other to the frigates. The investigators whom he dealt with were based in Düsseldorf and they were investigating the corvette deal. He also had interactions with investigators based in Munich who were involved in the submarine transactions.

[2651] He spoke to Chief Detective Inspector Andreas Bruns of the Düsseldorf Criminal Investigation unit.

[2652] He communicated through e-mail with Advocate Martin Fischer, a member of the German Prosecution Authority. These German authorities never gave him any documents.

[2653] In June 1985 he was appointed as Development Engineer by a company which was later known as UEC Projects (Pty) Ltd.

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[2654] UEC Projects was involved in a few Navy projects, funded by Armscor. As Project Engineer at UEC Projects, he was responsible for the development of a System Data Bus (SDB) sub-system.

[2655] One of his main projects at UEC Projects included a fibre-optic LAN system. He was responsible for the requirements analysis and concept design of a system that would provide the total information management infrastructure for a new frigate for the SA Navy under *Project Foreshore*, later *Falcon*, (the entire vessel portion) and *Project Frizzle* (the combat suite portion). This was called the *FDB Project*.

[2656] In the early 1990s the Navy cancelled some of the projects for a variety of reasons and that led to his resignation from UEC Projects.

[2657] On 27 August 1990 he registered his company CCII Systems but continued working for UEC Projects.

[2658] He left the employment of UEC Projects on 31 January 1992 and started working at CCII Systems on 3 February 1992. Prior to leaving UEC Projects he did not do any work for CCII Systems.

[2659] The capability that was developed at UEC Projects in respect of either the FDB or SDB projects was for the SA Navy and paid for in its entirety by Armscor.

[2660] In September 1992 he was approached by Armscor to ascertain whether he was interested in continuing with the work for the SA Navy's *Projects Diodon* and *Sitron*, and when he agreed, Armscor instructed UEC Projects to transfer all the project assets of both the SDB and FDB projects to CCII Systems.

[2661] Other than systems-level work and products, CCII Systems specialises in a number of electronic board-level products for industrial and military applications, including boards and adapters for Fibre Distributed Interface (FDI).

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[2662] The earlier submarine project was cancelled in 1989 and the earlier frigate project was cancelled in 1991. Those projects were resurrected under the SDPP acquisitions.

[2663] In the 1990s he was involved in various projects, which included conceptualisation of the Navigation Distribution System, Trucker Radar Console (TRC) and an Integrated Command and Control System (ICCS) for a ground-based air defence system. The Navigation Distribution System and TRC were both deployed in the combat suite aboard the SA Navy's new Valour class frigates.

[2664] They started working on *Project Sitron* in 1993, before the SDPP.

[2665] Certain project assets of UEC were transferred to his company. He also received a letter dated 15 March 1993 from Armscor requesting a proposal for the information management system (IMS). The IMS is a data network. At times it is called a databus.

[2666] He understood that Ministerial Directive MD 4/147 was drafted and to all intents and purposes used in the SDPP acquisition process, but it was not actually approved for use in the SDPP acquisition process.

[2667] The procurement process used by Armscor and the DOD for the SDPP required that before the SDPP was submitted to the Cabinet for final approval, they should first be considered by the following bodies:

- During the selection phase of the corvettes, the selection of main suppliers and cost had to be recommended by the Joint (Integrated) Project Team and thereafter by SOFCOM
- During the negotiation phase, all technical aspects relating to the acquisition of corvettes, the selection of sub-suppliers, as well as costs had to be recommended by the JPT and thereafter by the Project Control Board (PCB). The PCB was chaired by Chief of Acquisition, and it included as members the Chief of the Navy and the CEO of Armscor

- SOFCOM thereafter considered the various components of the SDPP. SOFCOM was required to make recommendations to the AASB, which was to make recommendations to the AAC, then to MINCOM and finally MINCOM was to make recommendations to the Cabinet for final decisions.

[2668] The PCB was not a decision-making body but only a co-ordinating body although it did take important 'decisions'. These decisions purportedly taken by the PCB were irregular.

52.1 *Frigates*

[2669] A set of South African-designed systems, as well as some systems from Thomson-CSF of France – including its Tavitac Combat Management System (CMS), Multi-Role Radar (MRR), Hull Mount Sonar (HMS) and the naval surface-to-surface missile (SSM) from its French equity partner Aerospatiale – were chosen for the corvette combat suite.

[2670] During early September 1992, Dr Young was approached by Armscor to assist in the development of a combat suite for use on new frigates or corvettes, which it was anticipated might in the future be acquired by the Navy. This assistance involved a continuation of the development efforts done at UEC Projects for a specialised, high-speed local area network to integrate the entire combat suite, as well as the system-engineering efforts to achieve an integrated combat suite architecture design and implementation.

[2671] Among the systems forming part of the combat suite in the development of which CCII Systems was involved, was the Information Management System (IMS). The latter is a databus for the distribution of data to the various systems comprising the combat suite.

[2672] With the knowledge of Armscor, the DOD and the Navy, CCII Systems continued to expend money and effort on the development of the IMS in the hope that if the system met the technical and functional requirements specified by the Navy, CCII Systems would be awarded the contract for supplying the IMS for the corvettes to be acquired by SAN.

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[2673] CCII Systems was involved in the development of the combat suite from 1992 to 1999.

[2674] During 1993, a capital programme for the acquisition of patrol corvettes was initiated by the Navy under the name *Project Sitron*. *Project Sitron* was to employ the technology and products developed from, *inter alia*, *Project Diodon* and *Project Caliban*, the then current strike craft upgrade programme.

[2675] On or about 15 March 1995 he wrote a letter to Armscor wherein he recorded the following:

'CCII Systems was making significant progress in respect of the development of the IMS ...

CCII Systems was confident that it could have at least all critical IMS functionality available by October 1996 with the balance of functionality to be provided in the following three (3) to six (6) months'.

[2676] Following the issuing of RFIs during February 1998, Armscor issued RFOs for the corvettes to the four shortlisted companies, namely GFC, Bazan, DCN International of France and GEC Marine of the UK.

[2677] The RFO stated amongst others that it was envisaged that the combat suite contractor would be a South African industry consortium in which ADS would play a leading role, co-responsible for the overall design, integration and supply of the combat suite element.

[2678] The intention was that the corvettes would be acquired under a single prime contract, the ship platform built overseas and integrated with their combat suite at the Navy's dockyard in Simon's Town.

[2679] The vessel contractor was to be a 'teaming' arrangement between the ship platform supplier and the nominated South African combat suite supplier, with subcontracts for the various sub-systems placed with nominated companies.

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[2680] The primary local company nominated to integrate the combat suite was ADS. CCII Systems was nominated as the supplier of the information management system (IMS). ADS was identified as the supplier of the combat system integration element and the combat management system (CMS). In its offer, GFC proposed that the primary vessel contractor should be the original members of GFC plus ADS.

[2681] In a communication dated 26 March 1998 addressed to Dr Young by the then Captain JEG Kamerman, he was informed that the IMS was still part of the Navy's official requirement for the combat suite.

[2682] For contractual purposes, the JPT divided the various components comprising the corvettes into three categories, namely Category A, consisting of the vessel platform, Category B, consisting of the sub systems for which the prime contractor was expected to assume full responsibility, and Category C, consisting of sub-systems supplied by sub-contractors and for which the prime contractor was not expected to assume full responsibility until after a satisfactory and successful completion of factory acceptance tests.

[2683] The JPT classified the IMS as a Category C sub-system and the Request for Best and Final offer was issued on that basis.

[2684] Shortly before GFC submitted its bid, Altech Limited sold approximately 51% of its shares in ADS to Thomson CSF of France (TCSF). The shares were transferred to TCSF on or about 28 April 1998. Mr Pierre Moynot of TCSF was then appointed CEO of ADS.

[2685] TCSF caused two companies to be incorporated in South Africa, namely Thomson CSF Holdings (SA) (Pty) Ltd and Thomson CSF (Pty) Ltd.

[2686] Nkobi Investments held 10% of the shares in Thomson CSF Holdings and 30% of the shares in Thomson CSF (Pty) Ltd. All the shares in Nkobi Investments were held by Nkobi Holdings (Pty) Ltd, with the shares in the latter company in turn being controlled directly or indirectly by Mr Schabir

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Shaik. Mr Shaik became a director of Thomson CSF SA (Pty) Ltd from date of its incorporation in July 1996.

[2687] During February 1999 Altech transferred the remaining shareholding in ADS to TCSF. During September 1999, 80% of the shares in ADS were transferred to Thomson CFS (Pty) Ltd (in which Nkobi Investments held shares) and Mr Schabir Shaik was appointed as an alternate director of ADS.

[2688] In May 1998 Mr Shamin Shaik was appointed the DOD's Chief of Acquisition.

[2689] The responses to the RFO were evaluated by the JPT and subsequently considered by SOFCOM.

[2690] The JPT was led by Admiral Kamerman. Mr Shamin Shaik was Chairperson of the PCB, the co-chairperson of SOFCOM and Secretary of MINCOM.

[2691] GFC failed to meet the DOD's minimum DIP requirements. However, SOFCOM selected GFC as the preferred supplier of the corvettes and its recommendation was adopted by the AAC on 13 July 1998.

[2692] On or about 18 November 1998, the Cabinet approved the SDPP of which the acquisition of four corvettes for the Navy formed part and GFC was approved as the preferred supplier of the corvettes.

[2693] This approval was given on the basis that the four corvettes would be acquired at a total cost of about R6,001 billion with the combat suite component being at a cost (in April 1998 prices) of R1,47 billion (equating to about R1,9 billion in December 1998 terms).

[2694] On or about 5 March 1999, the Navy issued a revised version of the URS to GFC. The URS contained amongst others the following statements and specifications:

- The combat suite component of the corvettes comprised systems specified in accordance with the URS and selected by the Navy

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- The primary object of the URS was to describe the combat suite performance, design, logistic and associated hardware elements required by the Navy in order to establish a baseline for the acquisition of the corvette combat suite.

[2695] The information management system (IMS) was specified as part of the integration segment and as being a system to be supplied by a local industry supplier. The IMS was to interface all the combat suite segments. Furthermore the IMS was to provide reliable data communication between sub-systems with enough spare capacity for combat suite expansion. The URS identified CCII Systems as the supplier of the IMS.

[2696] The URS identified ADS as the supplier of amongst others the combat suite integration element and the CMS.

[2697] TCSF and its subsidiaries (including a company called Detexis) had developed various naval combat systems, including the Tavitac combat management system (Thomson CFS's combat management system) and the Detexis Diacerto combat databus. As the nominated supplier of the combat suite integration element and of the CMS ADS wanted to substitute the Tavitac CMS for the indigenous CMS specified in the URS and the Detexis system for CCII System's IMS specified in the URS. The Tavitac CMS could not be used in conjunction with CCII System's IMS without substantial adjustments to the Tavitac CMS

[2698] On 11 November 1998 ADS, as the nominated combat suite contractor and the nominated supplier of the integration segment, requested CCII Systems, as the nominated supplier of the IMS, to furnish a formal quotation for the supply of the IMS. In response to the ADS request of 11 November 1998, CCII Systems submitted a formal quotation dated 11 December 1998

52.2 GFC'S February 1999 offer

[2699] During February 1999 GFC submitted an offer to Armscor for the combat suite component of the corvettes for a total price of approximately R2,6 billion, excluding VAT.

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[2700] The content of the offer was determined by ADS as a member of the consortium headed by GFC and as the nominated supplier of the combat suite integration element.

[2701] In the quotation the price allocated to the IMS was as follows:

As quoted by CCII	R42 233 000
Plus ILS as per ADS	R 6 434 000
Plus: risk as per ADS	<u>R19 731 000</u>
TOTAL	R68 398 000

[2702] Armscor and the Navy considered the total offered price for the combat suite to be too high and negotiations ensued between the Navy, GFC and ADS.

[2703] On or about 8 March 1999, Armscor addressed a letter to GFC requesting the latter to present a further offer complying with the URS plus alternative strategies to best meet the URS and at the lowest price.

[2704] During April 1999 ADS and TCSF presented Armscor and the Navy with a revised combat suite architecture based on the Tavitac CMS and the Detexis system, completely eliminating the CCII Systems IMS.

52.3 GFC'S May 1999 offer

[2705] On or about 6 May 1999, the Navy addressed a letter to GFC and ADS stating that because an acceptable price for the combat suite had not been achieved through negotiation, they were now requested to submit a 'best and final offer' (BAFO) for the combat suite.

[2706] On 13 May 1999 ADS in turn requested CCII Systems to submit its BAFO for the IMS by 14 May 1999. On 14 May 1999 CCII Systems submitted an offer of R44 303 918 (including VAT). On or about 24 May 1999 GFC and ADS submitted a BAFO for the combat suite. This BAFO incorporated a price based on the supply of CCII System's IMS and an alternative price based on the supply of the Detexis system.

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[2707] In the price based on the supply of the CCII Systems IMS, the total portion of the price allocated to the IMS was R89 255 000, being the R44 303 918 quoted by CCII Systems plus R44 951 082 as a risk premium, to cover integration risks and the risk of having to replace the IMS with another system if the IMS should fail. In the price based on the supply of the Detexis system, the total price allocated to the Detexis system was R49,55 million, which price did not include any risk premium.

[2708] ADS's BAFO also proposed to remove the ammunition, which would include the surface missile rounds from the offer in order to bring down the price of its offer by approximately R300 million.

[2709] The CCII Systems databus was fully developed unlike the Detexis product.

[2710] ADS and Thompson unfairly claimed that the CCII Systems IMS had certain risks and added a huge amount to the price quoted by CCII Systems. The price of the IMS was adjusted by ADS and Thompson and consequently the CCII Systems price became unaffordable, which contributed to the deselection of CCII Systems' IMS.

52.4. Evaluation and selection of databus

[2711] On or about 27 May 1999, the PCB meeting took place. At this meeting the PCB discussed amongst others the possibility of replacing CCII Systems' IMS with the Detexis system, but resolved to defer a decision until full specifications of the Detexis system and the architectural implications for the combat suite had been furnished by ADS.

[2712] On 3 and 4 June 1999, the Armscor and Navy evaluation team performed a technical assessment of the merits of the CCII Systems IMS and the Detexis system. The assessment was undertaken on instructions of the programme manager and project officer.

[2713] The evaluation team consisted of three project engineers from the Navy, the combat suite acquisition manager from Armscor and Dr Wolfgang

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from GFC. Representatives of Detexis were present during the assessment but CCII Systems was not invited.

[2714] The assessment report identified the pros and cons of the two systems, and concluded that the current architecture based on the CCII Systems IMS should be retained. The evaluation team concluded that the CCII Systems IMS was a superior product to the Detexis system and the risk attached to the CCII Systems product was low.

[2715] The concluding paragraph of the report reads as follows:

'After the above report had been completed it was provided to the project officer and programme manager under cover of a memorandum. While the report clearly shows a preference for CCII option it must be stated that the evaluation undertaken was purely of a technical nature and the technical potential of the CCII ...

The Detexis option was selected purely on financial constraints placed on the project. The risk as determined by the main contractor translated into financial penalties for the CCII option. The Databus is a critical sub-system to the overall performances of the Combat Suite of the SAN Patrol Corvette. As such from a technical point of view the main contractor has to assume the responsibility for ensuring that it works.'

[2716] On 29 June 1999 Armscor notified GFC in writing that the PCB had made certain supplier selections, which included the selection of ADS as the main contractor for the combat suite and as the supplier of amongst others the integration segment and CMS. The letter did not state that any selection had as yet been made in respect of the databus.

[2717] The price allocated by GFC and ADS to the IMS in its offer of May 1999 assumed that the IMS was a Category B system for which GFC and ADS were required to accept full responsibility.

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[2718] The preferred supplier GFC was going to build the platform which was put in category A. The combat suite was going to be done by a group of South African companies, led by ADS.

[2719] Later the combat suite elements were categorised as B and C category. The IMS was later classified by the JPT as a Category C sub-system.

[2720] On a date unknown to him officials of the Navy, the DOD and Armscor decided that:

- The databus should be reclassified as a Category B system (for which GFC and ADS would have to accept full responsibility)
- CCII Systems' IMS should be replaced with the Detexis system and that the architecture of the combat suite should be altered to allow for the use of the Detexis system in conjunction with the Tavitac CMS.

[2721] Admiral Kamerman and Messrs Swan and Nortjé participated in the decision, despite having knowledge of the Detexis databus report and the conclusions of the evaluation team.

[2722] The report and conclusions of the evaluation team were not submitted or communicated to the JPT or the PCB, nor to any other body authorised to make a decision on the selection of the databus. Neither the JPT nor the PCB nor any other such body ever in fact took a decision to –

- Reclassify the databus as a Category B system
- to select the Detexis system in place of the CCII Systems IMS; or
- to authorise a departure from the architecture and databus specified in the URS.

52.5. Final contract

[2723] On or about 1 December 1999 the Cabinet approved the conclusion of contracts in respect of the SDPP, including the conclusion of the corvette contract with the European South African Corvette Consortium (ESACC) for the supply of four corvettes.

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[2724] The budget approved by the Cabinet for the acquisition of the corvettes was R6,873 billion (as against R6,001 billion in December 1998), of which R2, 599 billion was allocated to the combat suite (an increase of R699 million as against the December 1998 budget of R1,9 billion). The budget approved by the Cabinet made provision for the use of the Detexis system rather than CCII Systems IMS.

[2725] Among the major contributors to the price increase of R699 million in the combat suite were:

- The selection of the Tavitac CMS at a cost of about R350 million as opposed to the indigenous CMS specified in the URS, which would have cost about R96 million and
- the acceptance by the state of ADS's integration fee of R425 million as opposed to the fee of R150 million that had been estimated as at January 1999.

[2726] The written contract for the supply of the four corvettes was signed on 3 December 1999 and it made provision for the use of the Detexis system rather than CCII Systems IMS.

[2727] GFC was nominated the preferred bidder on the basis of its NIP offer. This was despite the fact that NIP was not ascertainable in terms of achievability. The award of the corvette contract was carefully managed by the South African Government. There were two stages in the manipulation, namely, first getting GFC to be a contender after it was not successful in the 1995 round, and further being pushed from position 2 to position 1 in the 1999 round. This was as a result of bribes paid.

52.6. Allegations of corruption: corvette platform

[2728] Dr Young referred to a document that allegedly emanated from the German Prosecuting Authorities. He was unable to inform the Commission about the identity of the person who allegedly sent him the document with the allegations of corruption or to provide any evidence or information supporting the allegations.

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[2729] In his view there were cogent circumstantial grounds for believing these allegations to be true, at least credible or at the very least worthy of independent investigation by the Commission of Inquiry.

[2730] Between 1993 and 1995 under *Project Sitron*, the Navy initiated a bidding process. Bazan of Spain was selected as the preferred bidder. Blohm+Voss of Germany and other bidders were not successful. The acquisition process was not proceeded with as the Cabinet was of the view that Defence Review process had to be finalised before the acquisition process could be proceeded with.

[2731] He had analysed the alleged results of the German investigations, accepted allegations therein contained as facts and drew certain conclusions.

[2732] Normally military equipment is selected on the basis of military value only and if such process was followed, Bazan of Spain should have won the contest. All the evaluations of the corvettes bids, with the exception of the military value, were wrong.

[2733] It is difficult not to conclude that the GFC payments of a bribe to the Chief of Acquisition resulted in it winning a R6, 873 billion-contract in the SDPP.

[2734] The Schabir Shaik trial revealed facts from which one can say the most likely inference that can reasonably be drawn is that Thomson-CSF had paid bribes to the ANC and other functionaries in order to secure the lion's share of the corvette combat suite and that a proper investigation would ascertain this.

[2735] After obtaining documents relevant to the corvette acquisition and after extensive investigations, there were fairly clear indications of both very high amounts of money available in Thomson-CSF's project budget to pay bribes to secure the corvette combat suite business by Thomson-CSF Naval Combat Systems (NCS) and ADS, and an extraordinary level of political interference in the acquisition process.

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[2736] By this time, Mr Chippy Schaik had formally declared his conflict of interest. However, the joint investigation found that such recusal was a sham.

[2737] A range of formal DOD documents showed that Mr Shaik was fully involved with the corvette combat suite acquisition process while other records showed that the local representatives of Thomson-CSF, namely Messrs Pierre Moynot and Alain Thetard, were having a series of regular secret meetings with Mr Chippy Schaik.

[2738] He further complained about the selection of the System Management System. He alleged that their pricing of the System Management System was illegally made available to ADS and consequently ADS quoted a price which made it possible for their System Management System to be preferred over the CCII Systems product.

[2739] ADS quoted R29 647 000 and CCII Systems quoted R23 192 922. ADS was allowed to add to their margin a handling fee of about 12,05% to CCII Systems' price (but not to its own price), which then made CCII Systems' extended price marginally higher than ADS's and this allowed ADS to win the contract to supply the SMS. The administration of this quotation process was done by GFC, but the JPT initiated it and was fully involved and made the relevant decisions.

[2740] The programme manager was of the view that the ADS product had lower risks than the CCII Systems product. It would appear that the main reason for this tendering process was to force ADS to lower its price for the System Management System.

[2741] Dr Young further testified that it was alleged by DOD and Armscor officials that a special PCB meeting took place on 19 August 1999 to discuss the categorisation of sub-systems as either Category B or Category C. This special meeting was alleged to have taken place before the PCB meeting of 24 August 1999. He doubted that the alleged Special Meeting of 19 August 1999 ever took place, and if it was accepted that it had taken place, serious doubt existed whether it was properly constituted.

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52.7. Allegations of corruption: submarines

[2742] He was surprised by the selection of GSC as the preferred supplier, as the GSC submitted a weak bid. Until very shortly before the preferred suppliers were announced, GSC was considered to be either last or second last in the running. A few days before the announcement, GSC moved into first position. There were problems with the scoring of the NIP, DIP, financing and military value. All the problems were to the advantage of GSC. Dr Young provided no further information to support the allegations.

52.7.1. Mr Thabo Mbeki

[2743] Mr Mbeki had several contacts and meetings with senior officials of Thomson-CSF and it was alleged that he gave the latter company an assurance that Thomson-CSF would be awarded the contract for the combat system and its sensors. This took place two years before the contract was awarded and a year before contract negotiations commenced between the DOD and Armscor on the one hand and GFC, Thomson-CSF and ADS, on the other. The discussions between Mr Mbeki and Thomson-CSF centred around the combat suite.

[2744] He did not explain how Mr Mbeki could have influenced the awarding of the contract for the combat suite and its sub-systems, nor did he provide any documentary evidence to support his allegations. He made these wild allegations without providing any factual basis for them.

52.7.2. Conflict of interest

[2745] Mr Shamin Shaik held the following positions: the DOD's Chief of Acquisition; Chairperson of the Naval PCB; Senior member of the IONT; Secretary of the AAC; and Secretary of the MINCOM.

[2746] At a PCB meeting Mr Shaik declared that he had a potential conflict of interest as he had a family member who was a member of boards of some of the companies involved. Despite the conflict of interest, Mr Shaik did not recuse himself from the deliberations of the PCB, SOFCOM, AAC and MINCOM. In performing his official functions Mr Shaik promoted the interests of ADS.

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[2747] In his capacity as chairperson of the PCB and co-chairperson of SOFCOM, Mr Shaik decided to condone GFC's non-compliance and to invite GFC (after the closing date specified in the RFO) to make good its non-compliance, which was the failure to provide a bank or sovereign guarantee to the value of 5% of GFC's proposed DIP commitment. GFC made good its non-compliance. The PCB and SOFCOM were not aware of the non-compliance by GFC.

[2748] Mr Shaik was present at Naval PCB meetings of 8 June and 24 August 1999 when the combat suite was discussed. At the PCB meeting of 24 August 1999 Mr Shaik informed the PCB that the DOD supported the principle that GFC should carry the overall risk for the databus. As said, despite the conflict of interest, Mr Shaik failed to recuse himself when he was supposed to have done so.

[2749] Mr Shamin Shaik changed the nature of SOFCOM into a decision-making body and changed the scoring formula at a higher level in order to achieve his desired results. SOFCOM had no authority to act in this manner.

[2750] Dr Young denied that he did not have good relations with ADS staff members.

[2751] CCII Systems did not lose the IPM simulator on the grounds of performance, price and timescales. From the RFI stage to the RFBAFO stage CCII Systems were referred to as either the nominated contractor or candidate supplier. They were exclusively indicated without any competitor. Their being referred to as nominated contractor or candidate supplier amounted to final selection. Once the selection had been made, only default conduct such as a clear inability to deliver or major changes in price, could disqualify a selected supplier.

[2752] CCII Systems had a legitimate expectation to be awarded the IMS contract. Its product was technically superior to its competitor, the Detexis Diacerto databus. The IMS had been in the development phase and was only awaiting a full-scale contract to complete formal qualifications.

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[2753] The CCII Systems IPMS simulator was nominated by the DOD as part of the corvette platform element. CCII Systems' simulator was thereafter selected by the Naval PCB and GFC was formally advised. GFC did not place a contract on CCII Systems for the IPMS simulator.

[2754] The CCII Systems-quoted System Management System initially had a lower price than ADS's quotation for the same system, and ADS was allowed the following day to reduce its quotation to slightly below the price of CCII Systems'. A substantial margin was added to the CCII Systems price. The process was administered by GFC although the DOD called for the competitive quotations.

[2755] The acquisition of the Hawk was a contrived affair with a pre-determined outcome. The same applied to the corvettes and the submarines.

[2756] It was unnecessary to commence with the acquisition of the Gripen to replace the Cheetah C in 1997, first because the latter aircraft had only formally been taken into service in the SAAF in the same year and, secondly, it had a remaining lifespan of at least 15 years that could have been extended to 20 or even 25 years.

[2757] In his statement Dr Young stated that the Commission should make recommendations that a certain number of people should be investigated to determine their role in the selection of GFC, the awarding of the corvette contract to GFC and the awarding of the combat suite contract to Thomson-CSF Naval Combat Systems.

[2758] He further said that the involvement of certain people and Ferrostaal in the awarding of the submarine contract to GSC and the awarding of the LIFT and ALFA contracts to BAE and SAAB should also be investigated. The payment of the bribes should also be investigated.

[2759] He basically repeated the allegations of fraud and corruption that were made over the years. He did not supply the Commission with a factual

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basis to support the allegations, instead he said that the Commission should investigate the allegations.

[2760] He also said that members of MINCOM, the Auditor General and the Public Protector should be investigated to determine their roles in the changing of the draft JIT Report.

[2761] Lastly, he said that the Commission should investigate the abandonment of the LIFT, ALFA and GFC investigations by the Director of Priority Crimes Investigation Unit.

[2762] The AAC and AASB were superseded by the PCB and SOFCOM in the acquisition process as defined by MODAC.

[2763] From the documentary evidence it appeared that the AASB and AAC were mainly omitted from the acquisition process and it was SOFCOM that dealt directly with MINCOM.

[2764] SOFCOM and MINCOM were not part of the MODAC process.

[2765] He referred to the investigations carried out by the SFO of the UK and the State Prosecutor's Office in Düsseldorf. As far as the German Prosecuting Authorities' investigation was concerned, he read certain reports which he claimed came from or were prepared by the German authorities. He said the reports were sent to him but he did not know who sent the documents to him.

[2766] He further said that the three German reports he referred to were genuine documents. They corroborated each other. The contents of the reports were possibly true and they were worth an investigation.

[2767] When dealing with the reports in his written statement, he said:

'In my view there are cogent circumstantial grounds for believing these allegations to be true, at least credible or at the very least worthy of independent investigation by this Commission of inquiry'

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[2768] He testified that he believed that certain parties, including the Germans, were illegally assisted by Mr Tony Yengeni to win the bids.

[2769] CCII Systems won the competitive bid for the Navigation Distribution System.

52.8 IPMS simulator

[2770] On 21 June 1999, Admiral Kamerman wrote a letter to GFC advising them that their offer for an Integrated Platform Management System (IPMS) simulator was not acceptable. On 23 June 1999 CCII Systems was requested to submit an offer for the IPMS simulator to Blohm+Voss. On 24 June 1999 CCII Systems submitted a quote to GFC for the IPMS simulator in an amount of R4,985 million (excluding VAT). On 11 April 2001 GFC informed CCII Systems that they had not been awarded the contract for the IPMS simulator. CCII Systems was de-selected at a very late stage.

[2771] He disputed the allegations that they lost the IPMS simulator contract on the grounds of performance, price and time scales.

[2772] The evidence of Admiral Kamerman that the State had never selected the CCII Systems IPMS simulator could not be correct.

[2773] He said that he was told that Ferrostaal paid larger bribes for GSC to win the South African submarine than Thyssen paid for GFC to win the South African corvette deal. When asked who told him about the bribes, he said he was not prepared to divulge the name of the person. He said it was someone who worked and lived in Germany.

[2774] In conclusion he said that the acquisition of the Hawks, Gripens, submarines and corvettes were contrived affairs with pre-determined outcomes. The pre-determined outcomes were a result of the bribes due when the contracts were signed.

[2775] The Auditor-General and Public Protector must be investigated to determine why they allowed their draft report to be materially changed at the behest of MINCOM.

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[2776] He repeated the allegations of fraud which were made over the years and said that the Commission should investigate the allegations.

[2777] The Commission should also investigate why various internal investigations of the SDPP were abandoned.

[2778] Shortly before cross-examination he testified that in the acquisition process, SOFCOM made most of the decisions and reported directly to MINCOM. The latter body was not a MODAC-constituted body.

52.9. Cross-examination

[2779] Under cross-examination Dr Young stated that from 1994 to 1998 CCII Systems was awarded various contracts by the DOD to the total value of approximately R22 million. No single contract awarded to CCII Systems was worth more than R6million.

[2780] It was put to him that in the SDPP acquisition programme CCII Systems made bids for the different contracts. It won three contracts and lost three. CCII Systems won the following contracts:

- The Navigation Distribution System for *Project Sitron*, worth R17 million
- The tracker consoles for *Project Sitron*, worth R20 million
- Software and MMI adaptation of the *Project Wills* combat system worth R26 million.

The total value of the contracts was R63 million. In two of the above-mentioned contracts ADS was their competitor.

[2781] During the period 2000-2005, CCII Systems earned an amount of R56 million from export work arising directly out of *Projects Suvecs* and *Sitron* and SDPP technology.

[2782] The three contracts that CCII Systems lost were the following:

- The IMS for *Project Sitron* valued at R42 million
- The System Management System for *Project Sitron* worth R30 million

- The IPMS Simulator for *Project Sitron*, worth R12 million

[2783] In the first two Detexis and ADS were the competitors, with Detexis winning the IMS contract and ADS the System Management System contract. As far as the IPMS simulator contract was concerned, Siemens was the competitor won the contract.

[2784] He agreed with the above proposition but said that if he remembered well, the Navigation Distribution System contract was worth about R12 million and the software MMI contract between R6 million and R8 million. He admitted that in the case of IMS for *Project Sitron* Detexis was a competitor and in the case of the System Management System, ADS was a competitor. He denied that ADS was a competitor in the tracker consoles for *Project Sitron*. He said that there was no competitor. The software and MMI contract was awarded to CCII Systems under DIP and there was no competitor. As regards the IPMS Simulator, he agreed that Siemens was the competitor.

[2785] He testified that in the three instances where CCII Systems lost the bids, the processes were either unfair or irregular or manipulated, but in instances where CCII Systems won the contracts the processes were fair and legitimate. There were no complaints in respect of the contracts that were awarded to CCII Systems.

[2786] He was referred to his website and he said that the habitual practice on this website was to publish a complete article from the media and he then commented and elaborated on matters arising from the article or media reports that he thought relevant. All the articles that appeared on this website were devoted to the arms deal and all his comments related to his understanding, viewpoints, judgment and accusations regarding the arms deal.

[2787] He was referred to his website where he said: '*Erwin and his Grand Larceneers Mandela, Mbeki, Modise, Manuel et cie had this golden goose well and truly plucked, stuffed, peri-peried, drawn and quartered.*'

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[2788] He was asked what was meant by the words 'Grand Larceneers' and he gave an explanation which was unclear. It was put to him that he knew very well that the word 'larceny' meant theft: He replied: *'Well I actually thought that it meant fraud but in any way if it is theft that is good enough for me'*.

[2789] He was asked to explain why he described former President Mandela as a grand thief and he said that as a leader of a team that was responsible for fraud or theft it was logical to include the team leader.

[2790] He was referred to another statement appearing on his website, where he said the following: 'The Government of Mandela, the Robber Barons of himself, Mbeki, Modise, et al, thought nothing about lifecycle costs and real long term needs'. He was asked why he described former President Mandela as a robber and he said it was because he held him responsible as things happened on his watch.

