

Trial Hearing
WITNESS: MLI-D28-0501

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Judge Antoine Kesia-Mbe Mindua, Presiding, Judge Tomoko Akane and Judge
7 Kimberly Prost
8 Trial Hearing - Courtroom 3
9 Tuesday, 17 May 2022
10 (The hearing starts in open session at 9.34 am)
11 THE COURT USHER: [9:34:34] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE MINDUA: [9:34:50](Interpretation) The hearing shall now
15 commence.
16 Good morning, everyone.
17 Court officer, if you could call the case.
18 THE COURT OFFICER: [9:35:24] Good morning, Mr President.
19 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al
20 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case number ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE MINDUA: [9:35:43](Interpretation) Thank you very much,
23 court officer.
24 As is the case every morning, we'll begin with introductions. First of all, the Office
25 of the Prosecutor.

1 Mr Prosecutor.

2 MR DUTERTRE: [9:36:03](Interpretation) Good morning, Mr President. Good
3 morning, your Honours.

4 The Office of the Prosecutor is represented by Mr Mousa Allafi, Mr Lucio Garcia, and
5 myself, Gilles Dutertre. I greet everyone here in the courtroom and everyone around
6 the courtroom who is also taking part in today's hearing.

7 PRESIDING JUDGE MINDUA: [9:36:26](Interpretation) Thank you very much,
8 Mr Prosecutor.

9 And now I turn to the Defence.
10 Counsel.

11 MR PESTMAN: [9:36:35] Good morning, Mr President, your Honours, colleagues
12 for the Prosecution and the civil parties, everyone else in and around this courtroom.
13 My name is Michiel Pestman. This is my first appearance in court this time, I
14 recently joined the team. It's a pleasure to be here.

15 With me for the Defence are, of course, Melinda Taylor, Sarah Marinier-Doucet, and
16 we have Amina Fahmy as well, representing the Defence. Thank you.

17 PRESIDING JUDGE MINDUA: [9:37:18](Interpretation) Thank you very much,
18 Mr Pestman.

19 I take this opportunity to greet Mr Al Hassan who is present here in the courtroom
20 today.

21 I now turn finally to the Legal Representatives for the Victims.
22 Counsel.

23 MR KASSONGO: [9:37:40](Interpretation) Good morning, Mr President,
24 your Honours.

25 Today we have -- well, we would like to thank the Chamber. We greet the parties,

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1 participants.

2 Today, we have Ms Prisque Biyéké Dipanga and myself, Mr Kassongo, and we
3 thank you.

4 PRESIDING JUDGE MINDUA: [9:38:05](Interpretation) Thank you very much,
5 Mr Kassongo.

6 Finally, it is now the witness's turn.

7 Good morning, Mr Witness. Can you hear me?

8 WITNESS: MLI-D28-0501

9 (The witness speaks English)

10 THE WITNESS: [9:38:18] Good morning, your Honour. I can hear you.

11 PRESIDING JUDGE MINDUA: [9:38:23](Interpretation) Thank you very much,
12 Mr Witness. On behalf of the Chamber, I'd like to welcome you.

13 You will now be questioned so as to help the Chamber determine the truth in the case
14 of Mr Al Hassan. I note that you have not requested protective measures, and so the
15 Chamber will be in a position for us to preside over today's hearing in open court.

16 Now, naturally, if there's an issue you'd like to raise in private session, please make
17 the request, or the Defence team of Mr Al Hassan will make the request and the
18 Chamber will allow such private session.

19 Now, Mr Witness, I would now like to move to your solemn undertaking under the
20 first paragraph of regulation 66 of the regulations of evidence and procedure. On
21 the table, in front of you, you will find the oath. Do you have it there?

22 THE WITNESS: [9:39:52] Yes, your Honour.

23 PRESIDING JUDGE MINDUA: [9:39:56](Interpretation) Very well.

24 I would like to ask you to read out the undertaking that you have before you.

25 THE WITNESS: [9:40:09] I solemnly declare that I will speak the truth, the whole

1 truth and nothing but the truth.

