

CHAIRPERSON: Welcome Mr J van Rensburg. I take the opportunity to formally welcome you to this investigative inquiry and let me quickly indicate to you who the members of the panel are. I am Ntsebeza, Dumisa. I am in the Human Rights Violations Committee and Commissioner, and I am in the investigative unit. To my right is Mr Wilson Magadhla who is Head of Special Investigations. To our right we have Ms Terreblanche who I consider you have been talking to, in preparation for your appearance today. She has been doing the investigation into both matters and in that she is being assisted by Ms Deborah Patta who is sitting next to her and who for purposes of this appearance, and her appearance at the inquiries has been contracted as a consultant by the Commission. We believe that you have been asked to testify in relation to certain matters and I do not know whether, before I call you to take the oath, you have any submissions to make in that regard. If you could press the red button whenever you want to....

MR VAN JANSE VAN RENSBURG: This one?

CHAIRPERSON: Yes.

MR JANSE VAN RENSBURG: I'm sorry Mr Chairman. No, I have nothing to add, and I thank you.

CHAIRPERSON: In that event then before you testify, can I swear you in?

JACOBUS NICOLAAS JANSE VAN RENSBURG: (sworn, states)

CHAIRPERSON: Please be seated Mr Van Rensburg. We have mentioned to you that we have got facilities for simultaneous translation and it is always our wish that people who testify should testify in the language they are best comfortable with. If therefore for that reason you would like to testify in Afrikaans, for whatever reason, then you can make use of those facilities. So that also those ladies who do the translation should feel that they have come to work to do just that. And not...

MR JANSE VAN RENSBURG: Thanks Mr Chairman. I'll go ahead in English. If I have any problem, I'll switch over to any other language that may be of assistance. Thanks.

CHAIRPERSON: Don't speak Sotho. I don't understand. Thank you then. Ms Terreblanche?

MS TERREBLANCHE: ~~Thank you for coming~~ Mr Van Rensburg.

Mr Van Rensburg, you are aware that we are conducting here two inquiries, the one into the 1987 Helderberg disaster and the other in the 1986 Machel crash.

MR JANSE VAN RENSBURG: That's correct.

MS TERREBLANCHE: We understand that you were the attorney that assisted Judge Margo in both of those inquiries.

MR JANSE VAN RENSBURG: That is correct Mr Chairman.

MS TERREBLANCHE: Now I don't know if you - ja, let's deal with the Helderberg first. Can you just perhaps tell us how far

back your relationship with Judge Margo goes and why you were chosen to be on that Inquiry?

MR JANSE VAN RENSBURG: Mr Chairman, I would say that it was a coincidence that I got involved in this entire matter of both these investigations. Our practice, Rooth & Wessels, has been established more than 110 years ago, in fact in 1889. And I personally am a latecomer at Rooth & Wessels. I started my professional career at this firm in January 1968.

Now Judge Margo had a long-standing relation with Rooth & Wessels. During his days when he acted as an advocate he did many appearances for and on behalf of Rooth & Wessels before the Medical Council, the South African Reserve Bank, Barclays Bank and other corporate clients of the firm.

Now when these unfortunate events occurred, starting with Samora Machel in '86, Judge Margo was appointed chairman of the Board of Inquiry and in view of the international involvement of more than one country he has also put together an international board. And the members of that board were nominated by the respective governments of their countries. And he then didn't want to approach the South African State attorney to act on behalf of the Board, because his attitude was that the credibility of the Board of Inquiry could have been questioned if a State Department, being the Justice Department, would have been involved in a matter of that sort, where other State departments

were also involved, for instance Foreign Affairs and Defence, et cetera.

And due to his relation with our firm he then approached us and he stated categorically that it's his opinion that our firm has never built up a label over the years, since its inception, from any political angle and that he would regard our firm as a firm with credibility and impartiality in a matter of this nature. And that is why he approached us.

My personal involvement was purely, I was the horse for the course because I am a commercial practitioner and I've practised aviation law and I also have experience in aviation. And that is why I got involved. And that was my first meeting with the Honourable Mr Justice CS Margo.

MS TERREBLANCHE: ~~Just another clarification:~~ I think you were or you still are a member of a Board on Civil Aviation Directorate.

MR JANSE VAN RENSBURG: That is correct Mr Chairman. The Honourable Minister of Transport, Mac Maharaj appointed me on the domestic air services licensing board where I still serve. We have monthly meetings at DCA and that is my involvement. I am just a council member there.

MS TERREBLANCHE: So you like flying.

MR JANSE VAN RENSBURG: Well, it's part of my interest, thanks.

MS TERREBLANCHE: I think perhaps we should really start with the Margo inquiry because chronologically that occurred first. I don't know if you (indistinct). The fact that you got...  
[intervention]

CHAIRPERSON: I don't know for purposes again I had indicated that we should be sure and be certain whether the people who are running the record have in fact made arrangements to run the record in such a way that we do not run these two inquiries into one. I can understand and settle for - I can understand the question of logistical problems, but I need to be satisfied that we are not going to run into transcription problems, because we are running two inquiries in one. Because if that were so we have taken the bulk of the Helderberg inquiry evidence today, except only for the evidence that was taken from the first witness. And I would therefore want to be sure that if we are taking Mr Van Rensburg's evidence now, immediately after the last witness it will not cause us problems. I have had your assurance, but it appeared immediately thereafter that the engineer was not as confident as you were that that arrangement was enduring its stand.

MS TERREBLANCHE: Very well. This is a difficult one to separate, and I think that the engineer who is making two copies, would most likely be able to use the intro part of the one and then

start when we do the Helderberg part, do it on the other part.

Thank you.

CHAIRPERSON: I'm not technical. I just wanted to be sure that we were not running into problems. Ms Deborah Patta?

MS PATTA: Okay, if we could start with the Samora Machel inquiry Mr Van Rensburg. Could you just briefly tell us what your role was in that inquiry?

MR JANSE VAN RENSBURG: Mr Chairman, my role was purely to represent the Board of Inquiry and to gather all the evidence which was made available to the Board by the relevant investigating teams.

You know, an investigation of this nature takes place in terms of the provisions of Annexe 13 of the Chicago Convention.