[2791] He was referred to another statement which reads as follows:

'But instead Mandela, Mbeki, Erwin, Modise, Manuel, Radebe, et cie sacrificed this golden goose on the alters of avarice, gluttony, greed, conspicuous consumption and dynasty construction', and was asked to explain why he said so. His explanation was that the corruption in the arms deal took place on his watch and the innocence of South Africa and transformation was sacrificed for other reasons. Mr Mandela had knowledge of the irregularity in the arms deal and he was complicit.'

[2792] He was further referred to another statement on his website which read as follows: *'Nothing or little will come out of the South African Arms Deal investigation until Nelson Mandela has rebounded with Joe Modise.'*

[2793] He was referred to another statement from his website which reads as follows:

'It all started when Mandela decided to do the Arms deal without any real or proper consideration of the future needs of South

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African National Defence Force (yes, the SANDF actually belongs to all of us and not Mrs Sisulu). Everything was designed around giving one third of the proceeds of the Arms Deal to the ANC party and political wigs, some big and some medium. Invariably the more expensive options were chosen or the equipment was not needed at all.'

[2794] He was asked to comment and he said:

'Again, I will not say. I intended to implicate him personally and alone. What I am saying is my theory, my grand theory is that the Arms deal was put together, in the way that it was, in order to benefit many connected individuals and party organisations, such as the Nelson Mandela Children's Fund and the ANC Woman's League and others. But at the same time that I will not say that he, himself was responsible for the Arms deal. But he was still the President and the Chairman of the Cabinet that precipitated the Arms deal.'

[2795] He further said that one third of the proceeds of the arms deal went to the ANC and political wigs. When asked to provide facts to substantiate the allegation, he referred to commissions paid by the suppliers of equipment and said that it was clear that individuals received money and kept the money.

[2796] He further said that some members of the ANC were extremely opportunistic in utilising the arms deal to get money for themselves and the party.

[2797] He was referred to another statement on his website that read:

'The reason is that, although there was so much stronger evidence in the South African leg, BAE will not admit anything because it goes right up to the top right up to Nelson Mandela, Thabo Mbeki (who was effectively just the runner) John Major and Tony Blair.'

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[2798] He confirmed that in the above-quoted statement he said that there was a conspiracy between former President Mandela, former Deputy President Mbeki, former Prime Minister Major and former Prime Minister Blair to corrupt the arms deal package in regard to BAE.

[2799] He further said that the German Government conspired with the South African Government for the German companies to be awarded the corvettes contract. He was informed about this conspiracy by the late Mr Richard Charter.

[2800] If anybody would contact him and complain about any statement that appeared on his website, he would remove the statement. On two occasions he was approached by certain individuals who complained about certain statements appearing on his website and they removed the statements.

[2801] He was referred to another statement on his website which reads as follows:

'Indeed once Mandela and Mbeki had decided to whom to award the corvette contract, Mbeki summoned Chief of the SA Navy Robert Claude Simple Anderson and Kamerman to a "meeting". There he instructed them how the corvette project was to happen.'

He was asked if he stood by the above quotation and he answered in the positive. He said he was told by someone about the meeting mentioned in the quotation.

[2802] He was referred to another statement on his website, which reads as follows:

'This Commission is a farce—but not a funny one ha ha one. It is a farce of the most odoriferous and pungent kind. Something that reminds me of something that came out of the anuses of my neighbours' pigs when they invaded my farm last year.'

He said he made the statement quoted above as he did not agree with a certain ruling made by the Commission last year.

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[2803] The key findings of the JIT Report that he did not agree with were nonsense.

[2804] He was referred to the so-called German investigators' reports and asked if they were distributed with the permission of the authors thereof and he said that there was no indication that the person who supplied him with the three reports had received them by unlawful means. He did not know the person who sent him the reports. The author of the documents was the police official in the criminal investigation department of Düsseldorf. He did not know the name of the police official.

[2805] He communicated with Chief Detective Inspector Andreas Bruns in order to get clarity about the alleged three reports. The latter said that he had no authority to communicate with people like him. He was referred to Prosecutor Herr Götte who said to him that they would not collaborate with him.

[2806] He was certain that the reports were genuine.

[2807] He said that he did not know the person who gave him the three reports, although he earlier indicated that he was reluctant to disclose his source when asked again how the reports came to his possession. When pressed for an answer, he said that he was not prepared to answer that question.

[2808] He further testified that the investigations in Germany were closed down because the Statute of Limitations kicked in at the end of 2008. At the time when he consulted with Colonel du Plooy, the latter had either one or all the three reports. He saw one page of the reports. Colonel Du Plooy told him that he had received the two or three pages from a Düsseldorf police official.

[2809] The pages shown to him by Colonel du Plooy had a reference to an agreement between Mr Christoph Hoenings and Mr Chippy Shaik regarding the Thyssen bribery agreement. Colonel du Plooy told him that he had received the reports from police officials in Düsseldorf, Germany.

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[2810] Some of the information contained in the reports was the information that was provided by him. The allegation about a payment of \$3 million and the payment by Merian Ltd was information that came from the *Mail & Guardian* newspaper article. He had sent Chief Detective Inspector Andreas Bruns in Düsseldorf articles regarding allegations of corruption published by the *Mail & Guardian*. He had also sent him other newspaper articles.

[2811] He was referred to a portion of the report which reads as follows:

'Richard Young claims that more payments have been made from Merian Ltd to Pierce. But the above-mentioned is the only one he could prove, by presenting a transaction report.'

He confirmed that he gave them the information contained in the above quoted paragraph. He was merely a conduit of information available in South Africa, which was sent to Germany.

[2812] He was referred to a portion of the alleged report which reads as follows:

'From Richard Young we received information about one payment from Merian Ltd to Pierce of the amount of 10,000 US\$ value date 30th March 2001. The Money seems to have been transferred from the UK to SA Reserve Bank via First National Bank Ltd.'

He confirmed that he provided the information. The information came straight out of the *Mail & Guardian* article.

[2813] He was referred to an e-mail which he received from an official working at the Public Protectors office, Düsseldorf that stated: *'These preliminary proceedings to which you refer in your e-mail were closed by the 13th of January 2008.'*

[2814] He confirmed that the e-mail was advising that the investigation was closed in January 2008.

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[2815] He did not know the identity of the person who sent the documents to him, nor the link between that person and the authors of the documents. He did not know how these documents were obtained.

[2816] The reports were written in English and not in German. He refused to disclose how the alleged reports came into his possession. He later said that the mini hard drive containing the reports were sent to his Cape Town office and one of his staff members gave him the reports.

[2817] He was referred to the minutes of the meeting of members of Advanced Systems Management (ASM). The members appeared to be BAE, CCII Systems, STN-Atlas and Tellumat. The meeting was held on 2 December 1998.

[2818] The purpose of the meeting was the implementation and organisation of a new consortium that would bid for aspects of the corvette contracts, especially the combat suite. He was present at the meeting.

[2819] Paragraph 6 of the minutes reads as follows:

6.1 Atlantis Consulting

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

6.2 Thus Atlantis should be paid a retainer and success fee.'

[2820] Paragraph 8 of the minutes dealt with organisation. Paragraph 8.3 reads as follows: *'Additional position: Marketing Manager – Pretoria: John Gower: close to the political power base and the customer for intelligence.'* The two members of Atlantis Consulting, Gordon and Brian Blackbeard, were former Navy officers.

[2821] He was asked about the nature of the high political involvement attributed to Atlantis Consulting, and he said he did not know what high political involvement means. It was never his understanding that Atlantis Consulting had 'connectivity' at a high political level.

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[2822] Paragraph 6.3.2 of the same minutes reads as follows: '*Appropriate contract including non-disclosure agreements and fidelity clauses*'. He was asked about the meaning of 'non-disclosure agreement' and he took some time to agree that it was an agreement not to disclose certain information.

[2823] He was also referred to paragraph 1.4 of the minutes which states: '*Richard Charter would like to be kept informed so he can provide appropriate political support.*' He was asked what the paragraph meant and he said: 'I have got absolutely no idea what that means, appropriate political support'.

[2824] He was asked about 'political power base' as mentioned in paragraph 8.3 of the minutes and he replied that he did not know what 'political power base' referred to.

[2825] Advanced System Management was interested to compete for the corvette combat suite. They intended to supply a combat suite alternative to the one that ADS was going to supply.

[2826] ADS had been identified as the nominated or candidate supplier of the combat suite. The position changed when Thomson bought approximately 50% of ADS's shares in April 1998 and the balance in March 1999. The nominations were made in September 1997 and as at December 1998 they were no longer valid because of changed circumstances.

[2827] BAE suddenly withdrew from the consortium. This was done at the last moment and that surprised them. He was referred to the minutes of the ASM Steering Committee meeting of 7 January 1999. In that meeting BAE pointed out that the South African situation would be reviewed and a meeting would be held in the United Kingdom on 13 January 1999. BAE informed them of their withdrawal from the consortium on 13 January 1999 and that came to them as a complete shock

[2828] BAE wrote a letter explaining why they were pulling out of the consortium but he did not agree with the reasons put forward by BAE. BAE was lying and the letter did not disclose the true reasons that made BAE

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withdraw from the consortium. The real reason for BAE's withdrawal was that they were told by a high ranking South African official not to proceed with their bid for the combat suite. In fact either the President of South Africa or the Deputy President or the Minister of Defence instructed BAE not to proceed with the bid.

[2829] It was vital for the combat suite to operate properly that the IMS must function correctly. The IMS is a fundamental component in a combat suite. As mentioned earlier, CCII Systems was bidding to provide the IMS. It was necessary that any supplier of the combat suite or any supplier of the vessel would be fundamentally concerned that the IMS would work properly within the integrated system.

[2830] He agreed that the question of risk in regard to the IMS was a legitimate question that should have concerned every contractor whose work was going to involve reliance on the IMS.

[2831] At the time when CCII Systems became a nominated or candidate supplier of the IMS as part of the combat suite, the IMS had not yet reached a stage where it could perform in ordinary working conditions on a vessel. The IMS was in the pre-production phase. It had not as yet passed the factory acceptance test. There were other tests that CCII Systems was going to do in order to win the competition. At some stage, there was a dispute about the risk attached to the IMS, although the Navy had already indicated that it preferred the CCII Systems sub-system to the Detexis system.

[2832] The question of risk had an impact on price.

[2833] A difficulty arose during the negotiations between ADS and the Navy. The friction point was who would bear the risk of the IMS not meeting performance or time testing standards.

[2834] There were negotiations going on regarding the risk between GFC, Thomson/ADS, Armscor and the Navy.

[2835] He was later advised by some Navy officials that it would be better if he could sort out the dispute with ADS. He contacted ADS with a proposal to manage the risk. The risk attached to the IMS was very low and there was no need to penalise them by attaching a high risk to the IMS. The attitude of ADS was that the IMS posed a risk to ADS's combat management system as well as to the entire combat suite for which ADS had offered to take responsibility for performance as a whole.

[2836] The vessel contractor was going to be liable for a penalty or damages if the vessel was not delivered on time. Generally the supplier of the vessel was on risk not only for timeous performance by itself, but also for timeless performance by all sub-contractors.

[2837] In a letter dated 29 July 1999, addressed to African Defence Systems (Pty) Ltd, he wrote the following:

'You have expressed your opinion that the IMS imposes a risk to ADS's Combat Management Systems (CMS) as well as to the entire Combat Suite (CS) for which ADS has offered to take responsibility for performance as a whole. Our position on this is that ADS themselves changed the baseline system architecture such that the IMS, if selected, would be directly involved within the CMS. This is the downside of your approach to system architecture. Regarding the IMS being a risk to the CS as whole and Thomson/ADS providing a performance guarantee therefore, this is the implication that Thomson/ADS must bear for the right of exclusivity in offering a Combat Suite to the SA Navy. It must be remembered that there were, in fact, a number of other parties who had expressed an interest in offering a Combat Suite for the SA Navy's corvette. They may well not have taken the same view of risk that Thomson and ADS have done.

...

Furthermore I am of the opinion that the Navy should be prepared to pay a modest premium for the peace of mind of the

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IMS being included in Category B, i.e where ADS carries the risk.'

It did not make sense that CCII Systems should be expected to carry the risk.

[2838] In the same letter he proposed three options in order to resolve the impasse regarding the question of risk. None of the options included CCII Systems assuming any risk for its product. One of the options was that ADS should provide a development contract to CCII Systems for an amount of R15 million for the completion of the IMS.

[2839] He was aware that the Navy was attempting to reduce costs. The suggestion put forward to the Navy was that the costs could be reduced if the Navy was prepared to assume risk for certain sub-systems. The Navy was required to take a certain amount of risk up to factory acceptance tests.

[2840] The question the Navy had to answer was whether it was prepared to have a reduction of the purchase price based on its assumption of risk, and if so, for what parts of the equipment was it prepared to offer to undertake the risk up to factory acceptance. Until then the Navy was not involved in the assumption of risk.

[2841] The categorisation of certain sub-systems into Category C arose when Thomson/ADS proposed that the Navy should undertake part of the risk for some of the suppliers. The Navy then agreed to assume such risk up to the stage of factory acceptance, but it refused to accept risk for the CCII Systems' IMS.

[2842] When he instructed his attorneys he recorded the following:

'We understand that ADS is prepared to drop its price for the Combat Suite to R2.6 billion, but this would be on the basis of not accepting risk for a portion of the sub-systems. In other words, ADS would drop its price if it were released from certain performance guarantees. While the Navy is apparently willing to accept this in relation to some of the sub-systems, the Navy is

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insisting that the IMS sub-system be guaranteed. This is because the IMS sub-system is crucial to the whole operation of the vessel. It is the nerve system of the Combat Suite and is absolutely key'

[2843] The above-quoted paragraph correctly captured his understanding of what was transpiring. In his view the position that ADS was adopting was unreasonable.

[2844] A bid was then made to the Navy, and they were given a choice of the Detexis product at a price of about R45 million or the CCII Systems IMS at a price of about R85 million. In case the Detexis product was chosen, the Thompson/ADS consortium would bear all the risk at its own expense. However, if the CCII Systems product was used, Thomson/ADS wanted to add to the price an additional R40 or R45 million to cover risk on the basis that from CCII Systems the only conceivable contribution might have been R15 million.

[2845] When asked which bid the Navy should have chosen once faced with those two bids at a time when its desire was to reduce the price, he said the CCII Systems IMS. They should have paid slightly more to get a better system.

[2846] At some stage during 1999 he was with Mr Swan, the CEO of Armscor, and Admiral Howell. They talked about CCII Systems providing a performance guarantee necessary to satisfy Armscor that CCII Systems could and would perform the tasks as required by Armscor and the DOD. He did not take the suggestion seriously as it did not make sense to him. He responded that he could not afford the guarantee.

[2847] He had no complaint about the fact that when bidding for the corvettes was re-opened, the Germans and others were invited to bid. In his view, there was no valid reason why the Phase 1 process had to be stopped on the so-called requirement of the Defence Review. The naval requirement had existed since 1980.

52.9.1. IPMS simulator

[2848] The IPMS simulator was the shore-based training simulator on which the ship's machinery crew could be trained to operate the on-board IPMS. CCII Systems was selected as the supplier for the shore-based training simulator but it was then deselected at a late stage. In the JIT investigation he stated that the deselection had occurred as a result of a desire to punish him for crying foul in regard to other parts of the corvette contract.

[2849] CCII Systems was selected and inexplicably they were then deselected.

[2850] He said he based his assertion that they were selected to supply the IPMS simulator on a letter dated 29 June 1999 addressed to GFC by Mr LR Swan, Chief Executive Officer of Armscor. This letter was one of the annexures to his statement.

[2851] He was asked who gave him copy of the letter and he said he would not disclose the identity of the person who gave him the letter. He did not receive the document through official channels. Attached to the letter was an annexure headed 'Combat Suite' and it contained names of various elements and the names of the suppliers. CCII System's was mentioned as the supplier of the IPMS simulator.

[2852] It was possible, but improbable, that Mr L Swan made a mistake by including the IPMS simulator in his letter or the list attached to his letter of 29 June 1999. GFC replied to Mr Swan's letter and said amongst others that the decision regarding the supplier of the simulator was still open. Dr Young then said this letter or document from GFC was a fraudulent document. It was not a genuine letter.

[2853] He was referred to a document titled '*Project Sitron: Contractor Security Plan*'. Item 438 of the document stated that IPMS simulator subcontractors were Siemens (Germany/South Africa) and CCII Systems (South Africa). The document was apparently dated 20 January 2001.

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[2854] It was suggested to him that the document indicated that there were two candidates, namely Siemens and CCII Systems and he said that was one interpretation. The other was that both companies were going to be involved.

[2855] He was referred to a letter dated 21 June 1999 from Admiral Kamerman to GFC. The letter requested, inter alia, that certain investigations relating to the IPMS training simulator should be undertaken. It further stated that final supplier selection would only be made after the investigation.

[2856] On 24 June 1999 CCII Systems was requested to submit an offer for the IPMS simulator to Blohm+Voss, a member of GFC. On the same date CCII Systems submitted the quotation. On 19 February 2001 they were requested to supply a 'last and final offer', which was submitted on 2 March 2001. On 11 April 2001 they were informed that they were not awarded the contract for the IPMS simulator. The contract was awarded to Siemens.

[2857] After receipt of the information that CCII Systems did not get the contract, he instructed his attorneys to demand an explanation.

[2858] In their reply, GFC stated the following:

'GFC has received a proposal from Siemens for the IPMS System as a complete package, including the simulator in 1997. Approximately during the middle of 1999, the GFC has sent an enquiry to C Square I Square and received a responsive offer. The proposal has been evaluated carefully regarding technical and commercial aspects, according to standard procedures'.

[2859] He was informed that GFC complained about a price increase contained in the CCII Systems offer, and he said that GFC had no basis to complain about a price increase. GFC was dishonest when they complained about an increase.

[2860] It was put to him that GFC also stated that the main reason for a decision in favour of Siemens was that CCII Systems had no experience in

projects of comparative size and complexity and he said it was not true that they had no experience in comparable projects.

[2861] He was asked whether CCII Systems would have delivered the simulator on time and he said it would have been difficult. He further said that he did not agree with the reasons given by GFC for awarding the contract to Siemens and not to CCII Systems. He further said the bidding process for this product was not fair.

52.9.2. System Management System (SMS)

[2862] The two competing bidders had to submit their bids to GFC by 15 April 1999. GFC had to submit the two bids to Navy the following day.

[2863] The letter requesting quotations from Blohm+Voss GMBH stated that the quotes should be submitted to them by no later than Thursday 15 April 1999 at 17h00. When dealing with costing, the letter stated that '[t]he SMS is to exclude the VSS portion'.

[2864] He was referred to a letter dated 12 April 1999 by Admiral Kamerman to GFC. The letter was instructing GFC to elicit competitive quotes for certain sub-systems including the System Management System. As far as the System Management System was concerned the letter stated that the closing date should be Friday 16 April 1999 at 09h00. He said that as far as he understood the bids were submitted to the DOD within the time limit. In their bid they did not include the VSS portion.

[2865] It was put to him that when Admiral Kamerman testified he said that when the ADS bid was received it had not eliminated the VSS portion and he said that was not true.

[2866] He was asked if there was any document that demonstrated that the testimony of Admiral Kamerman was not true. He replied that the relevant document was Pierre Moynot of ADS's response of 16 April 1999. He was referred to the letter concerned that was in one of the bundles and asked to indicate the portion of the letter that supported his assertion. He replied:

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'[W]hat I am suggesting is that it is an irregular and an unfair bidding process where there is a clear baseline'.

[2867] He could not point to any portion of the letter that supported his assertion, and he then said that ADS had not eliminated the VSS portion in their initial quotation. He accepted that the ADS quote should not have included VSS ILS costs.

[2868] In his view, if ADS had made a mistake they should have suffered the consequences of their own mistake or they should have gone out on a second round of tendering and keep the playing fields level.

[2869] He confirmed that his second complaint about this bid was that their bid price was made known to ADS. He further said that the process was designed in such a manner that CCII Systems' price for the System Management System was exposed to its competitor. He said this was done by someone involved in the process. He did not know who that person was. He did not point a finger at any of the DOD officials. He did not know who could have exposed his price to their competitor.

[2870] His other complaint was that the JPT added 12,5% to their bid price without having warned them in advance. His understanding was that in the case of ADS the integration fee and the handling fee were not added.

[2871] He won the contract for the supply of the Navigation Distribution System. He later learnt that the same process of adding a certain percentage to their price was followed. Their price for Navigation Distribution System was low enough that the margin added did not swing the results of the bid in ADS's favour.

[2872] He came up with various theories about how the price for the combat suite and certain sub-system could have been inflated in order to make provision for the bribes. He spoke about various possibilities which he said emanated from his reading and understanding of various documents.

[2873] When dealing with one of his theories he said:

'But, I probably need to state that, although my theory, especially as it stands out today, is backed up by some kind of arithmetic plausibility at least. But I have to say and I am not prepared to divulge their names, I have been told by two senior naval officers that my theory is actually correct'.

[2874] He was asked how the Commission could follow up with the people who supported his theory if he did not want to disclose their names. He replied: *'Well of course, you should actually subpoena everybody in the Navy'*. He further said that he could only mention that the two persons he was referring to were commissioned officers.

[2875] He was shown documents from the DOD relating to the combat suite contract which undermined one of his theories and he questioned the authenticity of the document.

[2876] As far as Advocate Hlongwane was concerned, he had no personal knowledge of evidence implicating him. It was not his evidence that Advocate Hlongwane received unlawful payments.

[2877] The documents from the SFO did not say that Advocate Hlongwane improperly influenced the award or conclusion of the contracts, but that was the conclusion that he arrived at after considering information from the SFO. His view was that Advocate Hlongwane was involved in the irregular awarding of the contracts.

[2878] If the contention of BAE witnesses was correct that they were treating Advocate Fana Hlongwane as their agent while he was acting as the Minister of Defence's advisor at the same time, then that would be irregular.

[2879] He was now requesting the Commission to further investigate issues relating to Advocate Hlongwane and all other issues he had raised in his statement.

[2880] He was again referred to his website and in particular to portions where he used all sorts of abusive and insulting language to describe former

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Presidents Mandela and Mbeki and other Ministers. He responded and said that he did so because he was upset by what had happened in the SDPP. He said the SDPP almost destroyed him and also almost caused his company to be bankrupt. Some of his remarks were posted on his website in 2014, 2013 and 2012.

[2881] It was put to him that his remarks were abusive and offensive and he said they might be offensive, but was not sure how abusive they were. He then said that there was no indication that former President Mbeki or former Ministers Manuel, Erwin, Lekota and Kasrils were involved in a self-enrichment exercise.

[2882] He was then asked why he described them as sacrificing the golden goose on the altars of avarice, gluttony, greed, conspicuous consumption and dynasty construction and he said:

'Because of two reasons. One is my theory is that a large proportion of the covert commission went to the party and these are all party people. Much of what was done was not necessarily for self-enrichment but for the good of the party. The other is that somebody, if again, if the theory is correct that things were wrong, it has to be those people who have to be accountable for what went wrong. It is purely in that context.'

[2883] He did not have facts regarding self-enrichment of the above-mentioned persons.

[2884] He had never made any allegations of corruption against the members of MINCOM. He agreed that at MINCOM level, the process was not tainted by any irregularities, corruption, or improprieties.

[2885] He was not pointing any fingers at Armscor.

[2886] He was referred to the conclusion of his statement where he said that the Commission should make recommendations that the activities of certain people in the awarding of the SDPP contracts should be investigated.

[2887] He also included in the recommendations that he urged the Commission to undertake the investigation of the following:

- Manipulation of the JIT Report both by MINCOM, the Auditor-General and the Public Protector
- The abandonment of the LIFT and ALFA legs of the investigation by the DPCI
- The abandonment of the Thyssen/Chippy Shaik leg (GFC leg) of the investigation by the DPCI.

[2888] He was not aware of any member of the Inter-Ministerial Committee who was involved in self-enrichment activities. He did not have any evidence that indicated that any member of the Inter Ministerial Committee had received any bribe.

[2889] Except for Mr Chippy Shaik, he did not have any evidence which indicated that any member of the various evaluation teams received a bribe.

53. Advocate Fana Hlongwane

[2890] Advocate Hlongwane testified that no evidence was presented before the Commission indicating that he or his companies influenced the awarding of the SDDP contracts. He or his companies did not participate in the process leading to the award of the SDDP contracts. There was also no evidence implicating him or his companies in any corruption or other wrongdoing in relation to the SDPP contracts.

[2891] At no stage was he employed by the South African Government, but he was an independent contractor working as an advisor to the late Minister of Defence, Mr Joe Modise.

[2892] The first 'advisory' agreement he had entered into with the Government was effective from 1 November 1994 to 30 June 1995. At its expiry, it was substituted by another agreement that came into effect on 1 June 1995 and expired on 31 December 1995.

[2893] Clause 23 of the last-mentioned contract read as follows:

'The Adviser acts as independent contractor and not as an agent or employee of the Employer and has no authority from the Employer to bind the Employer. The Adviser indemnifies the employer against any claims or court action, including all legal costs that may be instituted by any person against the Employer arising out of any act, omission, or default on the part of the Adviser.'

[2894] This agreement was substituted by other similar agreements until he left his position as adviser to the Minister of Defence on 31 January 1999.

[2895] He did not participate in decision-making relating to the procurement process or the selection of preferred bidders. He did not pay any gratification to anybody who was involved in the selection of preferred bidders or the procurement process. He did not have any knowledge of any person who had paid any gratification in order to influence the selection of preferred bidders.

[2896] There was no evidence to suggest that he was involved with the evaluation teams that evaluated the various bids, nor was he involved in any manner with the Ministerial Sub-Committee or the Cabinet. It was never within the ambit of his duties to advise the late Minister of Defence on matters relating to the SDDP.

[2897] On or about 10 September 2003, his company concluded a written consulting agreement with South African National Industrial Participation (SANIP). The purpose of the agreement was to assist BAE with the implementation of the NIP Programmes. The agreement made provision for the commercial terms and conditions, which included the remuneration and quantum thereof. It was correctly recorded in the agreement that his company was to assist SANIP to market and implement projects pursuant to the SA Government's NIP Programme.

[2898] The terms of the agreement between SANIP and his company was a matter between two private entities and third parties could not without further ado question the contents of the agreement.

[2899] As far as he was aware, no evidence was led before the Commission that suggested that he was involved in fraudulent activities or that he unduly influenced the awarding of the SDDP contracts to any of the bidders.

J. INVESTIGATORS

54. General Johannes Willem Meiring

[2900] General Meiring was employed by the South African Police Service for almost 41 years. On 1 March 2003 he was promoted to the rank of Major General and appointed as the Head of the Commercial Crime Component, Detective Service. On 1 October 2009 he was transferred to the Directorate for Priority Crime Investigations (DPCI) to head the Commercial Crime Component in the newly established Directorate. He retired from the SAPS on 30 November 2013.

[2901] As head of Commercial Crime within the detective section, he headed the Commercial Crime unit nationally. At the end of 2009 the commercial-related projects that were dealt with by the Directorate of Special Operations (DSO) and some of the investigators who were previously attached to the DSO were transferred to the Commercial Crime Component within the DPCI.

[2902] The DSO was better funded than the DPCI. The DSO started to investigate the SDPP in 2000. The DSO was dissolved through legislation in 2009 and the directorate was replaced by the Directorate for Priority Crime Investigation (DPCI).

[2903] Colonel Johan du Plooy was one of the officers who were transferred to the DPCI Commercial Component as well as the arms procurement investigations. He placed Colonel du Plooy at the Serious Economic Offences Unit, which was part of the Commercial Crime Unit. As head of the Unit, he was not personally involved in the investigations.

[2904] Colonel du Plooy briefed him about the SDPP investigations. The initial investigation was started during November 2000 by the former Directorate of Special Operations. Colonel du Plooy was part of the investigating team. Colonel du Plooy informed him that he focused only on one area of the investigation, namely the Shaik/Nkobi leg.

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[2905] Colonel du Plooy advised him that except for the Shaik/Nkobi/Zuma/Thint leg of the SDPP investigations, very little progress was made by the DSO.

[2906] Colonel du Plooy further advised him that the SDPP investigation had numerous legs. The British Aerospace leg was investigated by the DSO from 2000 to 2003 and thereafter the investigation was stopped as no direct evidence of corrupt payments could be identified. They could not establish any prima facie case against anybody. Very little progress was made with the GFC leg of the investigation as well.

[2907] Colonel du Plooy further advised him that during October 2007 the British Serious Fraud Office (SFO) furnished the DSO with information relating to its investigations in the United Kingdom.

[2908] The information submitted by the SFO to the DSO revealed that BAE had paid huge commissions to agents based in South Africa and abroad in order to secure the SDPP contracts. These commissions were paid into offshore bank accounts. He was also informed that the SFO and the DSO had started a joint investigation. The sharing of information was informal.

[2909] The then Director-General of the Department of Justice became aware of the informal sharing of information between the SFO and the DSO and raised a concern about the legality of the informal sharing of information.

[2910] Three suspects in the BAE leg had passed away.

[2911] As indicated, the DSO dealt with the investigation up to 2009.

[2912] The case was referred to the NPA for a decision. Certain salient features of the investigation were highlighted in the memorandum sent to the NPA, for example that the investigation was at an early stage; three suspects were deceased; SAPS had no MLA request; and most of the issues had to be investigated overseas.

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[2913] The NPA was of the view that the investigation was incomplete and it would take long to complete. The possibility of any accused raising a defence of failure to afford them a speedy trial was also raised.

[2914] Colonel du Plooy prepared an information note and submitted it to the head of the Directorate for Priority Crime Investigation. This was in September 2010. They recommended the closure of the investigation. Their recommendation was based on the following:

- Some of companies that were allegedly involved in corruption were no longer in existence
- Banks and company records will be difficult to trace due to the fact that by law, they are kept for five years
- 460 boxes of documents and 4,7 million pages of documents had to be perused and analysed
- Many of the witnesses were living abroad and needed to be interviewed to determine whether they could provide information to substantiate the allegations
- There was currently no prima facie evidence against any person
- The offshore accounts would have to be traced; and
- Some of the witnesses were deceased.

[2915] After receipt of the memorandum from Colonel du Plooy, he personally took the decision to recommend the closure of the investigation. No political pressure was put on him to make the recommendation.

[2916] The documents in the 460 boxes mentioned above were dumped in the boxes by DSO officials. They were not marked or indexed. It will take several years to deal with those documents.

[2917] The DSO investigated the SDPP for almost 10 years. Colonel du Plooy was involved in the main arms deal investigation for the past nine years as a senior Special Investigator.

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[2918] In his motivation of the recommendation to close the investigation, he relied on the information supplied to him by Colonel du Plooy. By that time du Plooy had been investigating the matter for 10 years.

[2919] He recommended the closure of the investigation because the prospect of finding and securing relevant evidence after so many years was slim. The issues of capacity and willingness to continue with the investigations were not a problem; the problem was the time lapse.

[2920] Under cross-examination he said the GFC matter was also investigated by Colonel du Plooy. Colonel du Plooy said that in the case of GFC there was no prima facie case against anybody.

[2921] Advocate Breytenbach of the NPA advised them that, *inter alia*, they could use the point of a failure of a speedy trial to close the investigation. She was also of the view that the investigation should be closed because if they were to continue, it was going to take them another five years to conclude the investigation.

[2922] The BAE leg of the investigation was started in 2000 and it was stopped in 2003. The investigation was stopped because they could not find any evidence indicating any corrupt payment relating to BAE. He was informed by Colonel du Plooy about facts contained in the previous paragraph.

[2923] At the DSO Colonel du Plooy did not deal with the BAE leg of the investigation.

[2924] When recommending to his senior, General Dramat, that the investigations should be closed, he explained the practical difficulties they were going to face should they continue with the investigation.

55. Colonel Johan du Plooy

[2925] Colonel du Plooy is a Colonel in the South African Police Service attached to the Anti-Corruption Task Team (ACTT), Directorate for Priority Crime Investigations.

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[2926] He started working in the SA Police in 1988 and in January 2001 joined the Directorate of Special Operations (DSO) or the Scorpions as they were called. In July 2009 the Scorpions were disbanded and he went back to the police. For a short period he was in the Serious Economic Offences Unit, and when the Anti-Corruption Task Team was established, he was appointed a group and team leader of the task team.

[2927] Since September 2010 after the closure of the BAE and GFC investigations, he was allocated other work. The investigation of the SDPP no longer formed part of his scope of work.

[2928] He was able to testify about the BAE and GFC investigations that took place several years ago. He was involved in the BAE investigation from 2007 to 2010. He also became involved in the GFC investigation from 2009 onwards.