2 PRESIDING JUDGE MINDUA: [9:40:21](Interpretation) Thank you very much,

3 Mr Witness. You are now under oath.

4 The Victims and Witnesses Section and the representatives of the Defence have no
5 doubt explained what it means to be under oath, so I won't repeat what they've
6 already told you. But I do have some suggestions for you.

7 Please remember that throughout the course of your testimony, everything that is
8 said in this courtroom is being transcribed by court reporters and interpreted

9 simultaneously into several languages by the interpreters. Consequently, it is

10 important for you to speak clearly and slowly. Please don't begin answering

11 a question until the person putting the question to you has finished his question.

12 Naturally, if you have a question, please raise your hand to let us know that you'd
13 like to say something.

14 Now, you will be first questioned by the Defence, that is, the examination-in-chief.

15 After that, the Office of the Prosecutor will be cross-examining you, and probably

16 you'll have a number of questions from the representatives of the victims, and,

17 perhaps, you will also have some questions from the Chamber.

18 Without any further ado, I would like to ask Mr Pestman to begin

19 examination-in-chief.

20 Counsel, please proceed.

21 MR PESTMAN: [9:42:58] Thank you very much, Mr President.

22 QUESTIONED BY MR PESTMAN:

23 Q. [9:43:05] Before we start, I just would like to remind the witness that he looked
24 at a report written by other experts and the names of those experts are confidential.

25 So I'm just asking you kindly not to mention their names. I understand that you

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1 were given the numbers these experts use or used, or which were used in court, and
2 you can use those numbers and we will know whom you're referring to.

3 Just for the record, could you please state your name, which is not confidential.

4 A. [9:43:48] My name is Nikolaos Kalantzis.

5 Q. [9:43:50] Thank you, Mr Kalantzis.

6 Could we please go to the first document, the report written by this witness, by
7 Mr Kalantzis. The MLI number is D28-0005-9928.

8 THE COURT OFFICER: [9:44:21] Could counsel please indicate whether this can be
9 broadcast publicly.

10 MR PESTMAN: [9:44:27] Yes. I'm really sorry. Yes, all documents, except for one,
11 can be public. And this one certainly is. Thank you.

12 MR DUTERTRE: [9:44:38](Interpretation) Your Honour?

13 PRESIDING JUDGE MINDUA: [9:44:42](Interpretation) Yes.

14 MR DUTERTRE: [9:44:46](Interpretation) Just for my learned friend, the witness's
15 report does contain the names of two Prosecution witnesses, and those names are
16 quite clearly written. So we'll have to be careful about that if pages are going to be
17 broadcast or shown publicly. Some pages may be --

18 THE INTERPRETER: [9:45:14] Overlapping.

19 PRESIDING JUDGE MINDUA: [9:45:17](Interpretation) I'm sure that Mr Pestman
20 will be able to distinguish between names that can be shown publicly and those that
21 cannot.

22 Yes, Mr Witness?

23 THE WITNESS: [9:45:29] Your Honour, what the Prosecution said is correct. And
24 the cover of the report also mentions the names of the witnesses, which is now
25 projected on my screen. So I think those names do appear in almost all the pages, so

1 that should be taken into account.

2 MR PESTMAN: [9:45:53] If we can scroll up.

3 PRESIDING JUDGE MINDUA: [9:46:17](Interpretation) Mr Prosecutor, well, there's
4 a problem if the names are to be up on the screen.

5 MR DUTERTRE: [9:46:25](Interpretation) Indeed, that is why I spoke, your Honour.
6 And perhaps we could begin by displaying the documents in private session and then
7 later on move to open session.

8 PRESIDING JUDGE MINDUA: [9:46:39](Interpretation) Yes, I think that is the
9 solution.

10 Madam Court Officer.

11 MR PESTMAN: [9:46:51] Mr President, maybe it's easier to -- there's only two
12 documents I wanted to show now from this report. We can just keep them
13 confidential. That's easier than going into private session.

14 (Private session at 9.47 a.m.)

