

In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 4
Hearing on the Merits

Thursday, 25th May 2017

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
PROFESSOR ALBERT JAN VAN DEN BERG
PROFESSOR PIERRE MAYER

(1) BSG RESOURCES LIMITED
(2) BSG RESOURCES (GUINEA) LIMITED
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

KATY COLTON, of Mishcon de Reya, DAVID WOLFSON QC, of One Essex Court, and DAVID BARNETT and GABRIELLE PELED, of Barnea & Co, appeared on behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON, THÉOBALD NAUD and SÂARRA-TILILA BOUNFOUR, of DLA Piper, LAURENT JAEGER and AGNÈS BIZARD, of Orrick Herrington & Sutcliffe, and MOHAMED SIDIKI SYLLA, of Sylla & Partners, appeared on behalf of the Respondent.

Secretary to the Tribunal: BENJAMIN GAREL
Assistant to the Tribunal: MAGNUS JESKO LANGER

Transcript produced by Trevor McGowan
Georgina Vaughn and Lisa Gulland
www.thecourtreporter.eu

ALSO APPEARING

FOR CLAIMANTS

JACK BURSTYN, Mishcon de Reya
DAG CRAMER, BSGR
FRANÇOIS FERREIRA, CFA

FOR RESPONDENT

ANDREA LAPUNZINA-VERONELLI, DLA Piper
CLÉMENTINE EMERY, DLA Piper
EUGÉNIE WROBEL, DLA Piper
YANN SCHNELLER, Orrick Herrington & Sutcliffe
QUIREC DE KERSAUSON, Orrick Herrington & Sutcliffe
VALÉRIE KUBWIMANA, Orrick Herrington & Sutcliffe
MARIUS ATTINDOGBE, Orrick Herrington & Sutcliffe

COURT REPORTERS

SIMONE BARDOT, French court reporter
CATHERINE LE MADIC, French court reporter
CHRISTINE ROUXEL-MERCHET, French court reporter

INTERPRETERS

SARAH ROSSI, French-English interpreter
ELIZA BURNHAM, French-English interpreter
JESUS GETAN BORNN, French-English interpreter

Discussion re procedural matters	1
MR MARCUS JOANNES PAULUS MARIA STRUIK	52
(called)	
Cross-examination by MR OSTROVE	55
Tribunal questions	158
Tribunal questions	176
Tribunal questions	204
Re-direct examination by MR WOLFSON	256
Questions from THE TRIBUNAL	270
Discussion re procedural matters	297

09:30

Thursday, 25th May 2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(9.38 am)
THE PRESIDENT: Good morning to everyone. We are ready to start Day 4 of this hearing. You will forgive the Tribunal for being a little late, but there were a number of issues to be discussed as a result of the communications we received last night.

Before I turn to the parties for any issues they have in mini-openings, maybe I should state where we stand.

The first thing that I would like to raise is just a practical matter. Would it be possible to hear Mr Ferreira this afternoon?

MR WOLFSON: Madam President, we have made efforts to have him here and I understand he will be here from 3 o'clock. I'm not sure I can get him here any earlier. I will be corrected if I -- yes, perhaps a little earlier, certainly by 3 o'clock. It seemed to us if we started with him at 3.00, we would finish.

THE PRESIDENT: Are you ready for the cross-examination of Mr Ferreira if it takes place this afternoon?

MR OSTROVE: (Interpreted) Yes, we think if we can finish with Mr Struik this morning, we can begin with Mr Ferreira this afternoon.

THE PRESIDENT: (Interpreted) Very well.

09:40

1 (In English) Then the next point is we received
2 a communication from the Claimants that Mr Avidan would
3 not appear. This of course raises the question of what
4 should we do with his evidence. His criminal lawyers'
5 letter speak of rescheduling. We don't know whether
6 that is what the Claimants wish to request, and of
7 course we do not know what the Respondent's views are on
8 this.

9 I will give you the floor in a moment. If he is not
10 heard, then you of course know that in PO1 there is
11 a paragraph 18.13 that deals with witnesses who have
12 given witness statements and do not appear in person.
13 But that has, of course, an alternative whether there is
14 a valid reason or not, and we can possibly rediscuss the
15 reasons if we get to this.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[PROTECTED]

2 The next thing is the Claimants' request to file the
3 complaint before the US courts against Mr Soros and the
4 Open Society Foundation, and that is a request that is
5 made by the Claimants and on which we should hear the
6 Respondent.

7 Then we understand that the Respondent has produced
8 the LMS/BSGR Guinea contract that we were discussing
9 with one of the witnesses yesterday. That was produced
10 in document production but was not in the record so far,
11 and is now in the record as R-586. If the Claimants
12 have any comments on this, of course they may make it.

13 That is what the Tribunal wished to address this
14 morning, and you may have other points that you can add.
15 But maybe you state your views; or if you have no views
16 on any of these issue at present, you may also say that
17 you will say so at another mini-opening later in the
18 hearing.

19 Mr Wolfson.

20 MR WOLFSON: I'm grateful, Madam President. I'll try to
21 deal with all those issues shortly. Forgive me if
22 I miss one, but I will try and get through them all.

23 First -- should I deal with the position of
24 Mr Avidan first?

25 THE PRESIDENT: Yes, please.

09:43

1 MR WOLFSON: The position in short is this: we would like
2 him to come and he would like to come, but the Tribunal
3 has seen the advice he has received not from me or from
4 BSGR's lawyers, but from his own criminal lawyers
5 effectively in Israel with regard to the Israeli
6 authorities' investigations.

7 We had some discussion between counsel before we
8 commenced today. I understand that the Respondent
9 believes that they may be able to provide some sort of
10 comfort -- I don't know what that is -- which they think
11 may encourage the Israeli lawyers to change their
12 advice. We could then try to slot him in, I understand,
13 next week. If that's possible, that would be great.

14 So certainly our position is that if there's any way
15 that comfort can be given and his Israeli lawyers advise
16 him that he can now come, that would be obviously
17 preferable. If not, the position is that he has
18 provided statements. Now is probably not the time to
19 debate whether he has [failed to]appeared, so to speak,
20 without valid reason or with valid reason; that's
21 probably best left to closing submissions. But clearly
22 we would say it is obviously a valid reason, but we could
23 leave that point.

24 So far as timetabling therefore is concerned, he is
25 obviously not going to be here today or tomorrow. If he

09:45

1 can be slotted in next week, that would be good.

2 It may be -- just being fair to the other side for
3 a moment -- it may be that if, because Mr Avidan has not
4 been here today and they have taken therefore a little
5 longer with Mr Struik than they otherwise would have
6 done, and then Mr Avidan does turn up next week, it may
7 be that they will ask the Tribunal to take that into
8 account on the chess clock, and obviously we would be
9 sensible about that.

10 So I think that's all I can really say, I'm afraid,
11 about Mr Avidan at the moment, unless there's anything
12 else I can help with.

13 THE PRESIDENT: Yes, actually two things.

14 The Tribunal would also like to hear Mr Avidan. He
15 has a lot to say, having been the country manager and
16 having been on the ground during all the time really
17 that is relevant to us. So if at all possible, we would
18 appreciate hearing him.

19 MR WOLFSON: Yes. I mean, there is another point I could
20 make, and let me make it as respectfully as I can.

21 I'm not sure how long the Tribunal would take in
22 this case to deliver their award, but other tribunals,
23 because of the weight of the material, can take some
24 time to deliver an award. If the position can't be
25 dealt with next week, but the position changes over the

09:47

1 next month or two, it may be that one thing the Tribunal
2 might want to consider at the end of next week is that
3 the proceedings are perhaps not formally closed upon the
4 receipt of written closing submissions, in the sense
5 that if Mr Avidan then became available, it might be
6 worth thinking about scheduling his evidence even at
7 that stage.

8 That depends, of course, how matters proceed in
9 Israel, and -- this is the respectful bit -- how long
10 the Tribunal would be considering its award in any
11 event. The position, as you will appreciate, is that
12 I can't at the moment promise any date by which he can
13 be available. So I don't want to say it could be three
14 months or four months or two months, because I simply
15 don't have any sensible date to give.

16 But if the position changes, of course we will
17 inform the Tribunal. And we would want, ideally,
18 Mr Avidan to give evidence, for the reason
19 Madam President has identified.

20 THE PRESIDENT: Yes. The best thing would of course be that
21 he can come next week.

22 MR WOLFSON: Of course.

23 THE PRESIDENT: If not, one question of course you may ask
24 the criminal lawyers in Israel is what their timeframe
25 is.

09:48

1 Another one is: if we were to come to the question
2 of valid reasons, then we would probably ask to have
3 some substantiation of the content of the letter of the
4 lawyers, in the sense that they say Mr Avidan was
5 instructed by the Israeli authorities to refrain from
6 any discussion of his investigation or the matters being
7 investigated. We understand that Mr Steinmetz is being
8 investigated as well and probably under similar
9 instructions, or the same instructions, and he did
10 appear. So we would need some assistance with
11 understanding this reason as it is stated here.

12 MR WOLFSON: Yes, I appreciate. I mean, I don't want to say
13 any more about that, but the Tribunal shouldn't
14 immediately equate the positions of Mr Steinmetz and
15 Mr Avidan. But I hear respectfully what the Tribunal
16 has said, and that sort of information we would provide
17 to the Tribunal if Mr Avidan can't come next week.

18 THE PRESIDENT: Thank you. Would you like to continue
19 dealing with the other points?

20 MR WOLFSON: Forgive me, sorry. I was going through my
21 little list.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:50

[PROTECTED]

[REDACTED]

13 THE PRESIDENT: The rule is actually that documents
14 exchanged as a result of a document production order are
15 not in the record as long as one of the parties does not
16 put them into the record formally, and that is usually
17 done together with your written submissions. So if it
18 is done now, it is subject to leave, and it could give
19 rise to an objection. I don't think, about the LMS
20 contract, there would be an objection.

21 MR WOLFSON: No, there certainly wasn't, and there isn't.

22 THE PRESIDENT: And the Tribunal certainly authorises it.

[PROTECTED]

[REDACTED]

09:51

[PROTECTED]

9 MR WOLFSON: I should also say that of course the second
10 document, the US complaint, is a public document.
11 THE PRESIDENT: Yes, there's many things that are public and
12 that are not in our record.
13 MR WOLFSON: Sorry, I wasn't saying it was public and
14 therefore it's on the record. What I'm saying is that
15 insofar as there are any objections, it should be taken
16 into account that it's a public document. That's the
17 point that I was making.
18 THE PRESIDENT: But there have been no objections so far,
19 right?
20 MR WOLFSON: Not to my knowledge. But we haven't really
21 discussed it, to be fair.
22 THE PRESIDENT: Can I note that there is agreement on the
23 submission into our record of the LMS/BSGR contract?
24 MR WOLFSON: Yes.
25 THE PRESIDENT: (Interpreted) I'm looking to Respondent.

09:56

[PROTECTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[PROTECTED]

[REDACTED]

11 The next point that you have not addressed yet is the
12 complaint against Mr Soros.

13 MR WOLFSON: Yes. This document, as the Tribunal will
14 recall, was referred to several times by Mr Steinmetz in
15 his evidence. He said in evidence on a number of
16 occasions that the Tribunal will find essentially the
17 position set out in that document, which of course is
18 a fairly recent document. It is a public document, as
19 I've already mentioned, and we consider it would be of
20 assistance to the Tribunal in assessing Mr Steinmetz's
21 evidence -- indeed, in understanding his evidence -- to
22 have access to that document.

23 Again, I don't know whether it's been objected to;
24 we haven't really discussed it so far between counsel in
25 any great detail.

09:59

1 THE PRESIDENT: (Interpreted) Would you like the floor on
2 this question?

3 MR OSTROVE: I think this is the first time the President of
4 the Tribunal asks me if they can give me the floor! I'm
5 at your disposal.

6 We have no objections. The Tribunal will understand
7 that we had great pleasure to read this complaint, it's
8 a public document, and just like Mr Steinmetz or
9 Mr Cramer's witness statements, the document is what it
10 is.

11 THE PRESIDENT: It's just a complaint before a US court?

12 MR OSTROVE: It's just a complaint. There is no evidence
13 submitted with the complaint.

[PROTECTED]

[REDACTED]

4 THE PRESIDENT: (In English) So this is about the various
5 points that arose last night. From yesterday we had
6 some leftovers, if I can call it like that.

7 I should also mention that we have received the
8 revised demonstrative exhibit on flow of funds.

9 (Interpreted) LMS were withdrawn from the left-hand
10 column; is that right?

11 MR OSTROVE: Yes.

12 THE PRESIDENT: Yes, you sent that to us last night too.

13 What remains on my list -- you have other lists,
14 I presume -- is the question of contracts and
15 demonstratives upon which you wanted to agree on the
16 listing of the various contracts. And you wanted to
17 determine whether there are originals of contracts when
18 there were allegations of forgeries, or are there expert
19 reports relating to the question of forgeries.

20 MR WOLFSON: Yes, I think the Tribunal is referring to this
21 document (indicating), which was a demonstrative
22 prepared by the Respondent yesterday, which we were
23 going to discuss.

24 THE PRESIDENT: (In English) I don't think we have this yet.

25 MR OSTROVE: We didn't submit it to the Tribunal because we

10:04

1 wished to discuss it with our adversary first. That's
2 why you haven't seen the document yet.

3 THE PRESIDENT: We know that there is a draft that you have
4 been discussing, but we have not seen it yet.

5 MR WOLFSON: Yes.

6 MR OSTROVE: Yes, we have just brought a few modifications
7 to this, because we discussed it, and so we wanted to
8 make some comments to the Tribunal before submitting it.

9 (Handed)

10 THE PRESIDENT: (Interpreted) Should I give the floor to the
11 [Respondent] to start with, to make their comments, and
12 then I shall give it to the Claimants?

13 MR OSTROVE: Thank you, Madam President. I think you have
14 just been handed out a copy of this document that we are
15 also going to put up on the screen.

16 PROFESSOR MAYER: (Interpreted) I just have one question.
17 In the second column, "Authenticity that is not
18 contested by BSGR", when we see "Yes", it's not
19 contested, and "no", it is contested; is that right?

20 MR OSTROVE: Yes, that was precisely what I purported to
21 explain. But I will go to this directly.

22 In our discussions we started by saying "Accepted
23 authenticity by BSGR", and so it means that we have
24 changed it from "non-contested". In other words, they
25 are not party to those contracts, and therefore they

10:06

1 accepted the idea of refraining from contesting the
2 contracts, but they don't want to go any further.

3 So what we've done for this is only contracts and
4 memos that are signed by Mamadie Touré. So on this
5 table you will not find any agreements between Pentler,
6 Bah, Touré, because obviously these originals would not
7 have been in the possession of the party.

8 So in the first column you've got the name, the
9 title of the document concerned; the second column, the
10 date. It says "contract", but in fact one of the
11 documents is just a statement. Then a reference as per
12 the proceedings. Then a contract the original of which
13 is held by the FBI. This is how we were able to
14 indicate whether Mrs Touré had these documents or not,
15 because she was the one who provided the originals to
16 the FBI, and therefore it was the only way we could
17 determine which were originals and which were not. And
18 authenticity which is not contested by the BSGR
19 companies -- sorry, there's a double-negative here. In
20 green we've got everything that is not put into question
21 by BSGR.

22 One thing you will be able to see in these said
23 exhibits -- and we're not going to show you every single
24 one of them, but it will be quite meaningful -- the
25 green in the FBI. You've seen in the electronic

10:08

1 versions that all of these exhibits are colour-scanned,
2 because they were originals which were scanned. We are
3 going to show you a few illustrations to explain what
4 I mean. So the copies of the exhibits come from scans,
5 colour scans, originals. In other words, R-30 or R-346,
6 you will see that we only have black and white copies,
7 which explains the source or the origin of these
8 exhibits.

9 I don't think I need to belabour this point any
10 further, but I can answer your questions if you have
11 any.

12 PROFESSOR VAN DEN BERG: (Interpreted) You said that these
13 are originals of contracts that Mrs Touré gave to the
14 FBI, and for this reason they are originals that she
15 mentioned to Mr Cilins?

16 MR OSTROVE: Yes, these are the documents that she held the
17 originals of, and our suggestion is that when Mr Cilins
18 came to ask to destroy these documents, these are the
19 ones.

20 But amongst all of these documents, the video of the
21 encounter between Mr Cilins and Mrs Touré was taken from
22 a handbag by the FBI, so you can't really see. So when
23 he says, "These are photocopies of these we don't need",
24 et cetera, only documents that are quoted by him --
25 we've seen that before -- are the two contracts,

10:10

1 27th February and 28th February 2008 and -- I haven't
2 made any comment on Mr Avidan's absence yet, but I will
3 come back to this -- these are documents that are
4 precisely signed by Mr Avidan.

5 PROFESSOR VAN DEN BERG: Yes, but during this meeting at the
6 airport she had these originals with her precisely, if
7 I remember rightly. She was saying, "I've got the
8 originals somewhere, I need some keys to access them",
9 et cetera, the complete story.

10 MR OSTROVE: Yes, of course, because it was the FBI who held
11 the originals.

12 PROFESSOR VAN DEN BERG: Yes, but what we see on the video
13 is the exchange of the originals. [PROTECTED]

16 MR OSTROVE: No, he didn't have the original either.

17 PROFESSOR VAN DEN BERG: No, no, but in the description that
18 is made.

19 MR OSTROVE: Two things. First, they spoke about certain
20 originals that were not with the FBI, but it was the
21 original of a statement that she had signed which said
22 that she sent to this to Mr Noy, if I'm right, but she
23 had no original with her because she had already worked
24 with the FBI at that stage, and she says, "Oh, no, no,
25 I didn't bring them, I put this in a safe place, I don't

10:12

1 have the key with me", et cetera, so that he couldn't
2 put his hands on them.

3 PROFESSOR VAN DEN BERG: Do you have any information as to
4 the estimated date at which the FBI will give the
5 results of the analysis of these documents?

6 MR OSTROVE: Well, I have to be very careful because there
7 are several criminal cases pending. But as far as these
8 authorities are concerned, I think the FBI and the US
9 Department of Justice are continuing their
10 investigation. There's still a grand jury who is
11 investigating these questions as we sit here today.

12 So the FBI holds the documents that they -- I can't
13 say that there will be a trial against anyone in the US,
14 but customarily the Department of Justice -- but there
15 is a criminal case, there is a discovery phase. And
16 what the DOJ does usually is that they don't produce
17 their analysis until the criminal trial starts, the
18 trial itself, and this is when they produce this for the
19 other party to look at.

20 So what we know is that within the framework for the
21 proceedings against Mr Cilins -- this is what was
22 explained by our adversary -- the DOJ had given
23 Mr Cilins two of the said documents to carry out his
24 expertise. At the end of the day there was no trial
25 against him because he pleaded guilty. And as far as we

10:14

1 know, the Department of Justice in the US never carried
2 out forensic analysis on this document because it's not
3 the usual practice if it's not absolutely required. But
4 they do hold these documents.

5 On our side, our point of view is very
6 straightforward. If a party alleges in arbitration that
7 a document is a forgery, well, the burden of proof is
8 with that party to demonstrate that it is in fact the
9 case. So you heard Mr Steinmetz yesterday, who said
10 that -- well, we can check what he said from the
11 transcript -- he said there were forensic analyses and
12 also expert advice given on the copies, but it never led
13 anywhere and he is not aware of any judgment on these
14 documents.

15 PROFESSOR VAN DEN BERG: Concerning Madame Touré, you heard
16 Mr Steinmetz yesterday talk of other felonies that she
17 would have committed which have nothing to do with our
18 case. The only question I wanted to ask: was the
19 Respondent aware of this, if it's right?

20 MR OSTROVE: If I may correct something, we were not aware
21 of any forensic analysis carried out on the documents.
22 We know that there was an expert; whether Cilins or
23 BSGR, we don't know. But anyway, we were not aware of
24 this.

25 As to Mrs Touré's felonies, we got in touch with the

10:16

1 Department of Justice and Mrs Touré's counsel to try and
2 ascertain, because it's the very first time that we've
3 heard about this. Madame Touré cannot come and testify
4 here; she is not subject to control by the Government of
5 Guinea. She is a witness belonging to the department,
6 she is a cooperating witness, and therefore she is not
7 free to leave the country. But we've never heard such
8 things.

9 It was said that it was well known that she was
10 under house arrest and the like. It's the very first
11 time we've ever heard such a thing, and we are trying to
12 obtain a declaration, I think, from the DOJ or her
13 counsel. But it's going to be difficult to obtain this
14 rapidly.

15 THE PRESIDENT: (In English) Would you like to comment just
16 on the last point, which is the mention of Mrs Touré
17 being under house arrest for other unrelated felonies?

18 MR WOLFSON: I'm not sure I can add very much to it.

19 THE PRESIDENT: This was mentioned by Mr Steinmetz
20 yesterday.

21 MR WOLFSON: It was. It was. I mean, I can make enquiries
22 about it.

23 THE PRESIDENT: But you have no further information about
24 it?

25 MR WOLFSON: I don't. But one point my friend made was that

10:17

1 Mrs Touré is unable to leave the United States because
2 she is a cooperating witness. I didn't understand him
3 to say that she is unable to be put on a video link
4 because she is a cooperating witness. That seems to me
5 to be an important point, and perhaps we ought to have
6 some clarification of that, because that may well become
7 quite an important point.

8 The Tribunal is aware of our concerns that she
9 hasn't been called. And if it is of course the case
10 that she could be put on video -- in other words, it's
11 physically leaving the US that's a problem and not, as
12 with Mr Avidan, giving his story to people other than
13 the Israeli authorities -- that seems to us to be
14 an important point. I don't want to people on the spot
15 now, but that seems to be a point which ought to be
16 clarified.

17 Obviously I shall come back on the rest of the
18 documents, but that's my only comment on the specific
19 point that was just put to me.

20 MR OSTROVE: If I may add to this a clarification.

21 Mrs Touré is not allowed -- well, we don't have any
22 direct access to Mrs Touré. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED] and they are not allowing her to

10:19

1 speak in another case. As is the case for the forensic
2 documents, they are not allowing her to speak in another
3 case, a case other than the one that's under criminal
4 investigation in the United States.

5 So we don't have access to Mrs Touré. We are not
6 allowed to ask her to testify without American
7 authorisation, and the US are not granting such
8 authorisation.

9 THE PRESIDENT: You may of course respond to this, if you
10 wish, and then I'll make my comment.

11 MR WOLFSON: I don't want to get into an argument about
12 this, but of course we heard what the Tribunal said
13 about Mr Avidan's position, who does not work for my
14 clients anymore, and it respectfully seems to us that
15 the Tribunal should at least consider whether the same
16 approach ought to be taken to Madame Touré.

17 This is the first I've heard of the nature of the
18 restriction she is under. To my knowledge, there is no
19 evidence whatsoever in the record as to the nature of
20 these restrictions. This is no doubt a matter which can
21 be canvassed at a better time than this. But the
22 Tribunal will appreciate that, so to speak, what goes
23 for Mr Avidan ought to go for Madame Touré as well; and
24 perhaps even more so, given the nature of the
25 allegations made.

10:20

1 But that's all I will say at the moment.

2 THE PRESIDENT: Thank you. I think this point is as clear
3 as it can be at this stage. If the Tribunal thinks it
4 must hear Madame Touré, then we will revert. But that
5 is certainly something that we could consider; and if
6 so, we would see how to proceed, if we can proceed.

7 Now, on the contracts, you have not commented on
8 this chart yet. Do you agree on the presentation, which
9 contract is challenged and which one is not?

10 MR WOLFSON: Can I say a few words about this?

11 THE PRESIDENT: Yes.

12 MR WOLFSON: My friend made a few comments, and I will keep
13 them short, but there is an important point here.

14 Can I deal with the last column first, because
15 that's the easiest to deal with. And with apologies for
16 the double negatives which have ended up between us, the
17 position is essentially that the "non", the contracts in
18 white, are the contracts which are challenged as
19 forgeries; the "oui", the "yes", is that, so to speak,
20 for these proceedings we accept that they are genuine.

21 The caveat -- which I think my friend understands,
22 and which led to the change in the heading -- is that
23 because these are Pentler documents, they are not our
24 documents, we rely on what Pentler have told us. That's
25 made clear in Annex 1 to our Reply at paragraph 32. So

10:22

1 that was the reason for the change to "non-contested".
2 We can't formally give our own evidence that they are
3 genuine; we have just been told by the people in Pentler
4 that they are. That's that column.

5 I should say a word, if I may, about the second
6 column, especially because Professor van den Berg asked
7 my friend a number of questions about this which really
8 go to the heart of the matter. We can't confirm in that
9 column whether any of those originals are with the FBI.
10 We are not a party to any FBI proceedings and unlike the
11 Republic of Guinea, who appear to have a direct line
12 into the DOJ, we do not.

13 But we do take issue with the bland assertion that
14 the FBI obtained the originals of the contracts directly
15 from Madame Touré, which has been made both earlier in
16 this hearing and again obviously this morning as well.
17 The reason we say this -- and I think we will have to
18 come back to this later -- is that there is evidence on
19 the public record which directly conflicts with what my
20 friend has just said. Of course my friend is giving
21 obviously his honest opinion and his honest belief, but
22 it may be that he is not getting instructions from the
23 Republic of Guinea directly.

24 I say that for this reason. On 28th June 2013
25 Mr Cilins filed a motion in the United States to produce

10:24

1 the original copies of the contracts that he was alleged
2 to have sought to destroy, that being the allegation
3 against him. On 30th June the US Government opposed
4 that motion on the ground that the United States:

5 "... is not in possession, custody or control of the
6 originals of documents that are the subject of Cilins'
7 motion."

8 On 3rd July 2013 the US court directed the
9 US Government to report by letter as to the status of
10 the original documents. That letter was provided on
11 12th July 2013. In that letter the US Government
12 informed the US court that:

13 "The Originals are not and never have been within
14 the Government's possession, custody or control. The
15 Government has learnt from the cooperating witness
16 referenced in the criminal complaint ..."

17 That's obviously Madame Touré:

18 "... that the cooperating witness directly provided
19 the originals to the Guinean authorities."

20 Thereafter, the US Government obtained the apparent
21 original contracts, but these were obtained by the
22 US Government from Guinea and not directly from
23 Madame Touré.

24 The Tribunal will immediately see the relevance of
25 this, the passing of the originals from Madame Touré to

10:25

1 Guinea, and not to the US Government, which of course
2 goes to two points: first of all, the general corruption
3 allegations; and second of all, the precise point that
4 Professor van den Berg was asked about earlier today.

5 There's a lot more, frankly, on this point; now is
6 probably not the time. But the Tribunal will see
7 immediately that for those reasons we simply cannot
8 agree to that second column, and we do take issue
9 with the position put now on a number of occasions that
10 Madame Touré had the originals in her possession and
11 gave them to the US Government, i.e. the FBI. It
12 appears that the US Government's position is that
13 Madame Touré passed those originals to Guinea.

14 I probably shouldn't say any more at this stage. We
15 are in mini-openings, we are not in closing submissions.
16 Unless the Tribunal wishes me to assist further, that's
17 all I was going to say.

18 So with that caveat, we don't of course object to
19 this demonstrative going in; the Tribunal has our
20 position on it and we can make further submissions in
21 due course.

22 THE PRESIDENT: Fine. (Interpreted) Would you like to
23 react?

24 MR OSTROVE: Yes, and I'd like to thank Mr Wolfson for his
25 comments.

10:27

1 I was very careful in what I said, and I don't
2 believe that I said that Mrs Touré gave those documents
3 directly to the FBI, but I had forgotten the timing. It
4 is absolutely true that the FBI and DOJ obtained the
5 documents of Madame Touré through legal assistance, and
6 I'd forgotten that the documents had not yet been
7 supplied at the time they were transferred or forwarded
8 later to the United States.

9 Obviously we didn't want to mislead anybody or
10 misrepresent things. Mrs Mamadie Touré, to start with,
11 had given the documents to the government during the
12 course of the investigation. It is during the request
13 for judicial assistance that these documents were
14 transmitted, and that's when they said that they didn't
15 have the documents, and then there were all these
16 forensic exercises that were carried out.

17 So we accept this objection quite willingly.

18 PROFESSOR VAN DEN BERG: (In English) Gentlemen, can
19 I please -- before you answer, because I have a fairly
20 discrete question on this.

21 (Interpreted) As far as you know, what is the
22 approximate date at which Mrs Touré gave the originals
23 to the Guinean Government?

24 MR OSTROVE: Well, to answer your question, I need to check.

25 We've got the information somewhere, because we followed

10:29

1 this.

but this

2 MR WOLFSON: (In English) I don't want to raise the temperature,

3 morning my friend said in terms (page 18, lines 15

4 to 16):

5 "... she was the one who provided the originals to
6 the FBI ..."

7 On Day 2, page 8, lines 12 to 14 of the transcript
8 my friend said:

9 "... we know that [Madame] Touré had many of these
10 Pentler contracts with her, because the FBI in fact got
11 hold of these contracts through Madame Touré."

12 This has been a point which has been -- there are
13 other references I won't go to -- has been repeated time
14 and time again. Of course I accept it's a slip, but
15 it's an important slip. And I'm pleased that this
16 discussion this morning has led to agreement on what's
17 happened, because the Tribunal will appreciate that the
18 nexus between Madame Touré and the Republic of Guinea,
19 as opposed to the nexus between Madame Touré and the
20 FBI, will be very important in closing submissions.

21 THE PRESIDENT: So I understand that now the
22 position is agreed by both parties: that Madame Touré at
23 some date gave the original to the Government of Guinea
24 which then, in letters rogatory proceedings or mutual
25 assistance proceedings, passed them on to the US

10:30

1 authorities. Is that a fair summary of your
2 understanding? I am first asking the Claimants.

3 MR WOLFSON: Yes, with one caveat: we are not entirely sure
4 that she provided them personally to the Republic of
5 Guinea. There could have been an intermediary at that
6 stage. But subject to that point, yes, that appears to
7 be the route.

8 THE PRESIDENT: They first were provided to the Guinean
9 Government --

10 MR WOLFSON: If we use the passive tense, yes.

11 THE PRESIDENT: -- and then communicated to the
12 US authorities?

13 MR WOLFSON: And of course we don't know whether it's
14 exactly the same documents which go to Guinea and
15 exactly the same documents which go to the FBI. But
16 that appears to be the route. There's no chain of
17 custody evidence, but we do know that is the direction
18 of the arrows. But whether there were intermediaries
19 and whether it's the same documents all the way through,
20 we just don't know.

21 THE PRESIDENT: (Interpreted) The way which I have
22 summarised this itinerary of the documents, would that
23 be in conformity with what you said?

24 MR OSTROVE: Yes, certainly, Madam President.

25 THE PRESIDENT: Thank you.

10:31

1 If I may continue summarising, just to make sure
2 that I fully understand what has been conveyed to us.

3 As things are, you do not know about any forensic
4 examination of the documents and the signatures on them?

5 MR OSTROVE: Several experts have taken a look at these
6 documents, but we have no knowledge of a report from
7 these experts.