And the factual report on the accident is usually put together in a matter like this by the aviation authority which was the Directorate of Civil Aviation. And from there all the other evidence flew together and it was my duty with the assistance of senior counsel Cedric Puckrin who is also an aviator to submit all available evidence to the Board of Inquiry under chairmanship of Justice Margo.

MS PATTA: You say all available evidence. Why was the evidence of the Russian Commission of Inquiry not considered by the Margo Inquiry? I know it was included in the final report as

a separate representation, but you did not look at the possibility of a decoy beacon. It was just dismissed in a three page report.

MR JANSE VAN RENSBURG: No, with respect Mr Chairman, it was most definitely not just dismissed. I mean there was a very serious allegation of the South African authorities - whether it's the defence force or whatever part of the RSA -they put up a decoy beacon to lure the aircraft off its course. And this matter was investigated very thoroughly. We had expert evidence from the United Kingdom on the whole question of decoy beacons. And if you take what has happened around that allegation, I mean the record will most definitely speak for itself. I mean it wasn't just a question of two or three pages and the whole decoy beacon issue was dismissed. That I can assure you.

MS PATTA: On what basis did you dismiss the Russians' finding that a beacon was used to lure the plane off course?

MR JANSE VAN RENSBURG: Because we had absolutely no evidence of whatsoever nature of the existence of a decoy beacon.

It was merely an allegation that something like that has happened. And if we investigate the facts around the matter, the cause of the accident with all the available evidence was most definitely based on a confusion of the 045 radials of the airports of Matsapa and Maputo.

Because this aircraft, when it intercepted the 045 radial VOR Matsapa in Swaziland, it executed the turn to the right. If

that turn would not have been executed, but they would have flown on for another eight minutes, the aircraft would have intercepted the 045 radial Maputo. The frequencies of these two VOR transmitters are very close to each other.

If you would look at the report you will see that the Russians' submissions or appendices to the report, they've also given us the flight path with the frequencies of the two VOR transmitters. And if you take the point of impact on land and you draw a line more to the east, you get to the threshold of Maputo.

So we also found from the investigating teams that the one VOR transmitter was on the frequency of Matsapa, it's a question of 112,3 mH if my memory keeps with me, and in the other case of Maputo it was 112,7 mH. So these frequencies are very close to each other and there was most definitely some confusion in the cockpit of that aircraft when the 045 radial Matsapa was intercepted.

MS PATTA: Okay. The Russians did not find that the Matsapa beacon was intercepted at all. I mean a VOR beacon is a very, very precise instrument.

MR JANSE VAN RENSBURG: Yes.

MS PATTA: You lock onto it and you fly down on the course of the VOR beacon. There was the Matsapa beacon, there was the line that they flew down on which they believed was the Maputo beacon and then there was the Maputo beacon, the real one.



That's what the Russian finding was. It actually missed the Matsapa beacon. They found that it did not lock. What measures did you take to - as you say there was no proof, no evidence of the decoy beacon. What did you actually do to try and ascertain if there was a beacon or not? How did you go about that investigation?

MR JANSE VAN RENSBURG: Well, you know I can just tell you Mr Chairman that in view of the sensitivity of this whole matter we have really gone out of our way to get hold of whatever evidence that could have been available to this Board of Inquiry. I mean if I can just refer you to the report here, we've said here

"Representatives of the State of registry and the State of manufacture..."



- that's now Mozambique and the USSR -

"...were invited to join the investigation team of the State of occurrence, and these three parties jointly undertook the field investigation. This tripartite investigation team jointly produced an agreed aircraft accident factual report which was signed on behalf of all three parties on the 16th of January 1987."

Then we've gone further.

"The State of occurrence..."

- which is the Republic of South Africa -

"...and also the Board invited the State of registry and the State of manufacture and all other interested parties to participate in the inquiry by attending the proceedings directly or through representatives with the right to cross-examine witnesses, to call their own witnesses and procure any other evidence and to make representations to the Board. In addition due notice of the date of the proceedings of the Board was given in writing to the representatives of the USSR and of Mozambique."

More than that we couldn't have done, because out of the factual report and all the documentary evidence, appendices and statements submitted to the Board as attachments to the factual report, had no reference or bearing whatsoever on any decoy beacon. That is why we've followed this route, to invite whatever information that they could have submitted to us.

MS PATTA: But they obviously didn't participate in the final inquiry because of political reasons.

MR JANSE VAN RENSBURG: Ja.

MS PATTA: But what I'm more asking is what did you do to try and find out if there was or was not a decoy beacon. Did you go to the South African Defence Force and look at EMLC for example which was the technical laboratory where this kind of equipment would have been built? Did you go and see if anything

was built? Did you actually probe the South African Defence Force? Did you do anything of that nature?

MR JANSE VAN RENSBURG: I personally have not done so, but I know that a lot of negotiation took place between the civil aviation authorities and the Defence Force. And there was a Col Des Lynch involved in this, who has been consulted on numerous occasions. And each and every time the question of a decoy beacon came up, discussions took place between the investigating teams and this air force colonel. But nothing was ever submitted to the Board or to me for submission to the Board, and my involvement was purely to try and invite whatever. I was not the investigator of the accident; I was just the co-ordinator of the available evidence which was submitted to the Board for hearing through senior counsel.

MS PATTA: And just one last question: were you satisfied with the investigations into the allegations of the presence of the South African in Mbuzini on the night of the crash? I think that was headed up by Anton Uys. He gave a statement that there was no military presence. And the SADF denied that it had personnel in the area.

MR JANSE VAN RENSBURG: Mr Chairman, I must say to you that I have no personal knowledge of the presence of any member of the defence force at the scene of the accident or the night before, or at any stage there. We had an inspection in loco after

the accident and we went to that area, with particular reference to the tent which was next to the international boundary between South Africa and Mozambique where they have alleged that the decoy beacon was housed or was accommodated. And the expert witnesses which we had refuted that possibility on site. And the whole thing around the decoy beacon was that we put it up - if I say we, meaning South Africa - has put up a decoy beacon just where that tent along the international border was. And when that was wiped out by the experts on the area of mobile or decoy beacons, it was the end of that matter. And then we've added the supplement to the report in the final instance.

MS PATTA: Not the Russian experts though. The South African experts.