15 THE COURT OFFICER: [9:47:08] We are in private session, Mr President.

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Open session at 9.48 a.m.)

2 THE COURT OFFICER: [9:48:05] We're back in open session, Mr President.

3 PRESIDING JUDGE MINDUA: [9:48:12](Interpretation) Thank you very much,
4 court officer.

5 Counsel, Mr Pestman.

6 MR PESTMAN: [9:48:19] I apologise for the confusion. It's my fault.

7 Q. [9:48:23] Mr Kalantzis, could you just confirm that this is the report you have
8 written.

9 A. [9:48:33] Yes, I can confirm this is my report.

10 Q. [9:48:40] And could we then move on to page 9946, please. And it's also
11 a confidential document not to be broadcasted. And can we scroll down to the
12 signature, please.

13 Mr Kalantzis, I know this might be a strange question considering your expertise, but
14 is this your signature?

15 A. [9:49:17] Yes, this is my signature.

16 Q. [9:49:20] Could you, for the benefit of the Court, briefly summarise what the
17 Defence asked you to do in this particular case.

18 A. [9:49:44] Your Honour, the Defence approached me and informed me that there
19 is an expert report written on the subject of documents and signature examination,
20 and I was asked to review that report and comment on the methodology that has been
21 applied.

22 Q. [9:50:10] Thank you.

23 And could you, again, briefly summarise the main conclusions in your report.

24 A. [9:50:22] After reviewing the report in question, in conjunction with the relevant
25 testimonies of the two expert authors of that report, I concluded that the statement of

1 the conclusion scale that was used for the examination was missing, leading to
2 a problem of communication of the level of certainty of the conclusions reached by
3 the experts. And it is also not clear to me whether there is any type of rigorous peer
4 review taken into account during the examination and the write-up of said report.

5 Q. [9:51:23] Thank you, Mr Kalantzis.

6 To start with, your first point, the "conclusion scale", I was not familiar with this term
7 until I read your report. Can you explain what a "conclusion scale" is.

8 A. [9:51:49] Yes. So when a forensic expert is asked to examine evidence and
9 render an opinion on the authenticity of said evidence - or, in our case, for the
10 authorship of signatures - that conclusion takes into account the various findings of
11 the process and has to be stipulated in a way that reflects the strength of the evidence
12 in relation to the given hypothesis, and it has to be articulated in a way that the
13 recipients of the report are in a position to also assess the strength of the evidence that
14 has been examined.

15 To achieve that, there are various different scales of conclusions that are used around
16 the world, and they have to be mentioned so that, as I said earlier, the recipient of the
17 report is in a position to understand exactly what the experts mean when they reach
18 a conclusion.

19 Q. [9:53:17] Thank you, Mr Kalantzis.

20 What happens if you don't use a conclusion scale? What's the risk of doing that?

21 A. [9:53:31] For the benefit of the legal proceedings and the legal process, usually
22 the results are written up through a form of verbal scale of conclusions, and using the
23 verbal scale of conclusions, we use words -- we, the experts, use words that also have
24 a meaning in everyday life. But as such, that might be confusing or misleading to
25 the recipient of a report, if that verbal scale is not clearly defined.

1 For example, I might examine a document as to the authenticity of a signature, and if I
2 reach a conclusion that that signature may have been written by the suspect, for
3 example, that wording might mean something completely different for me than for an
4 another expert or the court that is the recipient of the report. So that is an objective
5 problem we have with a verbal scale of conclusions.

6 And to confront that problem, the process that has been used for several years is to
7 have -- for the laboratories or experts to use specific predefined scales of conclusions
8 that usually come with a paragraph that explains and defines each level as to the
9 strength of the evidence in relation to the conclusion that has been reached.

10 Q. [9:55:19] Mr Kalantzis, so what scale do you use in your work?

11 A. [9:55:33] In our laboratory, we use the German scale, which was a verbal scale of
12 conclusions developed by a team of four scientists from the federal -- from the
13 laboratory of the German Federal Police. And through their studies, they applied
14 Bayesian statistics and probabilistic reasoning and concluded in a logical scale of
15 conclusions that comes with strict definition of the strength of evidence per scale
16 of -- per step and level of certainty, let's say.