8 THE PRESIDENT: Yes, it's exactly what I understood.

9 (In English) Is this also the Claimants'
10 understanding: you have no knowledge of the existence of
11 one or several forensic reports on the authenticity of
12 the documents that are challenged, and the signatures
13 specifically?

14 MR WOLFSON: Yes, that's my understanding as well. The
15 Tribunal will recall -- it's Exhibit C-72, page 2 --
16 that during the Technical Committee process we asked for
17 the opportunity to forensically inspect the contracts
18 and that was denied.

19 THE PRESIDENT: Have the parties enquired with experts
20 whether a review of the authenticity could be carried
21 out on the basis of copies, or is it necessary -- I see
22 we have scanned copies: they are relatively good colour
23 copies. Is this something that you have enquired into
24 or not? And if so, with what results?

25 MR WOLFSON: Shall I go first?

10:33

1 My understanding is that there is a very limited
2 amount you can do if you just have a copy. There is
3 what you might call, so to speak, logical analysis,
4 i.e. looking at particular stamps used and the typing
5 and whether words are misspelt and things like that, and
6 the Tribunal will recall we've made some submissions on
7 that. But my understanding is that not having the
8 original is a very significant limitation on any more
9 scientific examination of the document.

10 THE PRESIDENT: Thank you.

11 (Interpreted) Is this also what the [Respondent]
12 feels about this?

13 MR OSTROVE: Partially. We do agree that in the absence of
14 the originals, what an expert can do is rather limited.
15 But an expert can go beyond a logical analysis; it can
16 also take a look at the signatures.

17 The position that I announced earlier for Guinea is
18 that the burden of proof here is on BSGR. I do not know
19 that BSGR have asked for a forensic examination to take
20 place. But we would be ready to take this matter up, if
21 ever there's a request on their side for a forensic
22 examination to be carried out, get access to the FBI
23 documents.

24 THE PRESIDENT: No, I understand, I understand. I wasn't
25 going into burden of proof at this particular stage.

10:35

1 I just wanted to know what the situation was, in case
2 the Tribunal felt in its deliberations that it was
3 an important point.

4 MR OSTROVE: Please grant me a few minutes, Madam President;
5 I need to consult on this. Thank you. (Pause)

6 Apologies, Madam President. We have asked whether
7 it was possible to carry out a forensic examination on
8 the basis of photocopies and we have been told that it
9 is possible, subject to certain limitations.

10 THE PRESIDENT: Yes, because you cannot analyse the ink, you
11 cannot analysis also the stress points; there are all
12 kinds of limitations.

13 MR WOLFSON: (in English) And also with respect the nature and
quality of

14 the paper, which is often an important point.

15 THE PRESIDENT: Absolutely.

16 MR WOLFSON: I'm not sure there is much more I can add at
17 this stage though, unless I can assist the Tribunal.

18 THE PRESIDENT: I think that both parties are in agreement
19 that some analysis could be done, with limitations.

20 PROFESSOR MAYER: (In English) As to signatures, is there
21 a big difference between the original and the copy? I'm
22 asking the parties, and then Professor van den Berg can
23 add something!

24 MR WOLFSON: I don't want to give evidence myself, but the
25 majority of letters that go out in my name in respect of

10:38

1 a school which I run, I don't sign. My signature is
2 applied electronically and nobody will be able to
3 indicate that's not my signature. These days
4 photocopies of original signatures can be appended and
5 you can't tell it, as I understand it, from a copy.
6 I don't want to give evidence myself, but that's
7 certainly my understanding from considerable previous
8 litigation and some personal experience.

9 PROFESSOR VAN DEN BERG: [A technical question, if I may, to
10 understand.] (Interpreted) In the reference column to
11 procedure, where you have the annexes mentioned, are
12 these scanned copies of the originals?

13 MR OSTROVE: The ones in colour are scanned copies of the
14 originals, yes.

15 PROFESSOR VAN DEN BERG: Who scanned the documents? Who
16 scanned the originals and when?

17 MR OSTROVE: I scanned the originals.

18 PROFESSOR VAN DEN BERG: But those originals were in
19 possession -- it was the FBI who had them or was it
20 Guinea?

21 MR OSTROVE: They transited through Guinea, I scanned
22 them, and they were produced to the FBI later by letter
23 rogatory.

24 PROFESSOR VAN DEN BERG: So they were scanned in Guinea?
25 When did you do the scanning?

10:39

1 MR OSTROVE: I cannot remember the date.

2 THE PRESIDENT: By the latest, it must have been at the
3 submission of the Counter-Memorial.

4 MR OSTROVE: No, it was well before the procedure started.

5 MR WOLFSON: We are going to have to come back to this, but
6 can I register a serious concern at what we've just been
7 told.

8 It appears that Respondent's counsel has had access
9 to documents, has personally taken scans. The only
10 evidence we have that they are scans are his own
11 evidence. We have not been told any of this before. We
12 don't know when it was done, where it was done, under
13 whose authority it has been done. We don't know whether
14 all the copies have been produced to us. And these are
15 the documents on the basis of which allegations of
16 corruption are being maintained against my clients.

17 The Tribunal will be aware of our concerns as to the
18 role that my friend's firm has played in this -- well,
19 we would say this "farce", respectfully, but this
20 "story", to be more neutral -- from the beginning.

21 To be told on the fourth morning of the hearing that
22 there is some direct line not only, it appears, into the
23 DOJ, but into particular scanned copies -- have they all
24 been produced? When were they produced? Where were
25 they taken? Were there documents which my friend saw

10:41

1 which he chose not to scan, and therefore didn't want to
2 produce? We are getting dangerously close to the stage
3 where we may need Mr Ostrove to be a witness, which
4 would be rather unfortunate.

5 This is very unsatisfactory, with respect, that
6 we've just found this out in the nature of a discussion
7 which really started on a different point. These are
8 central documents. This is the first time, certainly to
9 my knowledge, that we have been told that these scans
10 were done by DLA personally in Guinea at a date unknown.

11 THE PRESIDENT: Well --

12 MR WOLFSON: And we weren't given access. We asked the
13 Technical Committee to do a forensic examination and we
14 were told: no. And now it's being put against us that
15 the burden of proof is on us.

16 Well, we can make submissions in due course --

17 THE PRESIDENT: I think that is more in terms of
18 submissions. We are now trying to sort out the facts,
19 and I think this type of discussion is very helpful to
20 the Tribunal, because we feel that we understand the
21 record better. Of course we note your concerns.

22 MR WOLFSON: So do we. But is what my friend has just said
23 facts in the case? And if so, on what basis are they
24 facts in the case?

25 As I understand it, Professor van den Berg asked,

10:42

1 with respect, a central question: when and where were
2 these scanned copies taken?

3 Let's say that John Smith had produced the scanned
4 copies. We would be entitled to say, "Well, produce
5 John Smith, and we'll ask John Smith when the scanned
6 copies were taken, were all the documents looked at, did
7 he copy them all, et cetera, who was there, who asked
8 him to do it, under what circumstances". That would go
9 to the veracity of the evidence and the weight of the
10 evidence.

11 Now, as I understand it, the only evidence we have
12 on this point is from Mr Ostrove. We are going to have
13 to consider very carefully how we proceed here. But the
14 Tribunal will see immediately the unfortunate nature of
15 what we've just been told this morning.

16 MR OSTROVE: I understand.

17 THE PRESIDENT: (Interpreted) Do you wish to react now?

18 MR OSTROVE: Yes, if I can say a word. However, I will
19 reserve the rest for later.

20 I certainly understand that my friend opposite would
21 like to say as much as he wants about this today. But
22 in international arbitrations, documents are always
23 furnished, you go to your client, you look at the
24 documents, you take photocopies of those documents.
25 I do accept the circumstances here are different, but

10:44

1 this is not a question of hiding anything whatsoever in
2 this case file.

3 DLA Piper is also helping Guinea in its criminal
4 proceedings with the United States, with Switzerland,
5 with England and with other countries, and nobody has
6 asked so far. We have colour copies of these documents
7 which have been in this case file right from the very
8 beginning. The BSGR companies may be challenging the
9 veracity thereof, the authenticity thereof, but they
10 have never asked any questions as to the origin of these
11 documents. They never submitted any forensic
12 examination on them. Maybe they could say, "Yes, we've
13 just learnt about this today". However, when these
14 documents were placed in the file, nobody asked us how
15 [we] got hold of those documents. These are documents
16 that were simply put on record.

17 I do understand now that you want to make a big
18 rhetorical statement about this, here now, but it
19 doesn't seem to be the right moment for that. If there
20 are specific questions, we would be very pleased to
21 answer the Tribunal, definitely.

22 THE PRESIDENT: (In English) Fine. I think we can put this
23 to rest for the time being. Is there anything else that
24 you would like to address, in the mini-openings that
25 have started to be not that mini anymore?!

10:45

1 MR OSTROVE: Two additional points.

2 PROFESSOR MAYER: (In English) Before we leave this chart,
3 just to be sure, because it concerns the relationship
4 with Madame Touré, that's the object, but I understand
5 that the authenticity of no other document is challenged
6 by anyone?

7 MR WOLFSON: Essentially, yes. Can I just explain my
8 caveat?

9 PROFESSOR MAYER: Of course.

10 MR WOLFSON: Let me just give, sir, respectfully,
11 an example.

12 Bah made what we say is a blackmail attempt. You
13 are familiar, obviously, with that point. My
14 recollection, without going back to the record, is that
15 he enclosed with that blackmail attempt a number of
16 documents. Of course we have no way of knowing whether
17 those documents themselves were genuine, given that we
18 say the whole thing was a blackmail attempt.

19 So I don't want to say, "Yes, there are no other
20 documents the authenticity of which is not challenged";
21 it of course depends what you mean by "authenticity".
22 He did enclose them with his blackmail attempt, but
23 I wouldn't want, by that, to be agreeing to the truth,
24 so to speak, of, for example, the documents which Bah
25 attached.

10:47

1 I appreciate that's a caveat in answer to your
2 question, but I hope it is a helpful one.

3 PROFESSOR MAYER: Yes, thank you.

talking

4 MR OSTROVE: (Interpreted) If I've understood correctly, you're
5 about documents that were appended to Mr Bah's letters,
6 the letters which were placed on the record by the
7 Claimants, but without any attachments. Oh, I'm sorry,
8 they produced them; fine. I maintain my comments, but
9 perhaps I didn't quite understand the point made.

10 As far as we are concerned, sir, there are no
11 further documents on the file whose authenticity would
12 be challenged.

13 If we could come back now to the other points.

14 There was a minor point raised in the testimony of
15 Mr Steinmetz yesterday. There were very many things he
16 said, but there's one point in particular where I wanted
17 to give some explanations, and if our friends opposite
18 want to, we could submit a document on that.

19 I was not able to [stop myself from smiling] when
20 Steinmetz said that Soros was paying us for this
21 arbitration. If that only were the case! The only
22 thing I can say about this is that recently the African
23 Facility for Legal Support created by the African
24 Development Bank to fight vulture funds accepted making
25 a donation to the state in order to cover part of the

10:49

1 fees of the lawyers. So we do hope indeed that
2 DLA Piper and Orrick will get, for the first time, part
3 of our fees being paid. I had the African legal
4 assistance people this morning, and they said that they
5 are ready to submit a letter to the Tribunal, if they so
6 wish, on that point.

7 I know that this is not a proof that we have not had
8 \$40 million or \$50 million coming to us from George
9 Soros, I grant you that. But that is really the source
10 of our fees, madam.

11 Now, on the position of Asher Avidan and the letter
12 we received last night from the Claimants, if I could
13 make some comments now?

14 THE PRESIDENT: Please go right ahead.

15 MR OSTROVE: Well, indeed this letter was sent at around
16 8.20 last night, when we were preparing the
17 cross-examination of Mr Avidan, and we immediately
18 approached the Israeli authorities -- it was even later
19 in Israel, obviously -- to try and understand the
20 situation. And what we managed to understand was that
21 Mr Avidan, like Mr Steinmetz or any other person, when
22 they are heard, at the end of their [hearing] they are
23 told that they should not be speaking about that
24 particular investigation with anybody else.

25 We can always discuss whether or not that covers

10:51

1 testimony in this particular arbitration or not.
2 Mr Steinmetz, I would imagine, because of the warnings
3 he received, that wouldn't prevent him from talking to
4 the Tribunal. You saw the terms delivered by Chen,
5 which were not particularly clear on that point.

6 But what the Israeli authorities told us also is
7 that Mr Avidan, like Mr Steinmetz, are both free to ask
8 the authorities for an authorisation to speak under
9 specific circumstances, and we had already proposed to
10 the BSGR companies that Mr Steinmetz and Mr Avidan
11 should approach the authorities even to ask for
12 permission to come to Paris and testify here directly.
13 But no such request was ever made by either one.

14 What is really astonishing is that this is
15 a position that hasn't changed since the very beginning
16 of this case. Mr Avidan says that since December 2006
17 that he is being heard on this, in April we received
18 an email from Mr Burstyn telling us that the
19 testimonies would be given. So why do we have to wait
20 until last night, on the eve of his hearing, to tell us
21 that this is a problem? The circumstances for Mr Avidan
22 haven't changed, but the circumstances for this
23 arbitration are thereby changed.

24 What has happened to Mr Avidan since the beginning
25 of this hearing? Well, you have heard that practically

10:53

1 all of the witnesses referred to Mr Avidan or to
2 Mr Oron. Mr Steinmetz says that he had nothing to do
3 with this matter before the end of 2007. Mr Tchelet
4 always -- Mr Oron or Mr Avidan, who gave them
5 instructions, he was following them. Madame
6 Merloni-Horemans, pretty much the same thing: it was
7 Avidan who gave the information. So what has changed?
8 Mr Oron does not wish to testify, and all of a sudden
9 the other person about whom everybody speaks is suddenly
10 unavailable.

11 There's also a reference in the Chen Cabinet letter
12 indicating that they thought that they had understood
13 there was a discussion on alleged cash payments of
14 \$1 million and \$50,000 that Mr Avidan would have
15 organised or directly gave to Mrs Touré, and it was also
16 mentioned during the hearing that the two contracts
17 expressly mentioned by Mr Cilins on the recording of his
18 conversation with Mrs Touré were 27th and
19 28th February 2008 contracts, signed by Mr Avidan
20 apparently.

21 So that makes us wonder, because in Procedural Order
22 No. 9 of this Tribunal, paragraph 21, it is mentioned
23 that fact witnesses cannot attend the hearings, they
24 have no access to the transcript of the oral
25 submissions; and all of a sudden there is specific

10:55

1 mention of something that was discussed in Mr Tchelet's
2 hearing yesterday, mentioned by the personal counsel of
3 Mr Avidan as a specific reason why he doesn't want to
4 testify. So we do wonder, very strongly indeed, how
5 Mr Avidan's personal legal counsel managed to know about
6 that. Was this discussed with Mr Avidan? Because after
7 all, he is counselling him and raises something that
8 happened during the hearing.

9 Secondly, Guinea obviously objects to any indefinite
10 delaying of Mr Avidan's hearing, Mr Avidan's testimony.
11 We do not know how long the Israeli procedure will go on
12 for, but that's not a reason to delay his hearing.

13 So within this context, I would appeal to the
14 Tribunal to give instructions to the Claimant companies
15 so that their witnesses and lawyers immediately approach
16 the Israeli authorities so as to ask for authorisation
17 to give testimony to this Tribunal, so as to be able to
18 overcome this first difficulty, i.e. that they received
19 instructions not to speak to anybody else about the
20 subject of their interrogation. And if this may
21 reassure Mr Avidan, if he doesn't wish to answer certain
22 questions -- for instance, questions on the money that
23 he is supposed to have given in cash to Mrs Touré -- he
24 is always free to refuse to answer the question, by dint
25 of the circumstances in which he finds himself. He will

10:57

1 not be forced, he will not be obliged to provide
2 an answer.

3 So I think these two last-minute excuses of
4 Mr Avidan should not prevent him from testifying. As
5 the BSGR counsel indicated at the beginning of the
6 procedure, we could perhaps hear all of our witnesses
7 before Wednesday, and so perhaps we could already have
8 Mr Avidan ready for Thursday, and I would be very
9 pleased if Mr Wolfson explained whether this would be
10 possible.

11 Because last night we worked as much as we could on
12 all of this, covering Mr Struik and Mr Avidan. I'm
13 sorry if I am a little bit tired this morning. Perhaps
14 we will take longer with Mr Struik than we had
15 originally foreseen. But if Mr Avidan does accept to
16 testify -- we should like, obviously, to thank our
17 friends for their flexibility in this -- we could always
18 work that in next week, obviously.

19 But if he does not testify, then we would ask for
20 the remaining criminal proceedings to be informed to us
21 what happens at the end, whether he's acquitted or not.
22 At the end of those criminal proceedings, we would ask
23 that the results thereof be transmitted to us, to know
24 exactly where we stand.

25 Thank you, madam.

10:59

1 THE PRESIDENT: Thank you.

2 (In English) Would you like to reply briefly on the
3 very last point, which is a request made to the Tribunal
4 to invite the Claimants to invite Mr Avidan to make the
5 request to the Israeli authorities to be able to appear
6 here?

7 MR WOLFSON: Yes. I can certainly address that. I thought
8 the point at the end was a slightly different point.
9 The last point was that we should inform --

10 THE PRESIDENT: Yes, to me that is a point going forward; we
11 don't need to address this now.

12 MR WOLFSON: Fine. Yes, you're right.

13 THE PRESIDENT: We can do this later. We need to proceed
14 now, because it's already 11.00 and Mr Struik is
15 waiting.

16 MR WOLFSON: There's no issue here. We want him to turn up
17 as well. It's not so much a question of our asking
18 Mr Avidan. He is getting advice from his Israeli
19 lawyers; I can't control that advice.

20 Of course we will tell the Israeli lawyers, "Can you
21 approach the Israeli authorities and see whether
22 an agreement can be reached?" I hope they will do that.
23 They may take the view that even approaching the Israeli
24 authorities and making the request will be detrimental
25 to him. If that's their view, they will set it out in

11:01

1 a letter and will explain their position. Ultimately he
2 doesn't work for us and I can't control either him or
3 his Israeli lawyers.

4 Can I just make one point very clear though. The
5 letter does not say that the Israeli lawyers have been
6 discussing with Mr Avidan the allegations of \$1 million
7 and \$50,000. The letter is very clear. What it says
8 is, "We, the Israeli lawyers, have become aware of those
9 allegations". There is no prohibition on the Israeli
10 lawyers following the transcript, and indeed they regard
11 themselves as -- they should keep themselves informed so
12 they can give Mr Avidan proper advice. That has been
13 factored into their advice to Mr Avidan.

14 So I think my friend is reading the letter unfairly
15 when he made the point he did. But we will certainly
16 ask the Israeli lawyers to consider, we will encourage
17 them to contact the Israeli authorities and see whether
18 there is any way he can attend.

19 Can I also say that -- I don't want to waive
20 privilege, so let me say it carefully -- the suggestion
21 that my friend made of having, so to speak, an Israeli
22 lawyer in the room and being able to object to any
23 question which might put him in particular difficulty
24 with the Israeli authorities had already occurred to me,
25 and I can confirm that the Israeli lawyers had taken

11:02

1 that into account when they wrote this letter. So
2 that's not a new suggestion, but we can certainly repeat
3 it to the Israeli lawyers if that will facilitate
4 Mr Avidan's attendance. We want him to attend.

5 THE PRESIDENT: That is not how I understood the suggestion.
6 I understood the suggestion that it would be Mr Avidan
7 who would make his own judgment whether he wants to
8 answer or not. But your suggestion is one that can be
9 helpful as well. And when you speak to the Israeli
10 lawyers, you will also relay the Tribunal's view that it
11 would be helpful for him to appear.

12 MR WOLFSON: Certainly. As the Tribunal will appreciate,
13 I'm sure the Israeli lawyers will read the whole of this
14 exchange and will be very clear as to the Tribunal's
15 position.

16 THE PRESIDENT: Thank you.

17 Maybe we take just ten minutes now, so the Tribunal
18 can make sure that we've covered all that we need, and
19 we get ready for Mr Struik.

20 (11.03 am)

21 (A short break)

22 (11.33 am)

23 THE PRESIDENT: Are we ready to resume? Has this issue been
24 resolved, Mr Garel?

25 MR GAREL: Yes, I think it's been resolved. The last hour

11:33

1 until now has been moderated, i.e. not live-streamed,
2 and the feed is going to resume with Mr Struik's
3 examination. We are going to start from here.

4 THE PRESIDENT: Fine. And I should pay credit to the
5 Secretary for the light bulb that he has installed
6 himself! I think it is very helpful to everyone. Good.

7 Before we start your examination, Mr Struik -- and
8 I apologise, we have kept you waiting for quite a long
9 time -- I should revert to some of the discussion we had
10 before with respect to Mr Avidan.

11 We have again during the break reviewed his
12 counsel's letter. We have also reviewed Procedural
13 Order No. [9], paragraph 21 on sequestration of
14 witnesses, and it does say that:

15 "... unless the Parties and the Tribunal agree
16 otherwise, fact witnesses shall should not be allowed in
17 the hearing room before giving their oral evidence with
18 the exception of party representatives. They shall not
19 be given access to the audio recordings and the
20 transcripts of the opening statements and the
21 examinations of the other witnesses before being heard."

22 Now, I'm not saying that Mr Avidan himself may have
23 had access to the content of the hearing. But it seems
24 to the Tribunal that his lawyers are assimilated to the
25 witness, and in that sense we would expect that neither

11:35

1 himself nor his lawyers continue to follow this hearing.
2 MR WOLFSON: Certainly. We will immediately communicate
3 that to the Israeli lawyers. I know that they took the
4 view, I think, that in order for them to provide advice,
5 they ought to follow what was going on, so they could
6 factor that into their advice to the client. We have
7 heard what Madam President has said; we will immediately
8 inform the Israeli lawyers of that point.

9 I should also say that in the break we have spoken
10 to Mr Avidan and we have conveyed to him the Tribunal's
11 keenness, to put it neutrally, that he attend. We will
12 speak to him later again, obviously, and as soon as we
13 have any further information to report, we will inform,
14 obviously, our colleagues and the Tribunal.

15 But if you will excuse Mr Libson, he will
16 immediately call the Israeli lawyers with that point.

17 THE PRESIDENT: That is why I am saying this now, and
18 I would appreciate if you could convey this, absolutely.

19 So now we can eventually come to the examination of
20 Mr Struik.

21 (11.36 am)

22 MR MARCUS JOANNES PAULUS MARIA STRUIK (called)

23 THE PRESIDENT: For the record, can you please confirm to us
24 that you are -- and I am giving your full name at this
25 stage, as you have stated it in your witness

11:36

1 statement -- Marcus Joannes Paulus Maria Struik?

2 MR STRUIK: That is correct.

3 THE PRESIDENT: You are the CEO of BSGR Metals and Mining;
4 is that correct?

5 A. I used to be. I am no longer. I resigned over a year
6 ago, and I work for another firm as their technical
7 advisor.

8 THE PRESIDENT: What is the name of this other firm?

9 A. The other firm is called IC Nickel. It's a subsidiary
10 of a private equity fund. And I am engaged as their
11 technical advisor for nickel ore/laterite ore projects
12 in Africa.

13 THE PRESIDENT: Is this a firm related to the BSG group?

14 A. No, not at all.

15 THE PRESIDENT: It's unrelated?

16 A. Unrelated.

17 THE PRESIDENT: Fine, thank you.

18 You have provided us with two written statements,
19 the first one dated 28th February 2016 and the second
20 one 10th January 2017; is that correct?

21 A. That is correct.

22 THE PRESIDENT: You have your statements with you?

23 A. I do.

24 THE PRESIDENT: In unmarked copies?

25 A. Yes.

11:37

1 THE PRESIDENT: Excellent.

2 You have also provided one statement in the LCIA
3 arbitration; is that correct?

4 A. Yes. I think actually I have provided two. I have
5 a second witness statement there too, if I'm not
6 mistaken.

7 THE PRESIDENT: Fine. So my notes are not complete, but
8 I note this, absolutely.

9 You are heard as a witness in this arbitration. As
10 a witness, you are under a duty to tell us the truth.

11 MR STRUIK: Understood.

12 THE PRESIDENT: Can you please confirm that you understand
13 being under this duty by reading the witness
14 declaration.

15 MR STRUIK: Thank you. I solemnly declare upon my honour
16 and conscience that I shall speak the truth, the whole
17 truth, and nothing but the truth.

18 THE PRESIDENT: Thank you.

19 Now I first turn to Claimants' counsel for any
20 direct questions.

21 MR WOLFSON: We have no questions for Mr Struik at this
22 stage.

23 THE PRESIDENT: Fine. Then I turn to the Respondent's
24 counsel for cross-examination questions.

25 MR STRUIK: Thank you.

11:39

1 (11.39 am)

2 Cross-examination by MR OSTROVE

3 Q. (In English) Good morning, Mr Struik.

4 A. Good morning.

5 Q. Michael Ostrove from DLA Piper, counsel to the Republic
6 of Guinea.

7 First, may I just verify that I am not overly
8 mispronouncing your last name. Is it "stroik"? Is that
9 correct?

10 A. No, officially it's "struck", but it's a Dutch surname.
11 But I've heard many versions, don't worry.

12 Q. I'll do my best.

13 A. I've been even called "Marcs" before.

14 Q. Okay.

15 A. So ...

16 Q. I'll do my best, and thanks for your understanding.

17 A. Not a problem.

18 Q. So your training is as a mining engineer; is that
19 correct?

20 A. Yes. I graduated as a Master of Science in mining
21 engineering in 1987 from the University -- Technical
22 University in Delft, the Netherlands.

23 Q. And you spent the first eleven years of your career
24 working with the De Beers corporation; is that right?

25 A. That is correct. I was a graduate in training, as they

11:39

1 called it in those days, and I moved up through the
2 ranks, and after about eleven years I ended up as
3 technical services manager and the -- and a member of
4 the executive committee of De Beers Consolidated Mines
5 in Kimberley.

6 Q. And De Beers is specialised in diamond mining; is that
7 correct?

8 A. Yes, that was pure and only diamond mining.

9 Q. Do I understand correctly that the Beny Steinmetz Group,
10 or companies affiliated with BSG or other Steinmetz
11 entities, work closely with De Beers as well?

12 A. I know -- it's not necessarily BSGR. There is
13 a division called Steinmetz Diamonds. I had nothing to
14 do with that division; that existed before I joined the
15 group, in any case. I think that division is purely
16 focused on cutting and polishing and buying the
17 diamonds.

18 I was informed at the beginning, when I joined,
19 that -- I did not know this from my De Beers days; it
20 was not my place to know these things at the time -- but
21 I think that in 2005/2006, somewhere there, I was
22 informed that Steinmetz Diamonds was one of the
23 side-holders -- I'm not sure when whether it was
24 Steinmetz Diamonds or maybe another division or
25 company -- but they were one of the side-holders, as

11:41

1 they used to call it, of De Beers.

2 Q. But in between working for De Beers and working for the
3 BSGR group, you had a short passage in your career where
4 you worked for a company called Snowden; correct?

5 A. That is correct. I wouldn't call it short though: six
6 years. I was hired as a mining consultant -- mining
7 engineering consultant for Snowden, which indeed is
8 an independent consulting firm and it had one of the
9 offices in Johannesburg; the head office was in Perth,
10 Australia. And then after one year, I was appointed as
11 principal consultant. And then two years exactly to the
12 date of me joining that group, I was promoted to general
13 manager of the office in Johannesburg, which I did for
14 four years.

15 Q. Snowden consults on a number of different types of
16 mining; is that right?

17 A. They do, yes.

18 Q. But is it fair to say that as a diamond mining
19 specialist, at least at first, your primary role there
20 was with respect to diamond mining consulting?

21 A. No, that's incorrect. I specifically -- when I joined
22 them, I specifically asked the then general manager of
23 Snowden in Johannesburg -- his name was Gordon Smith --
24 I said to him, "Please do not put me on any diamond
25 projects, actually put me on any other commodity besides

11:42

1 diamonds", which I did. I got involved with nickel,
2 I got involved with gold, I got involved with platinum,
3 I got involved with base metals, I got involved with
4 manganese.

5 Some of our big clients in those days were
6 Anglo American gold division, and then it was the Anglo
7 platinum division. I also worked for Impala Platinum.
8 We did many other works for various commodities.
9 I travelled a lot as a result of that, also in Africa.
10 I have also worked on diamond projects, but much later,
11 because I wanted to get familiar with the other
12 commodities.

13 And if I may, Madam President, I would like to say
14 that although the commodities are different, the mining
15 methods, being it open pit or underground, are not
16 necessarily different.

17 Q. Thank you, Mr Struik. I think we will have
18 an opportunity to discuss some of the differences
19 between diamond mining and iron ore mining and other
20 mining in a little while.

21 In your first witness statement, CWS-2, at
22 paragraph 20 you refer to, in the second half of this --
23 let's look at the whole paragraph -- you refer to the
24 fact that various companies were looking into Simandou
25 North and South -- sorry, I should correct that: North

11:44

1 and South Simandou, those areas -- and that in that
2 context you gave a presentation to demonstrate:

3 "... BSGR's financial and technical capabilities to
4 carry out the exploration works and feasibility
5 studies..."

6 Is that correct?

7 A. That is correct.

8 Q. You made this presentation during your very first stay
9 in Guinea, in November 2005?

10 A. I'm not sure about the exact date, but it was in the
11 initial period. My first time to visit Guinea was
12 somewhere in November 2005. I -- as I've written in my,
13 I think, first witness statement as well, it was
14 together with Mr Oron. I spent about five or so days
15 inside the country. And initially -- it might have been
16 actually during that first visit or the second visit,
17 but it was during the initial period that I actually
18 highlighted the capabilities of BSGR.

19 Q. To whom did you make that presentation?

20 A. It was Mr Soumah, if I'm not mistaken, of the CPDM. And
21 I think -- but I stand to be corrected -- that he had
22 one or two other people, because most of the meetings
23 that I attended with him there were one or two other
24 people, either from the geological background or
25 a mining engineering background, in the same meetings.

11:45

1 Q. And you understood that the reason for making that
2 presentation was to demonstrate that BSGR had technical
3 and financial capabilities to make it worthy of
4 receiving those permits?

5 A. Absolutely, because without that -- I mean, you can't
6 just come in as an investor, say you do poultry farming,
7 and then suddenly you want to do some mining in
8 a country. You have to show that you actually know what
9 you're talking about. So this is my job, this is my
10 background, this has been my career for almost 30 years,
11 this is what I do.

12 Q. Okay. So it wouldn't be correct to say that in order to
13 go into a country, as long as you show that you have
14 financial capabilities, that's enough; you also need to
15 show technical capabilities?