[2929] The DSO started its investigations in 2000. The DSO had a multi-disciplinary approach to its investigations. Investigators worked in conjunction with advocates and where necessary other experts were also engaged. Amongst others, forensic chartered accountants and analysts were used.

[2930] The DSO had an appointed project manager as well as an advocate to head a specific leg of the investigations. They would also have designated DSO investigators who worked with them as a team.

[2931] The prosecutor(s) guided the investigation in consultation with the team members, which included the DSO investigators, the forensic auditors and analysts. Monthly meetings were held and where necessary more than one meeting were held in a month.

[2932] In August 2001 he was requested by Advocate Gerda Ferreira who was the project manager in the SDPP investigation to assist with certain seizure operations regarding the Shabir Shaik-leg of the investigation, involving the combat suite. The search and seizure operations took place in

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South Africa, France and Mauritius. He was involved with the SDPPS investigations from 2001 up to 2007/2008.

[2933] He was also involved in the investigation of ADS, which was the BEE partner of Thomson's.

[2934] He was appointed in the GFC leg of the investigation in 2008/2009 when they received information from the Germans and saw newspaper articles about possible bribes.

[2935] Advocate Gerda Ferreira was the project manager of the SDPP investigations since 2000. The investigations included the GFC and the BAE legs.

[2936] The BAE investigation was part of the preparatory investigation announced in 2000, and he became involved in the investigation during 2007.

[2937] His involvement in the BAE investigations included drafting an application for a search and seizure; sharing information with and being part of a joint investigation with the SFO, London, UK; conducting the search and seizure; and obtaining further evidence in South Africa and abroad.

[2938] After the closure of the DSO in June/July 2009, he was transferred to the SAPS where he continued the investigation on the BAE and GFC legs.

[2939] After the closure of the DSO he regularly attended meetings with Major General Meiring, the National Head of the Commercial Crimes Unit in the SAPS, in order to obtain advice on how to proceed with the investigations.

[2940] He later sent the case docket to the Specialised Commercial Crimes Unit of the NPA for the NPA to form an opinion as to whether or not to investigate the matter further and whether or not to institute criminal proceedings.

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[2941] In a letter of 14 September 2010, the Deputy Director of Public Prosecutions expressed a view that the investigations in both legs of the investigations were not complete and put forward certain suggestions on how to proceed with the investigations. She expressed a concern about the delay in finalising the investigations.

[2942] In a memorandum dated 16 September 2010, addressed to Major General Meiring, he suggested that the BAE and GFC investigations should be closed. He advanced various reasons to support his suggestion. *Inter alia*, he said no direct evidence of corrupt payments could be identified.

[2943] On 21 September 2010 Major General Meiring submitted a memorandum to Lt General Dramat, Head: Directorate of Priority Crime Investigation. In the memorandum Major General Meiring was recommending that the BAE and GFC investigations should be closed. Major General Meiring advanced various reasons why the investigations should be closed.

[2944] When dealing with the BAE leg of the investigation, Colonel du Plooy said amongst others: '*No direct evidence of corrupt payments could be identified in respect of the BAE leg.*' He further said: 'There is currently no prima facie evidence against any person.' In the same memorandum he also said: 'The reason mentioned in the BAe case is also applicable to the German Frigate Consortium case.'

[2945] He was designated in August 2001 to investigate the GFC and as said earlier that investigation was closed together with the BAE investigation in 2010.

[2946] At the time of the closure of both the BAE and GFC investigations, no evidence had been found which indicated that corrupt payments were made.

[2947] He did not have any direct evidence which indicated that the Inter-Ministerial Committee or Cabinet was unduly influenced when making recommendations and decisions on who the preferred bidders were.

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[2948] He had a suspicion that they could have been unduly influenced, though he conceded that he had no facts to support this.

[2949] They could not obtain in an official manner the reports from the German investigators. He did not investigate the allegations contained in the reports.

[2950] During his investigations, he did not interview any member of the various evaluation teams. He did not know whether Mr Chippy Shaik influenced any of the decisions taken at a level higher than SOFCOM. He only had a suspicion that he might have influenced the making of decisions. What he could say was that the German documents alleged that Mr Chippy Shaik was paid \$3 million to assist GFC to win the contract.

[2951] He did not have evidence indicating that Mr Chippy Shaik influenced the process at any level.

[2952] He did not have any evidence which indicated that Advocate Fana Hlongwane influenced any decision at any level. There was also no evidence which indicated that Advocate Hlongwane gave the late Minister Modise any money in order to influence the awarding of the contracts. He also did not have any evidence which indicated that Advocate Hlongwane paid money to any official in order to improperly influence the awarding of the contracts; or exerted improper influence on any official.

[2953] They did not interview any members of the Inter Ministerial Committee.

[2954] He had discussions with General Meiring. General Meiring informed him that since there was no prima facie case against anybody in either the BAE or GFC leg of the investigations he (Colonel du Plooy) should write a memorandum to him and give reasons why the investigations should be closed. He prepared the memorandum. He agreed with the memorandum drafted by General Meiring.

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[2955] He has given the Commission all the documents he thought relevant. He had gone through some of the documents relating to BAE in the containers stored at their premises and could not find anything significant in those documents.

[2956] The documents were initially in strongrooms and when SAPS took over the DSO Gauteng offices, he had to move those documents to the containers to make space for the SAPS. They were not properly indexed, except the documents relating to the Shaik matter.

[2957] Documents relating to the BAE and GFC investigations were not indexed. He agreed with General Meiring that it was difficult to find a document in the containers.

[2958] In 2004 he met Mr Andrew Feinstein in London. He attempted to obtain an affidavit from Mr Feinstein but he was unsuccessful. At that time they went overseas to obtain evidence relating to their investigations. Mr Feinstein told them that he was not going to assist them with their investigations.

[2959] He had read the book by Mr Feinstein and the newspaper articles written about the book. He was surprised that Mr Feinstein, who refused to co-operate with them, had now written a book about the SDPP. He had never spoken to Mr Holden. He did not know what his connection to the SDPP was.

[2960] He was informed that Mr Chippy Shaik testified that he had never received any bribe money, but he could not dispute that as they never followed up the allegations.

[2961] Under cross-examination he was referred to his written statement where he said the following:

'I have a folder on my computer marked 'Information from Germany,' which contains documents the origin of which I cannot recollect as it could either be from Adv Downer who has received it from Mr Richard Young, or journalists of the Mail &

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Guardian or perhaps from SI Isak du Plooy and/or Adv Steynberg.'

[2962] He commented and said:

'All I am trying to do is to say I cannot recall who sent it, how we received it because it was unofficial, but I have this information that I feel is important for the Commission to know about.'

[2963] He spoke to Advocate Downer who said he also could not recall where they got the document. He said maybe they got documents from Dr Richard Young or from the journalists employed by the *Mail & Guardian* newspaper.

[2964] He denied that when he met with Dr Richard Young he showed him a few pages of the alleged German investigators reports.

[2965] He further said that the documents in the containers were put there during 2010. The documents were perused by members of the investigating team before they put them in the containers.

[2966] At the time that he wrote the memorandum to General Meiring, there were no documents in the containers indicating any wrong-doing on the part of anybody who was involved in the SDPP.

[2967] No other documents were placed in the containers after the investigations were closed.

[Chapter 5: continued in volume 3]

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

A. INTRODUCTION

[1] Based on its own inquiries and the evidence submitted to it, the findings of the Commission are presented in this Chapter. The sequence follows the Commission's six objects as set out in its terms of reference. For ease of reference, the objects are repeated in full:

'1. The Commission shall inquire into, make findings, report on, and make recommendations concerning the following, taking into consideration the Constitution, relevant legislation, policies and guidelines:

1.1 The rationale for the SDPP.

1.2 Whether the arms and the equipment acquired in terms of the SDPP are underutilised or not utilised at all.

1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all:

1.3.1 if they have, the extent to which they have materialised; and

1.3.2 if they have not, the steps that ought to be taken to realise them.

1.4 Whether the off-sets anticipated to flow from the SDPP have materialised at all and:

1.4.1 if they have, the extent to which they have materialised; and

1.4.2 if they have not, the steps that ought to be taken to realise them.

1.5 Whether any person(s), within and/or outside the Government of South Africa, improperly influenced the

award or conclusion of any of the contracts awarded or concluded in the SDPP procurement process and, if so:

1.5.1 Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and

1.5.2 Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.

1.6 Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.'

B. FINDINGS

1 THE RATIONALE FOR THE SDPP

[2] The *Reader's Digest Oxford Complete Wordfinder* defines the word 'rationale' as follows: '*the fundamental reason or logical basis of anything.*'

[3] The word 'rationale', when read in conjunction with the other terms of reference of the Commission, means the professed reasons and legal justification for the SDPP.

[4] When considering the rationale for the SDPP, one has to consider whether the reasons to purchase the equipment in question were justifiable.

[5] Section 227(1) of the Interim Constitution, which was applicable at the time of the launch of the SDPP, described the function of the SANDF as:

- Service in the defence of the Republic and the protection of its sovereignty and territorial integrity
- Service in compliance with international obligations of the Republic with regard to international bodies and other states
- Service in the preservation of life, health or property
- Service in the provision or maintenance of essential services

- Service in the upholding of law and order in support of the South African Police Service, and
- Service in support to any department of State for the purpose of socio- economic upliftment.

[6] Section 200 of the Constitution of the Republic of South Africa, 1996, reads as follows:

- '(1) The defence force must be structured and managed as a disciplined military force.*
- (2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.'*

[7] Section 201(2) of the Constitution provides that:

- 'Only the President, as head of the national executive, may authorise the employment of the defence force*
- a. in co-operation with the police service;*
 - b. in defence of the Republic; or*
 - c. in fulfilment of an international obligation.'*

[8] The Constitution provides that the SANDF may be employed in a range of 'non-military' activities, including disaster relief, the provision and maintenance of essential services, search and rescue, evacuation of South African citizens from high threat areas and the protection of maritime and marine resources.

[9] Section 18(1) of the Defence Act 42 of 2002 provides that:

'In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for services inside the Republic or in international waters, in order to –

- (a) *preserve life, health or property in emergency or humanitarian relief operations;*
- (b) *ensure the provision of essential services;*
- (c) *support any department of state, including support for purposes of socio-economic upliftment; and*
- (d) *effect national border control.'*

[10] Section 19 provides that the Defence Force may be employed in co-operation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic.

[11] Section 22 provides that the Chief of the Defence Force under certain circumstances may authorise the use of any military aircraft of the Defence Force or any warships of the Defence Force or any member of the Defence Force for the purpose of enforcing any provision of South African law at sea.

[12] Section 28 provides that a warship or military aircraft of the Defence Force must render assistance to any person found at sea in danger of being lost, or render assistance to any other ship which might require assistance.

[13] Section 29 provides that the Defence Force may in certain circumstances assist in combating the violation of laws of foreign states.

[14] Section 93 provides for the service of members of the Defence Force in fulfilment of international obligations and conditions attached to such service.

[15] South Africa has international commitments, particularly on the African continent, to support operations under the auspices of the United Nations and other organisations—such as the OAU/AU and SADC—that involve military resources.

[16] The White Paper on Defence recognises the function of the SANDF in peace support operations. It says:

'As a fully-fledged member of the international community, South Africa will fulfil its responsibility to participate in international peace support operations'.

[17] The SANDF has the additional task of protecting the coastline and marine resources of the Republic.

[18] Paragraph 2 of Chapter 13 of the Defence Review stipulates that:

'2. The White Paper on Defence, as approved by Parliament on 14 May 1996, states that the SANDF will be a balanced, modern, affordable and technologically advanced military force, capable of executing its tasks effectively and efficiently ...

2.1 The government will not endanger the lives of military personnel through the provision of inadequate or inferior weapons and equipment.

2.2 The SANDF has to maintain a core defence capability because of the inherent unpredictability of the future. Such capability cannot be created from scratch if the need suddenly arises. The maintenance and development of weapon systems is necessarily a long term endeavour.

2.3 Deterrence requires the existence of a defence capability which is sufficiently credible to inhibit potential aggressors. Although South Africa is not confronted by any foreseeable external threat, this capability cannot be turned on and off like a tap. It is therefore necessary to maintain a core defence capability. A core defence capability includes a balanced and sustainable nucleus with, amongst other features, the maintenance and, where necessary, the adequate and appropriate upgrading or replacement of equipment and weaponry.'

[19] General Gerald Malinga testified that the Strategic Objectives of the SANDF are:

- to defend and protect South Africa, its sovereignty, its territorial integrity, its national interest and its people
- to contribute to freedom from fear and want, including the promotion of human security both nationally and internationally, and
- to contribute to a better life for the people of South Africa.

[20] In order to carry out its constitutional mandate and other obligations thrust upon it, the SANDF had to have the necessary personnel and equipment. Without any of the two, the SANDF would not be able to carry out its mandate efficiently. This requires that the SANDF had to be adequately equipped.

[21] Rear Admiral Allan Graham Green testified that prior to 1994, much of the equipment of the then SADF was at the end of its life cycle. That was partly due to the arms embargo that was imposed on South Africa by the United Nations and lack of funds to upgrade some of its equipment. His view was shared by Rear Admiral Robert Higgs, Rear Admiral Philip Schoultz, Rear Admiral Derek John Christian, Brigadier General John William Bayne, Major General Gerald Malinga, Colonel Frank Kevin Sargent Viljoen and others.

[22] Rear Admiral Anthony Neville Howell testified that in the early 1990s, the SADF realised that its equipment was ageing and was concerned about 'block obsolescence' throughout the Defence Force.

[23] All three arms of service—the SAAF, the Navy and the Army—were of the view that there was a need to replace the ageing and obsolescing equipment.

[24] Admiral Green further testified that during the 1970s, 1980s and early 1990s the SADF recognised the need to rejuvenate its main equipment in order to be able to effectively carry out its mandate.

[25] When the SANDF was established, after the dawn of the new dispensation, it was clear to the SANDF that there was a dire need to renew its equipment.

[26] Mr David Griesel testified that prior to the approval of the SDPP acquisitions, Armscor was in the process of procuring various product systems on behalf of the DOD but before these procurement processes could be completed, they were suspended at various stages in 1997.

[27] Mr Griesel further testified that the DOD and Government decided that some of the individual procurement processes that were initiated by Armscor on behalf of the DOD prior to 1997 would be superseded by the package approach reflected in the SDPP. Prior to the SDPP the following acquisition programmes were underway:

- Light Utility Helicopters – an RFI had been issued
- A corvette/frigate programme that was initiated in 1992 became the subject matter of a review process initiated by the Cabinet in 1994-1995
- Advanced Fighter Trainer – an RFO was issued in May 1995 and a supplementary one in March 1996. The process was altered before the RFO was issued
- Submarines, in respect of which a Staff Target document was compiled in August 1996 for the replacement of the Daphne class submarines by Upholder class submarines.

[28] The above projects were administered in terms of the standard policies and practices of Armscor and the DOD until they were suspended.

[29] Former President Thabo Mbeki testified that when they came into Government in 1994, they realised that the SANDF required additional equipment. He further said that they also realised that the previous Government was on the verge of signing a contract to buy four corvettes for the Navy from Spain.

[30] The seven programmes that constituted the SDPP emanated from the Defence Review, which identified 14 required equipment types, seven of which were deemed to require foreign participation. The remaining seven were considered to be of such a nature that they could be developed or manufactured by the local South African industry with the possible cooperation with foreign partners.

i. The SA Navy

[31] For many years prior to 1994, the Navy operated large ships, the last of which were frigates. At the time they had three frigates (a small ship is a 400 ton ship and a frigate is a 2 500 ton ship). When the frigates were taken out of service in 1985, due, *inter alia*, to the fact that they had reached the end of their design life, the Navy was left only with small ships or strike craft.

[32] It was therefore necessary for the Navy to restore its capability to patrol South African's territorial waters and exclusive economic zone by acquiring new corvettes with helicopters and by replacing the 33-year old Daphne submarines.

[33] In the 1970s the Navy started upgrading its frigates. It took up to seven years to upgrade one frigate.

[34] The Navy also started a process of acquiring corvettes—1 200 tons at the time—from France. The corvettes were smaller than frigates but larger than strike craft. It was necessary for it to increase the number of ships because when there are three ships one can only be guaranteed to have one ship ready to use at any given time, because the other two would be in various stages of maintenance.

[35] The project of acquiring the corvettes from France failed because of the United Nations Security Council's mandatory arms embargo imposed against South Africa in 1977.

[36] The Navy initiated upgrade programmes of the frigates but the attempt failed and the frigates were decommissioned in 1985.

[37] Admiral Schoultz testified that the need to replace the frigates was first raised in 1980. In that year, the Navy decided that there was a need to acquire six vessels during the period 1987 to 1991. These new vessels were going to replace the frigates. The Navy wanted to acquire frigates since they had better capabilities than strike craft.

[38] According to Admiral Higgs, Mr Robert Maxwell Vermeulen (Programme Manager Naval Systems Division, Armscor), and other witnesses, at the time the SADF had three Daphne class submarines which they acquired from France. They were built in France and commissioned in 1971/1972.

[39] According to Mr Vermeulen, in the mid-1990s the submarines were reaching the end of their economic lifespan and they had to be replaced. Admiral Higgs further said that they were becoming increasingly difficult and expensive to support. It was envisaged that by the year 2005 it would no longer be cost-effective or possible to maintain them to the required level of operational effectiveness and safety. The usual design life of a submarine was about 30 years. The last of the Daphne submarines was decommissioned towards the end of 2004.

[40] It is significant to note that in the mid-1970s, the Navy had another two French-built Agusta submarines on order. As a result of the arms embargo they were not allowed to come to South Africa.

[41] As already said, when the SDPP was initiated, the SANDF was facing 'block obsolescence'.

[42] The process of acquiring larger vessels and submarines comes a long way. Throughout the years, acquisition of equipment has always been in the mind of the South African Navy. Warships have a lifespan of approximately 30 years. A process of acquisition can take up to 10 years and consequently a process of acquiring replacement vessels should start when the vessels are 20 years old.

[43] The force design that was in the implementation phase in the 1970s included five submarines, namely the three Daphne coastal submarines and two medium range Agusta submarines. A project to acquire four new submarines for delivery in the 1990s was approved but later cancelled.

[44] The Navy also had nine vessels known as strike craft. They were 400-ton ships and were the only combatants left once the frigates were decommissioned. The strike craft were not suited for tasks around our coast, which is very rough. They were small vessels with various disadvantages. The first one was built in 1977 and the last in 1986. They were nearing the end of their lifespan.

[45] The strike craft are still operational today. They are now considered to be offshore patrol vessels rather than surface combatants.

[46] Admiral Higgs testified that in order to maintain an army which is capable of fulfilling its constitutional mandate there has to be continuous maintenance and renewal of its equipment.

[47] South Africa's exclusive economic zone includes the sea surrounding the mainland as well as the Prince Edward Islands and totals 1 535 538 km², 314 501 km² more than South Africa's land mass. The integrity, safety and security of these waters are the direct responsibility of the Navy, which requires the capacity to ensure these effectively. The Navy's surface ships form an integral and vital part of this capacity.

[48] Admiral Higgs further testified that South Africa's maritime jurisdiction is extensive. In relative terms the maritime area was three times that of the landed area. The economic zone of the Republic is vast and the core force is modest. The maritime environment to be covered by the Navy is immense and to cover that area with three submarines and four frigates was modest.

[49] When the SDPP was announced, the Navy had a desperate need to replace the equipment that had either aged or had been retired. The frigates had been taken out of service and the submarines were engaged in an upgrade programme.

[50] As stated earlier, Mr David Griesel, Acting General Manager of the Armscor Acquisition Department, testified that prior to the SDPP, Armscor was in the process of procuring various product systems on behalf of the DOD but before these processes could be completed they were suspended at various stages in 1997. It was later decided by the DOD that the individual procurement processes that had been initiated by Armscor prior to 1997 would be superseded by the package approach reflected in the SDPP.

[51] As mentioned before, prior to the SDPP the following acquisition programmes were underway:

- Light Utility Helicopters – an RFI had been issued
- A corvette/frigates programme, initiated in 1992, had been the subject matter of a review process initiated by the Cabinet in 1994-1995
- Advanced Fighter Trainer – an RFO had been issued in May 1995 and a supplementary one in March 1996, which process was altered before the RFO was issued; and
- In respect of the submarines, a Staff Target document was compiled in August 1996 for the replacement of the Daphne class submarine by the Upholder class submarine.

[52] The above projects were administered in terms of the standard policies and practices until they were suspended.

[53] The acquisition process is time consuming and can take up to ten years. This is the reason that caused the Navy to start a process of acquiring new equipment long before the equipment they had in their inventory reached the end of its life cycle. Most of their equipment was due to be decommissioned in 2004.

[54] After the Defence White Paper and the Defence Review the concept of 'packages' was conceptualized and became Government policy. The Defence White Paper contains the policy framework and the guidelines are given by the Defence Review. The Defence Review is a much more detailed

document than the White Paper. It contains various options of the required equipment.

[55] The 1996 White Paper on Defence set out the defence policy of Government. It followed a very inclusive process and interaction and consultation between, amongst others, the DOD and Parliament's Joint Standing Committee on Defence. The White Paper was finally tabled in Parliament in May 1996 and was endorsed by all political parties represented in parliament at the time.

[56] Members of the public and non-governmental organisation also made inputs to the formulation of the White Paper on Defence.

[57] The Defence Review process began in March 1996 and was completed in 1998. It was a very inclusive consultative process as well. The White Paper called for a review in order to elaborate on its policy framework through comprehensive and long-term planning on matters such as posture, doctrine, force design, force levels and armaments.

[58] The main purpose of the Defence Review was to provide a comprehensive basis on which arms purchasing decisions and defence policy could be based. It was approved by both the Cabinet and Parliament in May 1998.

[59] The first part of the Defence Review dealt with the structure, functions and force design options for the SANDF in the future.

[60] When formulating the various force design options, amongst others the nation's vast territorial expanse, extended borders and maritime jurisdiction were properly taken into account. In addition, South Africa's Defence Cooperation Agreements with other countries and its international commitments, particularly in the African region, to support operations under the auspices of the United Nations and other organisations such as the OAU/AU and SADC, were also considered.

[61] It was recognised that the defence capabilities and expertise that were lost would take a longer time to re-establish than the period during which a military threat could emerge, and that maintenance of that capacity and expertise as part of deterrence was prudent (see paras 8.5 and 8.6 at p 11 of the Defence Review).

[62] In Chapter 8, the Defence Review developed four alternative force design options. After some debate and in May 1998, the Cabinet approved Option 1, although the SANDF favoured Option 2. The Cabinet's decision was basically the adoption of the outcome of the Defence Review, which was a rigorous and inclusive process and which ended with an endorsement by all political parties in Parliament.

[63] The total projected cost of Option 2, favoured by the SANDF, was much higher than the projected cost of Option 1. In certain areas, the number of units of equipment contained in Option 2 was higher than the number of units of equipment mentioned in Option 1. The number and type of equipment eventually acquired under the SDPPS was much lower than that recommended in either Option 1 or 2 of the SANDF Force Design Alternatives of the Defence Review. It was also less than what the SANDF thought needed to be acquired.

[64] Thus, the SDPP resulted in the acquisition of less equipment than what was recommended as being necessary to constitute a core force. No quantity of any equipment acquired in terms of the SDPP was more than the quantities mentioned in Options 1 and 2 of the force design contained in Chapter 8 of the Defence Review.

[65] As mentioned earlier, the Defence Review identified seven types of equipment that the SANDF required, including helicopters, submarines, fighter jets and warships. Options 1 and 2 in Chapter 8 of the Defence Review recommended, *inter alia*, 48 fighter aircraft (16 Light Fighters and 32 Medium Fighters); 96 transport helicopters, 12 combat support helicopters, 4 submarines and 4 corvettes.

[66] A Preliminary Staff Requirement 1/99 for the submarines was submitted in November 1999 and formed the baseline against which the new submarines were eventually acquired under *Project Wills*. This took place after the Cabinet had already announced that South Africa was to acquire three submarines.

[67] Normally, the Staff Requirement preceded procurement packages. Approval of the Staff Requirement for the acquisition of the 3 submarines announced by the Cabinet was sought by the Chairperson of the AACB in a Memorandum dated 6 January 2000.

[68] The late submission of the Staff Requirement was a deviation from the normal process, although it was not fatal as the need for the acquisition of new submarines was identified much earlier.

[69] The last Daphne class submarine was decommissioned towards the end of 2003. Both the White Paper and the Defence Review confirmed the requirements for a submarine capability and recommended that four submarines were needed.

[70] Frigates or corvettes are the workhorses of any navy, whilst submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value.

[71] The Navy, through the SDPP, acquired four frigates of 120 meters in length and about 3 500 tons in weight and three Heroine class 209 submarines. Frigates are capable of conducting autonomous, sustained operations in virtually any sea conditions. Until recently, our surface combatant was the very small patrol vessel. It was also a vessel that was becoming rapidly obsolete, and they had to be replaced. The Meko or the Valour class frigates we received effectively replaced the frigate capability acquired in the mid-1950s.

[72] Submarines and the frigates complement each other in capabilities. The three submarines that were acquired under the SPDDs are SAS

Manthatsi, SAS Charlotte Maxeke and SAS Queen Modjadji. They replaced the Daphne submarines that were becoming obsolete and very difficult and expensive to maintain.

[73] The three submarines arrived in South Africa on 7 April 2006, 27 April 2007 and 22 May 2008 respectively. As stated earlier, it was envisaged that the Daphne submarines would probably be decommissioned by the year 2005, but they were actually decommissioned in 2004. This means that for a period of approximately two years the SANDF did not have the capabilities offered by submarines.

[74] The three submarines acquired under the SDPP were less than the number recommended as being necessary to constitute a core force.

[75] The four frigates that were acquired under the SDPP are *SAS Amatola, SAS Spioenkop, SAS Isandlwana* and *SAS Mendi*. They arrived in South Africa during November 2003, January 2004, February 2004 and September 2004 respectively.

[76] It is worth noting that the frigates that were acquired by SADF were decommissioned in 1985 and the new frigates that were acquired under the SDPP arrived in the country from November 2003. The SADF and the SANDF were without the capabilities offered by frigates for a period of approximately 18 years,

[77] From the above information it is abundantly clear that the SANDF had to acquire frigates under the SDPP in order to replace the frigates that were decommissioned in 1985, and to acquire under the SDPP new submarines to replace the ageing Daphne class submarines which were reaching the end of their lifespan. At the time of the SDPP process, the Navy's submarines were 27 and 29 years old and were due for replacement.

[78] The capabilities offered by frigates and submarines are critical to the ability of the SANDF to successfully carry out its mandate. The frigates provide a surface combat capability which is critical to the Navy and the SANDF, which capability is necessary to provide proper maritime service.

The submarines, because of their inherent stealth capabilities, are necessary as a strategic deterrent weapon system. These capabilities are the essential tools that the Navy and SANDF require in order to carry out the mandate of the SANDF.

ii. The SA Air Force

[79] Brigadier General John William Bayne, Director of Combat Systems, and other senior officials of the SANDF testified that the SAAF had maintained a three-tier training system throughout its history.

[80] The initial wings training was done on the piston-engine Harvard and jet-engine Impala MK1 aircraft. The SAAF flew the Harvard for 50 years, which is much longer than the norm of between 25 and 30 years. The SAAF got the MK 1s between 1950 and 1967, which were used mainly for air-to-ground and air-to-air training.

[81] After the initial training, the selected aircrew would go to Combat Flying School for fighter training on the Impala MK 1 aircraft (jet trainers) and then fly the Sabre, which was later replaced by the Impala MK II (light fighter aircraft) as a stepping stone before completing training on the Mirage III.

[82] Although the Impala MK II was a training aircraft, it was also used as a collateral light fighter, doing various tasks which it could perform safely and very effectively. However, it was not designed to be a fully operational aircraft. The Impala jet trainer was acquired from 1966 and it was reaching the end of its economic lifespan.

[83] After flying the Impala jet trainer, the aircrew would be posted to any one of many operational squadrons to fly Mirage III, Mirage F1 (an update of the Mirage III), Canberra and/or Buccaneer types.

[84] The Mirage F1 became the frontline fighter of the Air Force. There were two versions, one called the FCS, a dedicated air-to-air aircraft, and the other, an air-to-ground aircraft, designated the AZ.

[85] The Canberra, which served in a bombing role, was introduced into the SAAF in 1963 and served until 1990. The Buccaneer, a large bomber aircraft, which was introduced in 1965, had bombing capacity and also played a role in reconnaissance activities.

[86] In 1980, the SAAF introduced the Cheetah, an upgrade of the Mirage III, done jointly by the Israeli aircraft industries and the South African local industry.

[87] All these types of aircraft were procured from various countries and companies throughout the seventies and eighties, a period when the sanctions were becoming more and more effective. The process of acquiring equipment is an ongoing one and as equipment is about to reach the end of its lifespan, a project for the replacement of the equipment is undertaken.

[88] Air forces have become an integral part of most balanced defence forces worldwide, participating jointly with armies, navies and special forces.

[89] In the late eighties, wars in the region receded and peace talks ensued. The Defence budget was cut drastically in the early nineties and many squadrons closed down and a lot of aircraft was phased out. These included the Canberra, Buccaneers, Mirage I and some Impala and Cheetah aircraft. Certain Impala and the Cheetah aircraft were fulfilling the bombing and fighter roles. The Cheetahs were medium fighters and the initial idea was to replace them with a medium fighter.

[90] General Bayne and General Malinga testified that just before phasing out the Sabre aircraft in 1980, the SAAF had around 350 jet trainer, fighter, bomber and reconnaissance aircraft. Today, all in all the SAAF has only 52 fighter aircraft, which is a mere 15% of the number of aircraft the SAAF had in the 1980s.

[91] Through the years the SAAF was using a three-tier training system. At some stage it considered a two-tier system due to costs and not due to operational requirements. After further consideration, it was decided to revert

to the three-tier training system as it was found that the three-tier system was more beneficial than the two-tier one.

[92] General Malinga testified that in the sixties and early seventies the SAAF acquired the first jet bomber and reconnaissance aircraft. The SAAF also acquired 57 MIR III variants from Dassault in France. He further said that Armscor and the local industry in co-operation with the Israeli aircraft industry embarked on a programme to upgrade the SAAF's Mirage III aircraft. As we have seen earlier, the result of these efforts was the Cheetah. Three variants of Cheetah aircraft were delivered to the SAAF between 1986 and 1994.

[93] The second level in the Air Force design of the three-tier training system was the Impala MK I and MKII, and the third line was the frontline fighters, namely the Cheetah D and F and Mirage F1.

[94] The Mirage F1 was phased out in 1997.

[95] There were no funds to do a midlife upgrade of the Impala MKI and MKII in order to extend their service life. The Cheetah D dual-seater had been in operation in the Air Force since 1986. It was planned to stop flying these aircraft in 2008.

[96] The Cheetah C, a fighter solo aircraft had been in operation in the Air Force since 1963 and they could be utilised until 2012. The Cheetahs C and D were old frames and the original aircraft were bought in 1963, 1964 and 1965. Throughout their life cycle they received the necessary midlife upgrades and even beyond that.

[97] The Impala MKI (dual-seater) and MKII (single-seater) came into SAAF's service progressively from 1966 up to and including 1975. No mid-life upgrade was done on these aircraft due to lack of funds. It was planned to phase out the Impala fleet between 1997 and 2004.

[98] The SAAF had to retire these aircraft because of safety concerns.

[99] General Bayne testified that the Hawk LIFT was purchased as part of the SDPP to replace the fleet of Impala aircraft and the Gripen ALFA was purchased to replace the Mirage F1 and Cheetah fleet. The Impala fleet was ageing, with a lifespan of up to the latest 2003, while the remaining Cheetah fleet was estimated to have an upgrade-life until 2008 for the dual seater and until 2012 for the single seater.

[100] The Alouette III helicopter entered service in the SAAF progressively from 1984 onwards. No mid-life upgrades were done because of lack of funds. The Alouettes were the basic platform for training young pilots to fly helicopters.

[101] It is clear that there was an urgency to replace major air systems in the SAAF, and its priority for replacement of its major air systems was identified in the early 1990s.

[102] The SAAF was facing block obsolescence.

[103] The replacement of equipment such as aircraft could take up to 10 years. It is undesirable to allow any gap, and consequently there is a need to start planning long before the existing equipment comes to the end of its lifespan.

[104] Studies were conducted in respect of the Advanced Fighter Trainer (AFT) and the Medium Fighter and these studies indicated that the Medium Fighter capability would be completely unaffordable within the national budget. The latter was then substituted by the Advanced Light Fighter Aircraft (ALFA) and a lead-in-fighter trainer (LIFT).

[105] The main objective of *Project Winchester* (LIFT) was to acquire aircraft that could replace the ageing Impala MKI and MKII.