MR JANSE VAN RENSBURG: Mr Chairman, I must just say to you here in all fairness, we have gone very far to gain the support and assistance and participation of the Russian delegation. But I can assure you, they did not want to co-operate with us. They've done an investigation to the best of my knowledge all by themselves. They were invited by me personally I would say three, four times, to submit whatever evidence they have so that we can put it before the Board of Inquiry. But they refused point blank. We even went to that place close to the border where we've met with them personally. I was still given a souvenir of a rouble by one of the Russian delegates. The engineer was there

personally of the Topolov aircraft. And we've asked them again at that particular spot, why don't they want to come forward and submit whatever they have under oath to the Board of Inquiry? But it was not done. What we have is all the appendices to the report which they've given us, and they were referred to as protocols, signed by the representatives of the various States. But they did not want to testify before this Commission of Inquiry or Board of Inquiry.

MS PATTA: Okay, and just one final question. South Africa - the investigators, DCA had to threaten to sue Police Forensics Department to get the black box back. The black box was taken from the scene, handed over to the police for safekeeping. It ended up in Lothar Neethling's forensic laboratory for six weeks and eventually you had ~~to threaten to sue~~ it, because you were about to leave for Russia without the black box. Why were they allowed to keep the black box for six weeks, and were any questions raised about that?

MR JANSE VAN RENSBURG: No, that was entirely - the person that will be in a much better position than me to explain that particular situation is Mr René van Zyl of the Directorate for Civil Aviation because he was the leader of the technical team and he had all the difficulty to get the co-operation on the Russian side as well as the other people involved in the investigation. So I'm not in a position to make any comment on exactly what

happened at General Lothar Neethling's laboratory or what the case was.

MS PATTA: But General Lothar Neethling wasn't brought before the Commission to explain why he had to keep the black box for six weeks when it was in contravention of the rules, when all three parties had to examine the box together.

MR JANSE VAN RENSBURG: Well Mr Chairman, the most important part of the black box was to have the information decoded and agreed upon by the various States. And I know that the cockpit voice recorder and the DFDR, I mean those recordings and decodings were agreed to in terms of a protocol between South Africa, the USSR and Mozambique. And that is the most important part. We couldn't even have done it in South Africa; it had to go to Moscow. And I still recall that René van Zyl was more than pleased when they eventually succeeded to take the black box as you refer to it, to Russia for the decoding, translation and recording to get it onto paper so that it has a meaning for submission to the Board of Inquiry.

MS PATTA: But when they received the black box it was cleaned, the wax had been removed, the seals and so on. It had been tampered with.

MR JANSE VAN RENSBURG: No, that I can't comment on.

MS PATTA: That's from René van Zyl and Des Lynch themselves.

MR JANSE VAN RENSBURG: Most definitely they'll be in a position to tell you what the situation was there. I can't.

MS PATTA: In addition I would just like to ask, Mr René van Zyl told me a month or so ago that he had a lot of problems with the then Minister of Foreign Affairs, Pik Botha, interfering with the investigation. Did your inquiry ever turn to that issue in addition to what happened to the black box, what happened in the early parts of the investigation? Why would certain people interfere and so forth?

MR JANSE VAN RENSBURG: No, no, I can just recall one incident involving the Minister of Foreign Affairs, Pik Botha. The day when we went to the scene of the accident by helicopter from Komatipoort he - the Minister himself has thrown out three of the investigating teams out of the chopper. And it was one big argument, because the investigator in charge has the full control over the wreckage and the scene of the accident and whatever. And I have personally communicated to the Minister's department that any interference - this was done by telephone - on the scene of the accident will be a violation of the provisions of Annexe 13 read with section 12 of the Aviation Act.

MS PATTA: But were you ever told that there were already evidence removed, evidence being all things that were on people, that accompanied people, photographs?

MR JANSE VAN RENSBURG: No. I just heard rumours to that effect, that shortly after the accident that people were on site and that they've removed certain items. But I have no personal knowledge of whatever nature to that extent.

MS PATTA: And the inquiry wasn't interested to investigate this aspect?

MR JANSE VAN RENSBURG: Mr Chairman, we must appreciate that the day of the accident, if I - I've made a note of the date. I mean the Samora Machel accident occurred on the 19th of October 1986. Now the report was dated the 2nd of July 1987. That's nine months later. Now we must see the whole situation in perspective. I mean where it started, there was a lot of time taken up by efforts to get the co-operation of all the States, the State of the manufacturer, the State of registry and the Republic of South Africa. Now if you take over that period, the Board of Inquiry only got together when all the information gathered during that period were together. And you know, what happened in between and all these ins and outs between the individuals, I mean it was a physical impossibility to get all that stuff before the Board of Inquiry, because most of the incidents we were not even aware of.

MS TERREBLANCHE: You are not aware of any intimidation of potential witnesses to such irregularities?



MR JANSE VAN RENSBURG: No Mr Chairman, most definitely not to my knowledge. If I would have been aware of any intimidation of any person with the intention to interfere with the Board of Inquiry's examination or investigation of the entire matter, I would most definitely as an officer of the high court I would have taken action. But I haven't been aware of that.

MS TERREBLANCHE: Does the panel want to ask questions in terms of the matter?

CHAIRPERSON: Mr Magadhla?

MR MAGADHLA: Mr Van Rensburg, you said there were members who assisted in the investigation. Now would you perhaps be able to remember some of the names of those members?

MR JANSE VAN RENSBURG: Oh yes Mr Chairman, most definitely. I mean from - you know, if you look at Annexe 13 the factual report is the first document to be put together. And that was put together by Mr René van Zyl and Capt Roy Downes, Mr De Klerk and Mr Jordaan. They were the officials in the Directorate for Civil Aviation involved in the investigation of aircraft accidents. I mean those are the main names that I can now remember, because I worked very close with them.

But they also had many other individuals that they dealt with in various departments. And there I will not be accurate if I must give you any name at this stage.

MR MAGADHLA: Are they army people themselves? Are they soldiers or civilians?

MR JANSE VAN RENSBURG: No, I know for a fact as I've said before that the South African Air Force was most definitely involved in giving information and submitting - or giving assistance with the analysis of certain documents submitted to them by DCA. But they will be in a better position to tell you exactly what the role of the South African Air Force was at the time and who the individuals were that they've consulted in this whole issue.