16 A. Of course. I mean, the one doesn't go without the
17 other. You cannot develop a mine if you don't
18 understand how to do it. Money is one side. Whether
19 it's your own money or external financing, it doesn't
20 matter. But that's the money side. You have to -- even
21 if you would go for external financing, those that would
22 supply the financing would like to know that you
23 technically can actually pull it off. You have to show
24 mining expertise.

25 Q. Absolutely. Then I'm just a little confused about

11:46

1 paragraph 102 of your witness statement --

2 A. Which one?

3 Q. Your first witness statement, CWS-2.

4 A. What number?

5 Q. Paragraph 102. If I could just read that, so we can
6 follow:

7 "I am also aware that the Technical Committee
8 concludes that due to Mamadie Touré's interventions at
9 the request of BSGR, BSGR was granted its mining title
10 titles and a mining agreement, and that BSGR did not
11 have significant experience in the mining sector
12 'allowing to doubt the existence of sufficient and
13 technical financial capacity to succeed in these mining
14 operations, a condition required by the mining code'."

15 And then a little bit further, if we just skip
16 a sentence, just in the interests of time, but please
17 read it:

18 "In any event, the conclusions of the Technical
19 Committee demonstrate a misunderstanding of the mining
20 code: to be awarded exploration rights, as BSGR was in
21 February 2006, you only needed to show you had
22 sufficient financial capabilities to succeed in
23 exploration activities, not mining expertise (although
24 we had that as well)."

25 So why did you testify to this Tribunal that in

11:47

1 February 2006 BSGR did not need to show that it had
2 mining expertise?

3 A. I think the answer to your question is twofold. So,
4 Madam President, if I may, I have to explain this.

5 THE PRESIDENT: Please do.

6 A. First of all, the BSGR -- whether BSGR had or did not
7 have technical expertise, I can tell everybody in this
8 room that we had substantial mining expertise, technical
9 expertise.

10 MR OSTROVE: If you will, we will come to a review of the
11 technical mining expertise. I'm just trying to
12 understand, when you first say that it is absolutely
13 necessary to show mining expertise, why it would be that
14 in your witness statement presented to this Tribunal for
15 them to understand this case, you said that that was
16 a misunderstanding of the Mining Code and all you had to
17 show was the financial ability at that stage, not mining
18 expertise. Was that your opinion at the time?

19 A. You are missing one important aspect of that paragraph.
20 To be awarded exploration rights, you do not necessarily
21 have to show the technical expertise of running or
22 developing a mine. Why? Because you don't even know if
23 there will be a mine yet.

24 And by the time you've done the exploration, which
25 is basically drilling, which is on surface -- you don't

11:49

1 need to dig tunnels, you don't need to install rock
2 enforcement systems, you don't need to do ventilation,
3 you don't need to do any of those things. You just need
4 to go there, make a road, get a drill machine in and
5 start drilling. And then you have to analyse the core,
6 and you have to then determine whether the results of
7 your exploration work is actually good enough, from
8 a quantitative and a qualitative point of view, to go
9 further and start doing a feasibility study and do
10 a mine.

11 So at that point in time, most of the cost that
12 we -- most of the money that we would spend on doing
13 a project like this would indeed be the exploration.
14 You need money to do this, because it's a very costly
15 exercise. Whether we had technical expertise or not at
16 the time -- although we did -- is not really that
17 material for an exploration permit. Any junior can get
18 exploration permits.

19 Q. So when I asked you earlier about whether your
20 presentation to the mining industry in November 2005 --

21 A. Yes.

22 Q. -- whether you were required to show technical expertise
23 and you said that, yes, you were, you were trying to get
24 something other than an exploration permit at that time?

25 A. What is the -- the whole purpose of getting

11:50

1 an exploration permit is that you actually want to get
2 the mining licence; you hope that you can develop
3 a mine. It's integrated in the end. So if you start
4 talking about your financial expertise and that -- you
5 know, you want to show that the company is a worthy
6 investor, which is what I did.

7 Q. So then I guess we can summarise by saying we agree that
8 you were trying to demonstrate to the CPDM that BSGR had
9 the necessary mining expertise?

10 A. Yes, and that we were capable; in case we found a mine,
11 in case we found a deposit that would be worth
12 developing, that we could actually do it, not just
13 financially but also technically.

14 Q. You would agree then that that was an important
15 factor -- or should have been an important factor -- for
16 the Mining Ministry's decision as to whether or not to
17 grant exploration permits?

18 A. No, not necessarily. They might find that
19 an exploration permit can just be handed to a person who
20 is willing to do exploration, because don't forget that
21 after two years or three years of doing exploration,
22 I might have recommended to the management board of BSGR
23 at the time to give it all back because it was all
24 a waste of money. We had to find something to be able
25 to develop something.

11:51

1 Q. Of course. But when you're looking at it from the
2 Mining Ministry's perspective and you're trying to
3 persuade the Mining Ministry, you want to show them that
4 you have both the financial capacity and the technical
5 capacity?

6 A. Yes.

7 Q. Thank you.

8 The actual presentation that you refer to having
9 presented is Exhibit C-2, which is conveniently at tab 2
10 of the bundle.

11 A. I have it in front of me, thank you.

12 Q. Is this the presentation that you were referring to
13 having used when you went to speak to the Mining
14 Minister?

15 A. Yes, it is. And subsequent to this presentation we had
16 many updated presentations of this, because it was of
17 course a moving target.

18 Q. But I'm just asking --

19 A. This is the one.

20 Q. We're going to create a lot of confusion if we jump
21 around in time. I'm just trying to understand --

22 A. This is correct, what you asked me. This is the one.

23 Q. Thank you.

24 If you could turn with me to page 2 of this
25 presentation, which presents an overview of the BSGR

11:53

1 group.

2 A. Yes.

3 Q. This refers to BSGR's focus on four major sectors:
4 diamonds, natural resources, real estate, technology,
5 et cetera.

6 With respect to the natural resources project
7 examples, you agree that none of those issues mentioned
8 under natural resources are iron ore mining projects; is
9 that correct?

10 A. No, that is not correct.

11 Q. Which one of these projects, in your mind -- it lists
12 Bateman, Koidu, Baku Steel, Chambishi Copper and Cobalt,
13 and Feni Industries -- which one of these involved iron
14 ore mining, please?

15 A. Feni Industries. Because Feni Industries in
16 Macedonia -- it's in a village called Kavadarci; I've
17 been there many, many times. The first visit I made to
18 that place was around October/November 2005; I cannot
19 recall the exact date. But as part of the supply of the
20 nickel ore to the smelter, there was a big mine called
21 Rzanovo, which is a big ferronickel sulphide. It's very
22 different than the nickel laterite deposits, for
23 example. This mine is outside Kavadarci; about 30-odd
24 kilometres away, if I remember correctly. It was
25 connected to the smelter by, at that time, the longest

11:54

1 overland conveyor belt that supplied the ferronickel ore
2 from the mine to the actual smelter in Kavadarci. And
3 this was a big open-pit ferronickel operation.

4 Q. There's more details of that given on page 13 of this
5 presentation; correct?

6 A. That is correct.

7 Q. So it's ferronickel and it's for a smelter operation?

8 A. Yes, Kavadarci had a smelter. Feni Industries is --
9 they were actually making ferronickel. Initially they
10 were making ingots; after that it became granules.

11 Q. And you're aware that the geology of that area in
12 Macedonia is completely different from the geology in,
13 for example, North Simandou and South Simandou?

14 A. Of course the geology is different. That doesn't mean
15 the mining method is different.

16 Q. So whether you are going through schist material with
17 limestone material, or whether you're dealing with
18 looking for a direct shipping ore hematite that's right
19 at the surface, for you the mining methods are exactly
20 the same?

21 A. I didn't say they were exactly the same, but they are
22 very similar.

23 Now, in Guinea, in Simandou, for example -- and
24 let's not forget that our first exploration project was
25 in Simandou North, where the Simandou mountain range had

11:56

1 dipped steeply into the exploration permit, so we did
2 not have anything that was, let's say in plain English,
3 sticking out from the surface.

4 So we knew that the geology simply did not stop at
5 the border of the two permits, being Block 1, that was
6 in the hands of Rio Tinto at the time, and Simandou
7 North, being our exploration permit. The geology would
8 continue. So this is what we had to establish by the
9 drilling. Then we had to establish not just the quality
10 and the quantity of it, but also what is the depth. And
11 based on the depth, we then decide what's an appropriate
12 mining method.

13 The drilling, by the way, is not only focused on the
14 actual mineralisation. As part of the feasibility study
15 that you need to complete, one aspect of the drilling is
16 extremely important: that's geotechnical drilling. So
17 we would drill holes that we believe are outside the actual
18 mineralisation. Why? Because -- so we can determine --
19 because you mentioned schist as part of the Rzanovo. We
20 can determine the actual strength of the rocks that we
21 would have to dig through in order to stabilise our wall
22 so that they don't collapse on the people that work in
23 the mine.

24 So the schist was a very problematic issue in
25 Rzanovo; I've dealt with it many times. We were not

11:57

1 going to encounter that in Guinea, so it was in our
2 favour.

3 Q. Do you recall when BSGR acquired its interest in the
4 Feni project?

5 A. If I remember correctly -- it was before my time --
6 I think we had been there since 2003. And I must also
7 add that BSGR was only a 50% shareholder, not 100%.

8 Q. Yes. And in fact, when BSGR went into that project, the
9 mine had already been created and was operating;
10 correct?

11 A. Yes, true.

12 Q. So in terms of providing an example of BSGR operations,
13 if you turn to the previous page, page 12 of the
14 presentation, it indicates that:

15 "100% of Feni Industries was recently acquired by
16 BSGR and partners and is being updated and restructured
17 to operate optimally."

18 A. Yes, so what I -- it's 100% by BSGR and partners. BSGR
19 itself was 50% partner.

20 Q. But all of the exploration work had --

21 A. The mine was an existing mine, if that's what you're
22 asking.

23 Q. It is. So in terms of experience of BSGR of exploring
24 for and opening up mines in the iron ore field, this
25 isn't a great example, because they bought into

11:58

1 an existing mine; correct?

2 A. But I -- Madam President, with respect, I do not
3 actually understand the question. I am a qualified
4 mining engineer, and let me quantify what I'm saying.
5 I am a professional engineer registered with the
6 Engineering Council of South Africa. I am
7 a professional engineer registered with the Royal
8 Institute for Engineers in the Netherlands. I am
9 a fellow of the South African Institute of Mining and
10 Metallurgy.

11 It doesn't matter whether this was a brownfields or
12 not. I was responsible for assisting with the extended
13 planning operation for this mine, so that in future
14 there would be a sustainable and a consistent flow of
15 ore coming out of this mine to the smelter. That was my
16 job, and I knew how to do it.

17 I can also build a mine from scratch; in fact,
18 I have just done one.

19 Q. Mr Struik, my question to you is not: can you build
20 a mine from scratch? I'm not disputing your training
21 and your educational background. I am asking about the
22 presentation that you made to Guinea in 2005 about BSGR
23 group's mining experience.

24 A. I understand that.

25 Q. I asked you if you could point to an example of the BSGR

11:59

1 group having relevant experience in the iron ore mining
2 industry, and you pointed to this project here. And
3 I put it to you that BSGR group is not the one that did
4 the exploration in this case or opened the mine in this
5 case. Can we agree on that much?

6 A. Of course. It was a brownfields operation. We took it
7 over and we restarted it.

8 Q. Thank you.

9 If we turn to page 28 of this presentation, it
10 refers to the management team at BSGR.

11 A. Correct.

12 Q. When you proposed to Guinea who is the CEO of BSGR, it
13 indicates Roy Oron; correct?

14 A. Correct.

15 Q. Mr Oron is not, like you, a mining man; correct?

16 A. He is not. He is more financial, structures, M&A.

17 Q. His background was in telecoms and finance?

18 A. Actually, I don't really know for 100% what was his
19 background. I know that he was -- that he had a degree
20 I think in mathematics, but he --

21 Q. But I think actually he presented it at the time -- and
22 I can understand that twelve years later you might not
23 remember the details of the presentation. In the fourth
24 sentence of the description of Mr Oron, it says:

25 "He was instrumental in the privatisation of the

12:01

1 Israeli telecommunication industry and the Israel
2 Ministry of Finance and brings with him a track record
3 of deal making and investment banking expertise ..."

4 Do you think that's an accurate description?

5 A. If that's what it says, then that's what it was.

6 I mean, it's not my CV. It's not my descriptive CV.

7 This is a presentation that was given to me to present
8 the group. I did not know at the time of Mr Oron's
9 background.

10 Q. And to be clear, I'm not asking for you to make
11 suppositions or guesses as to how things were. I'm just
12 trying to understand what you were presenting to the
13 Government of Guinea at the time.

14 A. This is what I presented to the Government of Guinea at
15 the time, at the CPDM.

16 Q. If we look at the people who are listed on this
17 presentation -- I don't intend to go through all of
18 their many CVs with you one by one -- but between
19 Mr Oron, Dr Campbell, Mr Swart, Mr Treadgold, Mr Shaw,
20 Mr Tchelet and Mr Eager, were you aware at the time as
21 to whether any of them had a background in iron ore
22 mining?

23 A. No, I was not aware. I found these people when I joined
24 in October 2005.

25 Q. So you were not responsible for putting together that

12:02

1 team?

2 A. No, that team was already in place when I arrived.

3 Q. When you arrived, was it your understanding that BSGR's
4 number one objective in entering Guinea was to get
5 access to some of the Simandou blocks?

6 A. I was not aware initially. But when I was on my first
7 trip and I found out about the potential of Simandou --
8 I think somewhere in my witness statement I also state
9 that I wasn't really aware of the actual Simandou
10 deposit at the time; I was more familiar with Mount
11 Nimba, where BHP Billiton worked. So I got to learn
12 about this very quickly. And because I had a background
13 in geology and mining engineering, it was not very
14 difficult for me to comprehend this.

15 Q. We can find the paragraph, but you're correct: you say
16 that you had not heard of Simandou itself before
17 October 2005.

18 A. That is correct.

19 Q. Okay. But once you got there and got on the ground in
20 November 2005, by that time you understood that BSGR's
21 primary interest in Guinea was the Simandou blocks?

22 A. No, it actually wasn't. We were told -- I was told by
23 Mr Oron at the time that -- and this was based on his
24 initial meetings a few months before that; if I'm not
25 mistaken, it was July 2005 -- that there were potential

12:04

1 opportunities around Simandou that had not been taken up
2 by other people. Now, Mr Oron did not want to say yea
3 or nay to this because, as we just described, he did not
4 have a background in this. So he needed me.

5 In fact I was recruited by BSG Resources, or
6 Norinter at that point in time, because they had so many
7 stakes in actual operating mines and they were getting
8 so many offers, proposals from people who had -- is it
9 still working? Yes -- who had either exploration
10 licences or mining licences or both of these, and he did
11 not know how to judge the quality of that. So he needed
12 someone with a technical background, and that was the
13 reason for my recruitment.

14 So immediately when I got in, I was told to go to
15 all these projects, familiarise myself with it. And he
16 then took me to Guinea, and he wanted me to check that
17 what the minister had told him months before was
18 actually worthwhile for BSGR to get into.

19 Q. So I understand from your answer that -- I'm going to
20 read the question that I asked you, and I understand
21 that it may not have been simple to give a yes or no
22 answer. But my question was:

23 "But once you got there and got on the ground in
24 November 2005, by that time you understood that BSGR's
25 primary interest in Guinea was the Simandou blocks?"

12:05

1 And if I understand your answer correctly, the
2 answer is to my question is: no, you understand that
3 they were primarily interested in knowing whether North
4 Simandou and South Simandou were of interest?

5 A. We didn't call it "North" and "South" at the time.
6 These were exploration areas, potential permits to be
7 had, to be given, to apply for, around the area.

8 Q. Let's see how they're referred to. It might be -- I'm
9 in the Tribunal's hands on this. Would it be useful for
10 understanding what we're going to be talking about for
11 a moment to put up a map of where the Simandou 1, 2, 3,
12 4 blocks are, and where the North Simandou and
13 South Simandou --

14 THE PRESIDENT: I think we are familiar with the map, but it
15 is always useful to look at it while we listen to
16 Mr Struik.

17 MR OSTROVE: Okay. We will get that up shortly.

18 So then, if I understand, these areas which I think
19 eventually become -- or these areas just outside of
20 Simandou are the areas that you were being asked to look
21 into?

22 A. Yes, and I looked at other things too.

23 Q. But with respect to this particular area, is it your
24 testimony that when you got there in November 2005, you
25 did not know or you did not understand that BSGR was

12:07

1 also quite interested in trying to get some of the
2 Simandou blocks themselves?

3 A. No. We could not express that interest in any case
4 because these blocks were owned by Rio Tinto. Now, when
5 I was at the CPDM, I became aware very quickly of what
6 the Mining Code said, I became aware of certain
7 frustration with certain people at the CPDM about the
8 non-performance of the other mining company, and of
9 course I became interested. We were there for business.
10 So --

11 Q. But I'm just trying to situate things as a matter of
12 time. As of November 2005?

13 A. During my first visit, no. I personally became aware of
14 the potential of particularly the northern part of the
15 Simandou range, as we can see now.

16 Q. I'm just looking for my laser pointer so I can make sure
17 we're talking about the same thing. Sorry, we had these
18 as separate exhibits.

19 So this is the southern area of Guinea, and I just
20 want to make sure that we're all talking about the same
21 area. The area I'm pointing [to] here, to the bottom
22 left, that would be Liberia?

23 A. Yes, that's correct.

24 Q. And this area right in the middle, in red -- and we will
25 have a closer-up vision of that soon -- would be

12:08

1 Blocks 3 and 4 of Simandou?

2 A. Correct.

3 Q. Then this area up here in purple, just below the giant
4 rectangle, that would be Simandou Blocks 1 and 2?

5 A. Correct.

6 Q. Just so the Tribunal is aware -- and please tell me if
7 this comports with your recollection -- there can be
8 a lot of confusion in this case because sometimes when
9 people refer to "Simandou North" and "Simandou South",
10 they're talking about Blocks 1 and 2 as "Simandou North"
11 and Blocks 3 and 4 as "South" whereas when they talk
12 about "North Simandou" and "South Simandou", they're
13 talking about these areas?

14 A. That is correct. It has been a frustration of me as
15 well, because it is very difficult to explain to people
16 who are not familiar with the difference between
17 exploration rights, mining rights, mining titles,
18 et cetera what it actually is.

19 Q. I'm glad to know we share some frustration.

20 A. So we had -- the licence that we got, the blue or
21 purplish rectangle right at the top called "North
22 Simandou", that was an exploration permit; and then
23 South Simandou was the same.

24 Q. Yes. And in fact this then shows also -- this is a map
25 which is -- I'd like to give the page reference; I was

12:10

1 going to give an exhibit reference -- page 25 of our
2 Duplique.

3 So this is showing what are called the "mining
4 rights" in this case: the research permits for North
5 Simandou, the research permits for Blocks 1 and 2, and
6 eventually there was a mining convention with respect to
7 South Simandou.

8 If we could now go to the ... okay.

9 I'm sorry, North Simandou is not a mining right in
10 this arbitration because it was relinquished before.
11 The concentration was on South Simandou, which is often
12 referred to as "Zogota" because of the --

13 A. Correct.

14 Q. Okay. (Pause)

15 We are going to put up page 29 now of the
16 Counter-Memorial of Guinea, which is this map. So this
17 is a closer-up view of Blocks 3 and 4, which were
18 eventually, for most of the relevant times here,
19 Rio Tinto blocks and what's called there the Zogota or
20 South Simandou.

21 A. Sorry, can you repeat the question?

22 Q. Just so the Tribunal knows where we're situated, this is
23 a closer-up view. We've left Blocks 1 and 2 and North
24 Simandou, and we're focused on Blocks 3 and 4 and
25 South Simandou or Zogota.

12:12

1 A. That is correct. There is only one mistake on this map:
2 the South Simandou perimeter did not touch Block 4. It
3 looks like this perimeter was after the retrocession, or
4 tried to be after the retrocession. So the actual
5 perimeter, the northern border of South Simandou did not
6 touch the southern border of Block 4.

7 Q. After the retrocession?

8 A. Exactly.

9 Q. Before the retrocession?

10 A. Before the retrocession -- I stand to be corrected;
11 I cannot recall that exactly -- but I also doubt it,
12 because I know for sure the southern border of Simandou
13 North was touching the northern border of Block 1, that
14 belonged to Rio Tinto. It was contiguous. So the
15 southern side was not -- definitely not after the
16 retrocession, because we focused really on Zogota
17 because the rest was irrelevant.

18 Q. Understood. We'll be coming to that in a little bit.

19 Just for reference, the Tribunal can find all of the
20 relevant maps in Exhibit R-150.

21 If you can cast your mind's eye back to this period
22 when you arrived in November, and then we'll be
23 discussing a little bit between then and February 2006,
24 because on 20th February 2006 BSGR signed what's called
25 a protocole d'accord or a memorandum of understanding

12:14

1 with the Government of Guinea. Do you recall that?

2 A. Yes, I do.

3 Q. You can find that document at tab 5 of the bundle. It's
4 Exhibit C-0009.

5 I'm sorry, I know that you said in your witness
6 statement that you didn't speak much French when you got
7 to Guinea, when you got on this project at first. Is
8 that correct?

9 A. That is correct.

10 Q. Do you read French, can you follow along in written
11 French now?

12 A. (Interpreted) Today I speak very good [French], thank
13 you.

14 Q. (Interpreted) Do you want to continue in French?

15 A. Non.

16 Q. (In English) It was worth a try!

17 But if we refer to paragraphs of this protocole
18 d'accord --

19 A. (In English) I can read it.

20 Q. Okay. Did you understand it at the time when you signed
21 it?

22 A. I understood at the time because this memorandum of
23 understanding or protocole d'accord was actually
24 drafted -- and you probably know or have seen there have
25 been many versions of this -- it was with the help of

12:15

1 Linklaters in Paris. There were two gentlemen in
2 particular that we used: one was Mr Simon Ratledge, and
3 I think the other person was called -- I think also
4 Marcus Renford, if I'm not mistaken.

5 And they helped us with the drafting of this,
6 because first of all it was not my expertise to draft
7 a document like this; I'd never done it before in my
8 life, let alone in French. So there were English
9 versions, by the way, too of this document.

10 Q. Okay. I just want to understand a few characteristics
11 of this document and then take you back to some of the
12 drafts to understand how it developed. So thank you,
13 that background is helpful.

14 If we look at what this document refers to, is it
15 fair to summarise that it's an agreement regarding the
16 grant of rights to North and South Simandou that we
17 looked at and a right of first refusal over Blocks 1
18 and 2 to --

19 A. That is correct.

20 Q. I'm sorry, not just 1 and 2, but of any part of
21 Blocks 1, 2, 3 or 4 that would become available?

22 A. Yes, I was going to remind you of that. Yes, that is
23 correct.

24 Q. But Blocks 1 and 2 were specifically targeted in Annex 1
25 of this document, if you turn --

12:17

1 A. Correct.

2 Q. -- towards the back? Annex 1 is entitled "Coordonnées
3 de la zone de recherche", and the coordinates that are
4 listed are the coordinates for Block 1 and Block 2, then
5 held by Rio Tinto, and the North and South blocks that
6 you had actually already received research permits for;
7 correct?

8 A. That is correct.

9 Q. Okay. And again, just to situate the Tribunal, the
10 research permits for North Simandou and South Simandou
11 had been granted on 6th February 2006; correct?

12 A. Yes, that is correct.

13 Q. Roy Oron had first sent a draft of this to the
14 government back in November 2005; were you aware of
15 that?

16 A. Yes, I was aware of that.

17 Q. That draft we can find in the next tab in the bundle,
18 tab 6. It is Exhibit R-173.

19 This early draft, do you recall, refers only to
20 North and South Simandou and does not refer to Simandou
21 itself?

22 A. You mean it does not refer to Blocks --

23 Q. No, I'm sorry, this first one actually refers to all of
24 Simandou; is that correct?

25 A. I need to check that. I can't recall.

12:18

1 Q. Let's look for it. (Pause) It's right on the first
2 page, where it talks about the objective, under "ÉTANT
3 PRÉALABLEMENT EXPOSE QUE".

4 A. What page?

5 Q. The very first page.

6 A. What paragraph?

7 Q. The very first paragraph of text:

8 "(Interpreted) The objective of this is to establish
9 a framework for the partnership between the State and
10 BSGR in the aim of promoting and developing iron ore
11 deposits ..."

12 (In English) So this first draft that Roy Oron sent
13 did not specify only North Simandou and South Simandou,
14 but rather talked generally about Simandou, right?

15 A. It talked generally about Simandou. Even the people in
16 Guinea, when they talked Simandou, they talked about
17 sometimes the region. Simandou was a very prominent
18 mountain, of course. So it was sometimes unclear as to
19 what people were referring to with Simandou.

20 But Roy Oron wanted to invest at the time, and this
21 is why he sent me there, about -- to find out about the
22 potential in the same region, the same area. Because we
23 knew very well that Blocks 1 to 4 were taken by
24 Rio Tinto, so obviously there was -- we could not ...

25 Q. But in the draft that he sent in November, he was

12:20

1 expressing an interest in anything in that area?

2 A. Yes.

3 Q. And he didn't exclude Blocks 1, 2, 3 and 4?

4 A. Yes.

5 Q. Okay.

6 Then in fact you sent a second draft on January 6th
7 of this document, which is the next tab. It's
8 Exhibit C-208, tab 7. And in fact here you are much
9 more specific when you are talking to the minister. You
10 say in the second paragraph of your cover letter:

11 (Interpreted) "The aim of this protocol is to
12 provide for the promotion and development of deposits
13 for iron ore in North and South Simandou ..."

14 (In English) As well as infrastructure and all. So
15 with a small parenthetical because, as we saw before,
16 sometimes people say "Simandou Nord et Sud" when they
17 mean Nord Simandou and Sud Simandou. Were you really
18 referring here to what we're talking about as North
19 Simandou and South Simandou?

20 A. Of course, because it was also the reason actually Roy
21 appointed me, recruited me, because from the moment --
22 the period that I worked with Roy Oron, he was in his
23 mind already somewhere else drafting a document. And
24 I had to correct him. And I said, "No, Roy, this is my
25 job. I've been there. These are the areas that we are

12:21

1 going for, so this is how we need to specify it".

2 Q. In fact, if I understood what you said earlier before,
3 the minister had already told you, "Blocks 1, 2, 3 and 4
4 are with Rio Tinto" --

5 A. Exactly.

6 Q. -- "so we can't sign anything about that"?

7 A. We knew that, yes.

8 Q. So you submitted something, which was North Simandou and
9 South Simandou?

10 A. Like Mount Nimba was with BHP Billiton; it's the same
11 thing.

12 Q. Right. You wouldn't sign a protocole d'accord with the
13 state saying, "Hey, we want a right of first refusal in
14 case Mount Nimba comes free"?

15 A. Yes. Well, we said first refusal of anything that
16 becomes available, in the final document.

17 Q. But not in this document. If we look at the
18 November ... not in this January draft.

19 A. Not in this document.

20 Q. In this January draft you had removed anything about
21 a right of first refusal over generally everything; you
22 were just focusing at that time on North Simandou and
23 South Simandou.

24 A. On North and South, correct.

25 Q. But then something changed between this January draft

12:22

1 and the February 20th final one, where you put back in
2 a right of first refusal over anything that should
3 become free?

4 A. Yes.

5 Q. Do you recall what changed right between January and
6 February?

7 A. I -- yes, I recall very well, because I was there, I was
8 on the ground. I discussed the lay of the land.

9 And before -- Madam President, let me explain a bit
10 more, before I answer your question.

11 Q. Actually, because this might go on for a while, perhaps
12 if I could ask a few specific questions that might get
13 us there very quickly.

14 A. But I think it's relevant to your question.

15 THE PRESIDENT: I think maybe we will let the witness
16 answer. It can be on the Tribunal's time, if that is
17 your concern. But for us it's helpful to have the
18 background.

19 A. Please do not forget that when I got to Guinea, I had
20 been working as an independent consultant on many mining
21 projects. I understand mining law. I understand the
22 use-it-or-lose-it rule, which particularly became very
23 prominent during 2006 and further even more so in 2007.

24 Now, whilst I was there and started to understand,
25 I got a good idea about what the Mining Code of Guinea

12:23

1 at that time -- the 1995 Mining Code -- was actually
2 telling us. I realised that even in that code, if you
3 do not do certain things, the government has the right
4 to take assets away from you. Like today. It's the
5 same story, it's never changed, and rightfully so.

6 Now, I saw this as an opportune moment because at
7 the same time whilst I was investigating what was
8 available to us to apply for as an exploration permit,
9 I also heard, right from almost the beginning, that
10 people were very unhappy, very unhappy with Rio Tinto
11 sitting on all these blocks for all that time and doing
12 nothing. Even today Guinea has not seen one tonne of
13 iron ore exported from the country; not one.

14 So it was obvious to me, and this is what
15 I recommended to Roy -- in the end, it was not my
16 decision to add it to the MOU, the protocole d'accord,
17 because it was Roy's decision -- I just suggested to him
18 that if these blocks become available -- it would not be
19 Blocks 3 and 4 because, in all fairness, Rio Tinto did
20 work there. We might disagree on the amount of work
21 that they've done, but they actually did work there.
22 They focused mostly on those blocks, and they left 1 and
23 2 alone. So it was very fair, very probable, very
24 plausible that if the Government of Guinea was going to
25 remove 50%, as per the Mining Code, it would be Blocks 1

12:25

1 and 2, and not 3 and 4.

2 That's why I suggested to Mr Oron at the time,
3 "Please, let us try and put this in. If they accept it,
4 fine. If not, then we stick with Simandou North and
5 South". But they accepted it. And the final draft --
6 the version of the protocole d'accord actually includes
7 that.

8 So forgive me for being opportunistic, but we are in
9 business; this is what we try to do. So this is why
10 I suggested we put it in.

11 MR OSTROVE: Thank you. In fact, a lot of what you just
12 said was already in your witness statement, so I will
13 try to move on with some specific questions.

14 I just to want take you back to exactly what was
15 going on specifically in the period between January 6th
16 2006, when you send this letter to Minister Souaré, and
17 February 20th, when you do the final version of the
18 protocole d'accord, which changes it to put in that
19 right of first refusal over Blocks 1 and 2. I'm just
20 trying to situate us in that time.

21 A. Okay.

22 Q. In your witness statement in paragraph 25, you
23 mention --

24 A. First or second?

25 Q. The first witness statement. We can take you directly

12:26

1 to paragraph 25 if you like, but I'm just trying to
2 recall where you say:

3 "Several drafts of the [MOU] were exchanged between
4 us and the Government, as Mr Oron was initially unhappy
5 with the Government's proposed terms and refused to
6 sign."