[106] The purpose of *Project Ukhozi* was to acquire aircraft that could replace the Cheetah C and D and Mirage FI with modern advanced light fighter aircraft.

[107] In 1997 another Defence budget cut resulted in the further reduction of fighter aircraft. The impact of the budget cut was, *inter alia*, that the Mir FI AZ, some Cheetahs and more Impalas were phased out.

[108] In the mid-nineties, a debate began over the replacement of the rapidly ageing Impala and the upgraded Cheetah fleets. Among others, Lt General Willem Hechter, Chief of the SAAF from May 1996 to February 2000, testified that the Impala fleet needed to be replaced by latest 2003 and the upgraded Cheetah medium fighter fleet by 2008 (the dual-seater) and by 2012 (the single-seater).

[109] The SANDF's idea in 1996 was to replace the Impala fleet with 48 Advanced Fighter Trainers (AFT) and the Cheetah fleet with 32 Future Medium Fighters (FMF).

[110] The Harvard basic-trainer fleet was replaced with the Pilatus Astra fleet in the mid-nineties. The acquisition of the Pilatus was a project on its own and not part of the SDPP. The Astra was used for the basic training of all young pilots in the Air Force up to wing standard.

[111] The White Paper on Defence of 1996 and the Defence Review of 1998 respectively mandated the SAAF's air defence capability to include two frontline squadrons of 32 FMFs, a light fighter squadron of 16 AFTs and a Combat Flying School of 22 AFTs. The 22 AFTs would be required for training. That meant a total of 70 aircraft.

[112] Further budget cuts in 1997 meant that the SAAF had to lower its sights in terms of the performance class of the future frontline fighter, hence the requirement for an Advanced Light Fighter Aircraft (ALFA). The FMFs are more costly than the ALFA, and they are much larger aircraft. There was then a deviation from the initial force design in several respects.

[113] The initial training would still be on the Astra, followed by the LIFT and then the ALFA.

[114] General Bayne further testified that numerous options were considered by the SAAF between 1994 and 1997 and the final solution arrived at, namely 28 ALFA and 24 LIFT, were driven by cost rather than need because of the various competing priorities of the Government. The number of aircraft required was reduced from 70 to 52.

[115] Project processes were carried out for the ALFA and LIFT, and the Gripen and Hawk were selected in November 1998 by the Government as the preferred equipment to satisfy the SAAF's combat system requirements. The Hawk aircraft were delivered to South Africa from May 2006 over 12 months and the Gripen from April 2008 over 30 months. As stated earlier, the Hawk replaced the fleet of Impala aircraft while the Gripen replaced the Mirage F1 and Cheetah fleet of aircraft.

[116] The official handover to the SAAF of the Hawk system was in 2012 and some project activities are still to be completed by 2015. The Gripen system is still in the final stages of handover to the SAAF and this is also estimated to be completed by 2015.

[117] General Bayne further testified that the Gripen is the SAAF's only full fighter-capability aircraft, while the Hawk is primarily a fighter trainer with a considerable level of collateral operational capability in low threat environments.

[118] As stated earlier, the Impala fleet needed to be replaced by latest 2003 and the upgraded Cheetahs had to be replaced from 2008 onward.

[119] The Hawks were delivered approximately three years after the date on which the Impalas had to be replaced. The Gripen were delivered in the year in which the Cheetahs had to be replaced.

[120] Dr Richard Young, on the other hand, alleged that it was unnecessary to commence with the acquisition of the Gripen to replace the Cheetah C in 1997 because:

- The Cheetah C had only formally been taken into service in the SAAF in 1997, and
- The Cheetah C had a remaining lifespan of at least 15 years that could have been extended to 20 or even 25 years.

This was also the view of Mr Steyn.

[121] Mr Terry Crawford-Browne testified that the acquisition decision was made by the Cabinet despite objections by the leadership of the SAAF and the SA Navy, including the former Secretary for Defence, Mr Pierre Steyn. He further said that the SAAF did not need fighter jets as they had 50 Cheetah aircraft, some of them still in their crates.

[122] The abovementioned allegations by Dr Young and Mr Crawford-Browne are not supported by any evidence and are in fact incorrect.

[123] General Hechter, former Chief of the SAAF, testified that both the Cheetah C and D aircraft had been in operation in the SAAF since 1986 and that the frames and the wings of the aircraft were produced in 1963/1964. They were upgrades of the Mirage III aircraft by Israeli industries together with SA local industries.

[124] General Hechter further testified that it was planned to stop flying the dual-seat Cheetah D in 2008 and the single-seat Cheetah C in 2012. General Hechter's evidence was supported by the evidence of General Malinga and other high-ranking officials of the SAAF.

[125] Dr Young and Mr Crawford-Browne's assertions are not consistent with overwhelming oral and documentary evidence tendered by various officials from the SANDF and Armscor, including high-ranking officers in the SAAF. Their allegations are also not consistent with the Defence Review, particularly Chapter 8 thereof. The various types of armaments and units that were acquired under the SDPP were less than what the SANDF thought it required in order to carry out its mandate.

[126] The Gripen is the SAAF's only full fighter-capability aircraft, whilst the Hawk is primarily a fighter-trainer aircraft, but with a considerable level of collateral operational capability in low threat environments, and has growth in this role when operating in a package together with the Gripen.

[127] General Bayne said that the SAAF found both the Hawk and the Gripen to be acceptable aircraft. They meet the needs of SAAF and in fact have exceeded the expectations of the SAAF.

[128] The Gripen is utilised by Sweden and numerous other countries. Various countries, including the UK, Finland, India, Switzerland and Canada have the Hawk in their inventories.

iii. Helicopters

[129] The SAAF formed its first helicopter squadron in 1957. Over the years, the SAAF acquired various helicopters from a number of sources.

[130] All the helicopter pilots trained first with the Harvards at the Central Flying School. After graduating they were trained on the Alouette II before they proceeded to operational helicopters. The three-tier training system was maintained.

[131] The SAAF acquired 16 Super Frelon helicopters from France between June 1967 and November 1969. They were used as heavy lift helicopters.

[132] General Malinga and Brigadier General Pieter Burger testified that in 1962 the SAAF started taking delivery of Alouette IIIs that became the standard light utility helicopters. Further consignments of Alouette IIIs followed in 1967 and 1975.

[133] The Alouette III was used as the basic helicopter trainer after the Alouette IIs that were acquired in 1961 were phased out in 1974. The Alouette III was at a later stage also used for advanced training on the helicopter side.

[134] General Burger testified that the Super Frelon was phased out in 1989 and the LUH replacement project for the Alouette III was initiated in 1992. The replacement of the Alouette III was already a registered SAAF requirement before the SDPP.

[135] The Alouette replacement study indicated that the replacement required 60 units as opposed to the 118 Alouette IIIs that were earlier acquired by the Air Force. Its force design and the Defence Review also specified that 60 LUHs should be acquired to replace the Alouette III.

[136] The SAAF had on its inventory other helicopters, such as the Oryx (a medium lift helicopter), the Rooivalk (a combat support helicopter), and the Super Lynx 300 that was acquired in 2007 and is used as a maritime helicopter.

[137] General Malinga, Colonel Viljoen and General Burger testified that the Alouette IIIs had been in service since 1962 and were becoming more difficult to operate, as costs were increasing and the helicopter was limited in its operational utilisation. Colonel Viljoen further testified that it came to the attention of the SAAF that there were indications that the manufacturers, Eurocopter, were about to discontinue the spares production line of the Alouette III. This meant that even if consideration was given to extend the lifespan of the Alouette III, it was not going to be possible to acquire spares when the need arose.

[138] As stated in the previous paragraph, the Alouette III was acquired in 1962. There was an investigation into the possibility of upgrading or replacing the Alouette III, which was already in service for about 30 years. The study revealed that it would not be advisable to upgrade the Alouette III. A User Requirement Statement was then prepared that dealt with, amongst others, the anticipated utilisation of the LUH. One of the requirements of the Alouette III replacement aircraft was that it had to be suitable for basic helicopter training as the Alouette was used for basic helicopter-flying training.

[139] It is important to have a helicopter trainer, so that the SAAF can train helicopter pilots in order to supply pilots to other systems as and when the need for new pilots arises.

[140] Colonel Viljoen testified that the RFO that was issued on 13 February 1998 was for 60 units. The number of units required stemmed from the study that was carried out in 1992 when it was determined that in order to satisfy an Alouette replacement, a quantity of 60 units would be required as opposed to the 118 Alouettes that were acquired earlier by the SAAF.

[141] Mr Johan Odendaal, Senior Manager Technical at Armscor, testified that on 16 May 1996, Staff Target 03/95 of 29 January 1996 was approved for the replacement of the Alouette III fleet of aircraft that was operated by the SAAF since 1962.

[142] After intense evaluations were carried out in November 1998, the Cabinet announced that the Agusta company had been selected as the preferred supplier for the Alouette III replacement. The Agusta A109 replaced the Alouette III. Thirty units were acquired.

[143] The three-tier training system is still in place. The basic flying training happens on the Astra (Pilatus PC7) aircraft at Central Flying School. Trainees who graduate and are earmarked for the helicopter line, are then trained on the LUH A109, and when they qualify they move on to the Oryx Medium Transport Helicopter (MTH).

[144] The first LUH was delivered in 2005 and the last in September 2009. General Burger testified that the LUH fulfils an important role in enabling the SANDF to carry out its mandate. He further said that the LUH is a very useful item of equipment to have on the inventory.

[145] The approved force design option (which emanated from the White Paper on Defence and the Defence Review), made provision for amongst others 12 combat helicopters, 5 maritime helicopters and 96 transport helicopters.

[146] General SZ Shoke, Chief of the SANDF, testified that at the time the various types of equipment were acquired under the SDPP, the country needed those capabilities and indeed others to supplement the SANDF's capabilities and to replace its ageing equipment that was approaching redundancy. The armaments purchased under the SDPP were and remain essential to the SANDF to enable it to carry out its constitutional mandate. Other senior officials of the SANDF who testified before the Commission were of the same view. Most of them have been in the SAAF and SANDF for several decades and they are experts in their various disciplines.

[147] Admiral Robert Higgs testified that aircraft provided aerial coverage and a rapid response capability that ships and submarines cannot equal. There is a complementary relationship between these types of equipment and the neglect of any one of them has a disproportionate effect on the overall defence capability.

[148] General Shoke further said that he did not agree with the notion that the country faced no threat. Amongst others, there is always a threat to the country's marine economy, which cannot be protected without a Navy that is adequately equipped for the purpose and could also fulfil other needs which require the utilisation of the SANDF's equipment.

[149] Various other important activities that the equipment acquired under the SDPP is utilised for include border control, crime control, peace-keeping and peace-enforcement missions in other African countries, piracy control on both the West and East coasts of Africa, humanitarian missions, and protection of the important Cape trade sea route. Piracy has increased the use and importance of the Cape sea route, which needs to be protected.

[150] General Shoke further said that in his view the current SANDF equipment is not sufficient to enable the SANDF to fulfil its constitutional mandate and to honour its international obligations. The SANDF needs to incrementally add to its current capabilities.

[151] The DOD's experts testified that the equipment acquired under the SDPP constituted the minimum or core requirement without which their constitutional mandate could not be fulfilled. A modern navy and air force was required to defend and protect the territorial integrity of the nation's land, the territorial waters and the exclusive economic zone.

[152] The SANDF still requires additional equipment as the SDPP covered only a portion of the full requirements. General Malinga and other senior officers of the SANDF expressed the same view. This was echoed by Mr David Griesel of Armscor, who testified that in many cases the quantities of the equipment actually acquired were much lower than the quantities mentioned in the RFOs. This was caused by affordability difficulties.

[153] It is clear that it was important for the DOD to acquire equipment under the SDPP. The equipment acquired enables the SANDF to carry out its constitutional mandate more efficiently.

[154] General Malinga testified that by the mid-1980s the Defence budget was 4,7% of GDP and it was approximately 25,7% of total government expenditure. He further said that today the defence budget is approximately 1,2% of GDP and about 16% of total government expenditure. The expenditure on defence is very modest when compared to what percentage of GDP other countries spend on defence.

[155] Mr Terry Crawford-Browne maintained that there was no need for the acquisition. The acquisition was motivated by the offsets. He further said that the armaments were acquired because of bribes and not because of any defence requirements.

[156] The allegation made by Mr Crawford-Browne is baseless and is not supported by any evidence and consequently it must be rejected.

[157] From the above, it is clear that if the SDPP was not undertaken, most of the equipment of the SANDF would have been obsolete by the early 2000s. What would have been left was also fast approaching the end of their lifespan. This would have seriously hampered the SANDF in their efforts to

carry out their constitutional mandate and international obligations of peace support, peace keeping, and the like.

[158] As stated earlier, General Malinga, the current Deputy Chief of the SAAF, said that the SDPP did not address all the required capabilities of the SANDF. General Shoke, the Chief of the SANDF, expressed the same view. He said that the SANDF still requires additional equipment as the SDPP covered only a portion of the full requirement.

[159] It was necessary and desirable for the Government to acquire, on behalf of the SANDF, the equipment it procured under the SDPP. The need to acquire some of the equipment was long overdue.

1.2 WHETHER THE ARMS AND EQUIPMENT ACQUIRED IN TERMS OF THE SDPP ARE UNDERUTILISED OR NOT UTILISED AT ALL

[160] Rear Admiral Alan Green testified that the utilisation of the armaments is not limited to the airtime flown by the aircraft or the sea-hours spent by the ships. In addition, the assets are utilised for the rotational training of pilots, submariners and other personnel. Force preparation is also a form of utilisation of the equipment.

[161] Admiral Green further testified that maintenance cycles must also be taken into account. Proper maintenance of the equipment would not require that all the ships must be at sea at the same time or that all the aircraft must be in the air at the same time.

[162] Admiral Philip Schoultz testified that the various maintenance periods or cycles are also included in the term 'utilisation'. When a ship is not operational it does not mean that it is not utilised, as at times it needs to be prepared, maintained and rejuvenated.

[163] Admirals Green and Schoultz and others further testified that budget and operational needs also enter into the equation. Long-term storage of equipment is part of a process of utilisation when one has to manage the life cycle of assets in terms of the available resources.

[164] Funding has an effect on utilisation of assets as well, because utilisation may be planned in terms of a certain funding profile. If that funding profile is less than anticipated, the SANDF is forced to reduce the utilisation cycle. Utilisation was planned on the basis of the allocated funds.

[165] The multinational exercises that the Navy and the SAAF participate in with other countries, also involve technical staff, artisans and engineers. During such exercises the technical staff, artisans and engineers have an opportunity to observe and learn from foreign crews, artisans and engineers performing similar functions. Such exercises are valuable and are an important form of utilisation.

[166] General Shoke testified that the equipment acquired under the SDPP is being used effectively, a fact that can be demonstrated by, amongst others, the use of the equipment to protect and secure major events that took place in the country, such as the 2010 Soccer World Cup, World Economic Forum meetings that were held in our country and many other major events.

[167] Members of a defence force must have confidence in their equipment for their morale to be high. If there is only old and redundant equipment the morale would be low.

[168] The SANDF still need additional equipment as the SDPP provided only a portion of the required equipment. The equipment acquired in terms of the SDPP is well below what the force design of 1998.

[169] The primary role of the SANDF is to be prepared to deter any external hostilities and to deal with conflict. Having corvettes and submarines operationally available is also a form of utilisation. Similarly hours flown by the aircraft serve as a deterrent so that the aircraft are in a sense being utilised to fulfil the primary goal of the SANDF.

i. Frigates

[170] In his testimony, General Pieter Burger said that the primary role of the SANDF is to prepare itself to deter any external hostilities. He further

said this is required even though the possibilities of such external hostilities in the foreseeable future may seem extremely remote.

[171] Having ships and aircraft ready to be deployed when the need arises is a form of utilisation. The availability of the equipment acts as a deterrent to potential aggressors.

[172] Admirals Higgs and Schoultz, amongst others, testified about the frigates and submarines in the inventory of the SA Navy, the importance of frigates and submarines, their utilisation and their capabilities.

[173] The frigates are South Africa's frontline naval surface combatants. Admiral Higgs described the role of frigates in maritime defence as follows in paragraph 11 of his statement:

'Maritime warfare is multi-dimensional and effective maritime defence requires balanced air, surface and sub-surface capabilities. Surface vessels can conduct sustained operations, maintaining a "presence" unequalled by other systems, and have substantial capabilities in countering aircraft, other surface vessels and submarines. Frigates or Corvettes are the workhorses of any navy. They are capable of conducting sustained operations in sea conditions like those off the South African coast.'

[174] The frigates and submarines are utilised in various activities by the Navy, such as peace-keeping and peace support operations, humanitarian and relief activities, and guarding and patrolling our economic natural resources, including the important Cape trade sea route.

[175] Admiral Higgs testified that, taking into account the South African maritime economic zone and other functions performed by the Navy, the investment in the Navy was modest. South Africa's trade sea route, its dependence on sea trade and its maritime area make maritime defence important for the survival and well-being of the economy.

[176] As mentioned earlier, the four frigates—SAS *Amatola*, SAS *Spioenkop*, SAS *Isandlwana* and SAS *Mendi*—arrived in South Africa between November 2003 and September 2004. They are capable of conducting autonomous, sustained operations in virtually any sea condition.

[177] The frigates have been utilised since 20 April 2005. Between April 2005 and 2013, they have spent some 1 932 days operationally deployed, engaged in the conduct of joint or multi-national exercises or in other ordered commitments (such as hydrographic survey, search and rescue operations). The mentioned number of days does not include days used for safety checks, internal use or training. 1 932 is the total number of sea-days that the four frigates were deployed, which means that they spent 241,5 days at sea per annum.

[178] Activities in which the vessels were utilised internally within the fleet in order to prepare them for generating the abovementioned number of days, include safety and readiness checks. In the case of the frigates this can take up to 19 weeks to complete.

[179] The planning of the utilisation of equipment by the Navy consists of two components, namely force preparation, on the one hand, and force employment, on the other. Force preparation is what the Navy needs to do in order to ensure that the vessels are prepared adequately for force employment. Force employment, in turn, is directed by the Government.

[180] The actual deployment of the equipment depends, to a very great extent, on the Government's needs or directions. The Navy's projected use of the equipment is arrived at after an environmental analysis and is done in terms of sea-hours and not sea days. The Auditor-General directed that the performance of the frigates and submarines should be indicated in hours and not in days as there was some ambiguity about what constitutes a day.

[181] The projected or planned number of hours at sea is affected also by the budget.

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[182] Admiral Green testified that according to the Navy's plan from 2006 to June 2014, the frigates would spend 87 584 hours at sea. Eventually, they were deployed at sea during the said period for 38 647 hours, which amounts to 44% of the planned hours.

[183] The Navy has always been able to deploy a vessel when directed to do so. The actual number of hours that the frigates were deployed is less than the planned hours, simply because the need for their deployment was less than the planned hours of deployment.

[184] To date, the frigates participated in some 24 operations, 25 joint and multinational exercises and five other ordered commitments. The operations ranged from goodwill visits to countries such as Brazil, Nigeria, China, India, Vietnam, Singapore, Tanzania and Mauritius, to East and West Coast patrols, anti-piracy patrols in the Mozambique Channel, rescuing injured sailors off Tristan da Cunha, safeguarding of the 2010 Soccer World Cup, and drug runner interdiction to the escort of a vessel carrying nuclear waste.

[185] The exercises the frigates participated in were with the navies of Argentina, Brazil, France, Germany, India, Mozambique, Namibia, the United States of America and Uruguay, as well as with the NATO Standing Maritime Group One.

[186] Exercises were conducted off the Southern African coast, off the South American coast and off La Réunion in the Indian Ocean.

[187] During force preparation, the asset is utilised. Force preparation is a mandate of that unit or service. Primarily, though, utilisation depends on where the Government orders the SANDF to utilise its forces.

[188] At the moment, there is a guideline with regard to the various levels of capability of the frigates. It stipulates that the Navy must have one frigate at what is termed a functional level of capability, in other words one frigate must be fully fit for its war-fighting role. Another frigate must be at the basic level of capability, which means it can perform a number of tasks, but not necessarily a full war-fighting role. One frigate must be at a seagoing level of

capability, so that it is safe to go to sea and do limited tasks, and one frigate at no level of capability. The last-mentioned frigate would classically be the vessel that is in a major refit or maintenance period.

[189] The above measures are both cost- and needs-driven. Admiral Schoultz testified that it would be prohibitively expensive to keep all four frigates at their full level of capability all the time, so that the planned and the actual utilisation will be influenced by both costs and the needs that actually arise.

[190] Mr Terry Crawford-Browne alleged that SA acquired the four frigates that are reportedly equipped with defective engines and obsolete combat suite and armoury systems. This alleged report is not supported by any oral or documentary evidence. In our view the said report is false and must be rejected.

[191] On each occasion where the Navy has been called upon to assist in an operation or exercise, it has been able to do so successfully whilst remaining within the constraints of the allocated budget.

[192] When the time spent utilising the frigates for independent training and exercises that are necessary to prepare the vessels and crew for such operation is taken into account, it is fair to conclude that the corvettes are well-utilised.

ii. Submarines

[193] According to Admiral Higgs, submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value. He proceeded (paragraph 13 of his statement):

‘Submarines provide a highly credible threat to any potential enemy or aggressor and are extremely effective covert surveillance platforms. The presence of submarines vastly complicates the freedom of operation as well as force composition of any aggressor, regardless of his strength or

potential. Submarines serve as very subtle instruments for the projection of power over long ranges. Their presence need not be known, but even so they are used across the full spectrum of activity, from peacekeeping through escalating tension and crisis to war.'

[194] Submarines and frigates complement each other in capability.

[195] It was mentioned earlier that the three submarines were delivered to South Africa between 2006 and 2008: SAS *Manthatisi* arrived at Simonstown in April 2006, SAS *Charlotte Maxeke* in April 2007 and SAS *Modjadji* during May 2008.

[196] Since the transfer of the submarines to the Navy, they have spent about 807 days operationally deployed, and were engaged in the conduct of joint or multi-national exercises or in the initial delivery, trials and training. This relates to the period 2006 to 2013. The number of days does not include safety and readiness check days.

[197] The principles applicable to the utilisation of the frigates apply equally to the utilisation of the submarines.

[198] Admiral Green testified that for the period 2006 to June 2014 it was planned that the submarines would be deployed for 47 275 hours. The actual hours of deployment were 18 269, which is about 40% of the planned hours.

[199] The reason for the lower number of hours deployed than the hours planned for, is that the submarines were required to be deployed for fewer hours. In other words, the utilisation of the submarines has been less than originally envisaged as a result of requirement rather than availability.

[200] At all times when the Navy was instructed to deploy the submarines, they were able to do so.

[201] Admiral Green further testified that the actual hours mentioned above refer only to deployment and not to force preparation. As stated earlier, force

deployment depends on need and not the force preparedness to be deployed.

[202] The principle as far as the utilisation of submarines is concerned, is that when two of them are kept operational in a cycle, one would be reserved or will be undergoing maintenance. The period of such maintenance or refit is approximately 30 months and takes place approximately every eight years. At the moment there are instructions as to how many submarines must be at a functional or full level of capability, a safe or seagoing level of capability, and at no level of capability.

[203] As mentioned earlier, a similar principle is applicable to the utilisation and level of functionality of the frigates.

[204] Admiral Schoultz testified that before the submarines could be fully utilised it was necessary to conduct certain trials. He further said that it was also necessary for new personnel to be trained to crew the submarines, as many submariners had come to the end of their careers with the demise of the Daphne class submarines.

[205] The submarines have been utilised for the purpose of training the commanding officers.

[206] The submarines have conducted 16 operations that included East and West Coast patrols, two anti-piracy patrols in the Mozambique Channel, and two patrols to Marion Island. They also participated in safeguarding the Soccer World Cup 2010.

[207] The submarines further participated in about 26 joint and multinational exercises with the navies of Argentina, Brazil, Germany, India, Namibia, the United States of America, Uruguay as well as the NATO Standing Maritime Group One. Most of the exercises were conducted off the South African coast but one of our submarines also attended exercises in Namibia and Brazil.

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[208] Multinational exercises allow South Africa continuously to hone its skills and assess its war-fighting capability as well as to keep up with worldwide trends in submarine and anti- submarine warfare.

[209] Admirals Higgs and Schoultz testified that *SAS Charlotte Maxeke* was deployed to the Marion and Prince Edward Islands group to protect fishery resources and to gather intelligence in relation to South Africa's extended continental shelf claim. *SAS Queen Modjadji* is regularly deployed, particularly up the East Coast, and has also been involved in naval excises with visiting navies.

[210] The submarines have also been utilised, along with the corvettes, in anti-piracy operations in the Mozambican Channel.

[211] As indicated, the utilisation of the submarines was less than anticipated. According to Admiral Schoultz, this was a result of need rather than availability. The Navy prepares the forces and make them operationally available for utilisation, should the need arise. The submarines were prepared but the occasions on which they were required to conduct operations were fewer than what the Navy had been prepared for. They were available but there was no need to utilise them to the expected extent.

[212] Rear Admiral Christian, Director Naval Logistics, testified that the Type 209 Heroine class submarines the SANDF acquired are much larger and better than the Daphne submarines. They enable the Navy to fulfil its mandate more effectively and efficiently.

[213] Still dealing with utilisation, over the period 2005 to 2013, the SA Navy has trained some 4 042 personnel (647 support personnel, 1 191 technical personnel and 2 204 combat personnel). It is from these trained people that the frigates, submarines and other vessels have been crewed.

[214] Despite this investment in training, critical shortages are still being experienced in mechanical engineering mastering mainly because once qualified, staff are 'poached'. As a result of this, it has not been possible to staff each ship and submarine fully with qualified personnel at all times,

although it has been possible to ensure that the laid-down minimum seagoing standards are maintained.

[215] The Navy receives instructions on how many submarines should be at a functional level of capacity and capable of performing a war-fighting function, how many must be at a seagoing level of capability, and how many should be at no level of capability to allow for extensive maintenance on the vessel.

[216] The same principle is applicable to the frigates.

[217] It was never the intention of the SA Navy that all submarines and all frigates should be operational at all times.

[218] During his testimony, Admiral Schoultz said:

'I believe that the strategic packages are well justified, they are necessary and I've tried to indicate how we have used them in training to hone our skills, how we've used them with other friendly nations to jointly hone our skills and how we are currently deploying them in fulfilment of some of the mandated tasks; therefore I have no doubt that it was a good decision by government to give South Africa this capability.'

[219] He further said that despite the budgetary constraints, the naval vessels acquired in terms of the SDPP have fulfilled all their mandated obligations.

[220] Mr Crawford-Browne, on the other hand, said that South Africa acquired submarines that spend most of the time on the 'hard rock' at Simon's Town.

[221] This statement is contradicted by the evidence of various naval officers.

[222] There is no factual basis for the averment made by Mr Crawford-Browne and therefore the averment is false and is accordingly rejected.

[223] The frigates and submarines are capable of performing the functions that require the utilisation of a frigate or a submarine. They are always available to be utilised if required. Admiral Schoultz testified that having ships and submarines operationally available can also be construed as utilisation. If a potential aggressor is aware of the capabilities of the SANDF, this will act as a deterrent. This view is shared by other senior officials of the Navy and the SANDF.

[224] Admiral Schoultz further said that every request that was directed to the Navy was complied with and there is no instance where they were unable to supply forces when requested to do so.

[225] The training provided by the Navy contributes positively to the skilling of our people and to some extent contributes to the reduction of unemployment.

[226] Despite challenges in terms of budgetary constraints, the naval vessels have fulfilled all of their mandated obligations.

iii. Light Utility Helicopters (LUH)

[227] Brigadier General Pieter Burger, Director Helicopter Systems, testified about various helicopters in the inventory of the SAAF, the acquisition of new helicopters, the training of pilots and the utilisation of the Agusta light utility helicopters (LUHs).

[228] The LUH is being deployed to units where the Alouette III previously served. Its deployment did not require any major infrastructure development.

[229] The LUH plays an important role in deterring external hostilities, rescue operations, and assisting other services and Government Departments to carry out their tasks.

[230] The LUH is also utilised as the basic helicopter for training air crews. The training on the LUH prepares trainees better to fly bigger platforms like the Rooivalk and the Lynx.

[231] The LUH fulfils various roles, both during conflict situations and peacetime, including various humanitarian services to local communities and other countries, such as Mozambique and the DRC.

[232] Among the roles of the LUH are the following:

- Supporting the South African Police Service in the maintenance of internal stability
- Supporting the other services of the SANDF
- Assisting both local and foreign Government Departments in accomplishing their tasks or missions
- Supporting the maintenance of regional stability and the rendering of aid
- Supporting the South African Police Service in crime prevention operations in order to reduce the local crime rate
- Supporting the Department of International Relations and Cooperation in carrying out national foreign policy
- Conducting rescue missions in mountainous terrain, at sea and in disaster situations.

[233] The helicopters are continuously utilised in a collateral role.

[234] Thirty A109 LUH helicopters were delivered between 2005 and September 2009, when the last one was received.

[235] The SAAF Helicopter Section had three accidents and the LUHs are down to 27. These catastrophic accidents occurred over a period of seven years.

[236] General Burger testified that the LUHs had since their acquisition participated in various exercises and operations, such as air force exercises with other arms of service, securing the 2010 Soccer World Cup competition, army border protection and control, anti-rhino poaching operations, supporting the National Parks Board in nature conservation, supporting the South African Police in crime prevention operations, rescue missions, and supporting the Department of International Relations and Cooperation.

[237] The LUHs have flown over 18 000 hours since entering service in 2005. It was initially planned that they would fly 6 000 fleet hours per year, which, given the build-up of the fleet, would amount to about 40 000 hours to date. They have flown almost half the expected hours.

[238] Generals Burger and Pelsler testified that the LUH fleet flew fewer than the expected number of hours for the following reasons:

- They did not receive all the aircraft at the same time. They received them at different times, the first in 2005 and the last one in 2009
- Austerity measures did not allow them to fly at all the times they were supposed to fly
- Some of the damaged aircraft have not flown for some time.

[239] General Burger further testified that the current resources available to the helicopter system are insufficient to achieve full and sustainable operational status. Sufficient resources must be made available to achieve this objective.

[240] The helicopters have always been available when required. They are utilised for the tasks which require the capabilities of LUHs and the SAAF is satisfied with the capabilities of the LUH A109.

iv. Hawk and Gripen

[241] Brigadier General John William Bayne, the Director of Combat Systems in the SAAF, testified about the acquisition process of the Hawk and Gripen aircraft, their capabilities and their utilisation. Resources and requirements of the Hawk and Gripen systems fall under his supervision.

[242] Both the Hawk and Gripen are capable of assisting other services and Government Departments with, amongst others:

- Support to the South African Police Service, the SA Army, the SA Navy, Special Forces, Defence Intelligence and joint and multinational exercises and operations
- Command and controls

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- Surveillance
- Border control
- Search and rescue
- Communication support.

[243] The SAAF, in the Staff Requirements, estimates the average flying hours per year, and working on flying hours per year as a baseline per type of aircraft, predicts all its costing and funding-resources planning. In doing these exercises the average lifespan of an aircraft is estimated at 30 years.

[244] The final number that was introduced in the User Requirement Specification was that the Hawk was designed to fly 4 000 hours a year and the Gripen 3 000 hours.

[245] General Bayne testified that the current fleet of 26 Gripens and 24 Hawks are adequate to meet the needs and requirements of the SAAF.

[246] Fighter air and ground crews have been well-trained and developed and are capable of operating and maintaining the aircraft. The SAAF has trained engineers and other support staff to service and maintain the aircraft. They have a fully-fledged Air Service Unit.

[247] All aircraft have to be serviced either after a number of flying hours or according to calendar. The Hawk is on calendar and the Gripen is on flying hours. The airframe on the Hawk is calendar-based but the engine and the avionics are time-based, which is much better because when the aircraft is not flown it does not have to be serviced.

[248] Major portions of the Hawk and Gripen maintenance and repairs are done on the premises of the SAAF or by the local industry. Only a small portion of repairs and maintenance is done offshore.

[249] Brigadier Bayne testified that their records indicate that as far as the Hawks are concerned, between 2005 and 2012 the budgeted hours were 11 305 and the actual flown hours 10 527.

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[250] The variance between the budgeted and flown hours was as a result of availability of the aircraft and funding.

[251] Both the budgeted hours and the actual flown hours increased from one year to the other because of various factors, mainly funding. In some years, such as 2007, 2010, 2011 and 2012, the flown hours exceeded the budgeted hours. In the years 2006, 2008 and 2009, the actual flown hours were slightly less than the budgeted hours.

[252] The increase in the flying hours was as a result of the threat level, extra funding and the tasks that the Hawks were required to undertake.