17 I need to state, of course, that the specific scale that we are using is not the only scale
18 that is used around the world by our colleagues, nor is it the best one. It is the best
19 one for our laboratory, because we have been trained to use it, and certainly there are
20 other scales of conclusions in use around the world.

21 Q. [9:56:59] Thank you, Mr Kalantzis.

22 Can we put up the next document, please. It's tab number 15. It's a public
23 document. And it is MLI number D28-0005-9512.

24 Mr Kalantzis, do you recognise this article?

25 A. [9:57:40] Yes, your Honour, I recognise this book.

1 Q. [9:57:44] Yes. Am I right to assume that this is one of the articles you used for
2 writing your report?

3 A. [9:57:54] This book is indeed referenced in my report. This is the study I
4 mentioned earlier conducted by the four scientists for the forensic laboratory of the
5 German Federal Police, and it is the work that leads to the construction of the verbal
6 scale we are using.

7 I need to inform the Court that this is a bilingual book, so the first half is in German
8 and the second half is the same in English. And it is referenced in my report as to
9 the point made for the necessity of having a clear definition of the strength of
10 conclusion when a verbal scale is used.

11 Q. [9:58:58] Thank you. Could we put up page 9643, please - it's a public
12 document - of this article. 9643. Can -- is it possible to tilt -- that's it. Thank you
13 very much.

14 Mr Kalantzis, can you explain what we are looking at.

15 A. [9:59:46] Yes. So, first of all, the specific verbal scale constructed and presented
16 within this book is a scale that involves 11 different steps. So always in the middle,
17 we have the inconclusive step where the expert has contradicting evidence and they
18 cannot distinguish between the two given hypothesis, whether a signature is
19 authentic or not. And then we usually have equal numbers of step towards the
20 hypothesis or away of the hypothesis.

21 The specific scale is an 11-point scale. This means that, apart from the middle
22 inconclusive step, we have five steps towards a given hypothesis and then five steps
23 away from the given hypothesis.

24 This chart correlates those steps with numerical probabilities for the hypothesis,
25 together with the calculation of error, let's say, when presented with such

1 a conclusion.

2 And as you can see, following the reasoning within the book, this scale is

3 a logarithmic one.

4 This means, for example, that the first step from the inconclusive to the slightly

5 predominant probability, which is the weakest conclusion we can have, that

6 corresponds to a certainty of, let's say, 75 per cent. If it was a linear scale, 75 would

7 be in the absolute middle of that part of the scale.

8 And I'm mentioning this to point out that the definition of the scale used is very

9 important to assess the certainty of the experts. We cannot assume, for example, that

10 all scales are the same as long as they have the same number of different steps. We

11 can have an 11-point scale that follows a logarithmic reasoning, like the one presented

12 on this page, or we can have an 11-point scale following a linear reasoning. That

13 would be completely different as to the certainty of the different levels.

14 Q. [10:02:23] Yeah, Mr Kalantzis, I have to wait for the translation.

15 You mentioned the first step, the slightly predominant probability towards a positive

16 hypothesis.

17 A. [10:02:53] Yes.

18 Q. [10:02:54] Seventy per cent sounds like a pretty good result, is that right or am I

19 wrong?

20 A. [10:03:07] This -- this statement -- this statement highlights the very problem we

21 have when we are using a conclusion scale. Even though a percentage was given, so

22 it's not strictly a verbal statement, the everyday assessment of what 75 per cent means

23 can be misleading.

24 For example, from our everyday transactions, 75 per cent, 0.75, that's almost 1, so

25 that's good, if we go to the supermarket and we want to buy something and it costs 75

1 cents, that's almost a euro in our mindset. In this context though, 75 per cent means
2 one out of four is wrong. So that's a terrible percentage for a forensic examination.
3 So this highlights the necessity to explain and define exactly what we mean in terms
4 of strength of evidence so that it can properly be assessed by the recipients of the
5 report.