7 Do you recall whether that was a refusal to sign
8 this version that we just looked at, of January 6th, or
9 the earlier one?

10 A. Exactly. No, I think it was the version -- I need to
11 check the dates now. It was one of these versions. But
12 it must have been this last -- this version that we just
13 spoke about, where I just referred to Simandou North and
14 South. So he obviously, from a business perspective,
15 wanted some changes, and better terms and conditions.
16 So this is why I went back.

17 Q. Okay. So then you went back, with a team from
18 Linklaters, you say, in mid-January 2006?

19 A. Yes.

20 Q. Okay.

21 A. I cannot recall if I have been on another trip before
22 the trip when we signed on 20th February, because that
23 was obviously a trip that we did attend. But I cannot
24 recall if there was another trip between the January --
25 mid-January trip, as we talk about now, and

12:27

- 1 20th February.
- 2 Q. But is it your recollection that the mid-January trip
- 3 was then after this January 6th version?
- 4 A. Yes.
- 5 Q. Because Roy Oron was not satisfied with this?
- 6 A. Correct.
- 7 Q. And then sometime obviously before the end of January?
- 8 A. Yes. I think normally when I went to Guinea for these
- 9 trips, I would stay up to a week to ten days.
- 10 Q. So you were there sometime between --
- 11 A. Mid and the end of January.
- 12 Q. -- January --
- 13 A. Yes. I mean, flight records could prove the date that
- 14 I arrived, the date that I left, so ...
- 15 Q. Okay. I'm just trying to get a general sense --
- 16 A. Yes, this was more or less the time, yes.
- 17 Q. Then February 6th 2006, that's when BSGR, we mentioned
- 18 before, was awarded prospecting permits, exploration
- 19 permits, for North Simandou and South Simandou?
- 20 A. Yes, correct.
- 21 Q. And those we can find at tabs 3 and 4 of the bundle, the
- 22 two prospecting permits (C-4 and C-5).
- 23 Do you recall whether you were still physically
- 24 present in Guinea when these were finally issued, or
- 25 this was after you had finished your trip in January?

12:29

1 A. I cannot recall this. But if we can go back into the
2 flight records ...

3 Q. If they're --

4 A. I cannot recall exactly if I was present when the
5 permits were handed out, or [whether] at the time the
6 permits were given to us and I received the scanned
7 copy. I cannot recall this.

8 Q. I'm not asking you to speculate. If you don't recall
9 something, please say so.

10 A. I cannot recall that I was present.

11 Q. If it becomes important, we might ask about this later.
12 Because you do still have all of your flight records
13 from back in 2006 and 2005?

14 A. I think they were, because -- yes, I think we do
15 actually.

16 Q. Thank you. I can't say I have the same for myself.
17 Okay.

18 At the time that these were issued, they're issued
19 to a Société BSGR Guinea, is the title of the holder of
20 the rights that's listed?

21 A. Yes.

22 Q. Do you recall that at the time the actual company that
23 became the Guinean Sàrl, BSGR Guinea Sàrl, that that
24 company had not yet been incorporated, it didn't exist
25 yet?

12:30

1 A. Yes. I cannot recall though the exact date of when we
2 incorporated that local Sàrl company.

3 Q. But do you recall that it was sometime shortly after the
4 permits were granted? If you don't recall --

5 A. Yes. No, no, I cannot recall the exact date.

6 Q. But do you recall if it was actually done after the
7 permits were granted?

8 A. Well, I don't know. I can't recall the date, so I don't
9 know if it was before or after.

10 Q. I wasn't sure if you could recall that it was after, but
11 not the date. But if you don't recall, it's fine.

12 A. I know by law, if I'm not mistaken, the exploration
13 permits can only be issued to a local entity. So the
14 Ministry of Mines would not have issued exploration
15 permits to a foreign entity because it is -- it's by
16 Mining Code that it must be a local entity who holds the
17 exploration permits.

18 So we need to just check the dates. I cannot recall
19 exactly.

20 Q. You're not here as a legal expert and I'm not sure that
21 what you've just stated is correct. It's definitely
22 true that concessions can't be held by anything other
23 than local entities. We will have to check whether --

24 A. So maybe I'm mistaken. I'm not a legal expert, no. I'm
25 becoming one!

12:31

1 Q. I just want to make sure that you're not putting
2 yourself on the record for something that might not be
3 accurate.

4 So we've seen that on January 6th you had sent
5 a protocole d'accord, a draft. Then Roy Oron was not
6 happy with the terms. You went to Guinea at some point
7 in mid-to-late January [2006], and following that,
8 things start developing. On February 6th the rights are
9 issued, the prospecting rights. And then on
10 20th January, we've already seen tab 5 in the bundle is
11 the signature --

12 A. February.

13 Q. 20th February, thank you -- is the signature of the
14 protocole d'accord. So you had then gone back to Guinea
15 to sign the protocole d'accord?

16 A. Yes, I was there.

17 Q. As you said a little bit earlier in your testimony, this
18 was a very unusual document; you had never signed
19 a document like this before?

20 A. No, it's not an unusual document for the actual deal, if
21 you wish, or proposition that was actually done. It was
22 for me a document that is -- I was involved with for the
23 first time in my life, because as a consultant I was not
24 involved with these sort of MOUs and drafting legal
25 documents. But for the actual deal between the

12:33

1 Government of Guinea and BSGR, I don't think it was
2 uncommon at all.

3 Q. But do you think it's a fair characterisation to say
4 that the signature for Guinea and BSGR of this document
5 was a first-of-its-kind moment?

6 A. What do you mean by "first-of-its-kind": for Guinea or
7 for BSGR or ...?

8 Q. I'm not trying to catch you out; I'm actually trying to
9 understand something that you said. So let me take you
10 to your first declaration, paragraph 31:

11 "Following lengthy discussions, we finalized the
12 negotiation of the Memorandum of Understanding, on terms
13 acceptable to us, on or around 20 February ... This was
14 a significant moment for both us and the Government, as
15 it was a first of its kind and ... it opened the door to
16 potential substantial investments in the country and
17 unlocking the country's natural resources ..."

18 A. Yes.

19 Q. So when you say, "it was a first of its kind" --

20 A. Yes, I also now recall why.

21 Q. Please.

22 A. Okay.

23 You know that -- I'm going to take a step forward to
24 2011, if I'm not mistaken, when the new Mining Code came
25 into Guinea, right? And in this new Mining Code there

12:34

1 is a requirement that the State of the Republic of
2 Guinea gets a 15% share.

3 Now, if you go back to this MOU that we signed with
4 the Government of Guinea at the time, which is based on
5 the 1995 Mining Code, we had already included -- and
6 this is why it was the first of its kind -- a 15% stake,
7 free carry, for the State of Guinea. So we were quite,
8 I would say, modern with our MOU and proposal to the
9 Government of Guinea.

10 Why did we include this? Because from my
11 experience, all the projects that I had seen elsewhere
12 in Africa, the government, in some form or another,
13 always had a stake -- a free-carry stake in the projects
14 that -- the mining -- sorry, actually in the mining
15 projects; not on the exploration level, at the mining
16 level they would get a free-carry stake. And sometimes
17 it would -- a clause would be added that would say that
18 they could buy at market value an additional 10%, or
19 whatever percentage that might be.

20 So with this protocole d'accord we were, I think,
21 the first company actually offering the Government of
22 Guinea at that time, in 2006, a 15% stake in the
23 Compagnie de Fer -- Minière de Fer or something; I think
24 it's also mentioned in the protocole d'accord.

25 Q. There was going to be a company named the Compagnie --

12:35

1 A. Yes, and the government would have stake in there.

2 Q. Okay. But that was a stake that was essentially
3 foreseen in the 1995 Mining Code; correct?

4 A. As far as I know, no. And I don't think that any other
5 company had done this. I don't think the Government of
6 Guinea at that point in time had any stake in mining
7 projects. We were the first, I think. And this is why
8 I recall saying this, or this is why I wrote it.
9 Because they made a very big issue out of this when the
10 new Mining Code was promoted, but we had done something
11 already like six/seven years before.

12 Q. Thank you.

13 Is 15% shareholding that the state would get, is
14 that, from your perspective, a very progressive and
15 generous share for the state?

16 A. It's very normal. I mean, I've been recently involved
17 with another project, I told you I work for another
18 company, and actually in fact I've just gone through
19 a very, very similar process, where we had to start from
20 scratch, do the feasibility study, get the mining
21 licence, get the permits, and the government of this
22 particular country gets 10%, as per the Mining Code.

23 Q. Okay, so --

24 A. So 10/15% is okay. There have been projects where the
25 government was asking for 20/25%. I mean, this is

12:37

1 a bargaining thing. If it's dictated by law, you have
2 no choice, you have no option. If it's not, you can
3 negotiate percentage.

4 Q. So here, since it wasn't dictated by law, you're saying
5 15% was a fair, good share for the Government of Guinea?

6 A. Yes, in our -- yes, because we believed that if these
7 mining projects would actually be developed, it would
8 come off and be a 20/25 year mining project, there would
9 be a lot to share between all parties. So 15% was fair
10 to us. It means that we were left with 85%.

11 Q. And we understand that sometimes mining projects fail,
12 and 15% is worthless and so is 85%.

13 A. Sure.

14 Q. But if a project like this developed as much as BSGR
15 really hoped --

16 A. Yes.

17 Q. -- 15% would be worth a significant amount for the
18 state?

19 A. Exactly. On top of which they would also get corporate
20 tax, royalties, personal tax from all the employees,
21 et cetera.

22 Q. Okay.

23 We have already seen, if we go back to the MOU that
24 was signed, tab 5 (C-9), that Article 3.2.2.7, if we get
25 there --

12:38

1 A. Is this now the final version or ...?

2 Q. The final version, the one signed on November --

3 A. Okay.

4 Q. Before we go to the subparagraph, let's see what the
5 paragraph is about. Section 3, which is on page 4 of
6 the document, is about "ASSISTANCE DES PARTIES". If you
7 go back to page 4. I don't want to pull things
8 completely out of their context.

9 Section 3 is about "ASSISTANCE DES PARTIES".

10 A. Oui.

11 Q. 3.1 is general assistance. 3.2 is the assistance that
12 the Republic of Guinea will provide. Then the
13 subparagraph under 3.2.2.7, the last assistance is:

14 (Interpreted) "The support given that, as soon as
15 the site becomes free of rights, it would be proposed to
16 BSGR Guinea for exploration and/or exploitation."

17 A. Oui.

18 Q. (In English) From your perspective, just like the 15%
19 interest accorded, this right of preemption, this
20 priority right, that's also something that's unusual;
21 it's not in the Mining Code, right?

22 A. No, it's not in the Mining Code, but it is part of
23 negotiation. So if they agree to it -- and both parties
24 agree to it, so we managed to put it. So, yes.

25 Q. But this is part of what makes it an unusual and

12:39

1 big-deal document?

2 A. No, not necessarily. I've seen many contracts since
3 also with other mining companies where things like that
4 are being discussed and agreed to. So you always --

5 Q. Sorry, with other states? You've seen other states
6 grant preemptive rights in case something becomes
7 available in the future --

8 A. No, it's a right of first refusal.

9 Q. From states to companies; you've seen that?

10 A. Yes, I've seen that.

11 Q. Okay.

12 You explained in your written testimony, and in the
13 explanation that you helpfully gave to the President
14 earlier about what was going on at the time, that you
15 were anticipating that Rio Tinto would have to retrocede
16 50% of its rights; correct?

17 A. Yes.

18 Q. If we can put R-150 back on to the screen.

19 These are the four blocks that were held at the time
20 by Rio Tinto; is that correct?

21 A. Yes.

22 Q. So --

23 A. I can see now the understand -- the confusion of
24 Simandou Nord and Sud, because it's actually not.

25 But --

12:41

1 Q. Right. But because it was the north half of Simandou,
2 Blocks 1 and 2, people called them "Simandou North", and
3 Blocks 3 and 4 for the south half, people called them
4 "Simandou South".

5 Madam President, we're trying in our discussions to
6 talk about "North Simandou" and "South Simandou" to talk
7 about the areas above and below, but apologies if
8 there's sometimes confusion even in the documents.

9 Do I understand your testimony to be that -- and you
10 mentioned this before, so I'm just trying to
11 summarise -- that Rio Tinto was focusing on Blocks 3
12 and 4, so as early as February 2006 you assumed that if
13 they had to do a retrocession, they would give up
14 Blocks 1 and 2? Is that correct?

15 A. That is correct.

16 Q. Thank you. But is it also correct that if Rio Tinto had
17 to do a retrocession, it didn't have to give up half of
18 its blocks; it had to give up 50% of the surface area
19 covered by its blocks? Is that correct?

20 A. 50%, yes.

21 Q. So it could have given up just, for example, the top 50%
22 of Block 1; or it could have given up all of Block 1 and
23 the side of Block 3 and a portion of Block 4 for 50%?

24 A. There would be many variations. But they would not be
25 logical.

12:42

1 Q. Depending on where they were exploring and what they
2 were particularly interested in?

3 A. Exactly. So from my knowledge, from what I discovered,
4 from what I was told by the CPDM -- and let's not forget
5 that the CPDM is in charge of all these exploration
6 permits, mining rights, the progress made on these
7 permits, et cetera -- it was very obvious to me that
8 Blocks 1 and 2 were not the priority of Rio Tinto.

9 We found out subsequent to that, after we were given
10 these blocks as exploration permits in December 2008
11 that Rio Tinto only had drilled -- it's disappeared
12 now -- only had drilled six holes, over 56-kilometre
13 length going north/south, in Blocks 1 and 2. These
14 holes were about 2 kilometres apart. That's all they'd
15 done. All the work -- most of the work was in Block 4,
16 a deposit which is now called Pic du Fon. The work
17 after that was in Block 3, that came after that, in
18 a deposit called Oueleba.

19 Q. Have you heard of an area called "Captain Hook"?

20 A. Yes.

21 Q. That's in which block?

22 A. That's now in Block 2.

23 Q. And in fact after the -- we'll come to what happened
24 later: there was sort of a forced retrocession of
25 Blocks 1 and 2 from Rio Tinto. Rio Tinto became fairly

12:44

1 upset that it lost Captain Hook. Do you recall that?

2 A. Rio Tinto became upset with the fact that they lost
3 something, not necessarily Captain Hook. I don't
4 know -- I cannot recall any specific message, article or
5 anything that said, "We are upset because of Captain
6 Hook".

7 Q. Were you involved at all in assisting BSGR in the
8 technical understanding when Rio Tinto brought a lawsuit
9 against BSGR, Vale, Mamadie Touré and other people in
10 New York?

11 A. You mean the one that was filed in New York and kicked
12 out?

13 Q. Exactly, that one.

14 A. That one.

15 Q. So you were aware of that case?

16 A. I was aware. I read the 50-page document.

17 Q. The complaint?

18 A. Yes --

19 Q. If we could put the complaint up on the screen -- it's
20 Exhibit R-47 -- and if we could look in particular at
21 paragraph 80.

22 Rio Tinto's allegations, if I may summarise --
23 please tell me if you disagree -- were that Vale had
24 access to confidential information about Rio Tinto's
25 blocks, and that Vale found out that there was a really

12:45

1 fantastic spot in Blocks 1 and 2, and that Vale
2 conspired with BSGR to force the withdrawal of rights.

3 A. Yes, I've heard the stories.

4 Q. Okay. (Pause) Paragraph 84:

5 "On December 10, 2008, Rio Tinto gave Vale
6 a confidential tour of the Simandou site ..."

7 A. Yes.

8 Q. Paragraph 85:

9 "During the site visit, Rio Tinto gave a detailed
10 tour of its potential mining operations at Captain Hook,
11 a site located in North Simandou Blocks 1 and 2 and
12 discussed at the November 24, 2008 meeting. It is
13 notable that during this time, Vale expressed particular
14 interest in Rio Tinto's plans and strategy for
15 developing Blocks 1 and 2 ..."

16 Is it your understanding that in Blocks 1 and 2,
17 when you finally obtained them, there was a zone called
18 "Captain Hook" that was of particular value?

19 A. We became aware afterwards that it was called by
20 Rio Tinto "Captain Hook"; by Rio Tinto. We did not know
21 about the quality -- the best -- the quality and the
22 quantity actually of the iron ore, the direct shipping
23 ore that was in -- we called it "the gaff" afterwards
24 ourselves; which we found out by drilling ourselves, by
25 the way. As I said earlier, Rio Tinto had only drilled

12:48

1 six holes in the total length of 56 kilometres. Now,
2 I cannot recall how many of these holes were actually in
3 the -- what they called "Captain Hook" at the time.

4 Madam President, I'd like to give some further
5 explanation to this, seeing that counsel brought it up,
6 if I may.

7 MR OSTROVE: I was planning to move on to another topic. It
8 could be covered in re-direct, I think.

9 THE PRESIDENT: While we're on it, maybe we can just deal
10 with it now, and it will be on the Tribunal's time,
11 because we could have asked the question later on.

12 A. So you are permitting me to give an explanation?

13 THE PRESIDENT: I am.

14 A. Thank you very much. I think it is very important,
15 because this lawsuit -- I mean, counsel brought it up.
16 I have to say this on behalf of BSGR: this lawsuit was
17 so full of flaws that it was actually kicked out.

18 Now, this particular paragraph that counsel is
19 referring to is alluding to the fact -- it's trying to
20 say that Vale colluded with us based on information that
21 Vale obtained from Rio Tinto during the period in 2008.
22 What we should also understand, because it highlights
23 why Rio was doing this: at the time BHP Billiton was
24 doing a hostile takeover of Rio Tinto. Rio Tinto was
25 cornered. They didn't enjoy the offer that they got,

12:49

1 the dollar per share value. And the reason for this is
2 that they had always understated the amount of potential
3 direct shipping ore resources; in other words, the
4 potential, the value of Simandou as a mountain range,
5 as --

6 THE PRESIDENT: I think you have explained this on the
7 valuation of reserves in your witness statement. Is
8 that right?

9 A. I have. But it is important, Madam President, to
10 understand this, because now they were forced to tell
11 also the Government of Guinea that they didn't have just
12 2 or 3 billion tonnes, but potentially 8 to 11 billion
13 tonnes. The gaff came up.

14 Now, Vale, when they did the deal with us, when they
15 started doing the due diligence with us -- and please
16 understand that I was in charge of the technical side of
17 that due diligence; it was all my responsibility.

18 I shared every piece of information that we had at the
19 time -- Zogota, as well as the drilling in Blocks 1
20 and 2 -- with Vale. Vale shared nothing -- absolute
21 zero -- with us. They did not confide in us. They did
22 not tell us anything about their deal that they tried to
23 do with Rio Tinto.

24 We found out later that Vale was trying to do also
25 maybe some synergy, like BHP Billiton was trying to do.

12:50

1 They all jumped in. Even the Chinese smelters put
2 a consortium together to take out Rio Tinto. It had
3 nothing to do with us. Vale gave us nothing. They took
4 everything from us; which they were entitled to, because
5 it was part of the due diligence that they were doing as
6 part of our deal.

7 So this -- it was implied that Vale shared with us
8 something that we didn't know about in the end. So
9 I want to -- I want this for the record.

10 THE PRESIDENT: No, I understand. We are not taking this at
11 face value, don't be concerned.

12 A. Okay, so forgive me. But this is what I would like to
13 say.

14 THE PRESIDENT: Thank you.

15 MR OSTROVE: I can understand your defensiveness about the
16 Rio Tinto suit. We are not prosecuting the Rio Tinto
17 suit. I was simply trying to talk about whether there
18 were zones in Blocks 1 and 2 that it turned out were of
19 great interest to Rio Tinto.

20 A. But we did not know about it until we started drilling.

21 Q. I did not ask you whether you heard about it --

22 A. And also when we got the blocks, we did not get any
23 information from Rio, although they were obliged to give
24 the government information, technical information of
25 whatever they had done in these blocks; which they did

12:51

1 not, until maybe much later.

2 MR OSTROVE: Thank you, Mr Struik.

3 Madam President, I was not trying to be disingenuous
4 before. I actually did plan to move on to a quite
5 different topic, and that different topic could take us
6 a good chunk of time to get through. I was wondering if
7 it might be a convenient time for our lunch break.

8 THE PRESIDENT: In that case it would be a good time to take
9 the lunch break now, and resume at 2 o'clock? 1.45,
10 2 o'clock?

11 How much longer is the cross-examination, in terms
12 of your estimate? It's an estimate, it's not
13 a commitment.

14 MR OSTROVE: It could go another two and a half hours.

15 THE PRESIDENT: Another two and a half hours. So that gives
16 Mr Ferreira plenty of time to get here.

17 MR WOLFSON: Yes, it may give him a night in Paris. But
18 we'll see how we go. He's available if the Tribunal
19 wants him.

20 THE PRESIDENT: We will see how we proceed. Fine. Let's
21 start again at 2 o'clock.

22 Mr Struik, during the break, please do not speak to
23 anyone about the case.

24 MR STRUIK: Understood.

25 THE PRESIDENT: And the best way of complying with this is

12:53

1 simply not to speak to anyone about anything.

2 MR STRUIK: Understood, Madam President.

3 THE PRESIDENT: But obviously you are entitled to have

4 lunch.

5 MR STRUIK: Thank you very much. Understood.

6 THE PRESIDENT: Good.

7 (12.53 pm)

8 (Adjourned until 2.00 pm)

9 (2.01 pm)

10 THE PRESIDENT: I hope everybody had a good lunch. We can

11 now continue.

12 Mr Struik, you are ready to continue?

13 MR STRUIK: I am, thank you.

14 THE PRESIDENT: Good.

15 MR STRUIK: I have one question, if I may?

16 THE PRESIDENT: Yes.

17 MR STRUIK: Is it permitted for me to say something about

18 a point that was raised in the first session, to come

19 back to a specific point, or not?

20 THE PRESIDENT: That is not the rule we follow. You are

21 here to answer the specific questions that are asked to

22 you. But as an exception, if there's something you wish

23 to say now, please do so.

24 MR STRUIK: Well, if you give me the permission, I'd like to

25 say, and I'll be brief: the questions that were asked

14:01

1 right at the beginning about whether we as a group had
2 the mining expertise to pull off a project of this
3 nature, I felt it was implied that we did not have.
4 I would like that corrected.

5 I -- well, from my point of view, I'd like to state
6 that we actually did have. Whether it was an iron ore
7 mine or a diamond mine or a base metal mine underground
8 in Zambia, from a mining engineering perspective --
9 which I am, which is my career and experience -- I can
10 say that building the mine, if we had gotten to that
11 point, would be the easiest part of this project in
12 Guinea. Because this is actually not a mining project,
13 it's a logistical project, because in the end it would
14 be 50, 60 or 70 million tonnes per year of iron ore
15 movement from the area around Simandou and Zogota to
16 a port, which in our case was the port of Buchanan in
17 Liberia.

18 So it's a logistical exercise rather than anything
19 else. The mining cost would be a fraction of the total
20 operating cost per tonne.

21 THE PRESIDENT: You can rest assured we have read the
22 feasibility study and so we have quite a good
23 understanding, I think, of what the project implied.

24 MR STRUIK: Thank you for allowing me to say that.

25 THE PRESIDENT: Thank you.

14:03

1 Mr Ostrove, are you ready to continue?

2 MR OSTROVE: (Interpreted) Thank you.

3 (In English) Good afternoon, Mr Struik. Yes, it's
4 a bit warm in here.

5 A. Yes, it is rather.

6 Q. It's not an interrogation technique! It's okay, it's
7 that way for everybody.

8 A. I have worked close to 30 years in Africa. I know the
9 heat, and I have the patience.

10 Q. Before the lunch break, as you just noted, we were
11 talking about the introduction, your arrival in Guinea,
12 what permits, what blocks BSGR was interested in,
13 Blocks 1 and 2, North/South, et cetera, and we talked
14 about the signature of the February 6th research
15 permits --

16 A. Correct.

17 Q. -- and the February 20th agreement.

18 A. Yes.

19 Q. The 20th February 2006 MOU.

20 I'd now like to talk about the role that a company,
21 or some people -- Messrs Cilins, Noy and Lev Ran, and
22 a company that they soon owned, named Pentler --
23 performed.

24 A. Understood.

25 Q. You state in paragraph 9 of your first witness statement

14:04

1 that Mr Oron had connections to Michael Noy, Frédéric
2 Cilins and Avraham Lev Ran.

3 When did you first meet Mr Cilins?

4 A. I met Mr Cilins the first time I went to Guinea. That
5 would have been November 2005.

6 Q. In paragraph 14 of your witness statement you explained
7 that Mr Cilins introduced you and Mr Oron to
8 Ibrahima Sory Touré?

9 A. That's correct.

10 Q. That was during that same trip?

11 A. Yes, it was the same trip.

12 Q. And it was --

13 A. In fact, if I may add, Mr Touré -- there was another
14 gentleman; his first name was Ben, I forget his surname.
15 There were two gentlemen, Touré and this Ben, always in
16 the presence of Mr Cilins. Ben was like a driver, and
17 Touré was always there with him.

18 Q. If this Ben did something very important, please feel
19 free to mention it. But I'm just trying to focus --

20 A. No, he did not.

21 Q. -- on the role of Mr Cilins and others.

22 You go on to explain in paragraph 17 -- I'm just
23 trying to summarise, to situate us -- that you visited
24 the CPDM several times during that first trip.

25 A. That is correct.

14:06

1 Q. And always with Mr Cilins and Mr Touré with you.

2 A. Yes.

3 Q. At that time, did you have a little French or no French
4 at all?

5 A. My French was basically -- I had French for a few years
6 at high school, and that was many years before, of
7 course, and then there was the odd word here and there
8 that I still remembered. I could not really speak it,
9 except for the normal greetings and, you know, "I would
10 like something to eat", things like that. But
11 I could -- I was better in following it. But I had to
12 read -- if I was reading a French paragraph, I had to
13 read it a few times to actually understand the
14 sentence -- the structure of the sentences.

15 Q. Okay. So when you explain that Mr Cilins and Mr Touré
16 helped you predominantly for translation purposes, in
17 speaking and having a conversation at that time, you
18 worked through translators?

19 A. Yes.

20 Q. And you confirm that Mr Cilins himself had no mining
21 background?

22 A. He had absolutely no mining background. He was
23 a businessman, but nothing in mining at all.

24 Q. So his role -- I think you describe it in [paragraph] 35
25 of your witness statement -- was:

14:07

1 "... to open bank accounts with local banks, to buy
2 cars, to get insurance, to find drivers, to find a house
3 and a chef, domestic staff and security guys."

4 A. That is correct.

5 Q. As for Mr Noy and Mr Lev Ran, were they on the ground in
6 Guinea with you at the time?

7 A. No, they were not. Mr Lev Ran I met when I joined
8 Norinter in Johannesburg in October 2005. The offices
9 we were occupying at the time had two floors, and
10 Mr Lev Ran was subletting an office on the first floor.
11 I realised -- or not "realised". I found out later that
12 this was a company called FMA that he was running from
13 that floor. Why he was there, I had no idea, until
14 I found out, also a bit later, that he was a friend of
15 Mr Oron.

16 Q. Mr Struik, we could go quite through the whole afternoon
17 and possibly spill over to tomorrow morning. I was just
18 asking whether Mr Lev Ran and Mr Noy were on the ground
19 in Guinea with you.

20 A. No, they were not.

21 Q. They were not. Thank you.

22 But you were aware that at some point in
23 February 2006 the three of them -- Messrs Cilins, Noy
24 and Lev Ran -- got a company called Pentler?

25 A. No, Pentler came in a bit later. But it was a company

14:08

1 that they had. But initially I was dealing with Cilins
2 as is, as part of FMA, because they had businesses in
3 Guinea as well as Mali, Burkina, I believe, or Senegal,
4 somewhere there.

5 Q. But in February 2006 you became aware that they worked
6 through this company Pentler?

7 A. Yes, there was a company called Pentler at some point.
8 I cannot recall the exact date.

9 Q. Was the company Pentler, or Mr Cilins or Lev Ran or Noy,
10 directly involved in negotiating the memorandum of
11 understanding with you?

12 A. Absolutely not. Cilins was there with me initially,
13 because he assisted me sometimes when I had meetings
14 with Linklaters, again because of the French. So, yes,
15 there is -- there was communication between Cilins and
16 also some people from Linklaters. But it was all to do
17 with the drafting, nothing else.

18 Q. So in terms of actually helping negotiate the MOU ...?

19 A. No, not the -- not the conditions.

20 Q. Okay.

21 A. Not the conditions. The conditions had nothing to do
22 with them; it had to do with us.

23 Q. Okay.

24 A. This is something -- with regard to the conditions,
25 I was in communication at the time with Mr Oron.

14:09

1 Q. So they weren't helping figure out whether you could
2 include Blocks 1 and 2, all those things we saw?

3 A. No, I did that myself.

4 Q. Were they expected to take any other active role in the
5 mining operations?

6 A. No, because they had no mining background. They could
7 not assist there, they could not add any value.

8 Q. On February 14th 2006 -- I believe you mention this in
9 paragraph 4 of your witness statement.

10 A. First or second.

11 Q. First witness statement. Sorry, I have an incorrect
12 reference. Don't worry about that.

13 Could we have a red card, please.

[PROTECTED]

[REDACTED]

14:11

[PROTECTED]

[REDACTED]

[PROTECTED]

[REDACTED]

3 Q. [PROTECTED], did you conduct any due
4 diligence on who Cilins, Noy and Lev Ran were?

5 A. No, not really. And I did this because we have very
6 flat structure. I was in discussions with Mr Oron at
7 the time; he was in charge. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

The

11 discussions took place between him and Mr Noy.

12 Q. In fact the way you describe this in your second witness
13 statement, paragraph 6, you write:

14 "I was aware that Pentler was going to be given
15 a minority shareholding on account of having introduced
16 us to Guinea and Simandou. It was not my decision and
17 was not something I concerned myself with."

18 A. Exactly.

19 Q. Do you stand by that?

20 A. I stand by that, because in the end it was Mr Oron who
21 decided this. I was not an executive person. I was
22 a director of this company, I was a director of many
23 other companies, because we wanted to have some record
24 for the different entities. But the decision was made
25 by Mr Oron.

14:13

1 Q. But as a director of the company, did you feel you
2 needed to understand who these people were [PROTECTED]

4 A. These people introduced the project in Guinea to us.
5 They came through the connections that Mr Oron had with
6 Mr Noy. I was not there to check that or disbelieve
7 that or verify that. He was my boss; these were his
8 connections. This is what you do. I followed
9 an instruction.

10 Q. So your understanding from your boss was: "These guys
11 introduced us, [PROTECTED]

13 A. Yes. And this introduction, the connection, was before
14 I joined BSGR in October 2005.

15 Q. So what you were expecting that they did was just -- it
16 was a thank you for their introduction to the country?

17 A. Yes. And if I may add, you know that I was a consultant
18 and managing a consulting firm for six years, Snowden,
19 okay? One of the ways we achieved revenue income as
20 a consultant was what we would call a "finder's fee".