[253] General Bayne further testified that their records dealing with the Gripen indicate that the budgeted hours that were to be flown by the Gripen between 2008 and 2012 were 2 525, while a total of 3 523 hours were actually flown.

[254] In the year 2008, the flown hours exceeded the budgeted hours as a result of extra funding that was provided. In 2009 the flown hours were less than the budgeted hours as a result of a lower number of available aircraft. In 2010 the flown hours were almost double the budgeted hours. This was the result of extra funding and the increased demand for the services of the aircraft, mainly because of the 2010 Soccer World Cup.

[255] It is worth noting that the Hawk and Gripen were utilised extensively to ensure the safety of the 2010 Soccer World Cup. This task was carried out successfully. The flown hours exceeded the planned flying hours during that period.

[256] In 2011 and 2012 the flown hours were more than the budgeted hours. This was as a result of more money made available for fuel and not for spares.

[257] All the aircraft have flown, some more than others. As stated earlier, the number of hours that are flown depends, to a significant extent, on funding and demand for the services of the equipment.

[258] Currently they have an adequate number of pilots on the Hawk to feed the Gripen, and the training of their crew is continuing although it is at a lower level because of budgetary constraints.

[259] General Bayne testified that since 2005 both aircraft have participated in many SAAF, joint SANDF and multi-national exercises, in and outside South Africa, as well as in certain specific SANDF operations, including with the land forces. More specifically, the Hawks and Gripens participated in joint and multinational exercises with the German Air Force, a multinational naval exercise with the Brazilian and Indian navies and a multinational exercise with seven SADC countries. They also participated in an exercise hosted by the Swedish Air Force in Sweden along with the Czech, Hungarian and Norwegian Air Forces.

[260] Two 'Flight Test Instrument' aircraft are being utilised for various test programmes and clearances at the SAAF Test Flight and Development Centre in Overberg.

[261] The performance of both aircraft systems has met the expectations of the SAAF.

[262] In his concluding statement, General Bayne said:

'The SAAF today has an excellent, well-balanced and well-equipped fighter system capability within the ideal three-tier system wherein the gap is higher between the first and second tier and relatively small between the second and third tier. The Hawk has also proven to have a cost-effective collateral operational capability, especially when packaged with the Gripen.'

[263] The version of the Hawk purchased by the SAAF represents a new generation of aircraft. It is equipped with a powerful Rolls Royce engine and has high level technology navigation and weapon delivery systems. Although the Hawk has certain fighting capabilities, its primary function is to train pilots to fly fighter aircraft.

[264] The Hawk is used in Australia, Bahrain, Canada, Finland, India, Indonesia, Kenya, Kuwait, Malaysia, Oman, Saudi Arabia, South Korea, the UK, Zimbabwe and Switzerland. It is a training aircraft of choice for many countries.

[265] Both the Hawk and the Gripen have exceeded the expectations of SAAF and the SANDF. According to General Bayne, they have been well-utilised since their delivery in line with the applicable security requirements and the funding allocations to the SAAF.

[266] Since delivery and up to 2012, the Hawk has flown almost the budgeted hours. The variance between the budgeted hours and the flown hours is minimal (778 hours), and is of no consequence. As stated earlier, the variance was mostly due to funding.

[267] On the other hand, the Gripen has flown more than the budgeted hours.

[268] General Bayne further testified that, since 2000, the SAAF has attended the Hawk User Group meeting with approximately 17 other air forces. The SAAF also participates in Gripen User Group activities. Six other air forces also participated.

[269] The user groups assist the SAAF by providing the opportunity to learn from the experience of other air forces that use the same or similar aircraft.

[270] Mr Terry Crawford-Browne testified that South Africa acquired the Hawk and Gripen fighter aircraft with almost no pilots to fly them, mechanics to maintain them or even money to fuel them.

[271] On the other hand, General Bayne, amongst others, testified that currently they have an adequate number of pilots on the Hawk to feed the Gripen.

[272] Amongst other witnesses, Major General Johan Daniel Pelsler, an engineer and Chief Director Force Development and Support (SAAF), testified that the SAAF has sufficient graduate engineers for 44% of the

posts and an adequate number of artisan and technical officers. He further said that the SAAF is capable of maintaining its fleet of aircraft.

[273] The averment made by Mr Crawford-Browne is not consistent with the evidence tendered before the Commission by various officials. The averments have no factual basis, are false and are therefore rejected.

[274] The SAAF has established a well-balanced and relatively well-equipped fighter system capability, comprising the ideal three-tier system. The gap between the first and second tiers is larger than that between the second and third tiers, consisting of the Hawk and Gripen respectively.

[275] From the abovementioned information it is fair to conclude that all the equipment acquired under the SDPP is adequately utilised. If extra funding can be made available to the helicopter system, it is apparent that the latter system will be utilised to the extent that was envisaged in the relevant Staff Requirement Specification. The utilisation to the envisaged extent will also depend on the extent of the need for their services.

[276] As stated earlier, senior officials of the SANDF are of the view that the SANDF still requires more equipment in order to enable it to carry out its mandate more effectively and efficiently.

[277] The SANDF has met all its obligations within the allocated budget for each period under consideration. It has done so in accordance with the principle that its operations must be 'needs-driven and cost-constrained.'

[278] The obligations of the SANDF comprise its constitutional mandate and various international obligations, as well as ordered commitments that will vary from year to year and will depend on the need. Given that it is not possible to predict with precision what the obligations in any given year will entail, it is not surprising that the actual utilisation of equipment may not always correspond with the planned utilisation.

[279] The Hawk has proven itself to have a cost-effective collateral operational capability. Both the Hawk and Gripen's capabilities have exceeded the expectations of the SAAF.

1.3 WHETHER JOB OPPORTUNITIES ANTICIPATED TO FLOW FROM THE SDPP HAVE MATERIALISED AT ALL:

1.3.1 IF THEY HAVE, THE EXTENT TO WHICH THEY HAVE MATERIALISED; AND

1.3.2 IF THEY HAVE NOT, THE STEPS THAT OUGHT TO BE TAKEN TO REALISE THEM

[280] In his opening address during the public hearings, Advocate Aboobaker SC said the following:

'On the basis of Mr Modise's address to parliament, the expectation raised was that the economy would benefit by R110 billion of new investment and Industrial Participation Programmes and that 65 000 jobs would be created. What was actually delivered by the SDPP in terms of offsets and jobs has therefore to be tested against this benchmark.'

[281] Mr Terry Crawford-Browne echoed the same sentiments in his statement.

[282] The above quoted statement is incorrect. The statement does not take into account how the projected or estimated investments and jobs to be created were arrived at. It also does not take into account the fact that what was ultimately acquired under the SDPP is less than what was initially planned. The fact that under the SDPP the SANDF acquired less than what was initially planned, affected both the anticipated amount of investment and the number of jobs to be created.

[283] The impact of the reduced amount of equipment and reduced quantities on the projected number of jobs to be created will be dealt with in this section. The impact of the reduced amount of equipment and reduced quantities on the anticipated investment will be dealt with in the next section.

[284] Dr Rustomjee testified that the DTI believed that the estimated number of jobs resulting from the NIP projects that had emerged from the original bid evaluation scores was achievable. He further said that Defence Minister Modise referred to some 65 000 potential jobs in a statement to Parliament in March 1999. This figure, he said, had emerged from the original 1998 NIP evaluation of projects proposed by the bidders.

[285] Mr Alexander Erwin and several other witnesses testified that the primary objective of the SDPP was to enhance the capabilities of the Defence Force in the discharge of its constitutional and legislative mandate. At the time of the conceptualisation of the SDPP, the Cabinet formed the view that it was in the best interest of the country to harness the opportunities for economic growth and development that these procurement packages presented.

[286] Mr Erwin further said that industrial participation, including job creation, was not used to justify a decision to purchase equipment, but was seen as a benefit that could be extracted from the SDPP.

[287] The initial number of jobs to be created, as announced by the officials, was based on projections or estimates contained in the business plans of the various potential obligors.

[288] Mr Johannes Bernhardus De Beer, Project Manager at Armscor, testified that after all the offers were evaluated in terms of value for DIP and NIP as at 20 November 1998, the evaluation results were submitted to the Inter-Ministerial Committee (IMC). The results were based on the original equipment quantities required, namely four corvettes, four submarines, 61 Light Utility Helicopters, 24 Lead-in Fighter Trainers, 38 Advanced Light Fighter aircraft and six maritime helicopters.

[289] It was projected that approximately 64 165 jobs would be created.

[290] The DOD made a presentation to the Cabinet prior to the Cabinet making a final decision. The presentation indicated that the SDPP would create the following number of jobs:

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Corvette Project	-	10 153
Submarine Project	-	16 251
LUH Project	-	4 558
Maritime Helicopter Project-		2 536
LIFT Project	-	7 472
ALFA Project	-	<u>23 195</u>
TOTAL	-	64 165

[291] Mr de Beer testified that the maritime helicopter project was not contracted concurrently with the other projects and the costs, IP values and projected number of jobs reduced. Since the maritime helicopter project was not proceeded with, it was anticipated that the remaining five projects would create 61 629 jobs (64 165 minus 2 536).

[292] Quantities of other equipment were reduced but the impact of the reduction was not significant on the estimated number of jobs to be created.

[293] As a result, the SDPP as contracted was expected to create 61 629 jobs.

i. NIP projects

[294] The South African National Industrial Participation Programme (NIPP) came into force on 1 September 1996. According to the NIPP Guidelines published by the DTI, the objectives of the NIPP policies are to:

- Ensure sustainable economic growth
- Facilitate access to new markets and establishment of new trading partners
- Encourage foreign direct investment into South Africa
- Increase exports of South African value added goods and services
- Encourage research and development collaboration in South Africa
- Contribute to job creation in South Africa
- Develop human resources in the country, and
- Ensure technology transfer to South Africa.

[295] All government and parastatal procurement with an imported content equal to or exceeding US\$10 million are subject to offset obligations.

[296] The seller or supplier who incurs an IP obligation will be required to participate in the South African economy in accordance with the NIPP. The projects or business proposals must be based on the principle of mutual benefit and business sense.

[297] The mission of the NIPP of the Republic of South Africa is stated as follows:

‘The mission of the Programme is to leverage economic benefits and support the development of the South African industry by effectively utilising the instrument of government procurement.’

[298] The function of DTI is therefore to trace all procurement values of or above US\$10 million in order to work out the offset obligations as a percentage of not less than 30% of the value of the imported content.

[299] The NIPP Guidelines set out the crediting methodology used to award NIP credits. NIP credits are awarded for each of the following:

- Sustainable economic growth: for every US\$1 revenue generated by the project over the fulfilment period, 1 NIP credit is awarded
- Export promotion: for every US\$1 export revenue generated, an additional 1 NIP credit over and above the one allocated for sustainable economic growth
- Job creation: for every US\$1 spent on salaries and wages over the fulfilment period, 1 NIP credit is awarded
- Training and development: for every US\$1 spent on training and development costs, 1NIP credit is awarded
- SMME promotion: for every US\$1 of work out-sourced to an SMME, 1 NIP credit is awarded
- Historically disadvantaged individuals: for every US\$1 spent on outsourcing to historically disadvantaged SMMEs, 2 NIP credits are awarded

- Investment: for every US\$1 invested on capital outlay, 2 NIP credits are awarded
- Research and development expenses: for all costs expended on research and development expenses, 2 credits are awarded for every US\$1 spent
- Technology transfer: 1 NIP credit is awarded for every US\$1 offered.

[300] The DTI managed the NIP projects flowing from the DSPP. In some projects they measured jobs created, but their main focus in managing the projects was based on the criteria mentioned in the contracts, namely awarding credits for investment, local sales and exports only.

[301] The criteria mentioned in the contracts made no mention of job creation. The projects were not measured on the number of jobs to be created, although the individual business plans would in some cases mention the jobs to be created. Sometimes the obligors would mention the number of jobs created in their claims documentation.

[302] In managing and monitoring the SDPP projects, the DTI relied on both the contracts and the NIP guidelines.

[303] Mr Masizakhe Zimela, Chief Director IPS in the DTI, and Mr Siphon Zikode, Deputy Director General of the DTI, testified that a report prepared by the DTI at the end of 2013 indicates that:

- BAE (Hawk and Gripen) projects created 22 422 jobs and saved or retained 5 768 jobs
- GFC (corvette platform) projects created 2 340 new jobs and saved or retained 920 jobs
- GSC (submarines) projects created 6 606 jobs and saved or retained 4 889 jobs
- Thales (combat suite) projects created 4 875 jobs and saved or retained 706 jobs

- Agusta (LUH) projects created 2 652 jobs and saved or retained 258 jobs.

[304] Mr Zimela testified that the information in their possession indicates that the various SDPP projects created 38 895 jobs (12 965 new direct jobs and 25 930 indirect jobs), and saved 12 541 jobs.

[305] It should be noted that according to DTI witnesses, they were not required in terms of the contracts to monitor the number of jobs created, and their main focus was on the three performance criteria, namely investment, local sales and exports. Consequently, the monitoring of jobs may not have been consistent.

[306] The term ‘jobs saved or retained’ is used in the case where, without the involvement of the obligor, a company or factory would have closed down and employees would have lost their jobs.

[307] Mr Zimela testified that the figure for jobs saved/retained is not an estimate but the actual figure.

[308] With regard to the number of jobs created, they obtained the figures from the obligors themselves and during the site visits at the various premises where the projects were carried out. Business plans were also used to extract the number of jobs created or retained.

[309] DTI witnesses referred to a project called the ‘Package Tourism Project’ that was undertaken in Port Elizabeth by one of the obligors. The project created new jobs that were never accounted for. The project caused a big number of tourists from Scandinavian countries to visit Port Elizabeth and other parts of the country.

[310] The initial number of jobs to be created was obtained from the business plans and during engagement with the obligors. It was not a requirement of the NIP Programme that obligors should indicate the number of jobs to be created.

[311] During his testimony, Mr Zimela said:

‘The “Jobs created” comes from two sources. There was never a requirement for the obligors to account for the jobs created but when we were doing the monitoring had review meetings every six months with the obligors. In some cases they would provide jobs for the projects, but in some cases they did not provide jobs, so we then went back to the business plans to arrive at the number of jobs created, where in the review reports there was no number of jobs created.’

[312] Mr Zimela further said:

‘The new indirect jobs were an estimate of what is the figure of indirect jobs. We economists use different figures to calculate indirect jobs, we have used a number of 2, like if you have 700 direct jobs, then you will have 1400 indirect jobs. The sort of multiplier for indirect jobs differ depending on the different sectors, each sector will have a different multiplier for indirect jobs. We took a decision to use 2 to calculate indirect jobs.’

[313] It is clear from the above statements that it is not possible to obtain an exact figure of direct and indirect jobs created. In the absence of exact figures, we have to work on the estimates provided to the Commission by the various witnesses.

[314] The failure to track or monitor the actual number of jobs created was occasioned partly by the fact that although job creation was regarded as an important element, it was not an evaluation element.

[315] The initial projections of number of jobs to be created were based on the projects initially submitted by the obligors. There were 38 initial projects, but not all of them were proceeded with, for a variety of reasons.

[316] The contracts allowed projects to be substituted, and when that happened, the number of jobs to be created also changed. Initially, the number of jobs to be created was estimated to be 61 629. The total number

of direct and indirect jobs created, saved or retained under the NIP Programme, is approximately 51 436.

[317] Mr Lionel Victor October also testified that the initial projection of the number of jobs expected to be created was based on the projects initially submitted by the obligors. He further said that initially there were 25 projects, but not all of them were proceeded with, for a variety of reasons.

[318] He confirmed other evidence that the contracts allowed projects to be substituted and when that happened, the number of jobs to be created also changed. Initially the number of jobs to be created was estimated at about 60 000. The number of jobs created saved or retained and indirect jobs created was 51 436, a figure which is not far off the initial projected figure of 60 000.

[319] Some SDPP projects are still continuing to date. They continue to create or retain jobs. Exports and local sales are still ongoing. For example, Ms Christine Guerrier, Vice President Dispute Resolution and Litigation for Thales, testified that the Thales Group had and still has other interests in South Africa where it employs more than 300 people at present.

[320] There are other successful projects, such as the already-mentioned Package Tourism Project in Port Elizabeth that created jobs that were never accounted for, for one reason or another. This implies that the number of jobs created or retained is much higher than the number recorded.

[321] Mr Zikode also testified about the Package Tourism Project. When tourists arrived in Port Elizabeth, young people would be employed as security personnel to ensure that the tourists were safe. The jobs thus created were never accounted for. Initially the tourists were going to Port Elizabeth, but later they went all over South Africa.

[322] He further said that this project caused about 244 000 tourists from Scandinavian countries to come to South Africa. According to him, it is accepted in the tourism industry that when 10 foreign tourists come to South Africa, one job is created. In fact, Mr Zikode said the following:

'[I]n terms of the number of tourists that came to South Africa, we have about 244 000 tourists if you add them up. To show that the numbers are simple, if you use a factor of 10, not 7, normally they said 7 tourists create a job; if you say 10 tourists create a job the potential for job creation for this project, which obviously I cannot prove, that is why we didn't even put here, this project created about 24 000 jobs alone, this project if you follow the logic which is out there in the market that 7 tourists create 1 job ... but I'm just being modest, I say 10 tourists now, let us say 10 tourists create a job, the potential jobs that were, or let me say, the jobs that were created roughly would amount to about 24 000. If you take 7 it goes to about 34 000 jobs. But we didn't want to put all these numbers here because if a person says "prove", that it's very difficult to prove.'

[323] As Mr Zikode has said, it is difficult to prove the number of jobs created as a result of the Package Tourism Project, but we believe that it is fair to infer that a reasonable number of jobs were created by this project.

[324] The probabilities are that the total number of direct, indirect and retained or saved jobs under the NIP Programme is much higher than the 51 436 jobs mentioned earlier.

[325] Mr October testified that they commissioned a number of independent audits of the SDPP programme, including an internal audit. He further said that some of the independent audits indicated that the benefits the country achieved from this programme were much more substantial than what the Department had indicated. The figures that the DTI gave the Commission were very conservative.

ii. DIP projects

[326] As stated earlier, it was projected that the SDPP projects both DIP and NIP—would create approximately 61 629 jobs, of which 16 000 were apportioned to DIP projects.

[327] Mr Daniel Burger, Acting Senior Manager of Armscor's DIP Division, testified that the creation of new jobs was never the rationale for having the DIP programme. The creation of new jobs was also not the main focus of the DIP programme.

[328] Prior to the SDPP, South Africa had over a number of years built up a substantial defence industry. For a variety of reasons, the defence industry started experiencing a decline in the demand for its products and services, and as a result jobs were negatively affected.

[329] The main focus of the DIP programmes in the SDPP was to secure as much business as possible for the local defence industry. That was the position before and after the SDPP.

[330] At some stage, the local beneficiary companies were requested to provide information regarding the impact of the DIP obligation on jobs, with specific reference to the number of jobs created or retained. The local beneficiary companies or the obligors were not duty-bound to provide the DIP Division with information relating to jobs created or retained.

[331] Mr Burger testified that the requests for information relating to the number of jobs created or retained were sent to local beneficiaries. According to the DIP Division's records, only about 80% of the local beneficiary companies responded. About 20% of the local beneficiary companies did not respond to the enquiries about jobs created or retained.

[332] According to the responses received by the DIP Division, 11 916 jobs were created or retained.

[333] As approximately 20% of the local beneficiary companies did not respond to the request of the DIP Division, the probabilities are that the number of jobs created or retained is much higher than 11 916.

[334] Mr Terry Crawford-Browne testified that of the 65 000 jobs that were promised, only 3 815 jobs actually materialised. This statement is not

consistent with the evidence of Mr Burger of the Armscor DIP Division and that of Messrs October, Zikode and Zimela of the DTI.

[335] The said averment by Mr Crawford-Browne is false and should be rejected.

[336] From the above information, it is apparent that the anticipated number of jobs to be created by the SDPP was achieved.

[337] As stated earlier, the recorded number of direct and indirect jobs created as well as the jobs saved, is 51 436 (NIP) and 11 916 (DIP). The probabilities are high that the number of jobs created by other projects, which are not recorded, is substantial.

[338] It is worth noting that Mr Simon Edge, Head of Industrial Participation of Agusta Westland, testified that despite the fact that they discharged their NIP obligations about seven years ago, some of the projects they introduced are still operating. They are still providing employment and export revenue. They are still creating both direct and indirect jobs.

[339] In its submission, dated 10 October 2012, SAAB indicated that to date some of their NIP projects are still operating in South Africa and they have employed 1 100 employees.

[340] It is fair to conclude that the SDPP projects created or retained the number of jobs that were projected. The SDPP assisted the country in creating or saving the much needed jobs.

[341] According to the evidence tendered before the Commission, some projects—both DIP and NIP—are still in operation, some projects are still generating both local and export sales, and they are still retaining jobs and possibly creating new jobs.

1.4 WHETHER THE OFF-SETS ANTICIPATED TO FLOW FROM THE SDPP HAVE MATERIALISED AT ALL AND:

1.4.1 IF THEY HAVE, THE EXTENT TO WHICH THEY HAVE MATERIALISED; AND

1.4.2 IF THEY HAVE NOT, THE STEPS THAT OUGHT TO BE TAKEN TO REALISE THEM.

[342] Mr Masizakhe Zimela, Chief Director: Industrial Participation Secretariat (IPS) in the DTI, testified that industrial participation (IP), also known as ‘offsets’, ‘countertrade’ or ‘reciprocal trade’, forms part of the South African Government’s industrial strategy, geared towards achieving the country’s developmental objectives.

[343] Mr Alexander Erwin, who was the Minister of Trade and Industry from 1996 to 2004, testified that offsets were negotiated in an effort to:

- stimulate economic growth and development
- promote investments and in particular foreign direct investment that would have broad spin-offs that would improve the socio-economic circumstances of the populace, and
- generally enhance South Africa’s ability to change the economic landscape that the democratic Government inherited.

[344] He further said:

‘It is imperative to emphasise that industrial participation was not used to justify a decision to purchase equipment. What is central to commercial negotiations is the concept of leverage, which implies that mechanisms are used to optimise the desired objectives.’

[345] Offset obligations require the suppliers of foreign goods or services to reciprocate with investments in order to ameliorate the negative effects of the procurement on the purchasing country’s economy and its balance of payments account.

[346] Mr Zimela testified that in their view, offsets were a special tool to be used to direct investments into certain priority areas of our economy where it was not easy to attract investors.

[347] Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that offset programmes are practised in over 100 countries worldwide, among them Canada, Norway and Australia, and require suppliers of defence or other major systems to governments to provide benefits to the economy in the customer country.

[348] Mr de Beer, Project Manager in the Command and Control Division of Armscor, testified that offset and countertrade are instruments of international business, based on government procurement. They are utilised by both developing and developed countries, such as Denmark, Sweden, Belgium, the United Kingdom, Spain, the United Arab Emirates and South Korea. He further said that in the Armscor environment, the practice of countertrade goes as far back as the 1960s. Between the period 1988 and 2000 (before the SDPP), the Armscor portfolio of countertrade agreements amounted to R5,4 billion, which agreements were successfully completed.

[349] Offset programmes are particularly favoured by customer countries where development of their defence industry is considered to be important.

[350] Mr de Beer testified that according to Armscor Policy Document A-POL-6100, the main objectives of DIP were the following:

- Retention and where possible creation of jobs
- Establishment of a sustainable and economic defence industry with strategic logistic support capabilities
- Promotion of defence exports of value-added goods
- Promotion of technology transfer and joint ventures
- Provision for a sustainable local defence industry capacity.

[351] Mr de Beer further said that the countertrade agreements lead to long-term arrangements between foreign suppliers and the local defence industry, the benefits of which were still in existence today.

[352] Projects to fulfil offset obligations are evaluated and approved by the IPS in conjunction with the IP Control Committee of the DTI. The monitoring carries on until the obligor has discharged all its obligations.

[353] During the RFI and RFO phases, the potential bidders were informed about the South African National Industrial Participation Policy and the obligations they might incur if they were chosen as the suppliers of certain equipment. The IP obligation of the preferred supplier, which had to equal the contract price of the equipment, was split into an NIP obligation of 50% and a DIP obligation of 50%. The NIP obligations were managed and monitored by the DTI and the DIP obligations by the DIP Division of Armscor.

[354] Mr de Beer testified that after receipt of the offers, they were evaluated in terms of NIP and DIP value systems. The results of the evaluations, based on the original number of units to be supplied, revealed that the projected IP (NIP and DIP) was R110,575 billion.

[355] The anticipated IP of each project was as follows:

Corvette project	-	R16 007 million
Submarine project	-	R30 274 million
LUH project	-	R 4 685 million
Maritime helicopter project		R 2 720 million
Trainer aircraft		R 8 850 million
Fighter aircraft		<u>R 48 313 million</u>
TOTAL	-	R110 575 million

[356] The maritime helicopter project was not proceeded with and therefore the R2,720 million estimate that was anticipated to flow from this project should be deducted from the total projected IP values. That leaves the figure of the projected IP value at R107,859 million.

[357] The presentation made to the Cabinet prior to the latter's final decision to proceed with the SDPP, indicated that the following financial benefits would flow into our economy:

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Investment	-	R 26 012 million,
Exports	-	R 59 180 million
Local sales	-	<u>R 25 387 million</u>
TOTAL		R110 579 million

[358] The total cost of the SDPP was estimated at R29 773,13 million, made up as follows:

Corvettes	-	R 6 001,25 million
Submarines	-	R 5 212,50 million
Utility helicopters	-	R 2 168,75 million
Maritime helicopters-		R 787,50 million
Trainer aircraft		R 4 728,13 million
Fighter aircraft	-	<u>R10 875,00 million</u>
TOTAL	-	R29 773,00 million

[359] The initial cost of the LUH helicopter was based on 61 units, but the number was reduced to 30. This implies that the anticipated IP to be generated by the LUH project should be reduced accordingly, and the result thereof is that the anticipated cost of 30 units was approximately R 2 342 million (which is 50% of R4 685 million).

[360] The outcome of the above exercise means that the total anticipated IP was reduced to approximately R104 975,91 million (R107 280 million minus R2 342 million).

[361] In order to arrive at the Rand values an exchange rate of US\$1 = R6,25 and €1 = R6,40 respectively was used.

[362] Obligors were required to submit proposals on how they would fulfil their IP obligations. Business plans were submitted. The plans were approved or rejected based on, *inter alia*, the principles of causality, additionality and sustainability.

[363] Mr Zimela testified that projects that were not sustainable for any particular reason had to be replaced by one or more projects of the aggregate value in order to fulfil the obligation.

[364] When monitoring the performance of the obligors, the approach was to look at the aggregate of all the projects submitted by an obligor in fulfilment of a particular obligation.

[365] The SDDP contracts stipulated that 1 NIP credit would be awarded only for each of the following:

- 1 US\$ investment
- 1 US\$ export sales
- 1 US\$ local sales

i. Defence Industrial Participation (DIP)

[366] Armscor is responsible for the execution and management of the DIP agreements or 'DIP terms'. The DIP obligations of the supplier equalled 50% of the contract price.

[367] The total DIP commitments negotiated with the preferred bidders came to a total of R15,326 billion and the NIP came to approximately R84,93 billion. The NIP obligations were administered in terms of the NIP Programme administered and managed by the DTI.

[368] Mr de Beer of Armscor testified that the DIP commitments achieved after negotiations were 27% higher than those contained in the original offers, despite the reduction in equipment quantities.

[369] Mr de Beer further testified that within the SDPP context, a total of 111 local companies were included in the DIP business plans, with a combined value of approximately R14,4 billion in 1999 economic terms. This represented close to 50% of the combined contract value of R29 billion in 1999 economic terms.

[370] Mr Burger of Armscor testified that various DIP terms were concluded with the various preferred bidders:

- GSC committed to DIP obligations amounting to €175 200 423
- GFC (corvette platform) committed to DIP obligations valued at €88 123 584

- Thompson CSF (combat suite) committed to a DIP obligation to the tune of €371 322 167
- BAE (Hawk) committed to a DIP obligation valued at \$680 314 667
- SAAB (Gripen) committed to DIP obligations valued at €808 049 501
- Agusta (LUH) committed to DIP obligations valued at \$190 987 395

[371] For reporting purposes, the values were converted to Rand at the fixed-base exchange rate for 1999 of R6,25 to the US Dollar and R6,40 to the Euro.

[372] The DIP obligations were actively managed by the foreign obligors, the South African defence-related industry and Armscor.

[373] Mr Burger testified that performance figures as at 31 March 2013 indicated 93,83% completion. The value of claims approved amounted to R13,625 billion in 1999 economic terms. These figures indicate that GSC, Agusta, BAE and BAE/SAAB have all fulfilled their DIP obligations. GFC has complied with only 68,28% of its obligations. Part of the reasons for the latter's failure to perform in full is that one of their combat suite foreign contractors failed to perform in full. The platform portion of the obligation has been fully complied with.

[374] Mr Burger testified that as at 31 December 2013, the DIP obligations in respect of the Hawks, Gripens, LUH and submarines have all been fully complied with. After the obligors had complied with their obligations—from 14 December 2007 up to 22 February 2012—Armscor addressed letters to the various obligors, advising them that they had fully complied with their obligations.

[375] As far as MAN Ferrostaal's portion of GSC's obligation is concerned, the letter addressed by Armscor to MAN Ferrostaal stated: *'According to our records an over achievement of €474 083 has in actual fact been registered.'*

[376] In respect of the corvettes, the value of the DIP obligations were R2,9 billion. To date only R2 billion has been discharged, leaving a balance of R932 million worth of DIP obligations which must still be performed.

[377] Armscor has negotiated with the foreign company MBDA that has failed to meet its obligations. In terms of the new arrangements, MBDA was granted an additional seven years from 2009 to discharge the outstanding obligation. The obligation must now be discharged by the end of March 2016.

[378] No multipliers were used in the case of the DIP obligations.

[379] Mr Burger testified that the total DIP obligations of all obligors were R14,557 billion, while the DIP obligations carried out as at 31 December 2013 amounted to R13,625 billion, equalling 93,59% of the total DIP obligations.

[380] As mentioned above, one of the obligors, MBDA, has not fully complied with its obligations. The DIP Division has put in place measures to ensure that MBDA complies with its obligations.

[381] Once the DIP obligations have been discharged, the DIP Division no longer monitors performance of the projects. Some DIP projects of the obligors who have fulfilled their obligations are still ongoing, benefiting the local defence industry and our economy.

[382] Mr Burger analysed the activities of the obligors. His analysis indicates that R267 430 041 was invested in our economy and that sales and exports realised an amount of R9 375 765 240. The value of technology transfer was R3 982 070 071.

[383] Mr Burger concluded his evidence by stating that in his capacity as Senior Manager DIP, he was of the view that the DIP programme has achieved its intended objectives. The anticipated benefits did materialise.

ii. NIP projects

[384] As stated earlier, the NIP obligations were managed and monitored by the DTI. The DTI relied on both NIP contracts and the NIP Policy and Guidelines when administering and monitoring the SDPP projects.

[385] Mr Zimela, Chief Director IPS in the DTI, testified that the various obligors had the following NIP commitments:

- i. BAE (Hawk and Gripen) had an obligation of US\$7,2 billion, made up as follows:
 - a. Investments of US\$2 000 000 000
 - b. Export sales of US\$3 640 000 000
 - c. Domestic sales of US\$1 560 000 000
- ii. GFC undertook to perform GFC NIP activities and Thomson CSF NIP activities with an aggregate value of:
 - a. Investments of US\$700 million, of which US\$509 100 000 was allocated to GFC and US\$190 900 000 to Thomson CSF
 - b. US\$2 billion for local sales and export revenues, of which US\$1 538 500 000 was allocated to GFC and US\$461 500 000 to Thomson CSF
- iii. GSC undertook to perform NIP obligations with an aggregate value of €2 856 460 450, made up as follows:
 - a. Investments of €960 300 000
 - b. Export sales of €1 641 512 454
 - c. Domestic sales of €250 648 000
- iv. Agusta's NIP commitment was US\$767 930 000, made up as follows:
 - a. Investments of US\$184 500 000
 - b. Export sales of US\$468 230 000
 - c. Domestic sales of US\$115 200 000

[386] In general, with the exception of BAE, the obligors had seven years to meet their obligations. BAE had 11 years to meet its obligations.

[387] In other cases substitute projects were introduced late—which was allowed—and where there was a potential for future sales, credits were granted upfront. The future sales were not included in the monitoring figures but obligors were credited for the future sales.

[388] In other instances, the DTI directed the obligors to invest in sectors which the DTI regarded as important to drive the Government's objectives. Investments were also directed to areas of the economy in which it was not easy to attract local or international investors.