MR MAGADHLA: Now according to your investigations, what was the time when the - the estimated time of the accident itself, of the crash?

MR JANSE VAN RENSBURG: If I remember correctly it must have been round about seven o'clock at night Mr Chairman.

MR MAGADHLA: Seven o'clock in the evening?

MR JANSE VAN RENSBURG: Ja.

MR MAGADHLA: Now about what time did South African personnel, army people or whoever arrive at the scene first? About what time was that?

MR JANSE VAN RENSBURG: No Mr Chairman, that I can't recall. I mean you know, this incident was about 11 years, 12 years ago. I just know that the investigating team of DCA went

first thing in the morning of the next day, they were out...  
[intervention]

MR MAGADHLA: Could it have been two o'clock in the morning?

MR JANSE VAN RENSBURG: No, I will not be accurate if I must say two o'clock there. I mean I know that the next day they were there, but who were on the scene of the accident between the occurrence of the accident and when the investigating team of DCA arrived, that I can't say.

MR MAGADHLA: Are you aware of the fact that the Mozambicans only got to know about this accident nine hours after it had happened?

MR JANSE VAN RENSBURG: I've heard that Mr Chairman, but I can't confirm it as accurate. I mean I've just heard that they haven't been informed. There were more concentration at the scene of the accident to help certain of the people. I know there was some medical assistance to see what they could do for the people still alive on site, but exactly when the Mozambican authorities were informed I can't say with accuracy.

MR MAGADHLA: Now would that have been an anomaly or something that would have been expected, that if an accident took place around seven o'clock the previous evening and the South African officials got there or investigators got there the following

morning, but that the Mozambicans would be informed nine hours later when in fact the distance is very minimal as one would say?

MR JANSE VAN RENSBURG: No, I follow the point you are making Mr Chairman, but I really think that it will be better to enquire from the DCA exactly when they've informed the Mozambican authorities. Because I will be speculating if I must say to you what - it's their duty as the investigating team putting together the factual report of the accident to - you know, if you read Annexe 13, all these things must be done as soon as possible.

The State of registry, the State of manufacture and all States involved with an accident like this must be informed without delay.

Now to what extent this was delayed or not delayed, I can't say. But I would suggest - they will have it on record for sure when they've informed the Mozambican authorities about the accident.

MR MAGADHLA: Well, in your opening address it was as if there was that much co-operation, that much willingness, that much vigour to assist in the whole thing by yourselves. But I mean if there was something that would have caused a concern to many people, for instance this time factor, I mean it wouldn't be a thing that would pass unnoticed, unattended to.

MR JANSE VAN RENSBURG: No, no, you... [intervention]

MR MAGADHLA: I mean the way you seem to be putting it now is as if it wasn't a matter of importance itself.

MR JANSE VAN RENSBURG: No Mr Chairman, that is most definitely not what I would like to convey to you. But we must appreciate that at the time of the accident, that day when this unfortunate and tragic event occurred, if we take that date being the 28th of November of 1987 the Board of Inquiry only came into being long after that. I mean all the events that took place on site at the night of the accident, the following day, those events were communicated to us ex post facto, much later, when the Board was appointed and when the Board decided to get separate legal assistance to represent it. I mean a long time lapsed before we came into the picture.

MR MAGADHLA: But then, even if the Board itself was incepted a long time thereafter, the first thing that the Board would have done when they got there, would have been to revisit that situation as to what time did it happen; what time did people get there, the first people, what time was it reported to the Mozambicans. It would have been the duty of the investigators as well, even if they came into the picture some time later.

MR JANSE VAN RENSBURG: Mr Chairman, that is correct. But if you look at the mandate or the terms of reference of a Board of Inquiry as set out in section 12 of the Aviation Act, I mean then it is the concentration and the emphasis is most

definitely on finding the cause of the accident and responsibility for the accident if possible. And once something like this has happened, then the notification of people ex post facto the incident will not make any contribution to finding the cause of the accident. And that is why I think - I'm now talking on behalf of the Board of Inquiry - the evidence was assessed, was analysed with a view to find what was the cause of this accident. And all these communications were in between and were not of that importance vis a vis the cause of the accident. If I can put it to you like that.

MR MAGADHLA: But that would have gone with the question which would have been saying, even with a view to establishing the cause of this accident, what time did this plane leave its departure point and what time did the accident happen.

MR JANSE VAN RENSBURG: But those times and events are set, concern to many people, for instance this time factor, I mean it wouldn't be a thing that would pass unnoticed, unattended to.

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MR MAGADHLA: But that would have gone with the question which would have been saying, even with a view to establishing the cause of this accident, what time did this plane leave its departure point and what time did the accident happen.

MR JANSE VAN RENSBURG: But those times and events are set out in the finest detail in the factual report; exactly when they took off, the route they were flying and you know, if you look at the cockpit voice recorder, I mean timewise there it's from minute to minute in the last stages of the flight and before that, everything is recorded in the factual report.

MR MAGADHLA: Yes. Now there was also the political factor in the whole thing, which would have been that the relations between these countries was not that cordial. So if a foreign plane of a country which harboured ANC for instance people happened to crash-land on South African soil, I cannot see how it would have not been of utmost importance, the question of who arrived at the scene first and what did they find, and what time was it when they arrived there. Because you don't know whether this plane was on a mission on invasion, whether it was - what was happening with this plane; why did it crash-land there. So



then the times of people arriving there would have been a factor. Because you would also want to find out what is it that they found when they got there; the first thing they found when they got there. Maybe they would have found material which would have been important for the South Africans themselves.

For instance there is talk that indeed they did find somebody's notebook in which there were things like an adventure into Malawi for instance to invade or attack Malawi or things like that. So I cannot see the exclusion of those points on the basis of them having been not that much important.

The thing that would have been important more than anything else, being what would have caused the accident. Anything else would have caused the accident, including the fact of that plane having been on a mission that was detrimental or that would have had adverse results to South Africa itself.

MR JANSE VAN RENSBURG: Mr Chairman, I must tell you that you know, the moment it was determined by the Board of Inquiry that there was a misreading of navigational equipment on that aircraft, all the allegations from a political point of view disappeared out of the minds of the board members, because they are all people with experience. And when the facts of the flight and the instruments were made clear, the rumours about the political involvement most definitely did not form an important part of the investigation.