21 Now, in many cases I was involved in a project
22 bringing people who had exploration assets or mining
23 assets together with people who had money, and as
24 a consultant we could not take a shareholding because
25 that would jeopardise our independent position, but we

14:15

1 could be paid a finder's fee. In this case it's
2 similar, but it's -- here they got the free
3 shareholding.

4 Q. Okay.

5 A. It was like a finder's free, a reward for what they
6 brought us, the opportunity.

7 Q. Very good.

8 A. And the risks, by the way.

9 Q. And the reward that they got -- we talked before the
10 break about the 15% that the state was going to get.
11 Their finder's fee, at least in Mr Oron's point of view,
12 was worth as much as the entire state's interest: 15%?

13 A. Yes. Well, in the end, yes. It's the same
14 shareholding.

[PROTECTED]

14:17

[PROTECTED]

[REDACTED]

You indicated

10 earlier, and at paragraph 29 of your first witness
11 statement, that exploration permits are not worth very
12 much.

13 A. That is --

14 Q. Do you stand by that?

15 A. Of course. That is correct.

16 Q. But in the milestones there for signing of the MOU and
17 issuing the corresponding prospecting permits, this
18 company Pentler is going to get \$2 million if you get
19 prospecting permits for Blocks 1 and 2 and Simandou
20 zones North and South?

21 A. No, it is, I think, related to the MOU, because the MOU
22 is far more encompassing than the actual prospecting
23 permit.

24 We spoke about the MOU before the break. It's
25 quite -- the conditions in there were negotiated many

14:18

1 tiles, and in the end I think we ended up with a very
2 good MOU. Now, that MOU is part of the process.

3 Q. And that MOU in particular was a very important part of
4 the process because later it allowed you to get the
5 prospecting permits for Blocks 1 and 2, right?

6 A. Prospecting permits was only in 2008.

7 Q. Yes. And in 2008 -- we will come there later -- when
8 the blocks became free, the company was able to go to
9 the minister, who had changed, who was a new minister,
10 and say, "Look at our MOU: you have already agreed to
11 give us the first access to these"; correct?

12 A. First right of first refusal, yes.

13 Q. Yes.

14 A. But we still had to apply, which we did.

15 Q. Yes. But right of first refusal.

16 So the MOU and the prospecting permits, at least to
17 Mr Oron here, were worth \$2 million?

18 A. Yes. If you add the two numbers together, yes.

19 Q. Before Pentler actually got its 17.65% shareholding, do
20 you remember that Ms Merloni-Horemans, who is -- do you
21 know who she is?

22 A. Yes.

23 Q. She is the person back in Switzerland who actually
24 handled the corporate back office things; is that
25 correct?

14:19

- 1 A. Yes, that is correct.
- 2 Q. She checked with you to make sure that the signing of
- 3 an agreement -- sorry, this is not with respect to
- 4 milestones. Let's go back to the cover letter.
- 5 A. Yes. (Pause)

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] but then they were

- 21 also going to get a milestone bonus for the MOU and the
- 22 permits?
- 23 A. Yes, according to the table, yes.

[PROTECTED]

[REDACTED]

14:21

[PROTECTED]

- 2 Q. The company needs to start --
- 3 A. No, because we hadn't even started yet, so --
- 4 Q. Right. We discussed this before with respect to the
5 state's interest: it becomes worth something if the
6 project really starts being worth something, right?
- 7 A. Yes, and our percentage also.
- 8 Q. But the second part, \$19.5 million in fees, if we go
9 back to that milestone, if we look at the North and
10 South permits, they only get bonus payments of
11 \$2 million, \$4 million and \$6.5 million after commercial
12 production starts and the company really starts making
13 money, right?
- 14 A. Yes.
- 15 Q. With respect to Blocks 1 and 2 of Simandou, they don't
16 get any kind of bonus for that, right?
- 17 A. Yes.
- 18 Q. But all the other payments they get -- so if you take
19 away \$16.5 million, they get \$13 million in bonus
20 payments before there's any commercial production;
21 correct?
- 22 A. If that's the total, yes, then ...
- 23 Q. Does that strike you as odd, that they would get
24 \$13 million in bonus payments before there's any
25 commercial production?

14:22

1 A. No, not at all. And again, I didn't negotiate this.

2 This was negotiated between Oron and Noy. They agreed

3 on this. So it was not for me to query this at all.

4 Q. Less than a week after signing this deal, this milestone

5 agreement, Pentler signs a series of three contracts:

6 one contract with IST, Mr Ibrahima Sory Touré, and

7 Mr Bah in a single contract -- I think you became aware

8 of that at least later?

9 A. I became aware of it much later.

10 Q. Okay. A contract with Ms Mamadie Touré?

11 A. Yes.

12 Q. And two contracts with Mr Daou?

13 A. I think I've seen one.

14 Q. Okay.

15 A. Maybe you say there are two, then there are two.

16 Q. Okay. In your second witness statement, section G, you

17 say:

18 "... BSGR had nothing to do with the contracts

19 Pentler apparently concluded with third parties."

20 Is it your testimony here today that at the time, in

21 February 2006, you were totally unaware that Pentler --

22 A. I was totally unaware that these contracts existed.

23 They were given to me or shown to me at a later stage.

24 I cannot recall what date.

25 Q. Just to understand what these contracts are, if you turn

14:24

1 to tab 12, Exhibit R-185, this is one agreement, another
2 protocole d'accord, signed between Pentler and Mr Daou.

3 In the more recent past, you've seen this document
4 before?

5 A. I've seen this as part of the proceedings, yes; not at
6 the time.

7 Q. So you understand that in this case essentially Pentler
8 had a 15% indirect interest in the project, and it gave
9 2% of that to Mr Daou; is that correct, your
10 understanding of this?

11 A. I recall this, yes.

12 Q. At the time, did you have any sense of what Mr Daou was
13 doing?

14 A. No. I met Daou once. He was part of the entourage of
15 Cilins, right at the beginning. I don't know why he was
16 there; I think he's related to Senegal, if I'm not
17 mistaken. And that was it. I never dealt with the guy,
18 never consulted him, never asked for any advice, never
19 needed him.

20 Q. So it seems pretty odd to you that somebody would give
21 him a 2% interest in the project?

22 A. But it's got nothing to do with me.

23 Q. Let's turn the tab to tab 13, which is R-24. It's
24 a protocole d'accord between Pentler now and
25 Mamadie Touré; basically the same agreement, but this

14:25

1 time giving her 5% of an interest in the project.

2 Correct?

3 A. I can read that, yes.

4 Q. Again, with Mamadie Touré at the time --

5 A. I met Mamadie Touré.

6 Q. And she seemed like someone, to you, who should get a 5%
7 interest in the project?

8 A. Mamadie Touré was in the presence of Mr Cilins.

9 I understood that Mr Cilins -- or FMA, I should say --
10 was doing business with her. They were importing
11 pharmaceuticals, soaps, condoms, chickens, I don't know
12 what. They were doing that sort of stuff. And she was
13 the distributor of these goods inside Guinea,
14 apparently. And this I was told by Cilins, at probably
15 November/December sometime. I can't recall exactly the
16 first time I met her.

17 Q. So if you had seen this document at the time, it would
18 have seemed pretty strange to you that she was getting
19 a 5% --

20 A. Yes, but again, I mean, I would not have done it, but
21 it's not me, it's not my decision, I wasn't involved
22 with this. This is not my contract.

23 Q. Okay. But at least -- even if it's not your decision --
24 for Noy, Cilins and Lev Ran, they have just transferred
25 effectively, if you add up the percentages, 46.62% of

14:27

1 their company, Pentler, to Mr Daou and to Ms Touré?

2 A. Yes, I didn't calculate the numbers, but if these are
3 the numbers, then that's what they did in these
4 contracts. But again, they have nothing to do with me.
5 I was not involved in these contracts. I did not know
6 they existed until much later.

7 Q. But Cilins, Noy and Lev Ran must have had some reason to
8 think that these people should get nearly half of their
9 company?

10 A. Well, yes, but I cannot speculate what they think.

[PROTECTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. But in your second witness statement at paragraph 28 you
7 note that when you learnt about these contracts later,
8 I think in 2009, you say:

9 "To me, honestly, this was a non-event. Based on my
10 experience in Africa, I knew that these kinds of
11 incidents happened all the time."

12 By "these kinds of incidents", you mean somebody
13 who's got a kind of finder's fee immediately passing
14 through all money they get to somebody else; that kind
15 of thing happens all the time?

16 A. That money passes to other people, yes.

17 Q. All of the money that they're being promised?

18 A. That I cannot recall from my experience, all of the
19 money.

20 Q. Then you say:

21 "Of course I noted the timing of the Pentler
22 contract and it occurred to me that they may have paid
23 away some of their BSGR introduction fees to Mr Bah."

24 A. Yes.

25 Q. "I noticed too ..."

14:31

1 You go on. So in fact it's not just that they paid
2 away some of their introduction fees, in terms of the
3 cash, to Mr Bah; they paid all of those fees to Mr Bah,
4 Mr Touré and to --

5 A. Yes, as I said before, I never added up the numbers.

6 Q. In your experience of Mr Cilins, is he someone who's
7 just a complete idiot, who would just give away his
8 money?

9 A. I'm not sure how to answer that question. I mean, must
10 I speculate that he's an idiot?

11 Q. My question to you is: he seemed to you to be a more or
12 less level-headed businessman? Let me put it that way.

13 A. No, he seemed to me like a guy that was doing business
14 in Africa. He didn't seem -- okay, let me just say
15 this: he didn't seem like a rocket scientist, okay? But
16 I think he was very streetwise. I think he was quite
17 successful in the entrepreneurial things that he had set
18 up everywhere.

19 Again, nothing to do with me. I didn't choose my
20 people to meet. I was introduced to the guy, we used
21 him initially; after that, I've said, "Bye-bye, because
22 I don't need you".

23 Q. And, Mr Struik, you stand by your testimony that you had
24 nothing to do with the drafting of any of these
25 agreements we just looked at?

14:33

[PROTECTED]

[REDACTED]

[REDACTED]

14:40

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:41

[PROTECTED]

[REDACTED]

[PROTECTED]

[REDACTED]

11 In your second witness statement at paragraph 27,
12 you explain that:

13 "On 1 December 2009, Roger Williams, an employee of
14 BSGR, forwarded me a letter sent by Groupe Fouta
15 Mondiale Corporation SA claiming the payment of
16 USD 15.2 million ... based on a contract that Mr Bah and
17 Pentler had allegedly entered into on 20 February 2006.
18 I discussed the Bah issue with Mr Barnett."

19 Who is Mr Barnett?

20 A. Mr David Barnett, he was our lawyer, counsel. He is
21 sitting next to me here.

22 Q. At the time he was in-house counsel or he was external
23 counsel?

24 A. In-house counsel, but I think he also did work for other
25 companies. I'm not sure.

14:43

1 Q. Okay. You discussed this with him, and:

2 "Mr Barnett reiterated that Mr Bah was a Pentler
3 issue and that they had assumed responsibility for
4 dealing with it and that I should ignore the letter --
5 which I did."

6 A. Correct.

[PROTECTED]

[REDACTED]

14:45

[PROTECTED]

2 MR OSTROVE: I'm sorry, does anyone know who the gentleman
3 who just came into the room is?

4 MR FERREIRA: I'm an expert witness.

5 MR OSTROVE: Mr Ferreira?

6 MR FERREIRA: That's right.

7 THE PRESIDENT: So, welcome.

8 MR OSTROVE: My powers of deduction are remarkable!

9 THE PRESIDENT: Thank you for being with us. You are
10 entitled to stay, that's perfectly fine. We simply
11 didn't know who you were.

[PROTECTED]

[REDACTED]

14:46

[PROTECTED]

[REDACTED]

14:49

[PROTECTED]

[REDACTED]

14:50

[PROTECTED]

[REDACTED]

- 22 Q. Changing gears, do you know who George Soros is?
- 23 A. Of course. Who doesn't know who George Soros is?
- 24 Q. Do you know that BSGR claims that he is a powerful man
- 25 who's got a big conspiracy to bring down Beny Steinmetz?

14:51 1 A. The conspiracy I cannot really prove. I can only -- can
2 I use that word? -- from the information that's out
3 there in the public domain, I can deduct that something
4 is going on.

5 Q. Do you agree with the position of BSGR and the position
6 that all --

7 A. Based on what I've been told --

8 Q. Can I finish my question?

9 A. Oh, sorry.

10 Q. Do you agree with the position of BSGR in this case that
11 what's really going on here is a conspiracy where
12 George Soros is using my law firm, DLA Piper, and
13 others, to try and take down Beny Steinmetz?

14 A. Based on the evidence and the information that we --
15 BSGR has compiled over the years since this whole
16 debacle began in 2012, I think yes.

17 Q. So you think he helps people make up all kinds of claims
18 and --

19 A. I think he definitely had a role to play. Can I prove
20 it myself? No. And there's nobody asking me --

21 Q. Do you know when President Condé was elected?

22 A. In 2010, December.

23 Q. The elections were in November 2010 and he became
24 President in December 2010; that's correct.

25 A. Yes.

14:52

1 Q. So you know that BSGR alleges in this case that part of
2 the conspiracy was George Soros got together with
3 President Condé and together they have manufactured all
4 this evidence?

5 A. Yes. I am aware of this, yes.

6 Q. And you think that that's probably what happened?

7 A. I think initially -- I thought initially that it maybe
8 was far-fetched. But after a while, after seeing more
9 and more information that came out from various corners,
10 including our PR company in London, the previous one
11 that we had -- I think it's called FTI, if I'm not
12 mistaken -- with Lord Malloch Brown and so on, I think
13 yes. I think it started -- you know, it's not -- is it
14 plausible? Yes.

15 Q. So your understanding is that you think it's plausible
16 that President Condé had promised Simandou in exchange
17 for purchasing the elections in November 2010, and
18 George Soros then came in and helped him fight off BSGR
19 to get Simandou back?

20 A. I think it's very plausible, yes.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:53

[PROTECTED]

[REDACTED]

22 Were you aware of the fact that BSGR Steel Holdings

23 company --

24 A. Yes. I was aware of that company, yes.

25 Q. Are you aware of the fact that they purchased back

14:54

1 Pentler's shares on 28th March 2008?

2 A. I believe so, yes. I believe so, they did. Again, it
3 was not a discussion I was involved in. It was
4 a decision not made by me; I had no say in that.

5 Q. Okay. But if you turn to tab 21 of the bundle, which is
6 Exhibit C-84. Did you have any role at all in either
7 negotiating or approving this agreement?

8 A. No. Not at all.

9 Q. This is the agreement where Pentler sells back its
10 shares for \$22 million?

11 A. Yes.

12 Q. Plus it will get a bonus of \$8 million if BSGR --

13 A. I believe they were paid more than \$22 million in the
14 end, yes. I don't know -- I cannot recall exactly how
15 much more or what the total amount was. But the initial
16 amount was 22, and after that they got something else.

17 Q. But you don't recall any role in approving or
18 validating --

19 A. Nothing at all. It had nothing to do me. It was not my
20 decision.

21 Q. Could we go on red card, please.

[PROTECTED]



14:55

[PROTECTED]

[REDACTED]

15:00

[PROTECTED]

[REDACTED]

15:01

[PROTECTED]

[REDACTED]

11 Q. Let's turn to another topic. I'm going to go back in
12 time now to 2006, but now we are going to talk about
13 bauxite for a few minutes. So you can take off your
14 iron ore hat and put on your bauxite hat.

15 PROFESSOR VAN DEN BERG: Mr Ostrove, may I ask a question
16 here or am I interrupting?

17 MR OSTROVE: We are on a new topic, so please go right
18 ahead.

19 PROFESSOR VAN DEN BERG: It's on the old one.

20 Could you be shown Exhibit R-0165. It's not in your
21 bundle. It's the Veracity report. (Pause)

22 While the document is being pulled out, you have
23 been asked questions -- I will not go to the document
24 itself -- [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 PROFESSOR VAN DEN BERG: Was Mr Cilins there as well?

7 A. I think he was there too, because we were going to
8 negotiate the draft of the MOU with Linklaters again.

9 PROFESSOR VAN DEN BERG: Now, this is the Veracity report.
10 There's an interview by Mr Steven Fox -- you see the
11 first line -- of Veracity Worldwide. (Pause)

12 By way of introduction, this is the Veracity report,
13 and you see that Mr Steven Fox, managing partner of
14 Veracity Worldwide, met with Frédéric Cilins in Paris on
15 5th October 2011. He describes the discussions he had
16 with Mr Cilins.

17 But I'm interested in item 5 on page 3. "Building
18 a Network", do you see that? That is what Mr Steven Fox
19 describes of his interview with Mr Cilins. Could you
20 please read out the second paragraph.

21 A. I will read it from the screen there; it's better:

22 "FC spent the better part of six months in Guinea
23 during 2005. He typically would stay for two to three
24 weeks on each visit. During his visits, FC stayed in
25 the Novotel in Conakry, where he used the business

15:05

1 center regularly and befriended its staff. FC recounted
2 that he received copies of all the materials prepared by
3 visitors in the business center of the Novotel.
4 Examples of the intelligence which FC garnered included
5 letters from Rio Tinto addressed to the Minister of
6 Mines Ahmed Tidiane Souaré and to the Prime Minister
7 expressing Rio Tinto's views on various issues. FC, in
8 turn, leveraged the intelligence he gathered during his
9 discussions with Guinean officials."

10 PROFESSOR VAN DEN BERG: May I stop you there.

11 My question is this: did you ever lend your computer
12 to Mr Cilins whilst you were there in the business
13 centre?

14 A. Professor van den Berg, I cannot honestly answer yes or
15 no. I cannot remember whether I did or did not. What
16 I know is that I had discussion -- I went to the same
17 business centre that he is talking about here in this
18 report; I've been there too. And I do remember -- I can
19 vouch for this paragraph, if I may, Madam President,
20 because it was an interesting situation in the Novotel.
21 I was explaining this to someone else the other day:
22 that it was mind-boggling to see how so many people go
23 to a business centre and leave information on the
24 computers. And this is what Fred was telling me.

25 So now to read here that he went to the business

15:06

1 centre, did all this in the first month, this is where
2 he gathered intelligence. Because I saw myself that
3 people left documents that they used on USB sticks, and
4 they took it, they put it on the desktop, they forgot to
5 delete it; then they deleted it, it's in the bin. And
6 if you're in the bin, you can recover the document, you can
7 see stuff.

8 So if you want to know what's going on, particularly
9 in a country like Guinea at that time, and in Conakry,
10 you have only the Novotel, you go to the business
11 centre, because you know people make mistakes, and
12 there's intelligence to be gathered.

13 Now, whether that's right or wrong, I'm not here to
14 judge that. It's just something that happened. So to
15 read this, it doesn't surprise me that he did that.

16 PROFESSOR VAN DEN BERG: Okay. This is 2005 --

17 A. Yes, I'm talking about the end of 2005/early 2006, when
18 we stayed -- before we had the house ourselves, our own
19 house in Conakry, which was I think April 2006, if I'm
20 not mistaken. But up till that time, I was on and off,
21 but Fred stayed in the Novotel. It was basically his
22 home; that's where he lived. He had no other place in
23 Conakry to stay.

24 PROFESSOR VAN DEN BERG: Right, thank you. (Pause)

25 MR OSTROVE: Thank you, Professor van den Berg.

15:09

[PROTECTED]

[REDACTED]

15:14

[PROTECTED]

[REDACTED]

15:15

[PROTECTED]

[REDACTED]

15:17

[PROTECTED]

[REDACTED]

15:18

[PROTECTED]

[REDACTED]

15:22

[PROTECTED]

[REDACTED]

13 Q. In fact he sometimes went to the CPDM with Madame Touré;
14 correct?

15 A. Maybe, maybe not. I don't know.

16 Q. I'm sorry, you said in your witness statement number 2,
17 CWS-12, paragraph 11:

18 "The information that we received from the CPDM also
19 came to us from Mr Cilins and his local business partner
20 Ms Touré. We used to call her the Lady."

21 So she also got a little mixed up in CPDM and mining
22 rights?

23 A. Yes, that's correct. But I already had the information
24 from the CPDM.

25 Q. Let's move on a little bit to talk about Madame Touré's

15:23

1 role?

2 A. Okay.

3 Q. In paragraph 11 of that witness statement we were just
4 looking at, you say not only that, "We used to call her
5 the Lady", but:

6 "She was said to have the ear of President Conté."

7 By "hav[ing] the ear of President Conté", you mean
8 people said that the President listens to her?

9 A. Sorry, can you repeat that? I was reading the --

10 Q. When you said, "She was said to have the issue of
11 President Conté", to "have [his] ear" means she had
12 access to him and he would listen to her?

13 A. That's what people said. I personally don't believe it.

14 Q. I'm not asking -- I'm just asking to understand what you
15 meant by what you understood people said.

16 A. That's what I understood that people said, yes. But
17 personally I didn't believe that.

18 Q. I'm just asking to understand what you said in your
19 witness statement. When you said, "She was said to have
20 the ear", you mean people around town in Conakry said,
21 "Madame Touré, the President listens to her", whether
22 you believed it or not?

23 A. Correct.

24 Q. You also describe in one of your witness statements
25 a meeting at the Presidential Palace that took place

15:25

1 late at night. It's in your first witness statement,
2 CWS-2, at paragraphs 105 to 106.

3 A. Yes, I remember the meeting. I remember it well.

4 Q. So this is sometime in 2007. Do you recall that the
5 President's health was declining over time?

6 A. Yes, I do.

7 Q. Do you recall how well he was at this time, or not well
8 he was?

9 A. To me, I know he was sick, I believe he had diabetes 2
10 and maybe something else. But although he was sick, he
11 was still Conté, if I -- I don't know how else to
12 explain it. He was like a ...

13 Q. I suppose some people have said that as he got towards
14 the end of his illness, he had moments when he was more
15 lucid, moments when he was less lucid. Do you recall
16 that?

17 A. No, not at all. I think it's the opposite.

18 Q. You think he got --

19 A. I think he -- despite the fact that he was sick, if
20 I can use this expression, he was still a bull, and he
21 made very sure that he was running the country until the
22 last moment.

23 Q. Okay.

24 A. That's my experience.

25 THE PRESIDENT: That's what you meant when you said, "he was

15:26

1 still Conté"?

2 A. Yes, exactly.

3 Madam President, if I may, I think I need to put
4 this in context. I think it is important for counsel
5 and the Tribunal to understand what actually -- what the
6 lay of the land was, if I can say it that way, at the
7 time that I was there in 2005/2006.

8 Although this Mamadie Touré was there and said to
9 have the ear of the President, this was what people
10 said, not what I said. The first time I met this
11 lady -- and we called her "Lady" because she was
12 everything but a lady. It was a cynical comment from
13 our side. She was not a lady, as what you call ladylike
14 and so on. I did not like her from the first moment
15 I saw her.

16 Now, this lady, this woman, is, at the time I met
17 her for the first time, about 19 -- maybe 20 tops --
18 years old. President Conté is end-70s, close to 80.
19 I stand to be corrected exactly what age he had. From
20 my perspective, having worked in Africa for so long, and
21 at that time at least about 20 years, there was no way
22 that he would listen to any advice that a 19- or
23 20-year-old would give him. In my personal opinion,
24 having observed this, and having been in Africa for that
25 long, she was also not his fourth wife.

15:28

1 Now, if you ask me, can I prove this, I cannot prove
2 this. What I can say though is that based on my
3 experience in other countries -- and polygamy is very
4 common in Africa -- I can say that whenever there is
5 another wife coming into the picture, there's always
6 a ceremony. Particularly -- and we know this -- I know
7 this personally in South Africa with Zuma; I know it in
8 Swaziland with the King of Swaziland. There is many
9 more examples of this.

10 This lady was not his wife. I was told by people in
11 the government -- I do not recall who, but it was right
12 then at the beginning -- that she was a protégée. She
13 was the daughter of an army friend of Conté when he took
14 over as a dictator. And this guy was dying, and he
15 asked him apparently -- I have no proof of this, but
16 this is what I'm telling you -- apparently to take care
17 of his daughter, the 19 or 18 -- whenever she came into
18 his protection, whenever, that's what it was.

19 Now --

20 THE PRESIDENT: We understand that you wish to explain the
21 context to us, and we do appreciate it. But you can
22 rest assured we have read all this in your written
23 statements. So we are aware of this, and we may ask you
24 questions afterwards, but don't be worried that we do
25 not know these things.

15:29

1 MR STRUIK: Sorry for taking your time.

2 THE PRESIDENT: Would you recognise Mamadie Touré on a video
3 today, if you see a video of her at the time?

4 A. I don't know what she would look like today, no.

5 THE PRESIDENT: No, if we show you a contemporaneous video
6 from 2006/2007, would you recognise her?

7 A. That was the -- I think I would, yes.

8 THE PRESIDENT: Fine.

9 A. That was the September -- I know one video: the
10 September 2006 video of our office opening in Conakry.

11 THE PRESIDENT: Yes, I think that is what it is. We would
12 like to show it and you to explain to us who she is
13 among the different participants.

14 A. Okay. I can do that for you.

15 THE PRESIDENT: Yes. But we do this afterwards.

16 MR OSTROVE: Madam President, I think that you've been
17 looking at my cross-examination outline, because we had
18 a very similar idea.

19 THE PRESIDENT: We're not at the business centre!

20 MR OSTROVE: And I did not work on it at the business centre
21 either.

22 Mr Struik, this is a video which I think you're
23 familiar with.

24 A. I have seen it, yes.

25 Q. If I recall correctly, this is the reception that BSGR

15:30

1 gave in September 2006 at its offices?

2 A. That's correct.

3 Q. Okay. The video is rather long, so I will show a little
4 bit at the beginning and then we can jump through to
5 a little bit in the middle, and, Madam President, if
6 anyone wants to ask questions from the Tribunal about
7 it, I can pause at any time.

8 THE PRESIDENT: There is a time when a woman comes in with
9 some beret rouge just behind her, and we thought this is
10 Mamadie Touré, but we are not certain, and we would very
11 much appreciate Mr Struik being able to comment on it.

12 MR OSTROVE: There is sound on this video. The sound is not
13 very important. I hope it will play.

14 THE PRESIDENT: If I can just add: if Mr Cilins is there,
15 Mr Noy, Mr Lev Ran, if you could show them to us, it
16 would be interesting as well.

17 MR OSTROVE: Some of them will be there, and we can pause
18 the video and ask Mr Struik.

19 I'm sorry, the audio is not coming through. So just
20 one moment, please.

21 THE PRESIDENT: This is R-457; is that correct?

22 (Video Exhibit R-457 played)

23 A. You can stop now.

24 MR OSTROVE: That's you, Mr Struik?

25 A. Yes, it's me standing. I'm doing a presentation there.

15:33

1 That's early in the day, by the way. This is not the
2 opening of the office.

3 Q. This is a presentation, and the reception will be later?

4 A. Yes.

5 Q. Just so the Tribunal can see, the person sitting to your
6 left, is that Mr Cilins?

7 A. That is Mr Cilins.

8 Q. And to his left -- we'll see him better in a moment,
9 I think -- is that Mr Avidan?

10 A. That is correct.

11 Q. And who is sitting to your right?

12 A. That is Mr Oron.

13 Q. And then is that Mr Ibrahima Sory Touré?

14 A. That is Ibrahima Touré.

15 (Video Exhibit R-457 played)

16 Q. So Mr Cilins is interpreting for you?

17 A. Exactly. He is helping me with the translation, because
18 my presentation was 100% in English.

19 Q. I don't propose that we go through the presentation,
20 which we can't even hear now. But I'm going to jump to
21 minute 18:09 of the video.

22 PROFESSOR VAN DEN BERG: Is that Mr Noy on his left-hand
23 side?

24 A. No, Mr Noy was not there. That's Mr Avidan.

25 PROFESSOR VAN DEN BERG: Okay, right.

15:34 1 MR OSTROVE: So now we are at the reception in the evening?

2 A. Yes.

3 (Video Exhibit R-457 played)

4 Q. Can you tell yet if that's Madame Touré?

5 A. That's Mamadie Touré, really, yes.

6 Q. And who is showing her around?

7 A. This is her half-brother.

8 Q. Ibrahima Sory Touré?

9 A. Correct.

10 Q. And the colour is not very great, but these are the

11 berets rouges that Madam President was speaking of

12 before?

13 A. Yes, these are the presidential guard. We had them at

14 our house, in any case.

15 (Video Exhibit R-457 played)

16 Q. And just before that, was that Mr Cilins again

17 accompanying her, or is it Avidan?

18 (Video Exhibit R-457 played)

19 A. Cilins was behind her, I think.

20 Q. And in fact, I think as she walks in --

21 A. Yes.

22 Q. -- it's Mr Cilins who is walking in with her?

23 A. I think so, yes.

24 (Video Exhibit R-457 played)

25 Yes, there's Cilins. That was Cilins. Cilins is

15:35

1 there behind him with the tie.

2 Q. Right there? Okay.

3 (Video Exhibit R-457 played)

4 Q. Do you know who she is being introduced to there?

5 A. No, I don't know who that is.

6 (Video Exhibit R-457 played)

7 THE PRESIDENT: Is there anyone else you recognise?

8 A. No.

9 THE PRESIDENT: No. So the Tribunal has seen what it wanted
10 to see.

11 MR OSTROVE: There are just a few more things that we would
12 like to show.

13 Do you recognise the gentleman in the middle right
14 there?

15 A. No. He looks familiar, but I cannot recall his name
16 actually. There were government people there.

17 Q. If I put it to you that that could be Minister Souaré,
18 could that be correct, or you couldn't tell?

19 A. The -- it's a bit vague. I cannot recall -- I have a --
20 you mean the Minister of Mines?

21 Q. Yes.

22 A. Yes, he was there, but I cannot recall if this is him
23 actually.

24 Q. Okay.

25 A. I do have another picture with him, so I could compare

15:38

1 this with the picture.

2 Q. That's alright. I was just wondering if you recognise
3 him. If we could just go through another minute,
4 there's another phase in the video, and then we'll stop.

5 (Video Exhibit R-457 played)

6 They've just gone into a side room. Do you know
7 what side room they were going into?

8 A. No. This is so long ago, I cannot recall.

9 Q. That's fine.

10 A. I know it was in our office in Conakry, in Quartier
11 Minière. But I'm trying to think now where these
12 curtains were hanging. I don't know.

13 Q. Let's just go through one more moment then.

14 (Video Exhibit R-457 played)

15 Do you know who that is?

16 A. No. I cannot recall.

17 (Video Exhibit R-457 played)

18 Q. Do you know who that gentleman is?

19 A. No.

20 (Video Exhibit R-457 played)

21 Q. And that's Mamadie Touré again?

22 A. Yes.

23 (Video Exhibit R-457 played)

24 Q. Okay. Thank you.

25 You mentioned before that in person she is not very

15:40

1 ladylike. Would you agree that she at least knows how
2 to appear ladylike at a reception?