[389] In order to incentivise the obligors to invest in the sectors mentioned above, the DTI granted obligors credits that were more than their investment. Obligor were granted what is termed 'multipliers'. The granting of multipliers was negotiated with the obligor, and credits were granted after the obligor had made the investment. Multipliers were subject to the approval of the Minister, which was sought after the DTI had negotiated with the obligor.

[390] Mr Zimela further testified that strategic matters were considered for the use of the multipliers, including:

- Risky and commercially unattractive projects developed or proposed by the Government. These projects had significant implications for job creation or the prevention of job losses and were highly unlikely to be funded by the market
- Important projects for the development of the essential skills desperately needed in the economy and which played a crucial role in developing poorer areas in South Africa, and
- Projects promoting economic transformation, especially promoting participation of historically disadvantaged individuals in the ownership and control of economic assets.

[391] In terms of the SDPP contracts, only investments and revenue generated from exports and local sales qualified for NIP credits.

[392] When awarding credits, with the exception of package deals where multipliers were negotiated, the DTI confined itself to the contracts, as the credit methodology contained in the NIP Guidelines differed from the credit methodology contained in the SDPP's NIP contracts.

[393] It is clear that multipliers were generally used as a tool to direct investments into certain priority areas of the economy where it is not easy to attract investors. They were also used where there was going to be no returns on investments.

[394] In certain cases, where the obligor would not have sufficient time to generate sales within the obligation period, the IP Control Committee would consider awarding credits upfront. These upfront credits were only granted where there was proof that the investment had already been made by the obligor.

[395] Mr Zikode, Deputy Director General: Broadening Participation Division in the DTI, testified that:

'Package deals arose in order to increase and spread the NIP uptake across all sectors of the economy and to deal with substitute projects. Package deals comprised both upfront credits and multipliers. Credits for investment and sales were awarded simultaneously.'

[396] In turn, Mr Zimela said during his testimony:

'[P]ackage deals were more an exception than the norm. They were not part of the NIP guidelines, but there were certain instances where it was deemed that some of these projects were important in terms of achieving certain strategic goals of government.'

[397] He further said:

'My understanding with the NIP terms ... has been that where credits are concerned the credits should be awarded one-for-one'

for investment, one-for-one for sales, and one-for-one for export sales. But my understanding as participating in the Committee has always been that where there are imperatives to deviate from the NIP terms, the unit (IPS) has always a right to apply to the Minister to make some deviations in order to achieve certain strategic objectives of the DTI.'

[398] This strategy was introduced in order to facilitate the achievement of strategic goals of the DTI and Government. Obligors were incentivised to invest in strategic industrial areas, sectors and businesses where the return on investment was not attractive and where the risk of not earning NIP credits on revenue was high, and the time for generating NIP credits would be longer than the time frame stipulated.

[399] Some of the package deals made provision for upfront credits. These credits were awarded in advance on the basis of projected sales revenue over a period of time, usually beyond the obligation discharge period.

[400] Mr Zikode further testified that the upfront sales credits were granted together with the investment credits to complete the package deal.

[401] As stated earlier, in certain instances obligors were requested to invest in strategic projects. In these instances the IPS negotiated multipliers with the obligors subject to the approval of the Minister.

[402] Both Messrs Zimela and Zikode testified about the type of projects where multipliers were used after obtaining the approval of the Minister.

[403] When determining the value of multipliers to be applied, the IPS took the following factors into account:

- The potential credits the project would likely generate over several years
- The potential number of investors
- Whether the obligor is the only investor, and if so, whether it was not likely to receive a return on investment, and

- Whether is it a training project or not.

[404] In instances where obligors invested in projects where they expected no commercial return, higher multipliers were used. Multipliers were negotiated on a project-by-project basis.

[405] Ms Carmela Teresa de Risi, former employee of the DTI, testified that she was involved in the management of the obligations of the GSC and GFC consortium projects. She confirmed that in administering the SDPP projects, multipliers were used, particularly in projects that were of high risk or when there were no returns on the investment.

[406] Upfront credits were awarded in projects where credits were going to be generated beyond the obligation period. This occurred mostly in instances of substitute projects.

[407] Mr Zikode testified that when upfront credits were granted, the DTI would demand that the obligor report back to the DTI about the actual realisation of the sales before a performance guarantee was released. He further said that the DTI would monitor the sales of the obligor in order to ensure that the anticipated sales were realised.

[408] The credits methodology stipulated in the contracts was varied or amended by the parties to the contract as they were entitled to do. Parties agreed to the variation and effected the amendments of the contracts.

[409] The evidence of the officials of the DTI suggests that the above mentioned amendments enabled the DTI to efficiently meet its strategic goals and the objectives of the industrial policy of the Government and the NIP Programme as adopted by the Cabinet on 30 April 1997.

[410] In his testimony, former Minister of Trade and Industry, Mr Alexander Erwin, said:

'It is evident from the NIPP that it involves a process of engagement with the private sector, which is to all intents and purposes a form of commercial negotiations. It is imperative to

emphasise that industrial participation was not used to justify a decision to purchase equipment. What is central to commercial negotiation is the concept of leverage, which implies that mechanisms are used to optimise the desired objectives. This is inherently a process of negotiation and agreement rather than the application of a fixed formula. In addition the requirements of additionality, sustainability and causality make this engagement an inherent feature of such a facilitative policy.'

[411] The process of negotiation allows each party to improve their position to the benefit of all involved.

[412] In this process, the DTI succeeded in directing direct investments to other sectors which they thought were critical for the achievement of their strategic goals.

[413] The policy choice made by the DTI was to allow the obligors to reach their credit target or fulfil their obligation without depending only on investment, exports and local sales. Other factors contained in the NIP Guidelines were taken into account. This allowed the DTI to achieve the full range of its industrial policy objectives.

[414] During their reviews of the performance of the obligors, they did not necessarily look at specific projects only, but they also looked at the aggregate projects in order to determine whether an obligor had met its obligation or not.

[415] The obligor was required to do a feasibility study, as the obligor was responsible for the success of any project that it undertook. If a particular project failed, the obligor was allowed to introduce a substitute project.

[416] Both Messrs Zimela and Zikode testified that the total actual investments of each obligor were the amount that was invested by the obligor plus the amount that was invested at the instigation of the obligor. The obligors provided proof of such investments. In instances where they

had not received proof of investment, the figures were not included in the total actual investment figure.

[417] Sales recorded included both local sales and export sales.

[418] Messrs Zikode and Zimela testified that at the end of 2013, the DTI prepared their monitoring report and it indicated the following:

i. BAE (Hawk and Gripen)

Actual investment	US\$665 286 285
Investment credits	US\$2 012 407 678
Sales credits	<u>US\$5 444 650 287</u>
Total credits	US\$7 457 057 965

(An effective multiplier of 3,02 was applied to their actual investment and that earned them investment credits of over \$2 billion.)

ii. GFC (platform)

Actual investment	US\$173 444 127
Investment credits	US\$516 724 126
Sales credits	<u>US\$1 545 361 235</u>
Total credits	US\$2 062 085 360

(A multiplier of 2,98 was applied to their actual investment and that earned them over US\$515,7 million credits.)

iii. THALES (combat suite)

Actual investment	US\$139 656 198
Investment credits	US\$199 279 454
Sales credits	<u>US\$591 255 265</u>
Total credits	US\$790 534 719

(A multiplier of 1,43 was applied to their actual investment and that earned them over US\$199,2 million investment credits.)

iv. GSC (submarine)

Actual investment	€149 405 863
Investment credits	€961 383 389
Sales credits	<u>€2156 377 635</u>
Total credits	€3117 761 024

(A multiplier of 6,43 was applied to their actual investment and that earned them over €961,38 million investment credits.)

The GSC figures, when converted into US Dollars are the following:

Actual investment	US\$179 287 036
Investment credits	US\$1 153 660 067
Sales credits	<u>US\$2 587 653 162</u>
Total credits	US\$3 741 313 229

As stated earlier a multiplier of 6,43 was used.

v. AGUSTA (LUH)

Actual investment	US\$ 82 267 852
Investment credits	US\$184 630 165
Sales credits	<u>US\$619 371 019</u>
Total credits	US\$804 001 184

(A multiplier of 2,24 was applied to their actual investment and that earned them over US\$184,6 million investment credits.)

[419] An average multiplier of 3,35 was used in all projects in awarding investment credits.

[420] The above figures indicate that the SDPP generated the following NIP figures:

Total actual investments	US\$ 1 210 058 000
Sales credits	<u>US\$10 357 014 000</u>
Total of investments plus sales	US\$11 567 072 000

[421] The above mentioned figures in Rand, using an exchange rate of 6,25, are the following:

Total actual investments	R 7 562 862 500
Sales credit	<u>R64 731 337 500</u>
Total of sales plus investments	R72 294 200 000

[422] Messrs Zikode and Zimela testified that in order to convert the total actual investments and sales into Rand, and average exchange rate for the period January 1999 to December 2010 of R7,64 to US\$1 should be used.

[423] Using this exchange rate, their calculations yield the following figures:

Total actual investments	R 8 845 089 724
Total sales	<u>R77 694 615 978</u>
Grand total	R86 539 705 702

[424] The NIPs and DIPs generated the following figures:

DIP projects	R13,625 billion
NIP Projects	<u>R86,539 billion</u>
Total	R100,164 billion

[425] When you use an average exchange rate of US\$1 = R6,25 to convert the NIP figures into Rand, the NIPs and DIPs figures are as follows:

DIP projects	R13,625 billion
NIP projects	<u>R72,294 billion</u>
Total	R85,919 billion

[426] The figures for both local sales and export sales were extracted from the records of the IPS. They represent actual sales. The upfront sales that were projected in the package deals are not included in these figures.

[427] The SDPP's NIP projects as a portfolio performed very well. To date some of those projects are still generating local and export sales.

[428] Other projects, such as those introduced by AgustaWestland—according to the evidence of Mr Simon Edge of AgustaWestland—are still operating and generating export revenue. In 2014, AgustaWestland procured from South African aerospace companies products worth more than €5 million. Using an exchange rate of €1 = R13,50 in April 2015, it means that the value of products procured by AgustaWestland in 2014 were worth R67,5 million.

[429] In its submission, dated 10 October 2012, SAAB stated that some of their NIP projects are still operating in South Africa and they have an annual turnover of R1,1 billion.

[430] BAE/SAAB, GSC, GFC, Agusta and Thales have discharged their obligations. The latter have over-achieved by US\$68 502 473.

[431] The difference between the total credits of R107 355 193 724 on the one hand, and the figures of total actual investments plus sales credits on the other, is not too significant. The difference was occasioned, *inter alia*, by the average multiplier of 3,35 applied to the granting of investment credits.

[432] All the obligors, with the exception of one, have fulfilled their obligations. One obligor still had to prove its actual sales that resulted from the project that was approved as a 'package deal'.

[433] In certain identified strategic projects, the DTI, with the approval of the Minister, used multipliers in order to achieve certain strategic goals of the Government.

[434] All projects were closely monitored to ensure that obligors met their obligations.

[435] As far as the NIP projects are concerned, the South African economy has received investments and sales worth approximately R72,294 billion, when using an exchange rate of US\$1 = R6,25, or approximately R86,539 billion, when using an exchange rate of US\$1 = R7,64. Funds were also directed into sectors where the DTI thought that there was a dire need for investments. To some extent the DTI managed to meet their strategic goals and the economy has benefited.

[436] As stated earlier, the DIP projects generated R13,625 billion for our economy.

[437] Mr Terry Crawford-Browne testified that instead of offset benefits of R110 billion, described by the late Mr Modise in 1999, the most recent media

estimate is that at best a dismal R6 billion in offset benefits actually materialised. He further said that the offset projects failed dismally.

[438] If there is such a media estimate, it is incorrect and is not consistent with evidence led before the Commission. The estimate can therefore be regarded as false.

[439] It is fair to conclude that the anticipated offsets have substantially materialised. Adequate arrangements are in place in order to ensure that the obligors who have not met their obligations do so in the immediate future.

[440] The DTI also managed to direct investments into sectors that are critical to the economy, which sectors are also critical to enhance the ability of the Government to meet its strategic goals. To date, some of the SDPP projects are still operating and generating local and export sales.

1.5 WHETHER ANY PERSON/S, WITHIN AND/OR OUTSIDE THE GOVERNMENT OF SOUTH AFRICA, IMPROPERLY INFLUENCED THE AWARD OR CONCLUSION OF ANY OF THE CONTRACTS AWARDED AND CONCLUDED IN THE SDPP PROCUREMENT PROCESS AND, IF SO:

1.5.1 WHETHER LEGAL PROCEEDINGS SHOULD BE INSTITUTED AGAINST SUCH PERSONS, AND THE NATURE OF SUCH LEGAL PROCEEDINGS; AND

1.5.2 WHETHER, IN PARTICULAR, THERE IS ANY BASIS TO PURSUE SUCH PERSONS FOR THE RECOVERY OF ANY LOSSES THAT THE STATE MIGHT HAVE SUFFERED AS A RESULT OF THEIR CONDUCT.

i. Selection process

[441] A Request for Information (RFI) was issued to several countries to obtain information relating to the equipment that the DOD intended to acquire from overseas companies.

[442] A value system for the evaluation of the RFI responses to each programme was prepared.

[443] An evaluation of the RFI responses with regard to the various programmes was undertaken, using the RFI value system. The results of the RFI evaluations were compiled by the various designated officials.

[444] After the evaluation of the RFI responses against the RFI value system, a shortlist of bidders in respect of each programme was compiled and a Request for Offer (RFO) was distributed to the respective shortlisted foreign suppliers of the different types of equipment. The shortlisted bidders were arrived at after evaluation of the RFI responses against the RFI value system for each product type. The shortlisted products were identified on the basis that all of them met the minimum functionality requirements. The shortlist was confirmed by the COD.

[445] The RFO addressed, *inter alia*, technical requirements, industrial participation (IP) and financing requirements. The IP portion was divided into two parts, namely, the NIP and DIP parts.

[446] The Armscor Procurement Secretariat was responsible for issuing the RFOs to the prospective offerors and receiving offers from the bidders.

[447] The evaluation of the offers was undertaken using the approved RFO value system.

[448] The main function of the RFO was to provide potential bidders with the required instructions and guidelines, so the solicited offers would all be to the same standard and format and include the same level of information.

[449] The RFO value system is an adjudication tool designed to ensure that an objective, forced decision-making process takes place.

[450] It was necessary to coordinate and consolidate the evaluation results. In order to achieve this, a Management Committee, which later became known as SOFCOM, was established. The aim of SOFCOM was to support the Minister of Defence in the management and execution of the DOD's involvement in the SDPP acquisition. SOFCOM consisted of senior representatives from Armscor, the Defence Acquisition and Procurement

Division (DAPD), the arms of service (SANDF), the DTI and the Department of Finance (Treasury). It consisted of 13 members and was co-chaired by the Chief of Acquisition and the General Manager: Aero Maritime of Armscor.

[451] SOFCOM operated under a formal constitution, which spelt out the functions of the committee. The constitution did not provide for decision-making authority in respect of any matters that would materially affect the evaluation as it pertained to the selection of the preferred bidders.

[452] SOFCOM was responsible for developing the Second Order Evaluation Value System that was eventually used for the consolidation of the evaluation results from the respective Integrated Project Teams.

[453] SOFCOM could not change any of the recommendations of the Project Teams.

[454] At some stage, prior to finalisation of the evaluation process, the DOD, the Department of Finance and the DTI agreed that the three elements of each offer, namely Military Value, Industrial Participation Value and Financing Value would carry equal weight in the final consolidation of the evaluation results.

[455] The final consolidation of the evaluation results of the respective elements of the offers was achieved by aggregating the three indices mentioned above, to obtain a Best Value option, being the bidder obtaining the highest score. Thus, Best Value = Military Value Index + Industrial Participation Index + Financing Index, or in brief: $BV = MV + IP + FI$.

[456] The recommended option in each equipment category was the option achieving the highest BV score.

[457] The Military Value Index for each offer in the respective equipment categories was determined by dividing the technical evaluation outcome by programme cost and then normalizing the results to a value of 100, with the best value option carrying a weight of 100.

[458] The Financing Index is the score of financial arrangements offered by the bidder normalised to a value of 100 with the best option carrying a weight of 100.

[459] The IP Index consisted of the combined DIP and NIP evaluation results.

[460] Rear Admiral Kamerman testified that in keeping with the strict instructions of SOFCOM, the execution of each respective evaluation of the Military Value, the IP value and the Finance Value was kept strictly separate.

[461] The various evaluation teams were operating in silos. Their evaluation results were submitted to SOFCOM for consolidation. After consolidating the evaluation results, SOFCOM submitted the evaluation results to other higher structures for further processing.

[462] Dr Young and Mr Terry Crawford-Browne testified that the award of the contracts was pre-determined. Mr Crawford-Browne went further and stated that during 1995 and 1996, the Cabinet decided who would be the suppliers of the various categories of equipment.

[463] The above averments are not supported by any evidence and are inconsistent with the volume of evidence presented to this Commission in regard to the process that was followed, and which culminated in the selection and announcement of preferred suppliers.

[464] The Commission is of the view that these averments are false and should be rejected.

[465] Dr Young alleged that from documentary evidence it would appear that the AASB and the AAC were mainly omitted from the acquisition process and it was SOFCOM that dealt directly with MINCOM (the Inter-Ministerial Committee). He further said that SOFCOM made most of the decisions and reported directly to MINCOM.

[466] Mr David Griesel, the Acting General Manager of the Acquisition Department at Armscor and a secretary of SOFCOM, testified that SOFCOM

had no decision-making powers and in the normal course of events made presentations to the AASB. In terms of the normal procedure, the AASB would then make recommendations to the AAC.

[467] SOFCOM made a presentation to the AASB on 8 July 1998. Mr Griesel was present at the meeting. SOFCOM was also invited to a special AAC meeting held on 13 July 1998. The main purpose of the meeting was to discuss the consolidation of all the evaluation results by SOFCOM.

[468] Mr Griesel further said that the AAC submitted its recommendations to the Inter-Ministerial Committee and the latter in turn forwarded its recommendations to the Cabinet. Mr Griesel testified about the reporting lines that were followed by SOFCOM.

[469] The final decision relating to the preferred suppliers was taken by the Cabinet. There is no documentary or oral evidence to support Dr Young's allegations as aforesaid; they are inconsistent with the direct, credible evidence and stand to be rejected.

ii. Submarines

[470] The *Project Wills* technical team decided that decisions would be taken on a consensus basis.

[471] The technical evaluation team consisted of various experts from the arms of service and Armscor. The team consisted of approximately 10 persons, who evaluated various technical areas of the military performance of the submarines offered by the respective bidders.

[472] The DIP team consisted of three members, the NIP team of 12 members and the financial team of 10. The members of those teams came from Armscor, the Defence Secretariat, the SANDF, the Department of Finance and financial institutions. There was only one finance team for all the programmes.

[473] In order to determine the Military Value Index of each of the bidders, the ratio of the performance value and the acquisition costs were taken into

account. The results indicated that the GSC 209 1400 MOD (Germany) scored the highest, followed by Sweden's T192, Italy's Fincantieri and the French Scorpene S1600. As far as both the IP value index and the Financing Index were concerned, the GSC 209 1400 MOD scored the highest.

[474] After the consolidation of the all the indices, the GSC 209 1400 MOD was ranked first, followed by Sweden's Kockums Type 192, then Italy's Fincantieri S1600 and finally France's DCN Scorpene.

[475] It is worth mentioning that the GSC 209 1400 MOD was R800 million cheaper than the closest contender and was best value for money.

[476] Dr Richard Young testified that the acquisition of the Type 209 conventional submarine was a contrived affair with a pre-determined outcome. He further said that in the evaluation results, GSC was ranked last until pretty close to the announcement by the Cabinet on 18 November 1998. He further said that a few days before the announcement, GSC moved into the first position, and this happened because of the bribes allegedly paid.

[477] These are wild allegations without any factual basis. Dr Young ignored the intensive evaluation process that was undertaken and the evaluation results that were used to recommend and select the preferred supplier. Regarding the allegations that bribes were paid to secure the award of submarine and frigate contracts, Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that he was not aware of any person or entity convicted in Germany on corruption charges relating to the SDPP. He further said that Ferrostaal was investigated by the German prosecutors but the investigation was discontinued and no consequences followed.

[478] He also said that the allegations that a Mr Hoenings signed bribe agreements with Messrs Tony Yengeni and Shamin Shaik was investigated

by the German prosecutors and no evidence was found to support the allegations.

[479] He further maintained that the company could not find any evidence that supported the allegation.

[480] Mr Vermeulen, the current Programme Manager of Armscor's Naval Systems Division, testified that he is aware that there are other 40 countries that make use of various versions of the German Type 209 submarines, which attests to their popularity or demand.

[481] Captain Reed, who is currently employed by SAAB AB in Sweden, testified that to date 61 Type 209 submarines have been built and exported to 13 countries.

[482] Mr Wiercimok also testified that HDW has so far built 61 Type 209 submarines, which continue to serve in 13 navies worldwide. He further said that this makes the Type 209 submarine internationally the most successful submarine type in service in the modern era.

[483] In our view the evaluation and selection process of GSC as the preferred bidder cannot be faulted.

[484] This conclusion is consistent with the following finding of the JIT Report that appears at paragraph 6.8.8 and which reads as follows: '*There is no evidence to indicate that any individuals influenced the selection process.*'

iii. LUH

[485] The technical evaluation team for the light utility helicopters (LUH) consisted of 11 members from the arms of service and seven from Armscor.

[486] The DIP team consisted of three members from Armscor and one from the arms of service. The NIP team had 12 members, mostly from the DTI, and the Finance team consisted of 10 members.

[487] Members of the various evaluation teams are experts in different relevant fields.

[488] The RFI for LUHs was issued to 16 countries. Only Agusta, Italy (A109), Bell Helicopter, Canada and Eurocopter, France (EC635) responded to the second RFI. The evaluation was carried out. All bidders complied with the mandatory criteria.

[489] An RFO was issued to the three bidders. Evaluations of the bids were carried out.

[490] The evaluation results indicated that the Agusta A109 had the best Military Performance Index, Military Value Index, IP Value Index, FIN Index and overall Best Value. It was ranked first, followed by the Eurocopter EC 635, while the Textron Bell M427 was ranked last.

[491] Mr Johan Odendaal, Armscor's Senior Manager Technical, testified that the Agusta proposal was technically the best of the three and it also cost the least of the three.

[492] It is worth noting that the Agusta A109 was the cheapest LUH on offer.

[493] The engine to be used by the helicopter was recommended by the evaluation team after an evaluation was carried out.

[494] In paragraph 5.7.3 of the JIT report, as far as the selection of the preferred bidder for the supply of the helicopter is concerned, the following is stated: *'No evidence could be found that any person had improperly influenced the selection of the prime bidder.'*

[495] This conclusion is consistent with the evidence led before the Commission and accords with our conclusion.

[496] Mr Terry-Crawford-Browne alleged that Bell Helicopter pulled out of the bidding process because it refused to pay a bribe that was demanded from it. The allegation is false. Bell Helicopter participated in the bidding

process and it was not successful. It was ranked last. Bell Helicopter does not have a record of a bribe ever being requested from it.

iv. Corvettes

[497] The technical evaluation team for the corvettes consisted of seven members from the arms of service and four from Armscor. The DIP team consisted of three members, the NIP team of 12 and the Finance team of nine members.

[498] Members of the various evaluation teams are experts in different relevant fields.

[499] The evaluation results indicated that the German GFC Meko A200 had the best Military Performance Index, IP Value Index and the Best Value, and was ranked first. Spain's Bazan 590 had the best Military Value Index and a marginally better Fin Index than the GFC Meko A200. The overall results indicated that the GFC Meko A200 had the Best Value and was ranked first, followed by the GFC Meko 200. Spain's Bazan 590B was ranked third and France's DCN Corvette and the United Kingdom's GEC F300 were ranked fourth and fifth respectively.

[500] The GFC corvettes were not the cheapest on offer, but they won the competition based on the financial proposals and industrial participation scores.

[501] The German GFC Meko A200 had the best Military Performance, but when Military Performance is divided by the offer cost, the Spanish Bazan 590B achieved the best Military Value score and it was ranked first as far as the Military Value Index was concerned. However, as indicated earlier, the overall results favoured the GFC Meko A200.

[502] Dr Richard Young testified that the acquisition of the GFC Meko A200 corvette was a contrived affair with a pre-determined outcome.

[503] He further said that the corvette platform and the submarine contracts were predestined to be awarded to the German companies. He further

claimed that earlier—1993 to 1995—the Germans were excluded from the competition (*Project Sitron*), but that they were later allowed to compete because they paid bribes.

[504] There are no facts to support these allegations and they are inconsistent with the volumes of documentary and oral evidence presented before the Commission. A number of officials testified about how the Germans came into the competition. Their evidence is not contradicted by any credible evidence.

[505] The above allegations can without any hesitation be rejected as false.

[506] Dr Young further alleged that GFC was nominated the preferred bidder on the basis of its NIP offer.

[507] This allegation is not supported by any evidence whatsoever and is false. The formula to determine the Best Value did not take into account only the NIP offer. As stated earlier, other factors came into the equation.

[508] Dr Young further alleged that GFC won the tender because of bribes paid. This is a wild allegation, it is not supported by any evidence, and should consequently be rejected.

[509] Dr Young further alleged that the evaluation of the corvettes bids were all wrong, with the exception of the calculation of the Military Value. No facts were produced by Dr Young to support his allegations and therefore the Commission has no hesitation in rejecting his allegations as false. There is no factual basis for the allegations.

[510] It is worth noting that the DPCI took over the investigations into the SDPP from the DSO. Some of the investigators who were investigating the SDPP whilst employed by the DSO, joined the DPCI. In September 2010, the DPCI closed the investigations, stating, *inter alia*, that there was no prima facie case against anybody.

[511] General Meiring, Head of the Commercial Crime Component, Detective Service in the DPCI, recommended the closure of the GFC and

BAE legs of the investigations after receiving a briefing from Colonel du Plooy. Colonel du Plooy for several years investigated the allegations of wrongful conduct relating to the SDPP, and in that whole period he could not find any prima facie evidence of wrongdoing against any person.

[512] Mr Klaus Wiercimok, a senior in-house attorney at Thyssenkrupp since 1982, testified that in 2006 the State Prosecutor's Office in Düsseldorf conducted a number of raids on the TKMS offices and on the homes of some of the company's employees. No evidence was found to support allegations made against TKMS. The investigations were closed without charges being preferred against anybody. He further said that GFC never paid or authorised payment of \$3 million to influence the procurement process of the corvette. He also said that the State Prosecutor's Office in Düsseldorf investigated the allegations and no evidence was found to support the allegations. No prosecution followed from the investigations.

[513] A proper and fair process was followed to select GFC as the preferred supplier and, as it will become clear later, the selection of sub-systems was also fair.

[514] There is no evidence to suggest that the selection of the preferred bidder was unduly influenced by any person or entity. The bidder that was recommended to the various structures, including the Inter-Ministerial Committee and the Cabinet, was the bidder who had the Best Value and was ranked first after the consolidation of the Technical, IP and Finance indices.

v. Combat suite

[515] As stated by the Navy officers who testified, including Admiral Kamerman, their contracting strategy meant that the prime or main contractor would be contracted and held responsible for all contractual performance for the main elements of the corvette vessel to be acquired. These elements are the ship platform, the combat system and the integrated logistic support, as well as the integration of the three elements.

[516] The prime contractor had to administer its own processes with regard to the sourcing of subcontractors. It also had to deal with the question of a risk premium for some of the subsystems acquired from sub-contractors.

[517] The DOD had limited control over the selection of subsystems and components in the programmes. Most of the combat suite negotiations concentrated on the Joint Project Team acting as a facilitator between the main contractor and the local combat suite industry.

[518] Mr Johannes de Beer testified that Armscor was not involved in the appointment of local suppliers. This was the responsibility of the seller. Armscor only played a facilitating role by making foreign obligors aware of what local companies could offer.

[519] During October 1998, the Project Control Board adopted certain 'Principle Concepts', one of which reads as follows:

'16. Preference may be given to the procurement of defence products and services from local suppliers, providing such procurement represents good value for money.'

[520] Mr Fritz Nortjé, Programme Manager at Armscor, testified that when Armscor and the DOD embarked on the project to acquire the patrol corvette for the SA Navy, the intention was to acquire the ship platform and certain identified subsystems from overseas, and to make maximum use of the local industry capabilities to the extent that it was affordable and made good business sense to do so.

[521] The combat suite was to be populated by largely locally-sourced subsystems. Certain important subsystems, namely the Hull Mounted Sonar, Surveillance Radar and Surface-to-Surface Missiles, were to be sourced overseas. GFC was instructed to obtain quotations from three competitors for each type of these three subsystems.

[522] The evaluations of the offers of the various competitors were carried out by the evaluation team at the Armscor offices. The evaluation team consisted of specialists from Armscor and the Navy.

[523] MBDA was recommended to supply the Surface-to-Surface Missiles, Thomson Marconi to supply Hull Mounted Sonar and the Surveillance Radar was to be supplied by Thomson MRR.

[524] These recommendations were ratified for inclusion into the Naval Combat System baseline by the Naval Board and the Project Control Board.

[525] GFC had offered in its original response to the RFO that, if selected, it would enter into a partnership with African Defence Systems as its contractor for the supply of the combat system. ADS was the only South African company with naval system integration technology and experience.

[526] The documents produced by the DOD and Armscor officials indicated that the whole combat suite was nominated in the RFO solely to provide a design baseline for the platform offer. The RFO indicated that the intention of the State was that after the selection of the preferred bidder, a tendering process for the combat suite elements would follow. The nominated element suppliers were actually proposed and not prescribed by the State.

[527] After GFC was selected as the main contractor, it formed a consortium with ADS, obtained quotations and made a series of combat suite offers to the State. On numerous occasions during the negotiation phase, GFC was requested to offer cost-effective alternatives to its proposed equipment, and it obtained various bids for some of the sub-systems.

[528] During December 1998, Dr Young's CCII Systems was seeking to oust ADS, the South African nominated supplier of the combat suite, and the other SA nominated suppliers of the combat suite sub-system, by making a competitive bid. This clearly indicates that CCII Systems understood that 'nominated' meant proposed and that GFC could consider any other local sub-systems it considered more appropriate. Thus, there were other nominated suppliers against whom CCII Systems competed.

[529] It is worth noting that at the time when competitive bids were called for, GFC was in the process of attempting to reduce the price of the combat suite. There was also competition for locally sourced sub-systems.

[530] During the acquisition process, CCII Systems, after competitive bids were called for, submitted bids for the supply of the following subsystems:

- The Navigation Distribution System (NDS) – *Project Sitron*
- Tracker consoles – *Project Sitron*
- The software and MMI adaption of *Project Wills* combat system
- The Integrated Management System (IMS) – *Project Sitron*
- The System Management System (SMS) – *Project Sitron*
- The IMPS Simulator – *Project Sitron*

[531] CCII Systems won the first three contracts, valued at approximately R63 million (on the version of the DOD), and lost the last three. Dr Young put the value of the contracts awarded to him at R38 million.

[532] Dr Young testified that in instances where CCII Systems won the contracts, the processes were fair and legitimate, but in instances where CCII Systems lost the bids, the processes were either unfair or irregular or they were manipulated.

[533] It is worth noting that the same team evaluated the bids that CCII Systems won and those that CCII Systems lost.

[534] The evidence presented before the Commission by various witnesses does not support the allegation that where CCII Systems lost the bids, the processes were unfair or that they were manipulated.

[535] Dr Young's abovementioned complaints are baseless and should be rejected. A legitimate and fair process was followed when evaluating the bids.

[536] Dr Young alleged that the CCII Systems IMS was deselected and unfairly replaced by the Detexis Diacerto databus.

[537] This allegation is false. The main contractors on whom the risk fell was not prepared to assume risk for the CCII Systems IMS, and CCII Systems was not prepared to put up a financial guarantee after being requested to do so.

[538] The State was also not prepared to assume risk for the CCII Systems IMS. In order to reduce costs, the State was left with no option but to accept the selection of the Detexis Diacerto databus, which came cheaper than the CCII Systems IMS.

[539] The procedure followed and reasons for the selection of the Detexis Diacerto databus cannot be faulted.

[540] The contention that the State was unfair to CCII Systems by refusing to carry the risk of the CCII Systems IMS is untenable.

[541] The other complaints by Dr Young relating to bids his company lost, are without merits and should be rejected. We do not deem it necessary to deal with all Dr Young's complaints in this part of the report.

[542] Approximately 60% of the technology acquired for the combat system for the corvettes was purchased in South Africa from South African companies relying on South African technology. About 18 companies, including CCII Systems, participated in *Project Sitron*.