Because according to the report you will see that the South African authorities were not even aware of the fact that the late president of Mozambique was on board that aircraft. And then no flight plan was filed in respect of the flight, so the biggest part of the flight was not over South African territory. It is a real coincidence that that aircraft came down something like 120 metres into South African territory, just where Swaziland and Mozambique and South Africa get together.

So you know, afterwards it raised the suspicion that some political involvement may have been the case there, but that was not the way the board looked at this thing. After the factual position was explained it was clear: it was pilot error; whomever the pilot was, whomever the crew of that aircraft were; it was an error from an aviation point of view and it was not a question of foul play, politically or otherwise.

MR MAGADHLA: What could precisely have been the confusion about according to your investigation?

MR JANSE VAN RENSBURG: Mr Chairman, we found both VOR's on board that aircraft on the frequencies of the VOR transmitters of Maputo and Matsapa respectively. And if you intercept the 45 radial VOR Matsapa, that's a line that's exactly parallel with the 45° radial of Maputo. And those two radials are exactly eight minutes away from each other, based on the speed of that aircraft during the flight.

Now it's very easy, if you are in a cockpit at night and you look at the instruments and you intercept a 05 radial, exactly what it is where your destiny is, to misread the frequencies of 112,7 and 112,3. Because the Russian terminology, if you look at how they make a 7 with a cross stroke through the 7 and a 3 - you can see it in the report as well - then 112,3 and 112,7 are very close.

And it is really my respectful submission and my conviction that there was that pilot error on board that aircraft; that they've confused the VOR of - because if they would have proceeded with the necessary altitude on the flight path they followed, they would have landed on Matsapa's runway. But that was a bit further.

And if you take ~~the point of impact~~ and you do a mathematical calculation to the left, then the parallel line, the 45 radial Maputo is exactly on the threshold of Maputo if you extend that line. So if they would have flown eight minutes longer and then have done exactly the same turn of 37° to the right, they would have done a final approach straight onto the centre line of Maputo.

But that was where the confusion came.

MR MAGADHLA: If then because of that confusion they ended up on a route to Matsapa...

MR JANSE VAN RENSBURG: Ja.

MR MAGADHLA: How did they land up in Mbuzini?

MR JANSE VAN RENSBURG: No, if you look at the Russians' graph here that's attached to the report, then that line, that 37° turn to the right, if you extend that line - make it longer from the point of impact - it goes straight to Matsapa runway.

MS PATTA: Just misses it actually. It's Matsapa and then the next one.

MR JANSE VAN RENSBURG: Ja.

MS PATTA: And just on a point of correction, you said that it was not found definitively that they selected the Matsapa beacon. It was found that it was highly likely that they had done this. There was no proof that they had selected the Matsapa beacon. Just to correct there. It was - according to what it says here, it says

"It makes it highly probable that the turn to the right occurred because of the selection of the Matsapa VOR."

MR JANSE VAN RENSBURG: But... [intervention]

MS PATTA: It was not found definitively. There was no proof that they had selected the Matsapa VOR.

MR JANSE VAN RENSBURG: Mr Chairman, the Board has found that the only VOR signal that could have indicated this, was that of Matsapa. And this seems the more likely, that the Matsapa VOR was selected inadvertently on the no 1 VOR selected. The navigators, OBS, CDI being coupled to the no 1

VOR receiver and that of the no 1 VOR selector was later turned to the Maputo ILS. That was done in the later stage of this flight. While they were on the wrong flight path to Matsapa, they've selected the instrument landing system frequency of Maputo and that's where the thing went wrong.

Or secondly that the Matsapa VOR frequency had been selected temporarily by the co-pilot as a cross-check without informing the rest of the crew and that the VOR selection had then been returned to Maputo, and that it was during that time that the navigator followed the Matsapa beacon.

MR MAGADHLA: Well, let us assume they selected the Matsapa route or they were led by the Matsapa beacon, was there an investigation then in Matsapa to find out whether Matsapa had then also spotted this plane coming towards their airport?

MR JANSE VAN RENSBURG: No, we had from the Russian side Mr Chairman an allegation that at flight level 22 where this aircraft made the turn of 37° to the right, it was impossible to receive the VOR signal of Matsapa. Because you know the VOR transmission has a line of sight. And if it's obstructed by mountains or any fixed subject, then you don't receive that signal.

And they even - the Russian side even submitted graphs to prove to the Board that there was some obstruction from that point, flight level 22 - that's 22 000 feet above sea level - that at that point it was impossible to receive the signal of Matsapa.

And we didn't want to believe that, because all the members of the board and myself, we know that at that height you must have received a VOR if there was any VOR.

And then we've arranged with one of the licensed operators - that affidavit is part of the record - that exactly that route was flown with two - I think two King Air - if I remember correctly, two King Air aircraft. And the pilots in command of the two aircraft, when they executed that turn to the right 37° on the flight path to Matsapa, the flags of the VOR Matsapa came up loud and clear. And it was clear, cleared up to something like I think 6 000 feet above ground level when it disappeared.

So that VOR was most definitely at that point when they've turned to the right was received by that aircraft if they had it on the frequency of Matsapa. And as I've said the likelihood and the probabilities of the two VOR's with the frequencies, that they've confused Maputo and Matsapa, I mean that's most definitely a finding of the Board.

MR MAGADHLA: But my question is was this scenario ever canvassed with Matsapa?

MR JANSE VAN RENSBURG: Not to my knowledge Mr Chairman.

MR MAGADHLA: Isn't that an omission then in that investigation?

MR JANSE VAN RENSBURG: I won't say that, because the VOR transmission from each and every airport - you know, we can fly to Johannesburg International Airport now - the VOR is operational. And as long as the air field is serviced by air controllers, that signal is there. And we just wanted to make dead sure that the statement by the Russian side that it was impossible to receive the VOR signal at that point of the turn to the right, that that doesn't hold any truth.

And once we were satisfied that it's loud and clear at that point - I mean we can fly it again today and you will see that the VOR Matsapa beacon is clearly receivable at that point. And for that reason I think there was no necessity to take it any further.