3 A. Everybody can put up an appearance.

4 Q. Do you recall that moment when she showed up at the
5 reception, or did you see --

6 A. Yes. I was actually surprised, because she was not
7 invited.

8 Q. But it seems that she was being introduced to an awful
9 lot of people?

10 A. Yes.

11 Q. And did a lot of people recognise her?

12 A. They probably did. They probably knew that she was the
13 protégée of the President, as I call it.

14 Q. And it was something unusual to have all these
15 presidential guards following her around?

16 A. No, no, they were not there for her.

17 Q. They came in with her, but they weren't there for her?

18 A. No, they were there already. We had the minister there.

19 Q. When she comes in, though, they walk down the stairs
20 with her; they are not with the minister.

21 A. But they were there already; they did not specifically
22 come with her. There were red berets already at the
23 opening -- at the start of the function. She's not of
24 presidential status; I don't know how many more times
25 I have to say this.

15:44

[PROTECTED]

[REDACTED]

15:46

[PROTECTED]

[REDACTED]

15:50

[PROTECTED]

[REDACTED]

24 MR OSTROVE: Okay. Let's move on to another topic.

25 I've got a couple of short topics left. Should

15:51

1 I try to do one more topic before a break, or would you
2 like to do a break first?

3 THE PRESIDENT: How long is the next topic? I understand
4 you still have a number of topics; is that right? From
5 your indication before the last break.

6 MR OSTROVE: I have, I think, three more topics; probably
7 another hour and a half.

8 THE PRESIDENT: I think it's not a bad idea that we take the
9 break now, because it's been a long stretch for the
10 court reporters and the interpreters.

11 We can turn back to green.

12 Mr Struik, this is again a break where you are asked
13 not to speak to anyone.

14 MR STRUIK: Understood.

15 THE PRESIDENT: So let's take 15 minutes now and then
16 resume.

17 MR OSTROVE: Merci.

18 (3.52 pm)

19 (A short break)

20 (4.13 pm)

21 THE PRESIDENT: I'm told by the court reporters and the
22 interpreters that the two of you both speak very fast,
23 and in addition you overlap. So if you can try --
24 I know it is difficult because you get into the action
25 and then you forget about it, but if you can think about

16:14

1 it for a while at least, it would be appreciated by
2 them.

3 MR OSTROVE: Thank you. My apologies to the interpreters
4 and to the court reporters. I'm sorry about that.

5 I think that Mr Wolfson was going to suggest
6 a housekeeping matter before we continue.

7 MR WOLFSON: I'm grateful to my friend.

8 It's just that we have, obviously, the expert here.
9 Without holding anybody to anything, we just really
10 wanted to enquire respectfully, really jointly from the
11 Tribunal, whether, if we were to finish Mr Struik by
12 5.00/5.15, together with re-examination, the Tribunal
13 will have questions, whether the Tribunal would wish to
14 hear the expert this evening. I am told -- again,
15 nobody is being held to anything -- there could be
16 an hour, an hour and a quarter, something like that, of
17 cross-examination of the expert, and there will be some
18 re-examination; the Tribunal may have questions.
19 Obviously we appreciate it involves other people as well
20 staying late.

21 But if that is, so to speak, not on the cards, and
22 the Tribunal would rather defer the expert to tomorrow,
23 just logistically, he may respectfully not wish to stay
24 here for another hour, and I understand he also has to
25 arrange a hotel.

16:15

1 So I apologise for interrupting, but we thought,
2 because the expert is here, we should raise this very
3 quickly now.

4 THE PRESIDENT: Absolutely. It's a good point.

5 From the Tribunal's point of view, we could hear him
6 today, yes. But let me check: is this the view of the
7 Respondent as well?

8 MR OSTROVE: Yes, Madam President, we are fine either, if
9 possible, hearing him this evening, or if anyone
10 prefers --

11 THE PRESIDENT: If it is getting too late. But we also need
12 to -- I don't see the interpreters; I do see the court
13 reporters. If we go a little longer -- it will be 6.00
14 or a little later -- is that fine? Do you hear the
15 interpreters saying something?

16 I should of course add to this that then they have
17 a free day tomorrow, because that goes together.

18 MR WOLFSON: That's the quid pro quo.

19 THE PRESIDENT: A free day, I don't know. They have
20 a non-hearing day, like everyone here. (Pause)

21 MR OSTROVE: I think that we are likely to go to at least
22 until 5.00 with Mr Struik, possibly a little longer. It
23 depends on how much we slow down, how much we don't
24 overlap with each other and how long the answers are.
25 So I can't make guarantees. But around 5 o'clock we

16:17

1 should end.

2 And then we think we will have about -- again,
3 depending on how it goes -- an hour or an hour and
4 a half with the expert.

5 THE PRESIDENT: So realistically it means that we will end
6 at 6.30/7.00, yes.

7 MR WOLFSON: I have a little bit of re-examination for
8 Mr Struik, so I think to be safe we should say 7.00.

9 MR OSTROVE: Yes. And of course we don't know how many
10 Tribunal questions there will be.

11 THE PRESIDENT: Let's plan now that we try to hear
12 Mr Ferreira tonight -- and therefore thank you very
13 much, sir, for staying with us -- but if it is really
14 getting too late, then we may still defer it when we get
15 there. Is that acceptable?

16 MR WOLFSON: Thank you for letting me raise that now.

17 THE PRESIDENT: Good.

18 So, Mr Ostrove, we can continue with the
19 cross-examination.

20 MR OSTROVE: Thank you, Madam President.

21 Hello again, Mr Struik. I'd like now to talk about
22 the relationships between BSGR and Mamadie Touré in
23 terms of some contracts that are in the record.

24 Obviously we know that these contracts are in many ways
25 contested by BSGR, but I'd like to go over some of them

16:18

1 with you.

2 If you turn to tab 26 in the bundle, there is an
3 exhibit, R-27, which is entitled "PROTOCOLE D'ACCORD"
4 between "Matinda and [Company] Limit[e]d-SARL" and
5 "La Société BSGR Ressources Guinée SARL". That company,
6 BSG Resources (Guinea) Sàrl, would be the local
7 operating entity?

8 A. Yes.

9 Q. In this agreement, which is dated 20th June 2007 at the
10 bottom, it indicates in the first paragraph:

11 (Interpreted) "Thus, the parties freely agree as
12 follows:

13 "In order to reward the efforts, the Company
14 BSGR Guinea accepts to transfer 5% of all of its shares
15 to the company MATINDA AND CO-LIMITED-SARL ..."

16 (In English) And with respect to which permits it
17 refers to, if you look in the second paragraph, it says:

18 (Interpreted) "... and the efforts under decree ...
19 of 28 February 2007, of the Ministry of Mines and
20 Geology, four exploration permits for uranium covering
21 a total surface of 1413 [square kilometres] have been
22 granted to the Company BSGR Resources Guinea in the
23 Prefectures of Lola and N'zerékoré ..."

24 (In English) I understand that you contest that you
25 signed this document?

16:20

1 A. I not only contest to sign this document, I also contest
2 drafting this document. I did not do this document,
3 I did not sign this document. And I also have to tell
4 you that there's more than one version of this document.

5 This document, with this stamp, is the first time
6 I saw it as part of the proceedings. The document that
7 I've seen is a similar document, but without the stamp
8 in the middle, dated 20th July. So there are at least
9 two versions of this document floating around.

10 Q. Okay. And when did you first see this version of this
11 document?

12 A. As part of these proceedings.

13 Now, you probably are aware that before we engaged
14 the services of Mishcon, we had other law firms, called
15 Skadden. These documents were of course questioned and
16 shown to us at that point in time. I think this was
17 also forensically investigated. I don't know the
18 results of this; I've never seen that, to be honest.
19 However, that document that Skadden showed me did not
20 have this stamp at all.

21 Q. Do you recall approximately when Skadden showed you
22 a copy of this document?

23 A. Whatever -- no, I cannot recall the exact date, but it
24 was part of the initial proceedings that started. There
25 was definitely a similar document without this --

16:22

1 without the stamp, just a signature.

2 Q. Meaning during the Technical Committee review process?

3 A. No, I just know that there was another document.

4 Q. Okay. And when you say they were forensically
5 investigated, do you mean some kind of document expert
6 was engaged?

7 A. I know that at the time they were going to send these
8 documents, I think, to the United States. Now, I don't
9 know what happened with that. I have no clue actually.
10 I don't know what the results were of this
11 investigation. I don't know when they were sent, and if
12 they were sent back. I don't know where the originals
13 are, so-called.

14 I did not sign this document, I did not draft this
15 document, and I've said to you there's at least two
16 versions of this document floating around: one with the
17 stamp and one without the stamp. And I find it
18 a coincidence that -- because I've read -- I saw this
19 document and suddenly this document, a month later, is
20 suddenly legalised or something, that it is correct, to
21 make it look more legal or something, with a stamp at
22 the bottom and a stamp at the top.

23 Q. When you say the document, as you understood it, had
24 been sent to the United States, meaning your
25 understanding was that some expert was going to study

16:23

1 the document to --

2 A. I was told that this was going to happen, yes.

3 Q. This document, which bears your signature, did you
4 enquire afterwards --

5 A. No.

6 Q. I'm sorry, I will retract the question.

7 This document, which purports to bear your
8 signature, did you not follow up and enquire as to
9 whether the forensic report was obtained?

10 A. It was part of the investigation that our lawyers
11 undertook. So I don't know; I was not in touch with the
12 lawyers per se myself. I did question it, but I never
13 got really an answer. So honestly I don't know what
14 happened with that. I can just tell you there's two
15 versions of this document, at least two versions.

16 Q. When did the existence of the other version, without the
17 stamps, come to your attention?

18 A. I don't know. I cannot answer the exact date. It was
19 part of the proceedings, part of some discovery. The
20 documents were there. I know that Skadden had it.
21 I think -- I stand to be corrected, but I'm sure our
22 counsel can answer that -- the material that Skadden had
23 was handed over.

24 Q. I don't want you to guess.

25 A. I don't know the date.

16:24

1 Q. I'm just going to ask you about two roles that Skadden
2 has played, to see that that helps you to find a date,
3 that I know of. At one point I believe Skadden assisted
4 BSGR in the sales process to Vale, and another time
5 Skadden assisted BSGR in the responses to the Technical
6 Committee's review.

7 A. That is correct, and thank you for reminding me of that.
8 It was part of the second task that Skadden had. It was
9 not part of the sale. It was part of the second task
10 that they had.

11 Q. Thank you.

12 PROFESSOR VAN DEN BERG: Are you finished with this
13 document?

14 MR OSTROVE: I had one or two more questions on the
15 document.

16 Mr Struik, is it your assumption that Mamadie Touré
17 forged your signature?

18 A. I don't know who did that. But it's not my signature.
19 It looks like my signature, but it is not. And I think
20 in the bundle that you -- we've just been going through,
21 you have plenty of examples of my other signature -- of
22 my signature actually, and you see that it's not the
23 same. And also I wouldn't sign a letter like this, by
24 the way.

25 MR OSTROVE: Professor van den Berg, I don't think I have

16:26

1 any more questions on this document, if you'd like to
2 take over.

3 PROFESSOR VAN DEN BERG: A simple question, Mr Struik: is
4 that your handwriting under your signature, "Directeur
5 Général"?

6 A. No, I wouldn't do it like this. I would actually have
7 a typed font, like I sign all official documents.
8 I would have a signature, underneath I would have my
9 typed name, my typed position or title that I -- whether
10 as a director of the company, and so on. And sometimes
11 I would add even a telephone number or an address or
12 an email or something.

13 PROFESSOR VAN DEN BERG: And then the dating, it says
14 "20 Juin". I use on purpose the French text, because
15 "Juin" is French.

16 A. Yes.

17 PROFESSOR VAN DEN BERG: And you testified earlier that your
18 French was rusty, at least.

19 A. You can say that.

20 PROFESSOR VAN DEN BERG: I paraphrase you: it was at
21 high-school level?

22 A. That is correct.

23 PROFESSOR VAN DEN BERG: Have you ever written French
24 afterwards?

25 A. After this date?

16:27

1 PROFESSOR VAN DEN BERG: No, after you left high school.

2 A. No.

3 PROFESSOR VAN DEN BERG: You never wrote any French letter?

4 A. No, no, because I went to university. And in fact,
5 I became more fluent -- I matriculated in German
6 language. And when I graduated at Delft University,
7 I actually wrote my thesis in German and did
8 a presentation in German, because the company I did my
9 final thesis for was actually the German coal company.

10 So French was not in my vocabulary, not in my
11 language skills for a very, very long time. In fact,
12 even when I worked for De Beers all those eleven years,
13 I was not involved with French. There was no need for
14 me to speak French or write French or listen to French
15 at all.

16 It only started when I joined Snowden Mining
17 Industry Consultants. Some of the projects took me to
18 the Congo, Congo-Kinshasa, they took me to Burkina Faso
19 and to Mali. So there was the first time that
20 I start -- started to get involved with the French
21 language again.

22 PROFESSOR VAN DEN BERG: So you confirm that the dating is
23 not -- the handwritten text in the date line --

24 A. No.

25 PROFESSOR VAN DEN BERG: -- do you see that?

16:28

1 A. Yes, I see it.

2 PROFESSOR VAN DEN BERG: In R-27, that is not your
3 handwriting?

4 A. No.

5 PROFESSOR VAN DEN BERG: Thank you.

6 THE PRESIDENT: Before we leave this, let me just ask.
7 I'm not trying to play forensic expert here, but
8 when you sign at the end of your signature, below it
9 there was always a dot, or is this ...

10 A. Yes, I do that.

11 THE PRESIDENT: At the end, did I say? Yes, below the
12 signature at the end there is a dot, at least in those
13 originals that I am looking at now; is that right?

14 A. Which originals are these? Oh, the other documents --

15 THE PRESIDENT: No, you must know this without looking at
16 anything.

17 A. I normally sign -- when I sign, I have a dot underneath
18 it now.

19 THE PRESIDENT: At the end?

20 A. Yes, underneath the -- I go like this and then go like
21 that (indicating).

22 THE PRESIDENT: That should be above the I, or why do you do
23 this?

24 A. No, it's underneath the end of the -- I don't know why
25 I do it, but ...

16:29

1 THE PRESIDENT: But you do it?
2 A. Yes.
3 THE PRESIDENT: Do you always do it?
4 A. Always do it, yes.
5 PROFESSOR VAN DEN BERG: Is it not --
6 A. I think so, yes. I think almost every line -- every
7 signature I do that.
8 PROFESSOR VAN DEN BERG: I looked at this too, and I'm not
9 a handwriting expert either, although we have been
10 educated somewhat in other cases, because these days
11 signatures become more a prominent issue.
12 But is your dot at the end, in the "M" of the stamp;
13 the "tampon", as they call it in French?
14 A. Where exactly, sorry?
15 MR OSTROVE: Yes, I think the dot that you are talking about
16 is there. It's just hard to see on the photocopied
17 version. Again, I'm not purporting to be a handwriting
18 expert.
19 PROFESSOR VAN DEN BERG: We are not handwriting [experts].
20 But look, this is ... I'm looking at ...
21 THE PRESIDENT: Ah, yes. It could be on the "M" of
22 "MATERIELLE".
23 A. (Inaudible, no microphone).
24 PROFESSOR VAN DEN BERG: It could be, but it may also be ink
25 dots, we have learnt.

16:31

1 A. Yes, it's not clear to me.

2 MR OSTROVE: I think that the microphone was not on for
3 Mr Struik's last answer.

4 A. No, it's on now.

5 Q. But I think your last answer was not on --

6 THE PRESIDENT: No, we understood you to tell us that the
7 dot may be there on the "M" of "MATERIELLE" in the
8 stamp?

9 A. Yes, it could be. But normally I have -- I do have
10 a dot there somewhere.

11 THE PRESIDENT: Fine, thank you. I don't think we can do
12 much more with our means.

13 MR OSTROVE: I could keep zooming in, but I'm not sure if
14 it's helpful.

15 THE PRESIDENT: Good. For our purposes I think we can leave
16 this document.

17 MR OSTROVE: Just a few questions for you regarding not
18 Mamadie Touré, but her half-brother, Ibrahima
19 Sory Touré.

20 When you describe his background -- and just to save
21 time, I will try to summarise a couple of points, and
22 please tell me if you think I'm misleading -- he was
23 a journalist, who didn't have any mining background, and
24 who appeared to you to be very well connected in Guinea.
25 Do you agree with those points?

16:32

1 A. He appeared like that, yes.

2 Q. And then in your first witness statement at
3 paragraph 36 -- I don't know that we need to turn
4 there -- you say:

5 "[You] started to use him directly to assist [you]
6 in day to day issues and [first you] employed him on
7 a temporary basis."

8 Do you recall that?

9 A. That is correct.

10 Q. Then you say at that time you didn't know about his
11 connections to President Conté?

12 A. No, I did not. I was only told -- informed about this,
13 and not his connections. It was that he had
14 a half-sister, actually. He was not himself connected
15 to Conté, but his half-sister was the protégée. I was
16 told about that later.

17 Q. You say in paragraph 36, if we turn to the penultimate
18 sentence of paragraph 36:

19 "I did not know at the time about his connections to
20 the President Conté, nor did I know that Ms Touré was
21 his half-sister. He never really spoke about his
22 private matters."

23 A. That is correct.

24 Q. Did you later confirm with him his relationship to --

25 A. I was informed by -- I think it was Frédéric Cilins who

16:33

1 told me.

2 Q. About his relations to President --

3 A. About that he was the half-brother of Mamadie Touré.

4 Q. And did Fred Cilins confirm to you that Mamadie Touré
5 was the fourth wife of the President?

6 A. No.

7 Q. Whether you believed him or not, did he --

8 A. No, I think Fred Cilins never mentioned to me that she
9 was the fourth wife.

10 Q. Did he mention to you that she had some kind of special
11 relationship with the President?

12 A. He mentioned to me that she was somehow in the
13 protection of the President.

14 Q. Mr Touré was eventually hired as a full-time employee of
15 BSGR; correct?

16 A. Correct, but not by me.

17 Q. Did you know what his wage was at the time? I'm not
18 asking you to remember the exact figure, but were you
19 aware of what he was paid?

20 A. No, I cannot recall his salary. But I'm sure we can
21 find a payroll somewhere. I cannot -- I do not know
22 what his salary was, I cannot recall. I did not
23 determine his salary either.

24 Q. I believe his salary can be found in ...

25 Before discussing his salary any further, were you

16:35

1 aware of whether he received a bonus after the Vale
2 transaction took place?

3 A. I believe he did. I cannot recall the amount, but
4 I believe he did get a bonus.

5 Q. If I told you, without going to the document, that the
6 amount of his bonus was \$450,000, would that sound
7 accurate to you?

8 A. I'm sure you're right. I don't know. I cannot recall
9 the number.

[PROTECTED]

[REDACTED]

16:36

1 I'm not asking you whether you've seen this document
2 before. But based on your position in the company, if
3 you could confirm whether the amounts mentioned seem
4 right.

5 If we go to page 4 of the document, we have on these
6 two lines, on June 30th 2010, "Invoice Date" -- and
7 I think these are written American style, so it's
8 July 6th 2010, "Date Rec[eive]d", we have first
9 a part-payment of a bonus agreement for "Ibrahima Toure
10 Sory II" of \$250,000, and then a remainder of payment of
11 \$200,000?

12 A. I see now, yes.

13 Q. You've spent enough time in Guinea to know that
14 a \$450,000 bonus payment would be a very significant sum
15 of money for a Guinean journalist; is that not correct?

16 A. I suppose so, yes.

17 Q. As someone very involved in the company -- and you've
18 described his role, and Mr Avidan has described his
19 role, as running errands, waiting in line at ministers'
20 offices and things -- doesn't that seem like a very
21 large sum of money to pay for someone whose job was
22 helping out?

23 A. In the end, that was agreed. I wasn't part of this
24 discussion, to pay him that amount. I think the person
25 to answer that question would be Asher Avidan. I was

16:37

1 more involved with the people that were in my team,
2 which are higher up on that list. But other than that,
3 yes, I suppose you can say that it seems like a high
4 amount, but that's what we give.

5 Q. By the way, you mentioned a Ben who was involved, often
6 hanging around with Mr Cilins --

7 A. Oh no, he was -- left long ago, right at the beginning
8 really.

9 Q. Okay.

10 A. Because he was simply not -- what can you say? He
11 didn't jump out, so we didn't employ him.

12 Q. I'd like to now turn to a different topic, which is the
13 feasibility study for Zogota.

14 A. Okay.

15 Q. You worked a lot on that document; correct?

16 A. I was fully responsible for this document.

17 Q. And that feasibility study, you explain in your first
18 witness statement, at paragraph 78, was submitted on
19 16th November 2009?

20 A. That is correct.

21 Q. I'm a little confused about one thing. The document
22 itself, which we have on the record, is the main body;
23 it's a 454-page document. But your witness statement
24 also refers to annexes.

25 A. Yes.

16:39

1 Q. I think there were 19 annexes?

2 A. There were a lot. I can't recall exactly how many, but
3 there were a serious amount of annexes.

4 Q. Okay. So were they at least as long as the document
5 itself, or even longer?

6 A. They had all the backup -- longer even, it was more,
7 because they had all the backup documentation, they had
8 all the detailed calculations. I mean, obviously in the
9 main body of the feasibility study you do not put all
10 the detail; you refer people to Annex 1, 2, et cetera,
11 which is the normal way of doing things.

12 Q. So this feasibility study then, with essentially
13 thousands of pages of annexes, did you personally
14 deliver that to the CPDM?

15 A. Yes. And not just one copy; I think we delivered ten
16 copies, if I'm not mistaken, plus a digital version.

17 Q. You delivered that then on 16th November 2009. If we
18 could turn to tab 28, which is Exhibit C-15. This is
19 an arrêté signed by the then Minister of Mines,
20 Mahmoud Thiam. If you turn over the page, it's dated
21 1st December 2009.

22 A. Correct, I've seen this document.

23 Q. It created what's sometimes been called a "technical
24 committee" in this case, but I hate using that term
25 because we get mixed up with the Technical Committee

16:40

1 later; a commission technique d'examen?

2 A. Oui.

3 Q. This decree creates a twofold purpose for that
4 committee, if I understand correctly from the title:

5 "... COMMISSION TECHNIQUE D'EXAMEN DE L'ETUDE DE
6 FAISABILITE ET DE NEGOCIATION D'UNE CONVENTION MINERE
7 AVEC LA SOCIETE BSGR".

8 So is it your understanding that that was in fact
9 the purpose of this committee: both to study the
10 feasibility study and to negotiate the Base Convention
11 with BSGR?

12 A. That's what it says. But in reality we started
13 discussing the feasibility study with them, and we --
14 there have been many emails between 1st December and
15 half of November where we communicated with the people
16 at the CPDM about the content, because they were the
17 custodian of these things, we had to hand it over to
18 them, and they were starting to study the feasibility
19 study.

20 So there had been -- I was in the country from
21 basically that moment, or just before 16th November,
22 until -- no, it was the beginning of November, until
23 about the middle of December. Six or seven weeks. That
24 was the longest period I ever stayed in Guinea, because
25 we negotiated with them.

16:42

1 The committee in the end was basically purely
2 focusing on the convention minière, but -- and that's
3 the committee that was installed from 1st December. And
4 then during the discussions we had with the committee,
5 I also had to do yet again another presentation --
6 I remember this clearly -- about the feasibility study.
7 This time it was in French.

8 Q. When you said, "between 1st December and half of
9 November", you mean --

10 A. No, no, the 1st -- yes, the initial discussion, sorry.

11 Q. Sorry, you said the dates backwards. So you're saying
12 you deposited this study on 16th November?

13 A. Yes.

14 Q. And then you say there were lots of exchanges with the
15 CPDM?

16 A. There were exchanges between us and the CPDM. I had
17 documents that I'm sure were taken also from my laptop,
18 documents that had questions, some Word documents. They
19 sent us questions which we had to answer with regard to
20 the feasibility study.

21 Q. When you look at the people who were on the commission
22 that was established to study the feasibility study and
23 review the Convention de Base, I see only one person
24 from the CPDM itself on there, and that's on the second
25 page: the directeur général du CPDM, Ibrahima Kalil

16:43

1 Soumah.

2 A. Yes.

3 Q. From your recollection, was there anybody else who was
4 part of the CPDM who was then part of this commission?

5 A. I cannot --

6 Q. I'm just asking whether you recall.

7 A. No, I cannot recall this.

8 Q. So you had a lot of exchanges, you say, with the CPDM?

9 A. Before.

10 Q. Before. And then this commission is established?

11 A. Yes.

12 Q. And at least the commission is, in theory, established
13 to review the feasibility study and the mining
14 convention?

15 A. The mining convention, to prepare, to draft, the mining
16 convention, and to agree on the content. Because in the
17 end the mining convention is an agreement between the
18 state and the investor, the new company, the mining
19 company, of course.

20 Q. But for all those exchanges with the CPDM, the CPDM had
21 only one representative on the commission?

22 A. Yes, but that was not our decision. That was a decision
23 of the minister to do that.

24 Q. Do you recall Mr Soumah? You know him personally,
25 right?

16:44

1 A. Of course.

2 Q. And he actively participated, to your recollection, with
3 the commission after December 1st?

4 A. They all did.

5 Q. Everybody listed on here did?

6 A. Yes. It was a very, very intense period of time.

7 Q. Okay. Let's look just at some of the names on here --

8 A. Sorry, Madam President, if I may, just to explain the
9 procedure -- I will be quick.

10 THE PRESIDENT: No, I think you've explained the procedure
11 and the fact that you worked every day from 9 o'clock
12 until 6.00 pm, and that you had lunch delivered so
13 people would not take a siesta and you could carry on
14 with the work. So we have this very present in our
15 minds.

16 A. With respect, Madam President, I was not referring to
17 that procedure. Maybe I should have used the word
18 "legal" procedure. Because by law -- and I've just
19 completed a very similar exercise in another country in
20 West Africa -- you deliver the feasibility study, you
21 then start discussing it with the technical custodian,
22 which in this case is the CPDM, and they then recommend
23 to the minister that we should continue now with the
24 convention de base. So the convention de base always
25 comes after the discussions about the content of the

16:45

1 feasibility study, for them to get an opportunity to
2 know the content before they start the convention
3 minière or the convention de base.

4 MR OSTROVE: Excuse me, Madam President. With respect,
5 earlier Mr Struik confirmed that he is not a legal
6 expert, and now he is testifying regarding his
7 experience in another country about how it works.

8 THE PRESIDENT: No, I understand that. I also understand
9 from this decree, arrêté, Article 1 says that this
10 commission is:

11 "... chargée d'examiner l'étude de faisabilité ...
12 et d'elaborer une convention minière ..."

13 And that is what you said before. This committee
14 had the two tasks: it had to review the feasibility
15 study and to draw up the convention de base.

16 A. Yes. And that's legal by the code, and I'm not a legal
17 expert, but it is correct. In another country where
18 I just finished, this is exactly stipulated in the
19 Mining Code. And although I'm not a lawyer I understand
20 the legality and I understand these codes, because
21 I have to obey these codes and work with them.

22 THE PRESIDENT: I understand that, yes.

23 Mr Ostrove, I think you can carry on.

24 MR OSTROVE: Yes, thank you.

25 When you said a few moments ago that you stayed for

16:47

1 six or seven weeks in Conakry at this time, if the
2 copies were delivered on November 16th, and even
3 counting your initial work with the CPDM -- which
4 I suppose started the next day, did it? Or did you
5 start the very same day immediately working with the
6 CPDM?

7 A. I cannot recall what the date was, whether I arrived on
8 the Friday and delivered it on the Monday. We need to
9 check.

10 Q. We can check.

11 A. But I was there for a long period. Normally I was
12 staying in the country for about two weeks, tops; this
13 was like five or six weeks. I cannot recall the exact
14 date; again, flight dates will confirm this. But it was
15 my longest period of time. Also during the time we
16 could not move out of the country because there was the
17 assassination attempt on the interim President, Camara,
18 on 3rd or 4th December.

19 Q. Okay. So November 16th 2009, I will submit -- according
20 at least to Apple -- was a Monday that the feasibility
21 study would have been delivered.

22 You then said earlier that you stayed for six or
23 seven weeks working on this?

24 A. Yes, but it could have been five/six weeks; I cannot
25 recall the exact amount. But it was the longest period

16:48

1 I've stayed in country.

2 Q. The Base Convention was signed on 16th December, right?

3 A. Correct.

4 Q. So if you and the CPDM and the committee worked from the
5 moment that you handed it in on November 16th until the
6 minute it was signed --

7 A. Yes.

8 Q. -- by the minister, then that would be four weeks and
9 two days.

10 A. Correct.

11 Q. Okay. So four weeks and two days from bringing in ten
12 copies of thousands of pages of documents to actually
13 having the Base Convention elaborated and signed.

14 So when you said "six or seven weeks", and in your
15 witness statement you've referred to "five weeks", at
16 the absolute maximum, it would be four weeks and two
17 days?

18 A. So then it was four weeks. It was a long period of
19 time, and I told you it was a very intense period of
20 time.

21 Q. The commission actually issued its final report not on
22 16th December but on 14th December, which is tab 29 of
23 the bundle, Exhibit R-268.

24 In terms of the amount of work actually done, the
25 committee states in the first paragraph:

16:49

1 "Suite à la communication au Ministère à la
2 Présidence chargé des Mines et de l'Energie de l'étude
3 de faisabilité pour l'exploitation des gisements de
4 minerai de fer de Zogota préfecture de N'Zérékoré par la
5 société BSGR Guinée, le Ministre a mis en place
6 une Commission Interministérielle qui du 02 au
7 12 Décembre 2009, a examiné ladite étude et élaboré
8 un project de Convention de Base ..."

9 So that would indicate that there were eleven days
10 that the committee itself worked on both studying
11 "ladite étude", the feasibility study, and drafting the
12 mining convention?

13 A. That is correct.

14 Q. So you agree that at least with respect to the
15 commission's work, they actually worked eleven days?

16 A. According to this.

17 Q. I'm not asking according to this; I'm asking whether
18 that helps you remember yourself. Do you agree that it
19 was eleven days of work with this commission?