6 Q. [10:04:25] Thank you.

7 How do you define "slightly predominant probability"? Just to give us an idea of
8 how this works. And I believe you're allowed to -- if you want to quote from your
9 article, we can put the page on the screen.

10 A. [10:05:08] Yes, I will quote the definition from the book. I just need to find the
11 proper page.

12 Q. [10:05:15] Which is a public document.

13 A. [10:05:15] It's a public document, yes.

14 So the page I want to reference is 9624. So the definition for "slightly predominant
15 probability" is this:

16 "The entire configuration of findings compiled, discussed and still assessed as having
17 meaningful evidence value, conforms with the hypothesis but not entirely without
18 inconsistency. Findings-related restrictions and/or inadequacies attributable to
19 material are significant and cannot be explained entirely on the basis of method."

20 And for this to be clear, one needs to compare it with the rest of the levels of this scale.

21 So, for example, if we go to the very previous page of the public document, which is
22 9623, we can see the definition for the highest -- for the level of highest certainty for
23 this scale, and that is probability bordering on certainty. The definition is:

24 "The entire configuration of findings compiled, discussed and assessed as having high
25 evidential value is in complete conformity with the hypothesis in all respects."

1 So that's the maximum we can have as a set of findings for a given examination.

2 And then we slowly take away parts of conformity. The very next level is very high
3 probability, on the same page, and the definition is:

4 "The entire configuration of findings compiled, discussed and assessed as having high
5 evidential value is in complete conformity with the hypothesis in nearly all respects."

6 So we start losing parts of the conformity.

7 "Findings which are not completely concordant and in no way relevant can be
8 explained on the basis of method."

9 And it keeps going, losing parts of conformity, and, therefore, lowering the level of
10 certainty.

11 Q. [10:08:18] Mr Kalantzis, in your -- maybe your first response to my first question,
12 you said that the experts who wrote the report you studied did not use a conclusion
13 scale - sorry, before you continue - but they do reach some kind of conclusion on
14 probability.

15 Can you explain to the Court what your interpretation of that probability is, or how
16 we should understand that.

17 And you can use the document if you --

18 A. [10:09:01] Yes. From reading the report in question, I could not identify
19 a specific scale of conclusions used. So I cannot state as a fact that none was used,
20 but there is no specific reference as to a scale, and there's no specific reference of the
21 different levels of certainty or a definition of what those mean.

22 There is a reference in the report that the results will be expressed according to a level
23 of certainty. And then we reach the final two pages of their report where the
24 stipulation is verbal, it uses every day words, and that is not defined for me as an
25 expert. So I cannot testify -- I cannot understand the strength of the conclusion that

1 my colleagues reached.

2 Q. [10:10:15] Thank you.

3 Just to go back to the graph we looked at earlier, the one with the colours which was
4 on the screen, so where do you think we should place the conclusions of the experts
5 that looked at the report? And I'm --

6 MR DUTERTRE: [10:10:56](Interpretation) Mr President?

7 PRESIDING JUDGE MINDUA: [10:10:59](Interpretation) Mr Prosecutor.

8 MR DUTERTRE: [10:11:01](Interpretation) In view of the last response of the
9 witness who says that he does not understand the conclusion of the two experts of the
10 OTP, the question put by my honourable colleague is entirely speculative and does
11 not assist the Chamber in any manner whatsoever. Thank you.

12 PRESIDING JUDGE MINDUA: [10:11:27](Interpretation) Mr Witness?

13 THE WITNESS: [10:11:29] Yes, your Honour. Regarding the comment by the
14 Prosecutor, I agree, and I was about to respond that I have no tools whatsoever to
15 place the conclusion of my colleagues on this specific scale.

16 I just need to highlight - maybe it's a problem of the translation - the Prosecutor stated
17 that I testified that I do not understand the conclusion of the report. That is not
18 accurate. I said that -- or, at least, I meant that it is not clear to me the strength of the
19 conclusion, not the conclusion itself, in the sense that the words that are used are
20 ambiguous and are not defined.