MS PATTA: How do you explain then that the pilots of the commercial aircraft Boeing 737 200 C9BAA of the LAM airline, the Mozambican plane, reported that their board navigation equipment on their aircraft picked up the VOR beacon on the frequency of Maputo unusually early?

MR JANSE VAN RENSBURG: Unusually?

MS PATTA: Early. It came on unusually early. Their equipment interacted. Did you speak to this pilot? It was in the Russian report.

MR JANSE VAN RENSBURG: No, no, no. I still remember that there was a serious effort to get hold of pilots of aircraft that

flew in that area round about the time of the accident. But that wasn't possible. And... [intervention]

MS PATTA: But it was in the Russian report; you didn't take it seriously?

MR JANSE VAN RENSBURG: No, no. But I mean the Russians were - Mr Chairman, we must please accept that you know, it's ex post facto, today they say after the war anyone can be a general. But I can assure you that we have gone out of our way to get the Russians to come and submit this evidence. And we've done it up to the last minute before the hearings of the Board started. But they have declined to have anything to do with this investigation.

And I can live today, I can tell you as an objective individuals, having no strings attached about these unfortunate events, I can live with my conscience that we have gone out of our way to get the Russian side here and to submit evidence, to cross-examine the witnesses who gave evidence. Because it's words that I've put the notices together, like we've done it in the other event. I mean we've published these notices nationally and internationally. It was addressed to ICAO, it was addressed to the States involved and they just didn't want to respond.

MR MAGADHLA: Maybe to put it another way: could the South African army radar systems picked up or could they not have picked up this Mozambican plane as it had actually entered South African territory at that point?



MR JANSE VAN RENSBURG: I'm pretty sure Mr Chairman that it would have been possible for South Africa to have picked this up. But I mean to identify, you know that aircraft via the radar system, that's not so easy.

If you have to take further action - and it was only for a split-second, to the best of my memory - you know, I haven't got the event in fine detail in my head - but it was only for a very short while that one particular aircraft was in South African air space and then out. So... [intervention]

MR MAGADHLA: Ja. Besides actually identifying it, did they pick it up? Did they pick up that there was an unidentifiable plane in our air space at that moment?

MR JANSE VAN RENSBURG: No, I can't say with any accuracy today that they've done so. And I think the air force authorities will be more suitable to answer that question, because they keep records of those things.

MR MAGADHLA: Was that part according to the investigation omitted then?

MR JANSE VAN RENSBURG: Well, it wasn't put before us Mr Chairman. That I can assure you. I don't recall any verbal or written evidence that was put before us about - we had rumours about what another aircraft pilot may have said, but it wasn't given as evidence.

MR MAGADHLA: We are talking about a plane which supposedly wandered into South African air space which according to other people, it was lured by a beacon to be there. But we are saying then, in view of also what you are saying, that the final finding of the whole thing was that there had not indeed been that kind of beacon from the South African side.

What you seem to accept is that the probabilities and the likelihood and whatever is that it was the Matsapa beacon that misled them.

MR JANSE VAN RENSBURG: Ja.

MR MAGADHLA: But in view of all these other rumours about what would have happened, allegations as well, wouldn't it have been proper as well to check with the South African aviation people; South African radars to find out whether indeed they did spot this plane? Because we want to say if they did, couldn't they have warned it to say hey, what are you doing? Where are you going? Who are you? Or you are headed for a mountain; look out.

MR JANSE VAN RENSBURG: No, that may be so Mr Chairman.

But I think it will be much better to rather get evidence from - you know, we also had it just as rumours that some pilot have said - but that pilot has never come forward, notwithstanding the fact that - I know that DCA tried to get hold of them. They haven't come forward at the time of the investigation.

You know, afterwards to say yes, I flew in that area and there was a strong beacon with a much stronger signal than any of the signals of Maputo or Matsapa, that's easy to say at this stage.

But when the time was there to put this evidence before the - if it was evidence - before the Board of Inquiry, it hasn't happened.

And notwithstanding various efforts to get whatever evidence.

I mean that would have been very important evidence if someone would have come at that stage and said I flew there and I had this signal, and the frequency was this and it's not the frequency of Maputo or Matsapa; it's another frequency; that would have been something serious for us to go into, and to really prompt the issue. But it wasn't before the Board of Inquiry.

MS PATTA: But to pick up on Mr Magadhla's question, could you not have gone to the air traffic control radar at Hoedspruit and the air defence radar at Mariepskop which would have tracked the aircraft for hundreds of miles before it crashed and asked them, did you track it on your radar? Did you ask them?

MR JANSE VAN RENSBURG: Mr Chairman, the position of - my personal position as the attorney who represented the Board of Inquiry is most definitely not to go and do investigations and to - you know, that's the American system. But you have a factual report put together by experts... [intervention]

MS PATTA: And you just accept it.

MR JANSE VAN RENSBURG: And then, if anything out of that factual report doesn't appear to be kosher or it doesn't add up, or it doesn't comply with the theoretical issues around matters of that nature, then you - it's like putting evidence before a Court of law. If you want to refute that evidence because you know there is some problem here, that is where our function came in.

But it wasn't for any board member or me as their legal representative to go and prompt each and every possible witness.

I mean I've gone out of my way as I've said more than once to get the evidence before the Board. And anyone who had any evidence, I would have been the first one to put it before the Board. But it hasn't happened.

MR MAGADHLA: You see, I think why the questions are put is because of a number of things. I think one of them is that the time that this tragedy took place, was a time when in spite of the Nkomathi accord it had become clear that it was being violated by the South African Air Force.

You will recall that months before this episode happened, a camp was overrun at Gorongosa. And documents were seized there which showed beyond a reasonable doubt that the Deputy Minister of Foreign Affairs had been there; that colonels and brigadiers of the South African Defence Force had been active in Gorongosa in Mozambique, assisting Renamo in circumstances

which clearly showed that there was an undermining of the Nkomathi accord.

I don't consider that Judge Margo or anybody else was unaware of the fact that here was a government that had gone publicly, internationally to sign an accord in terms of which they were saying that they have nothing to do now with the perpetration of the war. But where they were shown to have not only lied to the extent that they didn't keep to the terms of the Nkomathi accord, but that they'd actively assisted another side.