20 A. It was those two weeks, yes, eleven days.

21 Q. From 2nd December to 12th December.

22 A. 12th December, yes. So it's ten days, eleven days.

23 Q. Eleven days if we count both the 2nd and the 12th.

24 Could we have a red card, please.

[PROTECTED]

16:52

[PROTECTED]

[REDACTED]

16:55

- 1 A. Mm-hm.
- 2 Q. If you look at the members, if you look at the bottom of
3 the first page, you've got "M. Bouna SYLLA, Conseiller
4 Juridique et Fiscal". Do you know Mr Bouna Sylla?
- 5 A. No, I don't. I can't remember these people.
- 6 Q. But, sorry, you testified before that everybody on this
7 commission participated actively?
- 8 A. Sorry?
- 9 Q. You testified earlier that everybody on this commission
10 participated actively?
- 11 A. I don't understand.
- 12 Q. Earlier, when I asked you about this commission, this
13 committee, you said everybody on the committee
14 participated actively, if I --
- 15 A. Yes, they participated in the discussions.
- 16 Q. So I'm asking if you remember Mr Bouna Sylla. Do you
17 remember him participating?
- 18 A. I don't know the exact names of these people. This was
19 like how many years ago? But they all participated in
20 the discussions. We had heated discussions there.
- 21 Q. Okay. I'm just asking how you know that everybody on
22 this committee participated.
- 23 A. Yes. As far as I recall, yes.
- 24 Q. So the next person, "M. Tidjane YANSANÉ, Conseiller
25 Chargé des Infrastructures": for you, was Mr Yansané,

16:56

1 "Conseiller Chargé des Infrastructures", was he
2 a political person or was he a counsellor?

3 A. This is -- they have various ministries. The Ministry
4 of Infrastructure, the Ministry of Defence -- not that
5 defence was involved. But they have various ministries
6 who the Minister of Mines, Mr Thiam at the time, found
7 necessary to have representation on this committee.

8 Again, I just did it recently in a neighbouring
9 country there; it's exactly the same thing.

10 Q. I'm not asking you about your experience in other
11 countries.

12 A. But it's the same thing.

13 Q. I'm asking about these people. You said a few moments
14 ago that this was really a political committee.

15 A. No, I didn't say that. I didn't say political.

16 Q. You said these were political people from, like, the
17 ministries.

18 A. I said they were -- okay, maybe I said "political", but
19 not "political committee". They were representatives of
20 the various ministries. Because the Ministry of Budget,
21 the Ministry of Finance, the Ministry of Labour, the Ministry
of Justice, the
22 Ministry of Transport, they all have to have
23 representation on a committee like this.

24 Q. Okay --

25 A. Whether they actively can completely, 100%, contribute

16:57

1 to the content, no; to every part of the content, no.

2 But they can focus on, for example, finance or budget.

3 We talked about royalties, revenue stream, taxes,

4 customs, et cetera.

5 Q. I think I'm starting to understand. I may have

6 misunderstood what you said before. So are you saying

7 that these representatives from each of these ministries

8 each had their own specialisation?

9 A. Exactly.

10 Q. And did you consider these to be technically competent

11 people?

12 A. Of course; otherwise the minister would not put them on.

13 Q. I'm not asking about why the minister did. You were

14 working with them, you said?

15 A. Yes.

16 Q. And they were able to dive in and really spend time;

17 they understood this?

18 A. Of course they did.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16:58

[PROTECTED]

[REDACTED]

24 MR OSTROVE: I was hoping we could go quickly. I just
25 wanted to go through when the meetings were. But I have

16:59

1 no problem spending time on what the content was.

2 I am aware of the fact that it's 5.00 pm and I have
3 not gotten nearly as far as I thought I would. I am
4 concerned that perhaps we should let Mr Ferreira go.

5 THE PRESIDENT: I was thinking the same, because I think we
6 need to finish this quietly, without being rushed, and
7 then if things take a bit more time than what we had
8 anticipated, then so be it.

9 That would then mean that, Mr Ferreira, we're sorry
10 to have kept you this afternoon, but we will hear you
11 tomorrow morning. It's 10 o'clock, the time that we had
12 planned, right? Let me just check. That is what we had
13 initially planned, and that is what we will do. (Pause)
14 Fine.

15 Before we continue, so that we have an indication,
16 the idea would be that we could finish with Mr Ferreira
17 around noon, or is this overly optimistic? It's likely,
18 no? Of course it also depends on re-direct and Tribunal
19 questions, but --

20 MR OSTROVE: We certainly expect so.

21 THE PRESIDENT: Around that time, yes, fine. So that also
22 gives Mr Ferreira some indication.

23 Mr Ferreira, you are welcome to stay, if you enjoy
24 it; but you can also leave, if you prefer, and come back
25 tomorrow.

17:03

[PROTECTED]

[REDACTED]

17:04

[PROTECTED]

[REDACTED]

10 Q. Let's go back to tab 29, please, which is Exhibit R-268.

11 The first page is just a general overview. The second
12 page presents the commission's analysis of the
13 feasibility study. And then the third [page] says
14 "Présentation du Projet", and it says:

15 (Interpreted) "The commission, better to understand
16 the project, had a working session with the leaders of
17 BSGR in order to clarify its queries."

18 (In English) That sounds like it matches with the
19 first meeting that you described: there was one meeting
20 with the commission to go over their questions?

21 A. Yes.

[PROTECTED]

[REDACTED]

17:06

[PROTECTED]

[REDACTED]

16 Q. Okay. I think I'm starting to understand, thank you.

17 The commission itself, we've seen, was established
18 on December 1st, and its report says it started work on
19 December 2nd. You recall that there was a fairly major
20 event in the country on December 3rd?

21 A. Yes, I just referred to that myself.

22 Q. So the day after the commission started its work. And
23 that event was that the head of security of President
24 Dadis Camara shot him in the head; correct?

25 A. Yes. I believe it was a sergeant.

17:07

1 Q. Sorry?

2 A. A sergeant, one of his sergeants who did that.

3 Q. If I recall correctly, President Camara is still alive,
4 he survived the assassination attempt, but he was
5 immediately evacuated to Morocco for treatment?

6 A. I believe so, yes.

7 Q. And the situation in the country at the time was
8 chaotic?

9 A. Yes and no. That sounds strange, to answer that way,
10 but I have to say it this way. Yes, there were moments,
11 there were times, certainly in the beginning. But that
12 subsided a bit after about, I would say, a week, week
13 and a half. There were -- there were moments of --
14 I wouldn't say chaos, but it wasn't clear, particularly
15 amongst some of the -- how would you say that? -- like
16 militants, maybe, or factions, because there appeared to
17 be a vacuum, who was going to be with whom, and who was
18 behind -- representing what party, et cetera.

19 So particularly with the youth, it was a bit --
20 a bit "chaotic" is the right word. But there was no
21 panic as such. I mean, there was no big riots or fires
22 or people shooting at each other. It was actually
23 remarkably calm in that sense, although they were
24 driving around town with big M5s on the back of open,
25 you know, Toyota Hilux, et cetera, young people with

17:09

1 things like that, but ...

2 Q. So the BSGR team was fairly courageous and stayed, but
3 most foreign companies sent their personnel out?

4 A. That's exactly what we did, and that is exactly what
5 they appreciated, because this is the "yes" part -- the
6 "no" part. I explained the "yes" part to your question,
7 about being chaotic. And the "no" part of being chaotic
8 is that the people who were in charge of the various
9 ministries -- the ministers themselves, their
10 assistants -- they realised, and I think it's logical,
11 that they couldn't just drop everything. The country
12 cannot just from one moment -- even if it's a military
13 dictator that took over after Conté died, he gets shot,
14 and suddenly the country doesn't exist the next day?
15 That doesn't happen.

16 They continued to operate. And they were very
17 grateful -- this is very important that I explain
18 this -- they were very grateful that we continued, and
19 not -- they actually told us this: that we didn't flee
20 the country like all the other companies did and left
21 them alone. They were very grateful for the fact that
22 we stayed. I've heard this many times.

23 Q. Mr Struik --

24 A. And I was proud of it, by the way.

25 Q. At that time there was, however, serious doubt as to who

17:10

1 was going to lead the country; correct?

2 A. I think the country itself -- I'm not sure if it's in
3 the Constitution; again, I'm not a legal expert. But
4 I think there is some sort of clause that says that if
5 the top guy is not there, for whatever reason, somebody
6 else takes over in an interim period. Now, I cannot
7 understand -- I cannot recall whether that was the Prime
8 Minister or somebody, but somebody -- there was a group
9 of people that continued to run.

10 Q. In fact -- we can check the record -- the Constitution
11 was suspended at that time. But I'm not asking for your
12 legal analysis; I'm asking for your recollection at the
13 time. Was there doubt as to who was going to take over
14 leadership in the country?

15 A. There was no doubt, as far as we knew, in terms of what
16 we were doing. We continued -- we even got calls from
17 them "Are you still here? We are continuing with the
18 discussions, because we have to finalise this". I mean,
19 Thiam was still there, all the other ministers were
20 still in place. Nobody ran away.

21 Q. But in fact, whether those ministers were going to
22 continue in place when a new head of state came in,
23 there would be doubt about that, right?

24 A. No, not necessarily. Why?

25 Q. Because normally the President in Guinea decides who the

17:11

1 ministers are going to be?

2 A. Maybe, but maybe it would continue. I mean, are we
3 speculating? I don't know what happened with the new
4 President, or what the new President is, and would there
5 be a transitional President, or Parliament or something,
6 and elections; which in the end happened, by the way, as
7 we all know. So that was not for us. We had to
8 continue with what we were doing.

9 Q. Because, as you say, you were so close to signing the
10 Convention de Base, you really wanted --

11 A. Well, not so close, because the incident happened on
12 the 3rd and we only signed on the 16th. So there was
13 still another ten days or so.

14 Q. But I mean, you felt it was important to stay despite
15 the situation?

16 A. Yes, we had momentum.

17 Q. Because you were so close?

18 A. We had momentum, and we could not lose the momentum,
19 because we were right in the middle of talks with
20 Chinalco at the time also, and you probably -- you know
21 this from all the records.

22 Q. With respect to your talks with Chinalco, they started
23 within months of signing the Convention de Base?

24 A. No, and thank you for this question, because I have to
25 explain something to you.

17:12

1 The records show, I suppose -- and I think it is
2 also in my witness statement -- that at some point we
3 realised that we needed to get a partner in. So the
4 first partner we started talking to -- they actually
5 approached us -- was the Liberian Investment Authority.
6 And if I remember correctly, it was about March 2009
7 when I and my metallurgist, Mr Jerry Wilson, we flew
8 actually to Libya, which was still okay in those days,
9 and we actually met with the Libyan Investment
10 Authority. They then sent a team in May, we took them
11 around. They in the end then did not have the right
12 appetite for the project. Then there was a vacuum.

13 And then -- and I'll come to your answer now -- you
14 remember that Chinalco had done a deal with Rio Tinto at
15 the time. And Rio Tinto, in about end 2008 -- I forget
16 the exact date -- maybe it was because of the hostile
17 takeover of BHP Billiton, as a result of this --
18 Rio Tinto pulled the plug on Chinalco. Chinalco was
19 very upset. It's a Chinese company, it's the biggest
20 Chinese listed company. Chinese culture: to get egg in
21 your face like this by Rio Tinto was big shame, bad. It
22 was really bad.

23 Chinalco approached us. They came to us, as far as
24 I remember, in August 2009 already. We had not even
25 delivered the feasibility study. But they knew we were

17:13

1 busy. They knew we had drilled. They knew all these
2 things because they had seen it whilst they were talking
3 with Rio Tinto. Then they approached us.

4 And then in November -- and now I recall, sorry.
5 Now I recall why I said six/seven weeks that I was
6 there: because Chinalco -- I remember now. The
7 documents were delivered on the 16th to the Government
8 of Guinea, of November. But Chinalco came with a team
9 of 40 people, four-zero people -- geologists,
10 metallurgists, I don't know, mining engineers -- on
11 a due diligence mission, a fact-finding mission to our
12 projects. We took them around. And I had my team
13 organised: a metallurgist, the financial guy, the
14 geologist, et cetera. And we took those 40 people
15 around; not only in Guinea, but also to Liberia, to
16 Buchanan, because we had started the investment
17 agreement with the Government [in] Monrovia at the time.

18 So this happened already then.

19 Q. Thank you very much. So in fact one thing that was
20 going on right at the same time you delivered the
21 feasibility study --

22 A. Yes.

[PROTECTED]

And during

17:15

1 that time you have the Chinalco people on the ground?

2 A. Yes, the Chinalco people were at the beginning of
3 November. We were still finalising some administrative
4 things about the documents. We then handed the
5 documents on 6th November. But the actual tour -- and
6 I was part of this tour, taking these guys around,
7 because we had to explain the properties, the assets, we
8 had to climb the mountains; you know, all these things.
9 So it was a big logistical exercise, by the way, to
10 organise this for 40 people. And they were very, very,
11 very keen on the project.

12 Q. And that was going on in parallel with the feasibility
13 study?

14 A. That's exactly what was going on, yes.

15 Q. Okay, thank you. It's on a different topic that we
16 might have covered, but I think you've answered. So the
17 order of expressions of interest from buyers on the
18 project was, first, the Libyan Investment Authority?

19 A. Correct.

20 Q. And then Baosteel?

21 A. No, Baosteel was later. Because we had a deal with
22 Chinalco, we had a sort of memorandum of understanding,
23 of undertaking, that by the end of December 2009 we
24 would do a deal 50/50 with Chinalco, so they would come
25 in as 50% partners.

17:16

1 But when we were in China -- this was after the
2 convention minière was signed. I then left on the 16th.
3 I came to Johannesburg on the 18th, in the morning, of
4 December. And on the 20th, two days later, I left for
5 Beijing with the team because we had to finalise
6 discussions with Chinalco.

7 Chinalco then came with a totally ridiculous offer
8 to come to us of \$50 million to become 50% partner in
9 this huge project, so we were insulted and we walked
10 away. But because we were in China, we then decided, on
11 the spur of the moment, let's phone Baosteel, who was
12 the biggest steel company, iron company in China, and
13 then we went to Shanghai to meet with Baosteel.

14 Baosteel wanted to come in for 30%, not 70%. They
15 wanted 30% of the project plus the offtake agreement,
16 and they wanted us to manage the project. So we
17 decided: that's a good deal, we like that, we have
18 a guaranteed offtake. Then the chairman of Baosteel got
19 a call from the chairman of Chinalco and those -- as we
20 all know how it works in China, they are political
21 appointees, and this is the big brother telling the
22 small brother, "Stop interfering, no deal with BSGR,
23 bye-bye". So in the end we left China with nothing.

24 Then February 2010 I met this guy from Vale, and the
25 rest is history. That's, in short, the whole timing of

17:17

1 all the deals that we tried to do.

2 Q. Thank you. So the very first deal you tried to do was
3 with LIA?

4 A. Yes. They didn't want.

5 Q. And I think you've answered my question, because you've
6 mentioned March 2009 was the first discussion with them?

7 A. Yes, I recall going to Libya in March 2009. And then
8 they sent their team, with the mining engineers from
9 India and so on, in May 2009.

10 Q. I think that might help clarify a question I would have
11 had for Mr Avidan, which is in paragraph 48 of his first
12 witness statement. If I could just read to you and
13 maybe you'll clarify.

14 "While these discussions were going on ..."

15 Which is a discussion about the validity of the
16 exploration permits:

17 "... Rio Tinto tried to block BSGR's access to
18 blocks 1 and 2 and disrupt its work there."

19 This is in early 2009.

20 "Rio Tinto's actions were very childish and we
21 needed the assistance of the government to stop them.
22 It took until May 2009 before we could actually get
23 started with the drilling. Once we got started, we
24 quickly realised that there was a great amount of good
25 quality iron ore in the ground. It was fantastic to be

17:18

1 reassured that we had made the right decision. We also
2 quickly realised that the scale of the project would
3 require us to find a partner to develop blocks 1 and 2."

4 A. Correct.

5 Q. So he placed the realisation that you should find
6 a joint venture partner after you started drilling in
7 May 2009. But your understanding is that the very
8 earliest discussions were as early as March 2009?

9 A. We -- yes, because I think I flew to Libya for a visit
10 and to discuss it the technical aspects of what we had
11 on the ground, because by the time we had already been
12 awarded the exploration permits in 2008 for Blocks 1
13 and 2, so we could physically say something to --
14 technically. And then in May they sent the due
15 diligence people.

16 Q. But before March 2009 there were no discussions with
17 buyers?

18 A. With nobody, no.

19 Q. Okay. Sorry, that was a digression which saved us some
20 questions later, so thank you.

21 A. Good.

22 Q. Let me just try and re-find where I was on the Technical
23 Committee.

24 If we look back to the commission's report, which is
25 tab 29 (R-268). The final recommendations of the

17:20

1 commission on 14th December are, in light of what it has
2 discussed:

3 (Interpreted) "... the commission recommends to the
4 Minister charged with Mines:

5 "- To communicate the terms of this report ... to
6 the Council of Ministers [for the Council] to authorise
7 the signature of the Base Convention ..."

8 (In English) So does that comport with your
9 understanding that after this, it had to be approved in
10 the Council of Ministers before it could be signed?

11 A. Yes, which is normal, yes.

12 Q. And then:

13 (Interpreted) "- That it be authorised to have the
14 President of the Republic attribute the mining
15 concession to BSGR..."

16 (In English) I want to pause on that point for
17 a little while. At that point you would have understood
18 that actually getting the concession was going to take
19 some time, because there was no President in the
20 country; correct?

21 A. Yes, I suppose. But ...

22 Q. Getting the convention signed was one thing, but
23 actually getting the concession clearly was going to be
24 a problem, because the President had just been shot?

25 A. Yes.

17:21

1 Q. (Interpreted) "- Also the Council would recommend to the
2 President of the Republic the ratification and
3 promulgation of the Convention by means of the Decree."

4 (In English) That's an administrative step that
5 would have to follow?

6 A. That's right. That's being -- basically gazetting the
7 fact that this -- it becomes law. Once you sign the
8 Convention de Base, it becomes a law in itself. Again,
9 I'm not a legal expert, but this is how it works.

10 Q. Okay. But it's your understanding that within --
11 because the Convention de Base was signed on
12 December 16th, right?

13 A. Yes.

14 Q. So is your understanding that what happened is that
15 within two days of the commission making this
16 recommendation, everything went to the Conseil
17 des Ministres?

18 A. Yes. That's why we only signed on -- I think it was
19 a Wednesday, 16th December, if I'm not mistaken.

20 Q. But they were able, in the absence of a head of state,
21 to fulfil this recommendation, get the Council of
22 Ministers' approval and get it signed?

23 A. Yes. As strange as this might sound, yes, this is what
24 happened. They continued to operate. Now, you might be
25 surprised about that, but this is what happened.

17:22

1 Q. I'd like to just understand a couple of other points
2 about this commission before moving on.

3 At paragraph 82 of your first witness statement, you
4 state -- well, let's look at paragraph 81. You say:

5 "Mr Thiam was determined not to delay the process."

6 This is the commission process.

7 "He had implemented a policy that the negotiations
8 had to be completed within weeks. He also proposed that
9 BSGR should organize catering for the members of the
10 Committee for every day to avoid everyone disappearing
11 for lunch and coming back after they had a lengthy
12 siesta. He said that this would streamline the process
13 and he was right.

14 "BSGR paid for the catering. We also paid each of
15 the 20 members a daily allowance. I think we paid
16 \$20,000 in total over the entire period of the
17 negotiations."

18 Then you say:

19 "I assume that the \$20,000 we paid are the 'funds'
20 the Technical Committee refers to ...", et cetera.

21 A. Yes.

22 Q. With respect to the \$20,000, who actually gave the
23 \$20,000 to the Technical Committee?

24 A. The request came from the chairman of the committee.

25 I don't know who that was, but I'm sure it's mentioned

17:23

1 in the actual appointment of the committee, the letter
2 from the minister. In any case, the request came from
3 the chairman and was directed to Mr Avidan. He then
4 organised for the payment. I did not.

5 Q. Do you know how the payment was made? Was it --

6 A. No, I do not.

7 Q. You describe this in paragraph 82: you say it was
8 "standard practice" for the head of the committee to
9 request payment of such allowances?

10 A. Yes. And again, you tell me not to refer to what
11 I recently did, but I've been in a similar process
12 recently. It is -- now, the amount is maybe not that
13 standard. The amount could be \$15,000, I don't know.
14 There was a norm somehow that the daily allowance would
15 be paid. The government did not have budgets. The
16 ministries themselves had very little, if no money at
17 all, to do things. So sometimes the ministries were
18 not -- the people at the ministries were not even paid
19 the salaries because they didn't have anything.

20 Q. So there was no legal obligation in the Mining Code that
21 said you should pay --

22 A. No. I think it was -- because I actually tried myself
23 to find a reference to any legal note, like a clause,
24 an article somewhere, and I could not find it really.
25 But I know, let's say, that it was not uncommon to do

17:25

1 so.

2 There was no money in these ministries. The
3 catering from -- request from Mr Thiam was based on the
4 same reasons. Again, recently we had the same thing:
5 they asked us to cater for the committee in this recent
6 convention minière that I have been discussing. Exactly
7 the same thing; not in Guinea, in another country.

8 Q. So if we could turn --

9 A. It's common practice.

10 Q. So if we could turn back to tab 28 of the bundle (C-15),
11 the second page, the last page of the decree.

12 A. The decree?

13 Q. Article 3 of the decree signed by Minister Thiam says:

14 (Interpreted) "The expenses are attributable to the
15 Budget of the Ministry of Mines and Energy."

16 (In English) Is it your testimony then that there
17 was no money, so --

18 A. As far as I know, they had very little money. I don't
19 know how much money they had; we can maybe ask the
20 Government of Guinea. I don't know.

21 Q. But you felt it was appropriate to pay \$20,000 --

22 A. Yes, and I've admitted this from day one.

23 Q. Okay.

24 A. It was all out in the open. This was not some secret,
25 underhanded thing.

17:26

1 Q. We asked Mr Tchelet during his testimony whether he was
2 aware of the \$20,000 payment; he did not have any
3 recollection of that. I speak subject to control of
4 opposing counsel. But it should be Day 3, page 194,
5 line 5 of the transcript.

6 Why would it be that Mr Tchelet, who was in charge
7 of all the payments, was not aware of this?

8 A. I don't know. If you asked him this question -- I don't
9 know, really.

10 Q. But from an operating daily basis, was it possible --

11 A. I'm a bit surprised that he wasn't aware of this because
12 Mr Avidan would have received the money from somewhere,
13 okay? So I don't know why he says that he didn't know
14 about this.

15 I mean, on the other hand --

16 Q. I'm not asking you to speculate.

17 A. No, I'm not speculating. Okay, then I won't say
18 anything.

19 THE PRESIDENT: What did you want to add?

20 A. No, I didn't want to ask anything. It was that --

21 THE PRESIDENT: No, "to add".

22 A. Oh, "add", sorry. Excuse me, Madam President.

23 What I wanted to say is that \$20,000, in the scheme
24 of what we were doing, was nothing. We were spending
25 \$0.5 million a month, if not more, just on operating the

17:27

1 business, \$500,000 a month; maybe sometimes more,
2 including all the drilling costs. We went up to
3 \$1 million a month in terms of what we needed to do on
4 the ground. And let's not forget, whilst we were
5 negotiating, the drilling and everything and all the
6 expenses in Blocks 1 and 2 were going on.

7 So Mr Tchelet, I can only assume in this case the
8 \$20,000 did not appear on his radar screen because of
9 all the other larger amounts of money which attracted
10 far more attention. So for us the \$20,000 was nothing
11 in the bigger scheme of things.

12 And it was not an underhandedness. We were open
13 about this from the very beginning. Everybody knew it.

14 MR OSTROVE: I think I have my last topic, you'll be glad to
15 know and I might be very short.

16 A. I'm here to answer any questions you have.

17 Q. Thank you.

18 The deal that was signed with Vale in April 2010.

19 A. Yes.

20 Q. Were you involved at all in the negotiations of the deal
21 in the prior months?

22 A. No. The actual financial aspect of it, no. Was I part
23 and parcel of some of these discussions that took place
24 in London and in Brazil? Yes, I was there, because
25 I represented also the technical aspect of the actual

17:30

1 project, because the value of the project was in what we
2 had done.

3 Q. The focus of the project, of the team, was that the Vale
4 deal looked serious, like it would happen, right?

5 A. You mean the Vale team?

6 Q. We have evidence that the negotiations of the deal with
7 Vale happened very quickly, took just a matter of a few
8 months.

9 A. Two months.

10 Q. Two months. When those negotiations were going on, was
11 the understanding that Vale was going to take over the
12 operational aspects?

13 A. Of course. They insisted from the beginning that they
14 were having the majority shareholding, 51%.

15 Q. So on the BSGR side, you know that Vale was going to also
16 support most of the expenses of the project going
17 forward?

18 A. Correct.

19 Q. So --

20 A. I think there was a -- if I'm not mistaken, they would
21 pay on BSGR's behalf BSGR's component of 49%, and then
22 it would be repaid once the production -- the project
23 was in production.

24 Q. Is it accurate that while you were in those negotiations
25 with Vale, knowing that Vale was going to take over the

17:31

1 costs, that BSGR held back on making major expenditures
2 for the project during the first two months of --

3 A. I suppose that is the case. But we are talking about
4 a period of one month, a month and a half, two months
5 tops. Up till that point in time, until we -- let's say
6 the end of March, we had done -- we continued drilling.
7 100% we continued drilling. We have the drilling
8 invoices for that. We have the core analysis results
9 for those periods.

10 So that -- in Blocks 1 and 2, it was exploration.

11 Q. Okay.

12 A. But in Zogota we had already done what we needed to do.

13 Q. Right. So the expenses that were on the ground in early
14 2010 were drilling in Blocks 1 and 2?

15 A. Mainly, yes.

16 Q. Okay.

17 A. The majority of the expenses in that period was indeed
18 for the exploration in Blocks 1 and 2.

19 Q. Okay.

20 A. Because Zogota, we had finished.

21 Q. So in that period of January/February/March 2010, did
22 you already have the main equipment that you needed out
23 on the ground in Blocks 1 and 2?

24 A. What do you specify -- mean by "equipment"? Drilling
25 equipment we had.

17:32

1 Q. Yes.

2 A. We had drilling teams there. We employed -- for
3 Blocks 1 and 2, we employed three drilling companies.

4 Q. What I'm wondering is: did you have to make expenses for
5 new heavy equipment right at the beginning of 2010, or
6 was the equipment already there and you were doing --

7 A. The equipment -- the heavy equipment was not our
8 equipment. We had the -- I mean, we engaged drilling
9 contractors. It was their equipment: their trucks,
10 their this, their everything.

11 Q. Did you need tractors and bulldozers?

12 A. Oh yes, because we had roadworks to do.

13 Q. And were you doing roadwork at that time, or ...?

14 A. Yes, because we put a road across the mountain from
15 Kérouané, because -- let me explain to you. The
16 Blocks 1 and 2 that we had was -- the total "strike
17 length", as we call it, in technical terms, is
18 56 kilometres.

19 Now, from the base camp that we had in Kérouané, to
20 go to the other site -- I forget the name of that town
21 now, that village -- to go there, we had to travel all
22 the way down to a point what we tend to use to call
23 Captain Hook. And there was like a passage in between,
24 and we would go in, and then come up to the north. We
25 would leave 5 o'clock in the morning, and arrive on site

17:33

1 at 8 o'clock.

2 Q. But my question --

3 A. So this road we then made was between Kérouané, right
4 across the mountain to the other side.

5 Q. So that work you started on after you got the
6 exploration permits?

7 A. Yes, that was from that -- no, no, no. No, because
8 initially we had the dispute with Rio Tinto. So we
9 could not work on the ground until such time that the
10 government -- that the government had decided, "This is
11 your block, and that's their block, and that's it". And
12 that's why we only started on 1st May.

13 Q. May 2009?

14 A. Correct.

15 Q. So the big period of investment in earth-moving
16 equipment and all that starts in May 2009?

17 A. I think, yes, that's what we did.

18 Q. Coming back to my question, you had invested a lot in
19 equipment. When you are negotiating with Vale, were you
20 continue to invest in equipment for that, or the
21 roadwork was already done?

22 A. No, the -- I think the roadwork was completed, because
23 I remember going to site over that mountain already.

24 Q. When the Vale deal was done, we saw that Mr Ibrahima
25 Sory Touré received \$450,000 as a bonus, right?

17:34

1 A. Correct.

2 Q. For the work that he did, whatever that work was. Do
3 you recall whether you received a bonus as well for that
4 being done?

5 A. Do I recall ...?

6 Q. Whether you received a bonus as well at that time.

7 A. You know I did.

8 Q. Yes. And is it correct that the amount of that bonus
9 was \$2 million?

10 A. That is correct.

11 MR OSTROVE: Thank you very much. Many thanks for your
12 time. I don't have any further questions.

13 THE PRESIDENT: Any questions in re-direct?

14 MR WOLFSON: I just have a few, if I may.

15 THE PRESIDENT: Are you doing fine, or do you wish
16 a five-minute break? Can we continue? Yes, good.

17 So please go ahead.

18 MR WOLFSON: Thank you, Madam President.

19 (5.35 pm)

20 Re-direct examination by MR WOLFSON

21 Q. Mr Struik, I'd like first to ask you some questions
22 which arise out of a series of questions you were asked
23 about the 15% free carry. Do you recall those
24 questions?

25 A. I do.

17:35

1 Q. I think they were this morning.

2 A. I do.

3 Q. You gave some answers relating to the 1995 Mining Code
4 and the 2011 Mining Code?

5 A. Correct.

6 Q. Can I ask, if we can, to have the 2011 Mining Code to
7 put up on the screen, because we weren't actually shown
8 this. The reference is RL-0018. (Pause) If we could
9 scroll through, please, to Article 150, which
10 I understand is on page 117 of the document.

11 Mr Struik, could you have a look -- I'm certainly
12 working off the English on the right-hand side. Could
13 you have a look please at the [second and third]
14 paragraphs, beginning:

15 "From the effective date of this code ..."

16 A. Would you like me to read it out?

17 Q. No, read it to yourself.

18 A. Okay, yes, I've read it.

19 Q. Is this the 15% free carry you were referring to in the
20 2011 Mining Code?

21 A. Yes, correct.

22 Q. Could you now go back to the bundle you were given,
23 because I think the 1995 Mining Code is actually in
24 there, so we don't have to look at the screen anymore.
25 If you could turn, please, to page 47. This is tab 1 of

17:38

1 the bundle, CL-1.

2 On page 47 you should have Article 167. Could you
3 first have a look at 167.1.

4 A. Yes.

5 Q. Which you see does provide that:

6 "... the State is entitled to founder's shares
7 representing 15% of the capital ..."

8 Could you read out the heading to 167.1 in the bold,
9 please.

10 A. It says, "Gold, diamonds, other precious stones".

11 Q. Then could you please read into the record 167.2 from
12 the heading to the end of the first paragraph.

13 A. It says:

14 "Bauxite, Iron ore, Solid hydrocarbons, etc.

15 "Due to the degree of investment required, the State
16 does not take free shares in the capital of a company
17 operating substances of special interest."