21 PRESIDING JUDGE MINDUA: [10:12:32](Interpretation) Very well. We have
22 understood. So the words used in the conclusion were not defined to the extent that
23 they are ambiguous to you. There we are.

24 So the Prosecutor was saying that the question put by the Defence attorney was
25 speculative. That's why he said that.

1 Counsel, please.

2 MR PESTMAN: [10:12:57] I can certainly live with the explanation given by the
3 witness.

4 I'll move on to the next question.

5 Q. [10:13:04] A different topic.

6 Can a well-educated layperson authenticate signatures?

7 A. [10:13:28] To accurately answer this, your Honour, I will have to define that
8 within this context: A layperson is a person that has not been fully trained in the
9 forensic examination of handwriting and documents. In that sense, then, yes,
10 a layperson is not in a position to accurately examine and reach a safe scientific
11 conclusion when it comes to the authenticity of signatures. And that is
12 a scientifically proven fact. There are several research studies, some of which are
13 referenced in my report.

14 Q. [10:14:19] That brings me to the -- the second issue you mentioned, the second
15 issue you had with the report written by the other experts, and that is that it is not
16 clear whether the report was reviewed by peers, whether the report was peer
17 reviewed.

18 Can you explain briefly what "peer review" actually means.

19 A. [10:15:15] In the process of examination, especially for forensic disciplines that
20 may involve a subjective element within the process of examination and analysis of
21 the evidence, it has been proven that the experts may fall into a fallacy due to
22 cognitive bias, which is a brain function, let's say, that is invisible to the person and,
23 therefore, uncontrollable to the person.

24 As a safeguard, when it comes to trace evidence like fingerprints and handwriting
25 and so on, the peer review system is deemed the appropriate one, and the peer review

1 system wants the same examination reviewed and verified by another expert. And
2 the concept is that if one expert is unintentionally subject to cognitive bias, then their
3 opinion is going to differ from the second expert and so on.

4 So peer reviewing is a safety guard against these type of fallacies, and that's why it is
5 very important to have a structured peer review system. And when I say
6 "structured", I mean the most important aspect, in my opinion, to have a clearly
7 defined conflict resolution scenario.

8 What does this mean? If we have a case where two experts handle the case and one
9 is peer reviewing the other side, let's say, and they are in agreement, then everything
10 is fine. But if there is a difference of opinion on the formed conclusion, then there
11 needs to be a specific structured approach as to how to proceed and how to resolve
12 that difference of opinion.

13 Q. [10:17:45] So why did you come to the conclusion that there is no evidence that
14 peer review has taken place in this particular case?

15 A. [10:17:55] By reading the review, to begin with, there is no statement or
16 declaration of a specific peer review model used. So if there is one, it is not evident
17 from the report.

18 The report is written and signed by two experts. But going through their respective
19 CV and their testimony in your Court, your Honour, it is clearly stated by both
20 experts that each one analysed and wrote the part that has to do with their speciality.
21 And in this situation, one expert handles signature examination, the other expert
22 handles document examination, so their statement as to how they didn't cross over
23 their examination. This, on its own, makes me understand that these two experts
24 did not review each other's part.

25 Furthermore, according to the mission letter that my colleagues received in order to

1 conduct their examination, it is stated therein that all experts or technicians who assist
2 or participate in the examination need to have their CV attached in the report.

3 In the report, there were only two CV notes attached; those of my two colleagues. So,
4 again, from this route, this approach, it is clear that there was no peer review taking
5 place.

6 There is a statement in the testimony of the handwriting expert that, within their
7 laboratory environment, peer review is included, but they were not in a position to
8 name the person that conducted that review.

9 So it is unclear to me if, indeed, there was peer review in either of the two distinct
10 parts of the report, and it is also not clear to me whether there is a conflict resolution
11 procedure and a structured approach to the peer review process.

12 Usually, and I say "usually" because it is not -- how would I say this? It is not
13 necessary that all the laboratories follow this practice and mention this in their report,
14 but usually there are two specific approaches when it comes to peer review for
15 handwriting and signature and document examination.