And you also recall that when the Commission of Inquiry did take place, it took place against the backdrop of the Minister of Foreign Affairs arriving at the scene of the accident almost within a few hours after it had happened. You ask yourself where was he; how had he known that this thing was going to happen?

But then that's speculation. But what I'm saying is, as at the time that all the evidence was being led and the report was being compiled, there was so much that had been raised by way of South African complicity in the tragedy, that a reasonable inquiry would go out of its way to have done everything possible to disprove any suspicions.

~~And one of the suspicions that obviously may have been~~ speculated upon at the time was the fact that this aircraft was monitored from the time that it left Zambia. Now the easiest thing to dispel this would have been - as suggested by Deborah

Patta - for any investigation, especially an investigation that would be pursued by an independent body to go and leave no stone unturned.

And I think for me, sitting as I am sitting, from where I am sitting one of the most disturbing aspects is that that commission did not seek to ascertain how an efficient air force like the South African Air Force could not have found or could not establish or could not be asked to explain how a foreign aircraft could have gone into their air space without them knowing it.

MR JANSE VAN RENSBURG: Mr Chairman, I must just say to you that I am not aware of the fact that this aircraft was monitored from where it took off from Zambia, right down. We had no... [intervention]

MR MAGADHLA: That's why I'm saying but there were suggestions. Certainly the suggestions were that there was complicity by the South African government of a nature where a false decoy beam or whatever it's called, this thing, was used. And that it was used by elements of the South African Army.

Now if that is so, you would then assume - or that commission should have assumed - that those who are making those allegations, must be implying that the aircraft was known to be - in other words it was known that that aircraft would be leaving Lusaka, wherever it was coming from, that it would be - or otherwise how do you use a false decoy if you do not know

that the aircraft is going to be travelling at such and such a place?

So enough suspicion had been raised about the complicity of the South African Air Force or the South African Defence Force. And what I'm saying is, it would seem to me for a commission which had one of its tasks to satisfy all theories - including a conspiracy theory - it was vital for it to have received evidence from an army whose elements were being implicated, even if by way of speculation.

I think that forms the basis of that question.

MR JANSE VAN RENSBURG: No, no, I'm with you Mr Chairman. But we must also just take care of the sequence of events.

You know, the whole question of a decoy beacon or a false beacon, only came up very late in the investigation. And it was raised by the Russian side when the evidence pointed in the direction of a confusion of navigational instruments by the pilot in command and the crew on board that aircraft, with the flight engineer and the navigator.

Then we started receiving graphs showing that there's a ~~possible obstruction, that this is not possible.~~ We've received various allegations. But there never was evidence submitted to the Board under oath that could have been tested, could have

been taken under cross-examination to determine whether it's the truth and nothing else but the truth.

It was never put before the Board. It kept on to be rumours and allegations. But no-one came forward to really say here's the evidence of this; that there was a decoy beacon and that you must have known that this aircraft was on a route from there to there.

We as the Board of Inquiry have gone out of this country, away from the South African Air Force, or the defence force per se. And we have brought into this investigation experts from the United Kingdom. And they had a free hand, to ask whatever questions to whomever. The investigating team of the Directorate Civil Aviation and people of the air force. And the outcome of all those discussions were this is just a rumour and cannot be the case in the circumstances that we are looking at here.

And that was the end of the decoy beacon as far as the Board of Inquiry was concerned.

MR MAGADHLA: Do you know if in fact that group of experts did interview people at these Hoedspruit for instance, air base?

CHAIRPERSON: And Matsapa

MR MAGADHLA: And Matsapa, all these other places where - in order to test this conspiracy theory?

MR JANSE VAN RENSBURG: No, as far... [intervention]



MR MAGADHLA: Or were they only testing the decoy beacon thing? Because the conspiracy theory was raised as early as the funeral of President Samora Machel as far as I knew. Where Mugabe - of course you can dismiss this and say ag look, I cannot even take judicial notice of that.

But it was always an open secret that the rest of certainly Southern African countries were you know, bending this conspiracy theory. Is it was, it was, it was.

And I'm just saying, when you heard something like that, was it not imperative that that should be shown to be false? Not just the decoy beacon; the conspiracy thing. Starting from the time that it now was known 1) Machel had been having a meeting in Lusaka with Kaunda and it also became revealed certain focal documentation which was purported to have been taken from the wreckage, that there was a plan to invade Malawi by Mozambique and that this had been you know the discussion at this meeting from which Machel was returning from.

Now you certainly have all of that, and all we are saying is how then do you allow that sort of theory, as a board charged with investigating and clearing the air, to go untested.

~~MR JANSE VAN RENSBURG~~ Mr Chairman, with all due

respect, we had nothing before the Board of Inquiry to test. I mean everything around a conspiracy and a decoy beacon were in the media and outside the parameters of the Board of Inquiry.

And we have tried our utmost to get evidence. This Board of Inquiry can only consider a matter of this nature on the evidence before it.

And I can assure you if you would go through the record of this entire inquiry, you won't find any evidence that was clearly put under oath to the Board of Inquiry that there was a conspiracy between the two countries, being South Africa and Mozambique, or a decoy beacon or anything to that.

It was after the whole thing was done that we just had a written summary coming from the Russian side on the decoy beacon and also what was taken out of the media. But there wasn't evidence. I mean no individual - if any individual would have come forward saying I am convinced - and he said it under oath - that there was a conspiracy between the governments of these countries to harm the president of Mozambique and that it was done by means of a false beacon to lure this aircraft off, and they knew exactly of the whereabouts of the aircraft, and we would have done nothing about that as a Board of Inquiry, then I will be the first one to say we have then neglected our duty, but badly.

~~MR. MAGADHLA: Yes. But you based your findings, you based~~  
your evidence on the basis of a theory by the Russians. Because you've repeated that many times that the Russian theories, they said the Russians and the Russians. You based it on the theory by

the Russians; which could just be a theory, which could be nothing else but a theory.

And yet you had Matsapa beacon people, Matsapa airport; you had the army bases within South Africa who would have monitored the movement in their air space and yet, also you had the time when the thing took place, seven o'clock the previous night and nine hours later the Mozambicans are informed of this.

You never explored those at all. All you depended upon was the theory by the Russian experts as you say.