18 Q. Thank you very much. If we can now turn to a different
19 topic.

20 You were asked -- and the reference, for the
21 transcript, is at 12:22:14 (page 85, line 20 onwards) --
22 about the various drafts of the agreement --

23 A. Correct.

24 Q. -- which you were taken to. At that time you were being
25 shown the document at tab 7 of the bundle, which was

17:40

1 presented to you as a draft as at 6th January 2006, and
2 it was put to you:

3 "... you had removed anything about a right of first
4 refusal ..."

5 Can I ask you to look at tab 6, which is the
6 previous draft of November 2005. For the record, this
7 is R-173. I don't know whether your French is up to
8 this or not, but could you have a quick look through
9 that draft and see whether you can find anything in
10 there which is a right of first refusal in that previous
11 draft. (Pause)

12 A. I'm looking on page 4 because, if anything, it would
13 have been mentioned under chapter 3, I think,
14 "ASSISTANCE DES PARTIES; and then, in particular, the
15 assistance of the government. And I cannot now see any
16 reference to that.

17 Q. Thank you. We can now go to a different point.

18 You were asked a few moments ago about the monies
19 paid to the 20 members of the Technical Committee. Do
20 you recall there was a couple of questions about that?
21 I'm talking about the \$20,000.

22 A. Correct. I understand.

23 Q. To your knowledge, has any member of the Technical
24 Committee been interrogated, charged or convicted with
25 respect to their receipt of any part of those sums?

17:42

1 A. To my knowledge, no.

2 Q. Thank you.

3 You were also asked, when you looked at the video,
4 a number of questions about the "red berets", if I can
5 use the English name. And you started to say -- and the
6 reference is 15:35:03 (page 182, lines 13 to 14) -- and
7 you were talking about some sort of security:

8 "We had them at our house [in case of ...]"

9 And then there was a bit of overspeaking.

10 Could I just give you the opportunity to explain:
11 who did you mean by "them", and what were you going to
12 say: "in case of" what?

13 A. The red berets is part of the -- I think maybe it is
14 actually the presidential guard, but I stand to be
15 corrected here. And because we had an official event
16 which was also going to be attended by ministers, a few
17 of them were protection. Not that there was immediate
18 danger or anything, but they were just there as part of
19 protocol.

20 Q. You said, "We had them at our house". Are you talking
21 at the time of the party or are you talking generally?

22 A. No, at the time of the party.

23 Q. And when did the party begin, roughly, on that day?

24 A. I would say we had the presentation during the day;
25 I think it was in the afternoon, if I'm not mistaken.

17:44

1 So I would guess that the party would have started
2 around 6 o'clock in the evening, at night.

3 Q. I think this is a matter of public record: it gets dark
4 at around 7 o'clock, I think, at that time in Guinea?

5 A. Yes, 6.30, 6.45, something like this.

6 Q. Do you recall roughly when Madame Touré turned up? Do
7 you remember was it light was it dark, was it at the
8 beginning of the party, was it later on?

9 A. No, it was later on. She did not make an appearance
10 right from the beginning.

11 Q. Was that before or after the red berets had turned up?

12 A. I think after because, as far as I recollect, the red
13 berets were already there.

14 MR WOLFSON: I am conscious of the time. Can I explain the
15 concern I've got about doing the next bit. My friend
16 played the video, which is about a 20-minute video, and
17 we saw bits of it. There is an earlier bit I wanted to
18 go to. I'm not blaming anybody, but the problem is
19 that, although the document disclosed is a 20-minute
20 video, on the index of documents, we've actually been
21 provided with just an electronic link to it, which is
22 a link to the YouTube website where the video has been
23 uploaded. That video is only, I think, a 4-minute
24 video, so it's not the same; there's obviously been
25 a problem in providing the whole thing. I think it has

17:45

1 been uploaded to YouTube by Global Witness.

2 I wanted to play it to show when the red berets
3 turned up, but I don't want to take the whole Tribunal's
4 time in doing that, for which I don't really need the
5 witness. So I've put to the witness that the red berets
6 turned up earlier. And I hope that the Tribunal will
7 then let us, perhaps in closing submissions, direct the
8 Tribunal to the particular part of the video which
9 I would otherwise have shown to the witness.

10 Otherwise I'm going to have to ask for the video to
11 be put up and just played from the beginning, because
12 I don't have the time. And I don't want to waste
13 everybody's time in doing that.

14 THE PRESIDENT: The video, which is R-207, that we have
15 seen, is that the short version that's on YouTube?

16 MR WOLFSON: No, it's 20 minutes, the long version. And at
17 the moment all I can technically get on the screen from,
18 so to speak, "my side" is that 4-minute version, and
19 it's on that bit. I could ask for the whole thing to be
20 played from the beginning, but I don't want to waste
21 your time.

22 THE PRESIDENT: I'm sure I can have it on my computer. That
23 will only help me, but I'm sure others could pull it up.

24 MR OSTROVE: The version we showed earlier is the full
25 version. It was on the key that was distributed to the

17:47

1 Tribunal and to Mishcon de Reya earlier on. And there
2 appears to have just been some confusion, and Mr Wolfson
3 himself only has access to the 4 minutes. We have the
4 full version here. The part that Madame Touré shows up
5 is at minute 18:09 of the video. So I don't know how
6 many minutes before that Mr Wolfson would like to show.
7 I'm happy to stay to watch movies.

8 MR WOLFSON: Well, the witness has said that his evidence is
9 that the red berets turned up earlier. What I was
10 proposing to do is not take any more time on this, and
11 just put in our written closing the time on the video
12 when you can see the red berets earlier than this. But
13 I don't want it to be taken against me later that
14 I didn't actually play it in front of the witness;
15 that's the only point.

16 THE PRESIDENT: Can you do it now or can you not? It might
17 be better to do it now, and then if there is any
18 additional question, we can ask it, and then we can
19 close this topic.

20 MR WOLFSON: I haven't got the exact minute, that's the
21 problem. So we'd end up playing --

22 THE PRESIDENT: You have to re-watch it?

23 MR WOLFSON: Yes, which is a bit dull.

24 THE PRESIDENT: I see.

25 MR OSTROVE: I could put it up and then just skip 30 seconds

17:48

1 at a time, if that would help, or 15 seconds at a time.

2 MR WOLFSON: I'm not sure we need to do this. The Tribunal

3 can play the video to themselves ...

4 THE PRESIDENT: We heard Mr Struik say today that the

5 presentation was during the day. The party was around

6 6.00 pm. It's getting dark around 6.30 to 7.00 pm.

7 Mamadie Touré arrived after the red berets because they

8 were already there, because this was an official event

9 with ministers and the red berets were there as part of

10 the protocol. These are my notes.

11 Is this a fair summary of what you have told us?

12 A. This is what I recollect. So I don't know what the

13 video will show, but this is what I recollect. To my

14 recollection, the berets were there. Maybe not the full

15 contingent; I don't know how many were there in the end.

16 But she came in later and the party had already started,

17 that is for sure.

18 I think this is Mr Soumah, if I'm not mistaken.

19 THE PRESIDENT: Roll back a little.

20 MR OSTROVE: Further back. We should also point out: this

21 is a video that was taken by local TV, so it has been

22 edited by the local TV station.

23 PROFESSOR VAN DEN BERG: Yes, I noted that the sound is not

24 synchronised with what you see.

25 MR OSTROVE: Sorry?

17:49

1 PROFESSOR VAN DEN BERG: The sound is not synchronised with
2 what you see.

3 A. But this is also not at the party.

4 MR OSTROVE: Shall I move forward a little bit?

5 A. This is the red berets, yes.

6 MR OSTROVE: Sorry, yes --

7 A. But this is not at the party.

8 THE PRESIDENT: This is still the presentation, isn't it?

9 PROFESSOR VAN DEN BERG: This is the party. And there it
10 stops.

11 A. There are the red berets. The berets were there really
12 during the first --

13 THE COURT REPORTER: Sorry, your microphone.

14 A. Sorry about that. I beg your pardon.

15 MR OSTROVE: Is this during the presentation or is this at
16 the beginning of the party? I'm not sure.

17 A. Yes, this is at the Novotel, on the first floor, the
18 mezzanine, I think, the mezzanine floor, the
19 presentation that we did before we had the -- so
20 I actually forgot about this, but I can see now that
21 they were already there. And the minister would have --

22 THE PRESIDENT: They were there at the time of the
23 presentation, are you saying?

24 A. Yes.

25 THE PRESIDENT: And the presentation was at the Novotel?

17:50

1 A. At the Novotel.

2 THE PRESIDENT: Whereas the party was at your new offices?

3 A. Exactly.

4 MR WOLFSON: Finally, and for the record, we've had some
5 confusion with the different Simandous; we've also
6 talked today about two Mr Soumahs.

7 There's an Ibrahima Kalil Soumah. Can you explain
8 who that gentleman was?

9 A. No, I cannot recall. I think there was a Minister of
10 Mines also who was called Soumah.

[PROTECTED]

20 A. Yes.

21 MR WOLFSON: Thank you very much. No further questions.

22 (Pause)

23 Sorry, there was one other point. I'm sorry.

24 You were asked about the contract which has your
25 signature on the foot, which you gave evidence that it

17:52

1 was a forgery, and there were some questions about the
2 stamp. Do you recall that?

3 A. Yes, I do recall.

[PROTECTED]

[REDACTED]

17:53

[PROTECTED]

[REDACTED]

5 THE PRESIDENT: (Interpreted) We think it is reasonable
6 because the witness referred to it.

7 (In English) So this means that the exhibit is
8 admitted into the record of this arbitration. You would
9 have to give it an exhibit number: it could be C-356.
10 Remember we still have C-355 open. And then you can ask
11 your question.

12 MR WOLFSON: I'm grateful. Thank you very much.

13 Mr Struik, have you been provided with the document?

14 A. I have.

15 Q. So you gave evidence earlier that you had seen the
16 document at tab 26, which is R-27, without a stamp.

17 A. Yes.

18 Q. Is this the document you were referring to, or were you
19 referring to a different document?

20 A. Yes, that is correct.

21 Q. Thank you.

22 A. That's the document I had seen before.

23 Q. Somebody has put a stamp with the word "Forged" in the
24 top right-hand corner. Did you see it before that had
25 been put on or only after it had been put on, or you

17:57

1 can't recall?

2 A. Let me think. I think the original Skadden version, or
3 the version that Skadden showed me at the time, I think
4 did not have this stamp on it.

5 MR WOLFSON: Thank you very much.

6 Thank you, this time I really do have no further
7 questions. Thank you.

8 MR OSTROVE: May I take the freedom, while you have the
9 document in front of you, without starting our closing
10 statements, it will solve the problem of the dot that
11 appears at the end of the signature which was a bit
12 covered by the term "MATERIAL".

13 THE PRESIDENT: (Interpreted) Yes, we've taken stock of
14 this.

15 (In English) Do my colleagues have questions?

16 I think you had questions for Mr Struik.

17 (5.58 pm)

18 Questions from THE TRIBUNAL

19 PROFESSOR MAYER: (In English) Yes. Good afternoon,

20 Mr Struik.

21 A. Good afternoon.

[PROTECTED]

18:00

[PROTECTED]

[REDACTED]

18:06

[PROTECTED]

[REDACTED]

[REDACTED]

18:10

[PROTECTED]

[REDACTED]

13 PROFESSOR MAYER: Well, thank you. Thank you very much.

14 I have no other questions.

15 MR STRUIK: You're welcome.

16 PROFESSOR VAN DEN BERG: Mr Struik, I have two questions.

17 First of all, can you be shown Exhibit C-270.

18 A. Is that in the bundle?

19 PROFESSOR VAN DEN BERG: No. It's probably a protected
20 document, although it is white in my bundle. It's the
21 bundle for Mr Tchelet. It's a document that seems to
22 originate from the LCIA arbitration. Can you put it on
23 the screen, please? (Pause)

24 So what you see here -- first of all, I should ask
25 the parties: is this a protected document? No. Okay,

18:12

1 then we can go ahead.

2 You testified earlier, Mr Struik, about the
3 equipment that was used for the Simandou project, and
4 I use that now in the large sense.

5 A. Correct.

6 PROFESSOR VAN DEN BERG: You were aware of the equipment
7 that was being used for it?

8 A. I was not aware -- you mean in terms of the purchasing?

9 PROFESSOR VAN DEN BERG: Yes, which type of equipment is
10 being used.

11 A. I know that we were looking at some Caterpillars at the
12 time, some excavators at the time, because we needed
13 some road equipment.

14 PROFESSOR VAN DEN BERG: Okay, right. Maybe going to the
15 second page -- okay, yes.

16 Can you tell us what is a "Caterpillar D9R"?

17 A. A D9R? That is a track dozer, the D9R. It's a track
18 dozer, it's not a wheel dozer, it's a track dozer-type
19 equipment.

20 PROFESSOR VAN DEN BERG: And if I buy it new, does it cost
21 around \$700,000?

22 A. Yes. I mean, today it would be a bit more, I would
23 think. But yes. They are expensive machines.

24 PROFESSOR VAN DEN BERG: And you see "Caterpillar 336DL
25 Track Excavator"?

18:14

1 A. This is an excavator basically on tracks with a boom,
2 just trying to loosen the road and load trucks.

3 PROFESSOR VAN DEN BERG: I have a very simple question to
4 you. To your knowledge, have these two Caterpillars
5 been delivered?

6 A. As far as I know, yes. I have seen the machines on site
7 at some point, yes. I don't know where they are now,
8 but they were there at the time. I've seen machines on
9 site.

10 PROFESSOR VAN DEN BERG: Okay. So the date of this one --
11 if you go, please, back up to the previous page -- the
12 date of this declaration for the customs, the date of
13 the invoice is 25th July 2009. Do you see that?

14 A. Where, sorry?

15 PROFESSOR VAN DEN BERG: Here (indicating).

16 A. Okay.

17 PROFESSOR VAN DEN BERG: It's the date of the invoice.

18 A. Yes, I can see it.

19 PROFESSOR VAN DEN BERG: Alright. Keep in mind that here
20 the declared value is \$700,000 for the Caterpillar D9R.

[PROTECTED]

18:18

1 paragraph 71. There you describe Mr Thiam. Maybe you
2 would like to refresh your memory what you wrote.

3 A. Yes, I have read it.

4 PROFESSOR VAN DEN BERG: So you write that:

5 "... BSGR never paid Mr Thiam anything. He was
6 a straightforward guy ..."

7 And then you give a character description at the end
8 that:

9 "... in [your] opinion, he was not the kind of
10 person who would be receptive to any such attempts."

11 And these "attempts" are being corrupted.

12 A. Yes, I wrote that.

13 PROFESSOR VAN DEN BERG: Are you aware of what has happened
14 to Mr Thiam in the United States?

15 A. I am.

16 PROFESSOR VAN DEN BERG: Does that give you then pause to
17 reconsider what you have written here?

18 A. Well, Professor van den Berg, the -- Mr Thiam, at the
19 time that I knew him, the few times that I met with him,
20 the few times -- the one time that he came to site, he
21 struck me as this type of guy. So when I was informed
22 that he was arrested because he was apparently or
23 allegedly laundering money through Hong Kong that he got
24 from Chinese investors and so on, it was a complete
25 surprise to me.

18:20

1 He was a flamboyant type of guy, for sure, but he
2 seemed to be down-to-earth at the same time. I don't
3 know how else to explain it. For sure, from my point of
4 view, BSGR never paid him any cent, not one single
5 Guinea franc.

6 PROFESSOR VAN DEN BERG: To be correct for the record, he
7 got condemned in the United States because of CIF, China
8 International --

9 A. Yes, something -- some Chinese investor who he
10 apparently had promised this and I don't know what.

11 So this has nothing to do with us, for one. But
12 I was surprised to see this, I was really surprised to
13 see this. I did not expect this at all. So obviously,
14 in terms of my witness statement, I have
15 mischaracterised the gentleman. But at that point in
16 time, this was true to my knowledge.

17 PROFESSOR VAN DEN BERG: Okay. Nothing further.

18 THE PRESIDENT: There's not much left, after so many hours
19 of questions, but there's still a few points.

20 In your first statement, paragraph 29, you speak of
21 exploration licences and you say -- and we've heard that
22 several times and I would just like your assistance with
23 this -- we've heard there was nothing.

24 From what I know about mining, if you have
25 an exploration licence and then you make a discovery of

18:21

1 a valuable deposit, you're in a very good position to
2 get the exploitation licence or the mining licence. So
3 why are you saying they are not worth very much?

4 A. Well, they -- in our -- thank you for the question.

5 In our terminology, in our business, if you look at
6 an exploration project -- and/or mining project, because
7 you could apply the same to a mining project too, but
8 let's take an exploration project -- you start spending
9 money on an exploration project and then at some point
10 you find something, so the permit itself becomes more
11 valuable, the area, the deposit, because now you have
12 proven there's something there. However, you have not
13 proven that there's enough there to sustain or justify
14 the development yet of a mining project.

15 So although these exploration projects and permits
16 are initially of very little value, they're not worth
17 much -- that's why also, by the way, when you deal with
18 the CPDM or a similar entity -- the mining codes will
19 refer to this too -- the actual taxes you pay, the
20 rental, the land rental, the surface taxes you pay for
21 an exploration permit are far less than what you would
22 pay the second time you get the exploration permit,
23 after you've given 50% back, and then it would increase
24 substantially per square metre kilometre once you have
25 the mining licence. Because the mining licence is now

18:23

1 the smallest piece that was part of this original
2 exploration permit, but it's the most valuable. So the
3 government will go from a few thousand -- I don't know
4 what it is, I can't recall exactly the number --
5 probably up to \$0.5 million to \$1 million, and that's
6 very common.

7 Now, exploration permits, on the other hand, can
8 also be -- if I could use the word -- traded. So if I'm
9 a junior exploration company and I have a certain
10 licence and I like to get an investor in, then I say,
11 "Okay, my licence is in this area and that area"; the
12 investor will send people with knowledge, independent
13 geologists, engineers, et cetera, and they start looking
14 at where the exploration permit is related to the
15 geology, related to nearby exploration permits that
16 belong to companies, et cetera. That in themselves can
17 increase the value of the actual permit.

18 So this has got to do, in the terminology, it's
19 like -- it's not like a property evaluation; it's the
20 mining rights and exploration permits valuation. So in
21 the beginning they're worth very little, but as you add
22 more money and you do more drilling, then hopefully the
23 value will increase.

24 But there's no guarantee. You could also end up
25 with a situation that you spend \$2/3/4 million -- and

18:25

1 for BSGR I've actually done a project like that in
2 Tanzania. It was a gold project. We spent, if I
3 recollect, \$5 million, just over \$5 million. In the end
4 we found nothing. That money was lost, gone, and we
5 gave the permits back to the government.

6 THE PRESIDENT: There's many stories of failed explorations
7 in the extractive industries, right.

8 But if you make a discovery, then you're in
9 a position, if you request a mining licence, you would
10 usually get it, no? It would not be awarded to your
11 competitors?

12 A. You would have to complete the feasibility study.

13 THE PRESIDENT: Yes.

14 A. So in the feasibility study, so we -- again, in my -- in
15 the terminology that I use, that my colleagues use, we
16 ask normally four questions of any geological deposit,
17 any project, potential mining project.

18 (1), the first question: is it in the ground?
19 Therefore we need to do the drilling and find what's in
20 the ground.

21 (2) -- and this is getting more in the feasibility
22 study now -- can it be mined? If so, how? What method?
23 What do we need to do and at what cost?

24 (3) Can it be processed? So now you have the
25 material out of the ground, you have to put it through

18:26

1 a metallurgical plant of some sort, and not all plants
2 can do it, not all material lends itself to processing.

3 So this -- and whilst you do the drilling and the
4 exploration, you start taking bulk samples, you do all
5 kind of other tests -- geotechnical, rock engineering
6 tests, you do metallurgical tests -- to all get
7 an answer to the final question: can it be sold? That's
8 the fourth one.

9 So you have to drill, you have to know that you have
10 it; then you know you need to mine, that you can mine
11 it; you know you need to can -- you need to know that
12 you can process it; and then in the end you have to have
13 a market for the end product.

14 Now, the end product could be a metallurgical
15 product -- sorry, I'm trying to think of the word now.
16 It's been a long day. It could be like nickel metal or
17 steel --

18 THE PRESIDENT: No, it of course depends on the resource.

19 A. -- or the beneficiated product. Or it could be, like in
20 our case, which was direct shipping ore, which did not
21 require any beneficiation; we could sell it, after
22 screening and crushing, into a lump and a fines
23 project -- product.

24 THE PRESIDENT: Thank you.

25 I think you've already been asked the question about

18:27

1 Mr Thiam where you tell us that you never paid anything
2 to him.

3 If you look at the end of your first witness
4 statement, paragraph 118, you insist that:

5 "From the very first moment when I got involved with
6 BSGR, I made sure that we did everything according to
7 internationally accepted guidelines ..."

8 You cite then certain guidelines:

9 "... and that we adhered to existing and applicable
10 local ... and international laws. I insisted in
11 following the guidelines, not only for moral reasons but
12 also because it was simply in our own interests."

13 That reads very well.

14 Then I try to put this together with the answers you
15 have in particular given to Professor Mayer before in
16 respect of R-182, where you had this deal where you gave
17 a share of the future company to some individuals or
18 company with certain milestone bonuses, and you signed
19 this, but you don't really enquire about what it is.

20 Is that following the highest principles? And what
21 were these principles for you? What was the level of
22 diligence that you thought you had to apply in this
23 environment?

24 A. The -- my background before I joined BSGR was that of
25 an independent consultant. My clients were blue-chip

18:29

1 companies, financial institutions. I was hired to -- as
2 an independent consultant by financial institutions to
3 actually review work done by other consultants before
4 the bank was going to put money in. So it was during my
5 time at Snowden that I learned about the guidelines,
6 about these principles, and that I try and I think
7 I have applied to the work that I did for BSGR.

8 Secondly, in terms of the shareholding and the 15%
9 and the milestones, the milestones themselves came from
10 Roy Oron. In terms of the shareholding, I have the
11 experience from my time at Snowden Mining Industry
12 Consultants that the various projects that we looked
13 at -- and subsequent I've looked at many other projects
14 in Africa, and for the record, just to give you an idea,
15 I have worked and stayed in 27 countries on the African
16 continent, from east to west and north to south. So
17 I understand the lay of the land, the law, the people,
18 how things work.

19 Now, very often have I been approached -- as
20 an independent consultant, but also as the person
21 running the mining and metals division for BSG
22 Resources -- by people who come with deposits. Now,
23 they have -- and we went to places like Zimbabwe,
24 Tanzania, to Kenya, to check all these things. Every
25 single time we offered the party, we tried to get it as

18:30

1 small as possible, because the less shareholding the
2 party has, the better for us. That's pure business.

3 On the other hand, we also wanted to be fair. So we
4 knew that we could not get away with at least 10%. Most
5 people ended up with non-disclosure agreements or --
6 I've written many memoranda of intent, you know, with
7 Tanzania and Zimbabwe and some of these people that had
8 these licences. In the end a lot of them did not work
9 because simply it wasn't there. But the intention was
10 there that should we find, after we had spent the money,
11 that they will get 15%. Some even got 20%. I remember
12 even contracts intent, memorandum or letter of intent,
13 as you call it, of 25% that we were giving to those that
14 came with the assets. We would still end up with 75%.

15 And then later on, if --

16 THE PRESIDENT: Pentler came with no assets.

17 A. No, Pentler brought us the opportunity, and sometimes it
18 works like that too. The opportunity can get rewarded.
19 It is common in the business to do that.

20 THE PRESIDENT: You said the milestones came from Roy Oron?

21 A. Yes, in terms of that he wanted to have a milestone
22 agreement with them. I don't know the exact reason;
23 I can only -- maybe I should not use that word. I was
24 going to say "guess".

25 THE PRESIDENT: No, you shouldn't guess while you are giving

18:32

1 evidence.

2 A. I'm sorry.

3 THE PRESIDENT: If you don't know, you don't know.

4 A. But it is plausible that he, because of the risk with
5 such a large project, that he didn't want -- he knew at
6 some point, I think, that he was going to have to pay
7 money to Pentler, to the guys who brought the
8 opportunity; at some point. Because in the end they
9 started arguing -- I know this because I heard this.
10 They said, "Well, we brought you this; without us, you
11 guys are nothing, you would not have had this. So we
12 need to be rewarded". So that fight was, in a way,
13 fair, from their point of view. I cannot fault that.

14 So I was involved only with the technical side of
15 these milestones, to understand --

16 THE PRESIDENT: You explained this this morning.

17 A. To say: this is what follows then, what follows then.

18 It's a logical sequence of events for each project. And
19 this is my expertise.

20 THE PRESIDENT: So these are not milestones where you reward
21 someone for having contributed to the achievement of the
22 milestone; these are milestones that are simply
23 instalments in a payment of a debt that you already have
24 from the start. Is that right?

25 A. I think, yes. And I think why we had these

18:33

1 milestones -- again, it is my personal opinion; I cannot
2 prove this -- but they asked for money upfront, they
3 probably asked for a lot of money, and that Mr Oron and
4 Mr Noy started arguing about, "Yes, but you don't know
5 what that money is going to be, we don't know what the
6 project is going to be. So I don't want to give you
7 money right now; instead we work with milestones and you
8 have a shareholding".

9 Now, initially it was free carry. Then there was
10 an argument at a later stage that the free carry that
11 they -- and this is the whole buyback procedure which
12 counsel on the left here has asked me about these
13 numbers. The values, I don't know how they came about;
14 it was not my decision, I was not involved in these
15 discussions.

16 But I know from discussions that took place at the
17 time that they started asking Pentler to contribute now,
18 because BSGR was spending a lot of money --

19 THE PRESIDENT: I think we've heard this already, and we
20 understand that.

21 A. Sorry.

22 THE PRESIDENT: I'm finished, for now at least.

[PROTECTED]

[REDACTED]

[REDACTED]

[PROTECTED]

2 PROFESSOR VAN DEN BERG: May I come back to the milestones,
3 Mr Struik. May I ask the question differently.

4 Would you, BSGR, have achieved these milestones
5 without Pentler?

6 A. Yes, because it would be bringing into production the
7 actual project. And Pentler had no idea -- except for
8 providing us with the opportunity to get into Guinea,
9 they had no idea how to achieve the milestones
10 themselves.

11 PROFESSOR VAN DEN BERG: So what exactly is then the
12 opportunity? Could you define that?

13 A. The opportunity is that we were informed about the
14 potential for gold -- not gold, sorry -- diamonds,
15 bauxite, iron ore in the Simandou range; not what
16 Rio Tinto had, but the Simandou North and South areas.

17 We also were informed, by the way, by Pentler --
18 I think the word was mentioned once by counsel here --
19 for Akariya, which is another iron ore deposit on the
20 border with Sierra Leone, which they also brought to our
21 attention.

22 So these opportunities existed. We -- BSGR at the
23 time was not in West Africa, except for Koidu, the
24 diamond operation in Sierra Leone. Other than that, we
25 had no other footprint anywhere else. They came with

18:37

1 this, they said, "Here's this. Here is potentially
2 that". And Roy Oron decided to go and have a look.

3 Now, they -- Oron was then introduced to certain
4 people with Cilins, because he met Cilins before I did,
5 in November. He was already I think in contact with
6 Cilins in -- when did he go? -- July 2005, I think it
7 was. So this is what they did.

8 PROFESSOR VAN DEN BERG: So it's basically telling
9 Mr Oron -- the three gentlemen you are talking about:
10 Mr Cilins, Mr Noy, Mr Lev Ran?

11 A. Yes.

12 PROFESSOR VAN DEN BERG: You are talking about them.
13 Because Pentler was founded around the same time that
14 you got the protocole d'accord, the first one.

15 A. Yes.

16 PROFESSOR VAN DEN BERG: So basically you are talking about
17 these three gentlemen. Is then the opportunity that
18 they told Mr Oron, "Look, there is in Guinea, in the
19 Simandou and elsewhere, viable deposits"? Is that what
20 they told?

21 A. That's basically what they said, I think. I wasn't
22 there.

23 PROFESSOR VAN DEN BERG: Because you had to do the work,
24 BSGR?

25 A. Yes, I had to do the work.

18:39

1 PROFESSOR VAN DEN BERG: The prospecting and everything
2 else?

3 A. Yes.

4 PROFESSOR VAN DEN BERG: But only the general information
5 that there may be deposits, is that sufficient to pay
6 them \$19.5 million plus a shareholding of 17.65%?

7 A. Professor van den Berg, I understand your question.
8 I think it's a fair question. And I think that it was
9 a discussion in the end between Noy and Oron, and they
10 decided this is what they wanted to do.

11 PROFESSOR VAN DEN BERG: But did they do more than simply
12 being a trip advisor -- if I may call it, somewhat
13 colloquially -- for Guinea?

14 A. For Guinea itself, or ...?

15 PROFESSOR VAN DEN BERG: No, for the bauxite, iron and
16 diamond deposits business in Guinea.

17 A. No, they actually -- they brought one other opportunity;
18 I also referred to this in my witness statement. That
19 was in Liberia, which was an official tender. They set
20 up another business, linked to FMA again, in Liberia.
21 They had some contacts there. The contacts told them,
22 "There's this tender coming up", and we then went to
23 Liberia. This was Mr Lev Ran and myself, actually.
24 This is in 2008, if I remember correctly.

[PROTECTED]

18:40

[REDACTED]

7 PROFESSOR VAN DEN BERG: I see. Okay, thank you.

8 THE PRESIDENT: No follow-up questions from the parties?

9 Then this completes your examination, Mr Struik.

10 Thank you very much for your explanations. We

11 appreciate it was a long day of questions.

12 MR STRUIK: Thank you very much.

13 THE PRESIDENT: But it was very helpful to us.

14 MR STRUIK: Thank you.

15 THE PRESIDENT: So you are now released.

16 It is good that we didn't start with Mr Ferreira,

17 looking at the time. And we thank the court reporters

18 and the interpreters for their patience.

19 Is there anything we need to say now before we close

20 for the day and resume tomorrow morning at 9.30? There

21 seems to be something on Mr Wolfson's side?

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

18:43

[PROTECTED]

[REDACTED]

18:44

[PROTECTED]

[REDACTED]

25 MR WOLFSON: No, thank you.

18:46

1 THE PRESIDENT: (Interpreted) The Respondent, nothing on
2 your side?

3 MR OSTROVE: No, thank you very much, Madam President.

4 THE PRESIDENT: Very well then. Thank you very much, all of
5 you. Have a very pleasant evening, and see you tomorrow
6 morning.

7 Tomorrow morning we start at 9.30, and I presume
8 that Mr Ferreira will be available?

9 MR WOLFSON: Yes.

10 THE PRESIDENT: (In English) Thank you.

11 (6.47 pm)

12 (The hearing adjourned until 9.30 am the following day)

13

14

15

16

17

18

19

20

21

22

23

24

25