[543] As stated earlier, CCII Systems submitted bids for six contracts on *Project Sitron* and *Project Wills* and won three of the six it tendered for. The three it won were the following:

- *Project Sitron* Navigation Distribution System (NDS)
- *Project Sitron* Tracking Radar Consoles (TRC)
- Submarine software custodian for the Combat Management System (CMS)

[544] The corvette radar contract that was awarded to CCII Systems was cancelled on the grounds of non-performance. The submarine combat

system contractor cancelled CCII Systems' CMS contract, also on the grounds of non-performance.

[545] There were justifiable reasons for the State to accept the selection of the Detexis Diacerto databus. The selection of the latter databus relieved the State of any possible risk for the failure of the databus, because the risk for the failure of the databus fell squarely on the main contractor. The selection of the Detexis Diacerto databus also enabled the State to reduce the costs.

[546] Rear Admiral Kamerman testified that for contractual purposes, in order to reduce costs, the Joint Project Team divided the various components comprising the corvette into three categories. Category A, consisted of the vessel platform for which the main contractor assumed full responsibility. Category B consisted of the subsystems for which the main contractor was expected to assume full responsibility. Category C included subsystems for which the main contractor was not expected to assume full responsibility until satisfactory and successful completion of factory acceptance tests.

[547] The CCII Systems IMS was categorised as a Category B sub-system as the State was not prepared to assume the risk relating to it. The main contractor was not willing to carry the risk for the failure of the CCII Systems IMS. The State was also not prepared to absorb additional costs associated with the selection of the CCII Systems IMS, or to assume risk for the failure of the IMS.

[548] The risks occasioned by the CCII Systems IMS to the Navy or the SANDF were much higher than those attached to the Detexis Diacerto databus. In the case of the latter, the main contractor was assuming the risk associated with the databus. Dr Young was requested to put up a performance guarantee but he refused, and the State was left with no option but to select the databus of Detexis.

[549] Dr Young testified that the French authorities conducted an investigation during which the offices of Thomson-CSF International and

those of their chairman, Mr Jean-Paul Pereira, were raided and searched. He further said that these raids yielded a vast amount of documentary evidence indicating criminal conduct on the part of certain individuals.

[550] On the other hand, the investigations in France were closed some time ago. The investigation did not lead to any prosecutions. If a vast amount of documentary evidence indicating criminal conduct were found, the probabilities are that a prosecution would have followed. From the fact that no prosecution followed, an inference can be drawn that no evidence was found indicating criminal conduct on the part of any person or entity.

[551] In the selection of the sub-systems, a fair and open process was followed. There is no basis to suggest that the process followed was flawed, unfair, tainted by corruption or improperly influenced by any person. Experts were appointed to assist the main contractor and the Joint Project Team in the selection of the sub-systems of the combat suite, and the procedures followed were fair.

[552] In concluding this topic, we wish to point out that we found Admiral Kamerman and Mr Nortjé to be reliable witnesses. They gave their evidence in a straightforward manner and there are no improbabilities in their versions. The Commission can rely on their evidence.

[553] The same cannot be said about Dr Young. He was argumentative and he refused to withdraw his unsupportable allegations. Some of his evidence was contradicted by unassailable documentary evidence, but he persisted in his unfounded allegations, for example, the reasons offered by BAE for withdrawing from the consortium to bid for the combat suite sub-systems. Dr Young said that the reasons put forward by BAE for withdrawing from the consortium were not correct.

[554] Some of his allegations could not be reconciled with the documents that were made available to the Commission, but despite that fact he persisted in his allegations without providing any documentary or cogent

evidence to contradict the contents of the documents before the Commission.

[555] His evidence to the effect that where he won the bids, the process was fair, but in instances where he lost, the process was unfair, is untenable.

[556] He published on his website vicious attacks on various persons, including the late former President NR Mandela and his cabinet colleagues. The attacks were reckless, vicious and without any factual basis.

[557] Dr Young also published on his website foul, vulgar and offending remarks about the Commission. Amongst others he said:

“This Commission is a farce—but not a funny ha ha one. It is a farce of the most odoriferous and pungent kind. Something that reminds me of something that came out of the anuses of my neighbour’s pigs when they invaded my farm last year.”

[558] He further stated:

‘I think it is a reasonable conclusion that the APC is klaar. At least for me. How can I work with it ever again when its members bullshit so much? How can I accept a new evidence leader who is going to be adversarial?’

[559] Senior naval officers and some senior counsel representing some of the interested parties were given the same treatment by Dr Young. Our view is that Dr Young is not a reliable witness and his evidence should be approached with caution. He has demonstrated his propensity to make and persist with baseless but serious allegations.

[560] Besides, Dr Young was not an impartial witness and he could not conceal his bitterness in having lost some of the bids in the combat suite sub-systems. Nor could he hide his animosity towards some of the officials who were involved in the selection of the suppliers of the sub-systems. He seemed particularly hostile and vindictive towards Admiral Kamerman, whom he partly blamed for his company’s failure to win some of the sub-

contracts and made derogatory comments about him. Yet, Admiral Kamerman impressed us as a reasonable, professional person who did not betray any vindictiveness towards anybody. Where the version of Dr Young is in conflict with that of Admiral Kamerman, we will prefer the latter's version.

[561] He also refused to disclose the identity of the senior SANDF officials whom he alleged were aware of the wrongdoing that took place during the SDPP process.

[562] During his testimony, Dr Young said that Ferrostaal paid larger bribes for GSC to win the South African submarines than Thyssen paid for GFC to win the South African corvette deal. When asked who told him about the bribes, he said he was not prepared to divulge the name of the person. He said it was someone who worked and lived in Germany.

[563] Dr Young is the only bidder involved in the bidding process of the combat suite elements, who is complaining bitterly about the bids he lost. He attributes his losing of the bids to a variety of reasons that are unfounded.

[564] Mr Wiercimok testified that by choosing the naval vessels built by TKMS, South Africa joined 12 other countries worldwide, including five NATO navies and the leading navies in Latin America, Australasia and Asia—all utilising the company's surface vessels.

vi. ALFA

[565] The Advanced Light Fighter Aircraft (ALFA) technical evaluation team consisted of 11 members from the arms of service and 14 from Armscor. The DIP team consisted of three members, the NIP team of 12 and the Finance team nine members.

[566] Members of the various teams were experts in their own fields.

[567] The results of the evaluation of the various indices indicated that the UK/SAAB JAS39 Gripen had the best Military Performance Index, Military Value Index, IP Value Index, and FIN Index—and overall the Best Value—

and was ranked first. Germany's DASA AT 2000 came a distant second and France's Dassault Mirage 2000 was ranked last.

[568] The Gripen was also the cheapest on offer.

[569] Mr Cornelius Johannes Ferreira, Programme Manager of the LIFT programme, testified that the Gripen came first in virtually all categories of the value system, such as military value, programme management, engineering plan, military functionality, logistic support system, mission and training support system, and operational support system.

[570] He further said that the Gripen was found to have the lowest programme risk, followed by the Mirage 2000 and the AT2000

[571] Dr Young testified that the South African Government and the British Government made arrangements to the effect that BAE would be awarded the Hawk and Gripen contracts.

[572] No evidence, either oral or documentary, was tendered to support the above-mentioned allegation.

[573] This allegation is inconsistent with much oral and voluminous documentary evidence tendered before the Commission, dealing with invitations issued to various countries, the receipt of bids and the evaluation of those bids.

[574] There is no doubt that the above-mentioned allegation by Dr Young is false and should be rejected.

[575] There is no evidence to suggest that the selection process of the preferred bidder was flawed or improperly influenced by any person.

vii. LIFT

[576] The technical evaluation team for the Lead-in Fighter Trainer (LIFT) consisted of 11 members from the arms of service and 12 from Armscor. The DIP team consisted of five members, the NIP team of 12 and the Finance team of nine members.

[577] Again, the members of the various evaluations teams were experts in their respective fields.

[578] When using the standard equation to determine the Best Value, the Aermacchi MB339FD was ranked first, followed by the BAE Hawk and then two other bidders. However, when costs are excluded, the BAE Hawk received the Best Value figure.

[579] The Hawks were the only item of equipment acquired as part of the SDPP that did not win the third-order evaluation round, due to their high cost.

[580] Lt General Hechter, the Chief of the SAAF at the relevant time, testified that at the Ukhozi Control Council meeting held on 24 April 1998, the various aircraft on offer were discussed. Note 2 of the minutes of the said meeting reads as follows:

‘The Hawk 100 is the only aircraft in the recommended shortlist that could be linked to the ALFA procurement in the Government packages.’

[581] On 30 April 1998, there was a special Ukhozi Control Council meeting, chaired by Lt General Hechter and attended by at least 13 SAAF senior officers and three senior Armscor officials. The minutes of the meeting indicate that various issues were discussed and various decisions taken. Paragraph 5.1.2 of the said minutes reads as follows:

‘Decision 1: The following manufacturers/aircraft should receive an RFP, based on a Military Value result from the value system above 68% and cost not taken into account at all.’

[582] Mr CJ Ferreira, Armscor programme manager of the Hawks programme, testified that the heading of the minutes of the meeting of 30 April 1998 is incorrect. He was present at the said meeting and the meeting was that of the Special Air Force Command Council.

[583] At a combined AASB/AAC meeting held on the same day, the Project Officer and Programme Manager presented the meeting with the two options, namely the 'costed' and 'non-costed'. Paragraph 8 of the minutes reads as follows:

'The project team presented the meeting with an affordability analysis of LIFT contenders. Without cost considerations the selection process is biased towards the higher performance category of aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. Thus, unless additional funding could be found to support the acquisition a more superior aircraft, the Air Force would have to take cognisance of budgetary constraints in the selection process.'

[584] Mr Pierre Steyn testified that the concept of a non-costed option was discussed for the first time at the combined AASB and AAC meeting of 30 April 1998.

[585] At this meeting, the Minister of Defence cautioned that a visionary approach should not be excluded, as the decision on the acquisition of a new fighter-trainer aircraft would impact on the South African defence industry's opportunity to be part of the global defence market through partnerships with major international companies.

[586] The Minister recognised that this vision might mean that the most inexpensive option may not necessarily be the best option.

[587] The Minister requested that the DOD's acquisition staff bear this vision in mind during the selection process.

[588] Mr Esterhuyse testified that the decision by the AAC during the 30 April 1998 briefing on the shortlist of offerors required the project team to consider a solution taking cost into account and a solution where cost was not taken as a deciding factor.

[589] On 5 May 1998, there was a meeting of Ukhozi Control Council. The meeting was attended, amongst others, by nine senior SAAF officers and five senior Armscor officials. The minutes of the said meeting indicate that the meeting of 30 April 1998 was an Air Force Command Council meeting and not an Ukhozi Control Council meeting. Paragraph 7.1.3 of the minutes reads as follows:

'The reason why the recommendation to the combined AASB/AAC was not based on cost-effectiveness, was because it was felt that the cost-constraints for the inclusion of the LIFT into the strategic Defence packages should be determined by the AAC.'

[590] On 8 June 1998, the final results were presented to the AASB by members of SOFCOM. A full presentation was made. The LIFT programme had both a costed and a non-costed option. The AASB recommendation was that the cheaper option was the preferred option.

[591] The SAAF Command Council meeting of 29 June 1998, chaired by the Chief of the SAAF, Lt General Hechter, decided, *inter alia*, to present to SOFCOM the 'costed' and 'non-costed' options for the LIFT programme.

[592] Mr Steyn favoured the MB339FD due to its relatively low price. At the AASB and the AAC meetings he strenuously opposed the choice of the Hawk, due to its costs.

[593] On 13 July 1998, the AAC meeting was briefed and again the LIFT programme had the two options mentioned earlier.

[594] At a COD meeting on 21 August 1998, the LIFT programme was also discussed. The two options were still on the table. During the discussions, General Beukes said:

'At issue is whether LIFT should be the Hawk or the MB339. From a purely training point of view, the Air Force can do the job with either. The Hawk is more expensive because it has operational capabilities which the MB339 does not offer.'

[595] The recommendation of the AASB to acquire the cheaper aircraft was conveyed to the COD.

[596] Mr Steyn testified that as far as the LIFT programme was concerned, the meeting of the COD on 21 August 1998 recognised that both contenders, the MB339 and the Hawk, should remain as possible contenders. According to him, the meeting did not make a choice as to which aircraft should be recommended to the Inter-Ministerial Committee (IMC).

[597] At the meeting, the impact of either bid on the country's economy and the local defence industry was also considered.

[598] On 31 August 1998, an IMC meeting took place. A presentation was made to it. With regard to the LIFT programme, two options were presented. After discussing the two options, a decision was made to select the Hawk. It was recorded that the decision was based on –

'national strategic considerations for the future survival of the Defence Aviation Sector and the best teaming up arrangements'

as well as –

'the strategically important Industrial Participation programmes offered with the best advantage to the State and local industries.'

[599] When the evaluations were made, without taking into account the cost of the equipment, the BAE Hawk was ranked first as far as the Best Value was concerned, followed by the Aermacchi MB339FD and then the other two bidders.

[600] The Hawk was recommended to the Cabinet by the IMC despite the objection by Mr Steyn, who preferred the cheaper option. The strategic concerns that were considered by the IMC and the Cabinet outweighed the ordinary preference for the cheaper offer. These strategic concerns were recorded in the relevant minutes of the various meetings.

[601] In terms of the LIFT evaluation, there were two classes of aircraft. On the one hand, there was the Aermacchi, which was cheaper but with a lower flying performance and capability. On the other hand, there was the Hawk, which was in a higher flying performance domain or capability, but more expensive.

[602] General Bayne had this to say:

‘The Hawk is primarily a fighter-trainer aircraft but with a considerable level of collateral operational capability in a low-threat environment, and has growth in this role when operating in a package together with the Gripen.’

[603] The SAAF has already trained pilots on the Hawk from the Astra, and successfully onto the Gripen. This demonstrates that their three-tier training system operates well.

[604] General Bayne continued:

‘The Gripen and Hawk aircraft systems have proven to be highly deployable, adaptable and have the flexibility to satisfy a wide range of airpower and national security requirements of the Republic.’

[605] It is apparent that the SAAF is satisfied with the capabilities of the Hawk and with the combination of the Hawk and Gripen. The combined effects of the capabilities of the Hawk and the Gripen have exceeded the expectations of the SAAF.

[606] It is worth noting that during his testimony, the then Deputy Minister of Defence reiterated that the most inexpensive option might not necessarily be the best option. There are other important factors that come into the equation.

[607] In fact, the MODAC 2 Report, in paragraph 2.4.2 headed ‘Tender adjudication’, reads as follows: ‘Adjudication of tenders shall not necessarily

be based on the lowest price, but on value for money and industrial development goals.’ (See also para 56, page 128 of the Defence Review).

[608] At its meeting of 31 August 1998, the IMC endorsed the recommendations of the AAC as far as the other programmes were concerned. As regards the LIFT programme, the Hawk was their preferred option.

[609] The minutes of the meeting of 31 August 1998 recorded, *inter alia*, the following:

‘This decision to recommend the Hawk was based on national strategic considerations for the future survival of the defence aviation sector and the best teaming up arrangement offered by the respective bidders.’

[610] It is important to note that best value for money includes taking into account long-term strategic alliances and the broader national interests in a global context. Best value for money also required considering industrial development and transformation imperatives. Best value for money required a consideration of DOD requirements, life cycle costs, local technology and industrial development, social responsibility, financing and strategic international relations. It also required taking into account the national objectives of job creation, wealth generation, trade balance and counter-trade (see para 56 of the Defence Review and para 3.1.2 of MODAC).

[611] Mr Shamin Shaik testified that as far as acquisition programmes were concerned, the final decision rested with the Cabinet, with the Minister of Defence as the overall custodian of the defence acquisition programme as outlined in the Defence Review and MODAC 1, 2 and 3.

[612] He further said that the MODAC policies and the Defence Review placed the final authority for the acquisition, procurement and production of military equipment on the Minister of Defence and Cabinet, as the final executive decision-making body of the country.

[613] Mr Ronald Kasrils testified that a departmental policy, such as MODAC, did not negate or invalidate the overall control function of the Minister of Defence as the executive authority whose decisions were final.

[614] Former President Mbeki testified that at no stage did the IMC take a decision without reference to cost. The Affordability Report they commissioned was discussed by the IMC and Cabinet. The whole procurement process was discussed within the context of the other national challenges. He further said that the IMC made a presentation to the Cabinet, which endorsed the recommendations.

[615] With the exception of the LIFT programme, the Cabinet selected as preferred bidders those which ranked first in the consolidated results of the various evaluation teams.

[616] Another reason for preferring the Hawk appears to be that it is easier for trainee pilots to train on the Hawk and from there proceed to the Gripen.

[617] It is at this point worth noting that Mr Steyn, who opposed the non-costed option and preferred the cheaper option (MB339), did not dispute the fact that the inexpensive option might not necessarily be the best option. He also conceded that under MODAC procedures the Minister had the final say and to convey such decision to the Cabinet.

[618] As indicated earlier, Mr Steyn initially alleged that the IMC meeting of 31 August 1998 did not make any decision relating to the LIFT programme. His allegation was proved wrong by the minutes of the meeting. The minutes were confirmed by the then Deputy Minister of Defence, who was present at the meeting and later, together with his colleagues, signed the minutes.

[619] Mr Steyn went out of his way to try to have the decision of the IMC to recommend the selection of the Hawk, changed. He and Mr Esterhuysen claimed that no decision was taken at the meeting of 31 August 1998 in Durban when the IMC was briefed on progress made with the SDPP. The evidence was that after the briefing, the officials who attended as invitees (including Mr Steyn and Mr Esterhuysen) had left, where after the IMC

continued with the meeting and took the decision to recommend the Hawk as the preferred aircraft. Mr Steyn and Mr Esterhuysen disputed this and also challenged the minutes reflecting the decision. Despite claiming that such meeting never took place, they nonetheless crafted their own version of the minutes of the meeting, which minutes stated that regarding the choice between the Hawk and the Aermacchi, no decision was taken.

[620] Mr Steyn's version collapsed under cross-examination by counsel for the DOD when his earlier version during the interrogation in terms of section 28 of National Prosecuting Authority Act 32 of 1998 was produced. He was forced to relent and to accept that the IMC meeting did in fact take place and that the decision to select the Hawk as the preferred aircraft was taken.

[621] The latter incident, coupled with his opportunistic denial of the applicability of Policy Directive 4/147 to the SDPP, as well as other discrepancies in his evidence, clearly indicate that Mr Steyn was not a reliable witness.

[622] Mr Steyn maintained that at the Special Briefing Meeting of 31 August 1998, no minutes were taken. When the various versions of the minutes were produced, he said none of the versions were correct. He even made a bizarre suggestion that it is possible that the Ministers signed the minutes without reading them.

[623] Mr Steyn testified that in some cases SOFCOM circumvented the AACB and AASB and further that the organisational structures for the management of the SDPP created by MODAC, namely the AAC, AASB and AACB, were side-lined.

[624] Oral and documentary evidence produced by Armscor and DOD officials contradicts the latter allegation of Mr Steyn.

[625] The evidence tendered before the Commission by Mr Steyn differed in material aspects from his version during the interrogation in terms of section 28 of the National Prosecuting Authority Act 32 of 1998.

[626] As stated earlier, Mr Steyn was not a reliable witness. His evidence must be approached with caution.

[627] The complaints raised by Mr Steyn relating to process and the selection of the Hawk are baseless and are rejected as being false. During his cross-examination he could not substantiate his allegations that improper procedures were followed and that it was wrong to select the Hawk aircraft.

[628] As already indicated, the Cabinet gave full reasons for selecting the Hawk for the LIFT programme. Mr Steyn criticised this decision, but his concerns were addressed and shown to fall short of justifying any inference that the acquisition of the Hawk was as a result of improper conduct on the part of any person.

[629] It is also worth noting that Mr CJ Ferreira, programme manager of the LIFT, testified that they were aware that the MB339FD family of aircraft was probably approaching the end of its production run. If the manufacturers stopped the production, it was going to be difficult and expensive to maintain the MB339FD aircraft.

[630] Mr Terry Crawford-Browne testified that during 1995 and 1996 the Cabinet had decided that the Hawk will be acquired from Britain, the Gripen from Sweden, and the frigates and submarines from Germany, without any evaluation of the bids. He further said that the Commission should ignore evidence tendered regarding the various evaluations as that evidence was not reliable.

[631] There is no factual basis for the above averments. They are wild statements and there is no doubt that they have no merit whatsoever.

[632] There is no justifiable reason why the evidence of the various evaluation teams should be deemed unreliable.

[633] Dr Young testified that the Hawk contract was pre-destined to be awarded to British Aerospace through the dealings of the late Mr Joe Modise. There is no factual basis for this allegation and it should be rejected.

[634] Mr Terry Crawford-Browne testified that in June 2003, the British Secretary for Trade and Industry admitted that BAE had paid bribes to secure its contracts with South Africa. Under cross-examination it emerged that this allegation was false.

[635] The evidence tendered before the Commission indicates that the various officials of the DOD, Armscor, the DTI and the National Treasury who were involved in the acquisition process, acted with a high level of professionalism, dedication and integrity. Despite the fact that numerous allegations of criminal conduct on their part were made, no evidence was found or presented before the Commission to substantiate the allegations.

[636] In paragraphs 2A and B of a report entitled 'SCOPA Hearings: Key Findings by the Auditor-General on the Strategic Defence Packages', the following is stated:

(A) The Air Force Command Council instructed the Project Team to prepare a costed and non costed technical evaluation when the evaluation was presented to it on 29 June 1998. The MB339 was the winner in the technical domain in both costed and non costed technical evaluations.

The costed and non costed technical options were consolidated with the Financing and Industrial Participation evaluations at the SOFCOM on 02 July 1998. The MB339 was the winner of the costed evaluation while the Hawk headed the non costed evaluation.

(B) The cost/benefit considerations of the LIFT aircraft extended beyond that evaluated.

The COD of 21 August 1998 recommended both options to the political level because the decision on international alliances in the aerospace industry was required.

The additional operational capabilities of the Hawk over the MB339 (dual role capabilities) plus the best teaming-up arrangements for the future of the local aviation industry coupled

to strategically important industrial participation projects, offered by the Hawk supplier resulted in the recommendation of the Hawk to cabinet.'

[637] The version of the Hawk purchased by the SAAF represents a new generation of aircraft. The same aircraft is used by various countries including Australia, Canada, Finland, India, the UK and Switzerland.

[638] In its written submission, BAE Systems PLC stated the following:

'The Hawk aircraft has had a strong export success throughout the world. It has been consistently selected in competitive tenders and is used in Australia, Bahrain, Canada, England, India, Indonesia, Kenya, Kuwait, Malaysia, Oman, Saudi Arabia, South Korea, UK, Zambia and Switzerland. It has operated successfully in a wide range of conditions, including the Arctic Circle, the Middle East and the tropics ... With proven low maintenance requirements and low life-cycle costs, the Hawk provides a cost-effective, realistic training environment for future front-line combat aircrew.'

[639] The process followed to select the preferred bidders was such that it made it difficult, if not impossible, for a single individual to unlawfully influence the selection of the preferred bidders.

[640] The Minister of Defence has the final authority on all acquisition matters and has the right to refer decisions on acquisition programmes to the Cabinet (see MODAC, p 40). Captain Jordaan testified that the Minister of Defence was the ultimate political authority. The responsibility for the acquisition function rests with the Minister.

[641] Mr H de W Esterhuysen testified that the constitution of the AAC stated that the Minister of Defence had the final authority on all acquisition matters and the right to refer decisions on the acquisition programme to the Cabinet. Mr Steyn made the same point.

[642] As stated earlier, with the exception of the LIFT programme, all the preferred bidders who were ultimately selected by the Cabinet were ranked first by the combined results of the various evaluation teams.

[643] As far as the Hawk is concerned, although it was ranked second on the results of the costed option and first on the ‘non- costed’ option, there is no indication that the contracts to procure them were tainted by improper influence. On the contrary, the evidence led before the Commission indicates that the decision to acquire the Hawks was properly motivated, well-documented, a strategic one and in the best interests of the country.

[644] Dr Young said that the Joint Investigating Team (JIT) Report was manipulated by the Government to ensure that it gave the Government a clean bill of health. He failed to provide a factual basis for this allegation. When evidence tendered by various officials is taken into account, the inevitable conclusion that we are bound to arrive at, is that this allegation is false and should be rejected.

[645] In paragraph 4.12 of the JIT Report the following is stated:

‘4.1.1 The decision that the evaluation criteria in respect of the LIFT had to be expanded to include a non-costed option and that eventually resulted in a different bidder being selected was taken by the Minister’s Committee, a subcommittee of Cabinet. Although unusual in terms of normal procurement practice, this decision was neither unlawful nor irregular in terms of the procurement process as it evolved during the SDPP acquisition. As the ultimate decision-maker, Cabinet was entitled to select the preferred bidder, taking into account the recommendations of the evaluating bodies as well as other factors, such as strategic considerations.

4.12.2 The decision to recommend the Hawk/Gripen combination to Cabinet as the preferred selection for the LIFT/ALFA was taken by the Minister’s Committee for strategic reasons, including the total

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benefit to the country in terms of counter trade investment and operational capabilities of the SANDF.'

The same sentiments are expressed in paragraph 14.1.7 of the Report.

[646] The views expressed in the above-quoted paragraph of the JIT Report are to a very great extent consistent with the evidence led before the Commission. To some extent this also accords with the key findings of the Auditor-General quoted earlier.

[647] The evaluation process undertaken for the purposes of the SDPP was a tool to enable the Minister and his Cabinet colleagues to select the preferred suppliers. Although the evaluation results were not binding on the Minister, the recommendations made by the evaluation teams were accepted by the Minister of Defence and his Cabinet colleagues.

[648] In paragraph 14.1.1 of the JIT Report, the following is stated:

'No evidence was found of any improper or unlawful conduct by Government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Minister's Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position is flawed. See also Para 1.3; 2.3 of the same report.'

[649] Mr David Griesel testified that the SDPP process was the subject-matter of two internal audit reports. The first audit was carried out over the period 6 to 30 November 1998 and the second internal audit report was produced on 21 July 1999.

[650] The audits were carried out to enquire whether the process followed during the evaluation of the SDPP bids was proper and transparent. The audit reports concluded that no evidence of improper conduct was found on

the part of any of the Armscor employees involved in the evaluation of the various proposals.

[651] Representatives of Armscor were involved in the technical evaluation of the equipment and the CEO of Armscor was a member of the IONT. Programme Managers of the respective projects were employees of Armscor.

[652] Members of Armscor's Audit Division and Armscor's bankers were involved in the Finance Evaluation Team. The latter team evaluated the bids from all the offerors for all the equipment acquired under the SDPP. Mr CJ Hoffman, Armscor's Financial Director and an executive member of the Armscor Board of Directors, was the leader of the Finance Evaluation Team, while other members came from the Department of Finance and the DTI.

[653] The DIP evaluation team, the Joint Project Team and the Integrated Project Team consisted amongst others of Armscor employees.

[654] The evidence presented before this Commission does not suggest that any undue or improper influence played any role in the selection of the preferred bidders who ultimately entered into contracts with the Government. This conclusion is consistent with findings of the Joint Investigating Team, the Auditor-General and the Armscor internal audits that were mentioned earlier.

[655] At this point, it is important to note that Armscor's general conditions of contract (K-STD 0020), as well as the Defence Review, stipulate that the prime responsibility for the selection of sub-contractors rests with the main contractors. However, Armscor was not precluded from contracting sub-contractors directly if this proved to be cost-effective.

[656] In the main, all the sub-contractors were selected by the main contractors. In a few instances, Armscor did nominate and select sub-contractors, for example, suppliers of the engines for the LUH, the gearboxes for the frigates and certain sub-systems of the combat suite. In

the instances where Armscor and/or the Navy selected subcontractors, a fair process was followed.

viii. Is there a need for further investigations?

[657] Colonel Du Plooy, who is currently employed by the SA Police Directorate of Priority Crime Investigations (DPCI), was previously a Senior Special Investigator in the NPA's Directorate for Special Operations (DSO) and responsible for the BAE and German leg of the investigations. He, together with General Meiring, testified that the BAE and the GFC legs of the investigation were closed in September 2010. They further testified that one of the reasons why the investigations were closed, was that they could not find any prima facie case of wrongdoing in either leg of the investigation against any person, despite the fact that the DSO, as the predecessor of the DPCI, started investigating the SDPP in 2000.

[658] Colonel du Plooy further testified that at the time of the closure of the investigations, they could not find any evidence which indicated that the Cabinet, members of the IMC or Mr Chippy Shaik unduly influenced the awarding of the SDPP contracts. They could not find any evidence to suggest that Advocate Fana Hlongwane paid any money to any official in order to improperly influence the awarding of the contracts, or that he exerted improper influence on any official.

[659] Despite the fact that various allegations of fraud, corruption or malfeasance were directed at Government officials and senior politicians, no evidence was produced or found to substantiate them. They thus remain wild allegations with no factual basis.

[660] During the submissions stage, Dr Young conceded that, on the available evidence, the Commission could not recommend that criminal charges be preferred against any person, but the Commission was urged to recommend that there should be another investigation. This further investigation should look into the possibility that there might be persons who are guilty of fraud or corruption.

[661] The above suggestion is untenable.

[662] In its written submission, BAE Systems PLC said the following:

'BAES engaged advisors in relation to BAES and SAAB, BAES paid approximately £115 million to advisors in connection with the sale of civil and military aircraft (including Hawk and Gripen) in South Africa and in fulfilling Offset obligations ... The use of advisors by international companies exporting to countries where they have no material in-country capability of staff was, and is, commonplace across many industries. This approach offers a lower cost base for long lead-time programmes compared to basing staff in-country, ultimately leading to a lower cost of sales to the customer. It is widely accepted that Offset obligations require contractors to employ advisors to perform roles which include providing local knowledge of market-specific procurement processes and practices. In the 1990s, BAES's strategy worldwide was to incur no cost in-country itself but rather to engage local advisors upon whom the cost fell. Further, the advisors assumed all the financial risks of the procurement process, saving BAES a fixed overhead which, in the case of South Africa, BAES estimates (based on the cost of other overseas offices) to have been in the order of approximately £4,2 annually.'

BAES's work in South Africa began 1991 and has run for more than 20 years. The SDPP contracts were worth in excess of £2 billion and incorporated very significant Offset obligations. The actual spend on advisors in relation to BAES and Saab was well within what any company bidding for contracts of this sort would have expected to incur ... The conduct of advisors BAES and Saab products in the course of the SDPP has been the subject to a number detailed investigations over many years. None of these investigations has demonstrated unlawful conduct on their part.'

[663] Various agencies investigated the possible criminal conduct of some of the role players in the SDPP, and no evidence was found to justify any criminal prosecution. There is no need to appoint another body to investigate the allegations of criminal conduct, as no credible evidence was found during our investigations or presented to the Commission that could sustain any criminal conviction. The Commission has carried out an intensive investigation, and other local and foreign agencies have investigated the possible criminal conduct of people who were involved in the SDPP. No evidence of criminal conduct on the part of any person was found.

[664] Given that 18 years have elapsed since the launch of the SDPP and 15 years have passed since the award of the primary contracts, it will be extremely difficult, if not impossible, to unearth evidence, if any, that may sustain any criminal prosecution at this late stage. As alluded to in paragraph 657 above, the DSO, and subsequently the DPCI, has over a period of ten years up to 2010 investigated the very allegations around the SDPP and they could find no prima facie evidence of criminal conduct against anybody. If these investigative bodies could not find any prima facie proof of wrongdoing when the events were still fresh, it is highly unlikely that any evidence could be found more than 20 years after the events. Furthermore, similar investigations were carried out in other jurisdictions, such as the United Kingdom, France, Germany, Sweden and Switzerland, and all were closed several years ago without any criminal prosecution being instituted against anybody. In the premises, another investigation into the SDPP will serve no purpose.

ix. German investigations

[665] Dr Young referred to the three reports that emanated from the German Prosecutorial Authority, (annexures RMY52, RMY53 and RMY54) as being the most important of all his evidence.

[666] Dr Young did not know whether the three reports were obtained by lawful or unlawful means or who their authors were. He also did not know who sent them to him but assumed that they emanated from the institution

identified in the header, which is stated as German Investigative Authority in Düsseldorf, Germany.

[667] The documents bore no official letterhead, nor details that one would normally find on a letterhead. The documents were not in final form and could at best be described as rough preliminary documents. Strangely, one was in German and the other two in English. It is not clear why a German investigator would prepare some of his or her reports in English, which is not their official language.

[668] Dr Young said that he had received the documents early in 2010, which was approximately two years after the German investigation was closed.