But just finally - because the time again is also becoming enemy to us - now they say before Machel left Mozambique, he called a press conference in which he told his people that he fears that he may be killed by South Africans. Feared that he may be killed. And he gave them instructions as to what to do in the event of him being killed.

Now he said that on his way when he was leaving to go to Zambia. And when he was in Zambia, they discussed the Malawi thing. And to just quickly read this, it says

"South Africa wanted to get rid of Samora Machel for the following reasons:

~~Under pressure of some presidents of the front-line states,~~

President Banda was forced to expel the Renamo soldiers who used Malawi as a springboard for attacks on Mozambique. Banda complied with the demands of the

front-line States leaders, but allowed Renamo to cross into Tete and Zambezia Province. Renamo mounted a huge offensive in Zambezi, where Frelimo had few troops at their disposal and approached the city of Kwalimane, trying to split Mozambique in two parts and to provide Malawi with an outlet to the sea."

Now "The South Africans expected that the death of Samora Machel would cause a power struggle in Maputo and that no Mozambican troops would be sent to counter the Renamo offensive."

But what I'm saying here now is that South Africa had at the time the capacity to have also monitored or to have also had presence at that conference before Machel went to Zambia. Him saying that the South African Intelligence would have had that.

Now they would have had also the capacity to have monitored that meeting that he had in Zambia where they discussed the Malawi situation. And indeed, on his way from there, as he had predicted, his plane finds itself in Mbuzini in South African soil, crashed there.

And what happens? Somebody rushes there and picks up a ~~notebook which says in which one of the people there writes~~ about the attack, the impending attack on Malawi. Exactly just that.

Now if there are such things and somebody is sent out there to investigate, one does not just go there to say this theory of the beacon, let's just deal with it only to just make sure that we are not involved; the beacon thing is not there.

And now how do they go about looking for that? As you have said; you say you didn't just do this thing here. How do they go about? They go all about the place; they go to Russia, they go to people who are just going to depend on theory.

MR JANSE VAN RENSBURG: No. Mr Chairman, let me just say to you; the whole question of the press conference of the late President Samora Machel before his departure and everything said there as you've just mentioned it; I am not aware of anything of that nature. I can just say to you that if that type of information would have been available to the Board of Inquiry it would have been a different story.

But in the report we have said here

"On the evidence the South African Air Force had no prior knowledge of the flight to Maputo...."

Now this is on the evidence. It's not just something that was grabbed out of the air.

~~" or of the time thereof, or of the identity of the aircraft~~

when it appeared on the radar screen; or of President Machel's presence on board."

MR MAGADHLA: Now okay, then let's take it from there. Knowing what you know of the South African Air Force, is that probable?

MR JANSE VAN RENSBURG: Mr Chairman, I must say to you that these... [intervention]

MR MAGADHLA: Is it probable that the South African Air Force would not have known that Machel or a Mozambican plane carrying not only the president but virtually the entire high command you know, of - there were people there in the air force and what have you - now is that probable that the South African Air Force - now was that on the basis of evidence that they led?

MR JANSE VAN RENSBURG: Yes.

MR MAGADHLA: Were they called there to say we do not know?

MR JANSE VAN RENSBURG: Ja. No, that has been discussed. I know that the Chief of the Air Force at that stage involved was General Dennis Earp. This matter was discussed and on the evidence this was the outcome of the situation.

No flight plan was filed; no-one was aware. Now you know, you can't make anyone aware if they say to you under oath

~~they were not aware~~

MR MAGADHLA: Yes. So many things have been said by so many people in this country under oath, and a few years later - in fact in the course of the TRC - we have found that a lot of things

that were said by people, high generals in the Harms Commission....

MR JANSE VAN RENSBURG: Ja.

CHAIRPERSON: Were not worth the paper that they were printed on. I think that's the whole purpose of this inquiry. The inquiry is seeking to find if there are no new answers to things that were purportedly said under oath has purportedly been the truth, when in fact the objective reality - maybe we will get to evidence, and I'm sure you will be one of the happiest persons if evidence which show that this was in fact amiss. But we have to explore this with you.

MR JANSE VAN RENSBURG: Ja. No, no, Mr Chairman look, if I can be of any assistance to get evidence to bring this closer to the answer of what the situation was, be sure you have my full co-operation. I just haven't had anything that I can put to you today, say this was something I was aware of, but wasn't part of the record and wasn't submitted to the Board of Inquiry. That I can say, and I'm saying it under oath as I'm sitting here; it's a fact.

CHAIRPERSON: Thank you Mr Van Rensburg.

~~MS TERREBLANCHE: Mr Chairman, I would like to move on to the Helderberg.~~

CHAIRPERSON: I am aware, but I want to make sure that there are no other questions.

MS PATTA: I just would like to put it on record that according to Des Lynch, the South African radar system did monitor the plane for at least 10 minutes, if not more.

MR JANSE VAN RENSBURG: Was he....

(tape giving problems)

MS PATTA: No, but he was part of the investigating team.

MR JANSE VAN RENSBURG: Oh yes.

MS PATTA: So it was actually put on record. It's actually in your report...

MR JANSE VAN RENSBURG: Ja.

MS PATTA: That the South African military radar system monitored the plane and noted it as it entered into the territory.

MR JANSE VAN RENSBURG: Ja, but then the report on the evidence that the South African Air Force had no prior knowledge of the flight to Maputo or of the time thereof, or of the identity of the aircraft when it appeared on the radar screen; all that will still stand.

MS PATTA: So a strange plane appears on a radar screen and they don't even get concerned?

MR JANSE VAN RENSBURG: And it disappears again from the scene, then it's out of South African air space. I mean at that

time we had many turbulent events in our situation from what I've gathered when we've done this. So if there's no real threat of an aircraft in South African air space they won't lose time on that,



especially if there's nothing on their mind in particular that this is some delictual event that's taking place.

MS PATTA: I don't want to go into that, I just want - I mean you do concede that the South African radar system did note that the plane came into South African territory.

MR JANSE VAN RENSBURG: Oh yes, oh no argument.

MS PATTA: Thank you.

CHAIRPERSON: Thank you Ms Patta.

MS TERREBLANCHE: For the record, we are now going onto the Helderberg case.

CHAIRPERSON: We'll adjourn for a few minutes.

HEARING ADJOURNS