[669] He said that he contacted police officials and the Public Prosecutor in Germany and was advised that the investigations were preliminary and had been closed by 13 January 2008.

[670] Dr Young became evasive when questioned about how he came into possession of these documents. It is certain though that he did not receive them from any official or lawful source nor did he know who authored them. He could not vouch for their authenticity, save to insist that they emanated from the German investigating authorities, based on the name of the institution identified on the header.

[671] The evasiveness about how he came into possession of these reports manifested itself in another aspect of Dr Young's evidence. He claimed that Colonel du Plooy had shown him a page of these reports to encourage him to lay a formal complaint in order that the police could launch an investigation into his complaints of malfeasance in the SDPP, which du Plooy denied. He claimed to have received the documents early in 2010 yet in March 2008 he had written to the South African prosecuting authorities and had repeated some of the allegations contained in the documents and had even referred to the German investigation reports, implying that he

already had them. Strangely, du Plooy was also uncertain, if not evasive, about when and from whom he obtained the same reports.

[672] The documents bore no official letterhead containing details customarily associated with an investigative body, no addressee, no signature and no formal salutation, and seem to be probing for information on an informal basis. Considering the comments of the public prosecutor in Bochum as set out in paragraphs 676 and 677 below, it is not inconceivable that the author of these documents was a German investigator who was conducting an informal, unauthorised investigation and they are therefore not official reports. In short, the authenticity and legitimacy of these reports are questionable.

[673] The matter is further complicated by the fact that, on his own version, Dr Young provided the German police with press reports and articles published in South Africa and as such he was the source of some of the allegations contained in the reports. He says that he contacted the German police investigator, Andreas Bruns, and public prosecutor Götte regarding these reports but they declined to collaborate in his probe. Importantly, he had been advised that the investigations were preliminary and had been closed by 13 January 2008 according to him. Despite this he still persisted that the reports presented the strongest evidence of bribery, fraud and corruption in the SDPP.

[674] As already alluded to, Dr Young himself contributed some of the information contained in the reports though he seemed to want to underplay his role. It is apposite to quote from one of the reports:

'From Richard Young we received information about one payment from Merian Ltd, to Pierce of the amount of 10,000 US\$, value date 30th March 2001. The money seems to have been transferred from the UK to the SA Reserve Bank via First National Bank of South Africa Ltd. Richard Young claims that more payments had been made from Merian Ltd to Pierce but the above is the only one he could prove by presenting a

transaction report. Young also presented statements for one bank account of Chippy Shaik but no suspicious deposit could be found yet.'

[675] Given the substantial documentation that Dr Young had stored in his computer over the years relating to the SDPP, it is not inconceivable that a lot more of the contents of the reports emanate from him. This is reinforced by the submission of Thyssenkrupp Marine Systems (TKMS), which was confirmed by Mr Wiercimok in his evidence, that the raid on its offices and the homes of some its employees during 2006 was triggered by a docket being opened on the basis of sources of information from South Africa, which included Mrs Patricia de Lille and Mr Terry Crawford-Browne; meaning that Dr Young was not the only South African source. Yet all of these individuals had no personal knowledge of the information passed on to the author of the reports. Nor has such author established any facts to support the allegations. In this regard, we agree with the submission of counsel for the DOD in her closing written argument where she says the following:

'It would be unjustifiable to elevate this unauthorised probing by an unnamed official in the German police to "evidence"—it would be tantamount to elevating mere untested opinion by an unidentified author with an apparent ignorance of the issues to a status which the German prosecuting authority itself has roundly rejected.'

[676] Apparently the investigations that led to compilation of these reports were triggered by, and were the side effects of, the tax evasion charges that the German prosecuting authorities had been investigating against Ferrostaal. In withdrawing the tax evasion charges, the public prosecutor at Bochum expressed his disapproval of the concomitant investigations relating to the bribes allegedly paid by Ferrostaal to foreign officials. In a memo dated 1 February 2008 (which is in the possession of the Commission and whose authenticity has been independently confirmed by the attorney then acting for Ferrostaal in the matter, Dr A Dierlamm) the public prosecutor

criticised the absence of any 'specific or substantial' evidence that would corroborate the assumptions contained in the reports and expressed his disapproval of the use of unconfirmed press reports as a basis for alleging the commission of a criminal offence. This would explain why the investigations were not pursued further.

[677] The public prosecutor recorded that the documents and deeds found in the Ferrostaal AG offices did not permit the inference that funds paid to Mallar Inc were forwarded to foreign officials. He went on to state that it was both impermissible and wrongful to have embarked upon these extensive investigations under the circumstances, and recorded that there was no cause whatsoever that would justify the further contacting of the persons listed in the reports. In a nutshell, the German prosecuting authorities have rejected the reports.

[678] Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that in 2006 the State Prosecutor's Office in Düsseldorf conducted a number of raids on the offices of TKMS and on the homes of some of his employees. It was subsequently learned that the prosecutor had opened a docket largely on the basis of two sources of information, namely, the media reports and South African critics of the SDPP, apparently including Ms Patricia de Lille and Mr Terry Crawford-Browne. He further said that no evidence was found supporting the allegations made by these South African sources against TKMS, its predecessor companies or its employees, directors or consultants.

[679] Mr Wiercimok further testified that the investigations were closed without charges being preferred against any person or entity.

[680] Mr Wiercimok testified that an allegation was made that the GFC had paid the then Chief of Acquisition of the DOD an amount of \$3 million to influence the award of the patrol corvettes contracts. He further said that this allegation was not true; that the GFC neither made nor authorised any such payment. The State prosecutor's office in Düsseldorf investigated the allegations made against GFC and no evidence was found to support them.

He further denied that his company had made any payments or promised Mr Shaik any payment to influence the procurement process relating to any equipment acquired in terms of the SDPP process. Nor has he ever seen the 'Teutonic memorandum' annexed to Dr Young's papers (RMY51).

[681] In our view, no reliance can be placed on these reports which were in draft form and whose source and authenticity are questionable. They contain opinion and speculation on various matters, unconfirmed allegations and no facts, as can be seen from the quotation in paragraph 674.

[682] Most importantly, they have been rejected by the German prosecuting authorities as forming no legitimate ground for even probing the individuals whose names appear therein. In any event, Dr Young was constrained to concede under cross-examination that the so-called German reports do not constitute evidence of conduct amounting to fraud, bribery or corruption on the part of any person. His strong reliance on these reports was watered down to saying that he brought them to the attention of the Commission for it to investigate the allegations contained therein, something that we acknowledge he was entitled to, or even duty bound to do, as a concerned citizen. He submitted, however, that we should recommend that they be referred to a specialised investigative body for further probing as he believed that they warrant closer investigation with a view to possible prosecution of some of the people whose names appear therein. We will revert to this submission when discussing possible recommendations.

[683] The one other document handed in by Dr Young which warrants consideration is the so-called 'Teutonic memorandum' (annexure RMY51). This is a copy of a memorandum purporting to have been written by Mr C Hoenings, formerly of Ferrostaal. It was apparently sent to Dr Young by an anonymous person from an anonymous fax purportedly in Germany. It purports to be a recordal of a conversation between Mr Hoenings and Mr Chippy Shaik, confirming the existence of a verbal agreement for payment by Ferrostaal to Mr Shaik of an amount of US\$3 million, allegedly for Shaik's

work in ensuring that the GFC won the contract for the supply of the frigates to the SA Navy.

[684] Apart from the fact that its authenticity could not be established, the essence of the allegations contained therein—payment of a bribe—have been denied by Mr Wiercimok who testified on behalf of TKMS. Mr Shaik has also denied ever soliciting any bribe from the GFS or anybody for that matter. Accordingly, not only is there no corroboration for its contents but, most importantly, its pertinent averments have been contradicted by direct oral evidence. No evidential value can be placed on it.

[685] Various critics, including Mrs de Lille, Mr Crawford-Browne, Dr Woods, Mrs Taljaard and Dr Young, testified before the Commission and could not provide any credible evidence to substantiate any allegation of fraud or corruption against any person or entity. They have been disseminating baseless hearsay, which they could not substantiate during the Commission's hearings.

[686] As indicated earlier, GFC was selected as the preferred bidder solely on the basis of its superior bid.

x. Miscellaneous observations

[687] It is worth noting that investigations relating to the SDPP that were carried out in other jurisdictions, such as the United Kingdom, France, Germany, Sweden and Switzerland, have been closed and no criminal charges were preferred against any person or entity. The investigations were closed several years ago.

[688] We are of the view that another investigation into the SDPP acquisition will not serve any purpose.

[689] The authors of the several books dealing with the SDPP were given an opportunity to appear before the Commission. Some of them appeared and testified. One appeared but refused to testify and two refused to appear before the Commission. Those who did testify could not provide any

evidence of criminal conduct or substantiate the allegations of wrongdoing contained in their books.

[690] During her testimony, Mrs Raenette Taljaard, a Senior Lecturer in the Department of Political Science at the University of Cape Town, was referred to various passages in the book she has authored and requested to explain certain of the allegations contained therein. She indicated that she had not included the relevant passages in her written statement because those were merely her opinions. She went on to say that expressing an opinion in a book and giving evidence under oath were two different propositions. She had clearly stated in her statement that a former naval officer who had been involved in the SDPP was now working for one of the successful bidders contrary to the agreement between the Government and the successful bidders. When documents were shown to her indicating that the officer concerned had obtained the requisite permission to take up the employment, she was candid enough to recognise her mistake and duly withdrew the allegations she had levelled against the officer.

[691] Another author, Mr Terry Crawford-Browne, did not deal in his evidence with the various allegations of criminal conduct contained in his two books. He was found to be an unreliable witness. Various serious allegations he had made were proved to be incorrect.

[692] Mr Hennie van Vuuren was subpoenaed to appear before the Commission and give evidence. He appeared but refused to take an oath and testify. Amongst others, he raised, *inter alia*, the flimsy excuse that the Commission was not prepared to allow him to use the Debevoise & Plimpton Report. Apparently, this was based on advice from his counsel, who queried the Commission's ruling that the Debevoise & Plimpton Report enjoyed the protection of privilege and was therefore inadmissible. We subsequently gave full reasons for the impugned ruling. As stated earlier, Ferrostaal refused to waive their privilege over the report.

[693] Messrs Holden and Feinstein associated themselves with the attitude of Mr van Vuuren. Their legal representative informed the Commission that

they were in the United Kingdom and beyond the jurisdiction of the Commission, that they would not appear before the Commission, and that the Commission would not be in a position to properly serve subpoenas on them.

[694] Colonel du Plooy testified that when they were investigating the SDPP, they went to London and met with Mr Feinstein. Mr Feinstein refused to give them affidavits dealing with the SDPP. He refused to co-operate with the police officials.

[695] From the above facts, it is, in our view, fair to draw an inference that the failure of Messrs van Vuuren, Holden and Feinstein to testify before the Commission stems from the fact that they have no information which could have assisted the Commission. They did not want the allegations they made against various people to be tested under cross-examination.

[696] As will be shown later, various serious allegations made by them are incorrect and without any factual basis.

[697] It should be mentioned that there were several witnesses, including former members of the Cabinet and persons from overseas, who voluntarily appeared and testified before the Commission.

[698] In our view, the process followed in the SDPP from its inception up to Cabinet approval of the preferred bidders, was a fair and rational process. The decisions of the Cabinet were strategic in nature and policy-laden.

[699] One of the functions of the National Executive as set out in section 85 of the Constitution is to develop and implement national policy, including defence policy. Any suggestion that the Cabinet's decision to proceed with the SDPP was irrational is misplaced.

xi. Policy Directive 4/147 and related policies

[700] Some of the witnesses testified that DOD Policy Directive 4/147 introduced procedures that were not consistent with Armscor procedures and compromised the legitimacy of the entire acquisition process of the

SDPP. The witnesses further alleged that Policy Directive 4/147 was never approved. In fact, Mr Steyn made the startling allegation that Directive 4/147 was not applicable to the SDPP.

[701] Captain J de la Rey Jordaan testified that prior to 1994, South Africa's ability to acquire arms was restricted by the arms embargo. The SADF dealt with the projects on an individual basis. After 1994, various foreign armaments manufacturers offered their respective products to South Africa, following which the Strategic Defence Procurement Package concept emerged.

[702] At the time it was felt that the international defence equipment offers fell outside the scope of the existing acquisition policy and a specific policy for such international defence equipment offers had to be established.

[703] Captain Jordaan testified that at the time when the SDPP was considered, MODAC 1 and 2 were applicable together with other policies. He further said that VB1000 that applied prior to the launch of the SDPP was insufficient insofar as it did not address the acquisition that was envisaged in the SDPP. The policy had to be augmented in order to deal specifically with the acquisitions foreseen under the SDPP.

[704] In order to deal with international defence equipment offers in the Ministry of Defence, DOD Policy Directive 4/147 was approved by the Council of Defence on 8 August 1997. The COD was chaired by the Minister of Defence. The Policy Directive was signed by both General Meiring, Chief of the SANDF, and Mr PD Steyn, the Secretary for Defence. The Policy Directive dealt with the process to be followed by the DOD and Armscor in dealing with international or government-to-government defence equipment offers.

[705] Mr David Griesel testified that Policy Directive 4/147 basically authorised some of the deviations from Armscor's standard process where this directive introduced a three-tier evaluation and a three-tiered value system for the SDPP. Policy Directive 4/147 introduced the 'third order'

value system that had to be developed for each equipment type by the project teams. First and second order value systems were also introduced.

[706] Mr Vermeulen testified that Policy Directive 4/147 introduced three layers of adjudicating teams. The three tiers were the upper tier (Cabinet level), the middle tier (SOFCOM level) and the lower level (IPT level). The Cabinet level was where strategic considerations were taken into account, while at SOFCOM level the consolidation of the results of the various teams took place. At the lowest tier, the technical teams were concerned with technical evaluations. At the same level, other teams were looking at the finances and industrial participation.

[707] The Policy Directive was utilised by all officials—including the Minister of Defence—during the SDPP acquisition process. No person queried its validity. Except for Mr Steyn, all the State officials who testified accepted that Policy Directive 4/147 was specifically designed for the SDPP and was applied throughout. No suggestion was made that Policy Directive 4/147 was not valid.

[708] From the above facts, it can be concluded or inferred that Policy Directive 4/147 was valid and that the use thereof did not compromise the legality of the SDPP acquisition process.

[709] In terms of the MODAC Report (page 40), the Minister of Defence had the final authority over all acquisition matters and had the right to refer decisions on acquisition programmes to the Cabinet.

[710] It is common cause that during the SDPP process the evaluation results were presented to the AASB, the AAC and the IMC (of which the Minister of Defence was a member). The IMC deliberated and thereafter made recommendations to the Cabinet, which took the final decision.

[711] Any suggestion that Ministerial Directive MD 4/147 introduced an undesirable deviation from Armscor's procedures is unfounded and not supported by evidence led before the Commission.

[712] All the structures envisaged by MODAC participated in the SDPP process. None of the said structures was overlooked or rendered redundant.

[713] In the SDPP process, the usual Armscor tender procedures and controls were replaced by broader and more comprehensive interdepartmental tender evaluation and management arrangements. The final decision was taken by the Cabinet.

[714] The IMC provided executive oversight over the SDPP process. The Cabinet did not require the approval of parliament to proceed with the SDPP. Parliament had an oversight role over all actions of the Cabinet and it carried out its oversight role through various established committees, for example, SCOPA.

[715] Former President Mbeki testified that it was not necessary for the Cabinet to secure Parliament's approval prior to authorising the signing of the contracts. Parliament was informed about the funding of any project through the national budget that must be approved by Parliament.

[716] Cabinet's oversight of the acquisition process was enhanced.

xii. Criticism of the rationale of the SDPP

[717] The most strident criticism of the rationale of the SDPP is contained in a 243-page document submitted to the Commission in 2012 by Messrs Andrew Feinstein and Paul Holden. This was in response to the Commission's invitation to interested parties to make submissions in respect of any of the Commission's terms of reference. In this document ('the Joint Submission'), Messrs Feinstein and Holden detailed various instances of alleged corruption, bribes and irregularities in the award of the primary contracts, as well as some secondary contracts awarded in relation to the combat suite for the corvette programme.

[718] These two gentlemen subsequently refused to appear before the Commission to testify and substantiate their allegations. The result is that their allegations could not be interrogated in order to assess their veracity, and they therefore remain allegations. Nonetheless, the Joint Submission is

part of the material before the Commission and we have to deal with the contents thereof. It is important to do so in order to determine whether the allegations warrant any further investigation.

[719] Most of the allegations of corruption, bribes and irregularities in the SDPP contained in the Joint Submission have also been made by Dr Richard Young, in particular, and to a lesser extent by Mr Terry Crawford-Browne and other critic witnesses who testified before the Commission. Interestingly, Messrs Feinstein and Holden make it clear in their submission that some of the allegations have been extracted from the inadmissible Debevoise & Plimpton report. The bulk of those allegations have been traversed and refuted by Rear Admiral Kamerman and other State officials who participated in the SDPP programmes. We have accordingly dealt therewith elsewhere in the body of this report, and it becomes unnecessary to comment further thereon in this chapter. In this section we focus on the averments relating to the rationale for the acquisition.

[720] The Joint Submission challenges the rationale on six main grounds. We comment hereunder on each of the grounds.

[721] First, the authors cite the White Paper on Defence and the Defence Review and point out that South Africa faced no external military threat in the short and medium term and that the real threat to the security of the country was posed by the problems of poverty and unemployment. They contend that it was irrational to expend huge sums of money on the acquisition of military equipment in the face of the pressing internal socio-economic needs, and considering the shaky state of the country's economy at the time.

[722] It is true that the White Paper acknowledged that the country faced no foreseeable external military threat and that the real security threat was posed by the problems of poverty, unemployment, inequality, crime and violence, and further that the Reconstruction and Development Programme (the RDP) should be prioritised in order to address these problems. However, the document also recognised the need for the country to have a

credible defence force that would be able to fulfil its constitutional mandate 'to defend and protect the country, its territorial integrity and its people'.

[723] The White Paper noted that the challenge was how to rationalise the SANDF and contain military spending without undermining the core defence capability in the short or long term. This Commission has heard extensive, credible evidence to the effect that the equipment types acquired under the SDPP were necessary replacements of ageing and obsolete equipment. The suggestion that spending money on the SDPP would have resulted in the Government neglecting the pressing socio-economic needs of the country, is not supported by the evidence led before the Commission.

[724] Secondly, it is alleged that there was considerable public opposition to the acquisition. Thus, the decision to proceed with it flew in the face of popular indignation and was therefore undemocratic. In this regard, the authors refer to the programme that was initiated by the DOD and Armscor in 1993 to acquire four corvettes. They allege that this programme was abandoned in 1995 due to popular opposition.

[725] The latter claim stems from a lack of knowledge of the true facts and is patently false. The undisputed evidence on record is that when the Cabinet was approached for final approval, it directed that the corvette programme be suspended to await the outcome of the White Paper and Defence Review processes.

[726] Another false allegation relating to this aspect, made by the other critics, is that the earlier programme was stopped in order to give the German companies an opportunity to enter the bidding process. The true facts are that the German companies had refused to participate in the programme when it started because at that time South Africa was still subject to the United Nations-imposed arms embargo. As soon as the arms embargo was lifted, the German companies requested to be allowed to join the competition, albeit late, and the request was granted. The specific German company, Blohm+Voss, was not shortlisted, though.

[727] Contrary to the assertion of popular indignation, the SDPP followed upon the processes of the White Paper and the Defence Review, which involved participation by a broad cross-section of the South African population, and some kind of national consensus was reached as a result.

[728] The third ground on which the rationale of the SDPP is challenged, is that the imperatives of cost constraints were ignored. The following allegation is made at page 32 of the Joint Submission:

'It should also be noted that many of the key decisions made during the Arms Deal selection process directly contradicted the imperative to be cognisant of constraints on defence spending in the context of severe socio-economic needs. As we will show in detail in Chapter 3 in every contract bar the Light Utility Helicopter contract the most expensive offer was (irregularly) selected. We estimate that this increased the cost of the Arms Deal by at least 50% if not more.'

[729] It is simply not correct that all but one of the equipment types selected were the most expensive on offer. In fact, the opposite is the case. The German GSC 209 1400 MOD was R800m cheaper than its closest competitor and was best value for money.

[730] The Agusta A109 was the cheapest on offer in its category and the Gripen was the cheapest on offer in its category. Cost constraints played a major role in the various stages of the programmes. We have already catalogued in this report the many instances where cost considerations played a very important role. For example, cost constraints compelled the decision to abandon the future medium fighters (FMFs) in favour of the advanced light fighter aircraft (ALFA).

[731] The undisputed evidence is that the principle that defence spending is 'needs-driven and cost-constrained' was generally applied in the whole process.

[732] The fourth ground of attack is that the SDPP was unaffordable. The authors cite, *inter alia*, the Affordability Report that was presented to the IMC in August 1999 and which provided a detailed assessment of the impact that the SDPP would have on the economy, pinpointing the potential risks inherent in the programme. They say that the Affordability Report made it clear to the IMC that the economic impact of the procurement would be broadly negative even in the best scenario case where the offsets flowing from the purchase of the equipment were fulfilled and the impact of the associated interest rates was low. They contend that it was irrational in the circumstances to have proceeded with the acquisition.

[733] The one cardinal mistake that the authors and other detractors of the SDPP make, is to misconstrue the purpose of the Affordability Report. The object of the Affordability Report was to provide the Cabinet with a full appraisal of the financial and economic implications of the SDPP for the country, including the associated risks. The report was meant to put before the Cabinet information that would enable it to make an informed decision whether or not to go ahead with the acquisition.

[734] This issue was fully dealt with by Mr Trevor Manuel in his evidence before the Commission. He made it clear that by commissioning an affordability study, the Cabinet had wanted the experts to provide it with a full appraisal of the risks. He put the matter as follows:

‘... you ask the mathematicians who are the medallists to synthesise a set of circumstances and frequently you ask what the worst possible risks are and in this discussion you run from exchange risks, affordability risks, to inflation risks, all kinds of risks and you ask them what the worst possible things are that can happen.’

[735] He went on to say:

‘We ask the experts to use the mathematics that they know to help us understand what the risks are, because the task of

management is not to avoid taking decisions but to avoid unnecessary risks in the circumstances.'

[736] Mr Manuel also dispelled the notion that expenditure on the SDPP would have had the effect of diverting funds from the country's pressing socio-economic needs. In this regard, he referred to the evidence of Mr Donaldson, a Treasury expert who was involved in the affordability study and who gave extensive evidence on the Affordability Report. Mr Donaldson disclosed that in the period 2002/2003, the expenditure on the SDPP had been at its peak and amounted to R6,342 billion. In the same period R14,966 billion was allocated to the Department of Social Security and Welfare alone, which far exceeded the SDPP expenditure. The consolidated government expenditure for that year also showed that R13,825 billion was allocated to the Departments of Transport and Communications. It further showed that all the other departments were allocated billions of rand.

[737] Mr Manuel also made the valid point that the issue of affordability was in fact distinct from the decision to acquire the equipment and that once the principal decision was made, it was incumbent upon his Department to find ways of funding the acquisition. This shows that affordability is, strictly speaking, not a valid ground for challenging the rationale of the acquisition. Nonetheless, the evidence is clear that the affordability of the procurement is an issue that was fully considered. It is apposite at this stage to quote the JIT report: *'Affordability is ultimately a question of political choice.'*

[738] It was the Cabinet's call to determine whether the acquisition would be affordable, and it decided on the matter having considered all the relevant information placed before it. The Cabinet was also confident, as Mr Mbeki had said, that it would be able to implement measures to obviate or minimise the risks.

[739] Furthermore, the Joint Submission contends that Parliamentary approval for the SDPP was not obtained. This contention is based on the wording of paragraph 8 of Chapter 8 of the Defence Review:

'The approval of a force design by the Parliamentary Defence Committee, Cabinet or Parliament does not constitute blanket approval for all implied capital projects or an immutable contract in terms of the exact numbers and types of equipment. At best it constitutes approval in principle for the maintenance of the specified capabilities at an appropriate level.'

[740] This contention was taken up with both Mr Mbeki and Mr Manuel under cross-examination. Mr Mbeki's evidence was that acquisition is a matter that falls within the responsibility of the Executive in line with the doctrine of separation of powers that is enshrined in the Constitution. It is not within the competence of Parliament. Parliament's role is that of oversight. He stated that the Government submits to Parliament for approval on a yearly basis a budget which covers the expenditure of all government departments. The expenditure on the SDPP formed part of the budget of the DOD that was presented to Parliament annually in the period during which the programme was in force. Mr Mbeki further pointed out that the Government's defence policy was contained in the White Paper and the Defence Review, both of which were the products of an extensive public participation process that was ultimately approved by Parliament. Mr Mbeki's evidence finds full support in the evidence of Mr Trevor Manuel.

[741] In our view, paragraph 74 of Chapter 8 of the Defence Review appears to support the Government's stance on the matter:

'The chosen force design option will become the object of implementation planning for the next decade or longer. However, the realisation of this force design will be influenced by periodic revisions of the Defence Review and subsequent planning will reflect the continuously changing strategic environment and prevailing circumstances. The result is that the exact details regarding the type and quantities of main equipment will inevitably deviate from the vision. Such deviations will be subject to parliamentary oversight and stipulations of the acquisition process.'

[742] This passage clearly envisages that the force design may over time have to be revised or amended depending on the circumstances, and such changes will of necessity result in a change in the types and quantities of the armaments and equipment contemplated in the Defence Review. If that happens, parliamentary approval will have to be obtained before acquisition can take place. In other words, if the approved policy framework is changed, parliamentary endorsement would be required. It would not make sense that each time the Government acquires any of the equipment specified in the Defence Review, it must first seek parliamentary approval.

[743] In terms of section 85(1) and (2) of the Constitution, the executive authority of the Republic vests in the President, who exercises such authority together with members of the Cabinet. The acquisition of military equipment is a matter that falls within the responsibility of the Minister of Defence, and therefore, the Cabinet, in line with the provisions of section 85(2)(e) of the Constitution.

[744] Section 55(2) of the Constitution provides as follows:

- (2) *The National Assembly must provide for mechanisms –*
- (a) *to ensure that all executive organs of state in the national sphere of government are accountable to it; and*
 - (b) *to maintain oversight of –*
 - (i) *the exercise of national executive authority, including the implementation of legislation; and*
 - (ii) *any organ of state.*

[745] Mr Andrew Donaldson, who was the Deputy Director-General and Head of the Budget Office in the National Treasury, testified that the costs of the SDPP procurement were approved by Parliament annually through its appropriation of the funds for the Defence vote. He further said that, although the appropriation is for a single financial year, the submission of the Main Appropriation Bill to Parliament each year is accompanied by a detailed three-year expenditure on the SDPP annually. Detailed expenditure

projections for the programme were presented to Parliament annually in the Budget Review and Estimates of National Expenditure.

[746] It is clear that the role of Parliament in the SDPP process was that of oversight, and the evidence confirms that it did exercise the necessary oversight over the process. Consequently, no irregularity was committed in not obtaining prior parliamentary approval for the SDPP.

[747] The sixth ground of attack on the rationale is what the authors refer to as the creation of a network of businesses that positioned themselves to benefit financially from the SDPP. The authors list a number of companies registered around 1995 and in which some prominent individuals associated with the ruling party and Government acquired interests. Some of the companies secured stakes in companies associated with the successful bidders and benefitted financially from the sub-contracts awarded under the SDPP, including those awarded in relation to offset activities. The suggestion is made that the SDPP was pursued in order to benefit the individuals concerned.

[748] This is a far-fetched suggestion that does not warrant further comment. Moreover, it is a half-hearted allegation about which the authors themselves concede they cannot make any definite claim.

xiii. Letter of resignation by evidence leaders

[749] Upon their resignation from the Commission as evidence leaders, Advocate BL Skinner SC and Advocate C Sibiyi submitted a detailed confidential letter of resignation, which, for reasons unknown to the Commission, found its way into the public domain. In one of the paragraphs of the letter, they state the following:

'We have reiterated on several occasions our view that Dr Young is an extremely important witness. Indeed he is the only witness (with the possible exception of Johan du Plooy) who will testify to their knowledge of bribery/corruption in connection with the Strategic Defence Procurement Package.'

[750] The above statement is an unfortunate exaggeration of the importance of Dr Young's evidence. The evidence revealed that his personal knowledge of the SDPP processes was limited—understandably so—to the award of the subcontracts for the sub-systems of the combat suite for the corvettes, for which his company had tendered. His purported knowledge of corruption relates only to this area. As for the rest, his allegations of bribery and/or corruption are based, just like most of the other critics, on either hearsay or documents that had landed on his desk or computer, the contents of which he had no personal knowledge of.

[751] In another paragraph of the same letter of resignation, the following is stated:

'For the Commission not to permit documents to be referred to in evidence, such as the Debevoise and Plimpton report, nullifies, in our view, the very purpose for which the Commission was set up.'

[752] The above statement emanates from a misunderstanding of our law. As set out elsewhere in this report, in our law the Debevoise & Plimpton report is a privileged document and is not admissible in evidence. Our ruling on this point during the hearings is supported by various decisions of our Courts.

1.6 WHETHER ANY CONTRACT CONCLUDED PURSUANT TO THE SDPP PROCUREMENT PROCESS IS TAINTED BY ANY FRAUD OR CORRUPTION CAPABLE OF PROOF, SUCH AS TO JUSTIFY ITS CANCELLATION, AND THE RAMIFICATIONS OF SUCH CANCELLATION

[753] Clause 20 of the BAE/Hawk/Gripen Umbrella Agreement, dealing with remedies in case of bribes, stipulates that:

'20.1 If the Seller or any of its members or representatives in relation to negotiating, entering or execution of the Agreement has:

20.1.1 been convicted of having committed an offence under the Prevention of Corruption Act or analogous legislation in

any relevant jurisdiction by for example having promised, offered or given any kind of illegal advantage or illegal consideration; or

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

Arm Scor and the South African Government acting together may summarily cancel the Agreement and claim damages resulting from the cancellation or claim an amount equal to 5% of the Total Contract Price as agreed pre-estimated damages.'

[754] Clause 20.1 of the GSC Umbrella Agreement, clause 19.1 of the Corvette Umbrella Agreement and clause 18.1 of the Agusta Umbrella Agreement contain similar provisions. It is common cause that no person or entity has been convicted of an offence under the Prevention of Corruption Act, or of fraud or criminal acts relating to the SDPP procurements or execution thereof.

[755] The likelihood of such a conviction seems remote, given the evidence led before the Commission.

[756] It must be borne in mind that General Meiring and Colonel du Plooy testified that their investigations could not reveal any direct evidence indicating that any corrupt payments were made. There was also no evidence that any government official was unduly influenced to select preferred bidders, and there was no evidence that the decision-makers received any corrupt payments.

[757] There is no doubt that if there was any reason to cancel the contracts, and they were indeed cancelled and the equipment returned to the sellers—if that were possible—it would hamper the DOD in carrying out its constitutional mandate. It would also compromise the ability of the Government to fulfil its international obligations.

[758] The consequences of the SANDF losing the capabilities acquired under the SDPP would be a national disaster. The security of the country would be compromised severely, certain sectors of the economy would be negatively affected, South Africa would lose scarce and specialised skills, morale of the members of the SANDF would go down and jobs would be lost.

[759] Some of the critics of the SDPP correctly conceded that cancellation of the SDPP contracts was not a viable option.

[760] Rear Admiral Robert Higgs testified that if the SDPP contracts were cancelled and the equipment returned (if it were possible at all), the country would have to seek other equipment to replace the returned equipment. The acquisition process takes a long time—about 10 years—and the costs will probably be much higher. Once lost, to re-establish the capabilities we have would be very costly.

[761] Amongst others, Rear Admiral Phillip Schoultz testified that attempting to cancel the whole or part of the SDPP contracts would be extremely complex, if not impossible.

[762] Finally, besides the practical difficulties which would ensue if the contracts concluded pursuant to the SDPP procurement process were cancelled, there is no evidence which suggests that the contracts concluded pursuant to the SDPP procurement process are tainted by fraud or corruption.

[763] There is no basis to suggest that the contracts should be cancelled.

C. RECOMMENDATIONS

[764] We have in paragraph 664 of this report given reasons why it would serve no purpose to recommend that the allegations of fraud, bribery and corruption in the SDPP be referred to another body for further investigation. The only other aspect of the SDPP procurement process that could be considered for further investigation is the deviations from standard procurement policies and procedures. We have, however, heard evidence

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from senior Armscor officials that, following the JIT and Auditor-General investigation reports, the procurement policies and procedures have been overhauled and new policies put in place which now guide procurement of all military equipment. In view hereof, we deem it unnecessary to make any recommendations in this regard.