16 One is the ACE-V approach and the other is the double ACE approach. So ACE is an
17 acronym. It stands for Analysis, Comparison and Evaluation. This is what
18 a forensic expert does when they have a case.

19 The ACE-V scenario, where "V" stands for Validation or Verification, has one expert
20 conducting all the examinations, reaching a conclusion, and documenting the
21 progress of the ACE procedure, and then a second expert trained on the same
22 discipline following the process of the first one and validating the conclusion.

23 The second approach, the double ACE system, involves two experts independently
24 applying the ACE approach. And usually this is stated in the report informing the
25 recipient of the report of the system that has been applied when it comes to peer

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1 review.

2 PRESIDING JUDGE MINDUA: [10:22:19](Interpretation) Mr Prosecutor?

3 MR DUTERTRE: [10:22:21](Interpretation) Thank you.

4 It is not an objection. I let the question go. But for the clarity of the proceedings

5 and for everyone to understand correctly, could my learned colleague indicate in the

6 report, the expert report, what is the reference in support of his question, which was:

7 (Speaks English) "So why did you come to the conclusion that there is no evidence

8 that peer review has taken place in this particular case?"

9 (Interpretation) We would like to have the reference in the witness's report to that,

10 please, bearing in mind that the conclusion says:

11 (Speaks English) "Whether there was any kind of actual peer review."

12 (Interpretation) Which is different.

13 PRESIDING JUDGE MINDUA: [10:23:21](Interpretation) Mr Pestman.

14 MR PESTMAN: [10:23:23] Maybe the easiest solution is to ask the witness whether

15 he approves -- with my question, whether he thinks I summarised his conclusions

16 correctly or not.

17 PRESIDING JUDGE MINDUA: [10:23:40](Interpretation) Because the Prosecutor is

18 requesting your reference for the basis of your question when you asked the witness

19 where his conclusion comes from. So you're now sending this back to the witness to

20 respond to.

21 Mr Witness?

22 THE WITNESS: [10:24:02] I can draw the attention of the Court, your Honour, to

23 a page in my report, which should not be publicly broadcasted because it includes the

24 names of my colleagues. I am referring to page 9943. On that page it --

25 MR PESTMAN: [10:24:30]

1 Q. [10:24:30] Excuse me, which tab? Which document?

2 A. [10:24:34] Oh, sorry, 1. I'm referring to my report. And I state, again, it -- that
3 page includes names that should not be broadcasted.

4 So this paragraph addresses the part of the testimony of my two colleagues. And
5 reading this paragraph alone in conjunction with the stipulation of the mission letter,
6 then the logical conclusion is that there has been no peer review, as it is stated in the
7 paragraph that starts with "Therefore [...]".

8 PRESIDING JUDGE MINDUA: [10:25:57](Interpretation) Mr Prosecutor, is that all
9 right with you? Is that the reference you were seeking?

10 MR DUTERTRE: [10:26:07](Interpretation) We have a reference, and we note that in
11 the conclusion - my colleague spoke about "your conclusion" - the wording is
12 different:

13 "It is unclear [...]"

14 That's what is said in the conclusion, but we can continue, it has just been put on
15 record. I'm referring to page, in the conclusion, 0005-9946 of the document 0005-9 --

16 THE INTERPRETER: [10:26:49] Said at great speed.

17 MR DUTERTRE: [10:26:49](Overlapping speakers) -- 928-R01. *Je vous remercie.*

18 PRESIDING JUDGE MINDUA: [10:26:51](Interpretation) Very well. It's on the
19 record.

20 So please continue, Mr Pestman.

21 MR PESTMAN: [10:26:59]

22 Q. [10:27:00] Just briefly, very briefly, on a different note, could you explain why
23 the use of non-original documents constitutes a problem in this particular case.

24 A. [10:27:15] When handwriting experts analyse a piece of writing or a signature,
25 we try to analyse all the characteristics available of that signature. And if we were to

1 group these characteristics into big groups, I would say that we have the
2 two-dimensional pictorial characteristics and then the dynamic characteristics of
3 writing.

4 When we are examining a photocopy, the -- almost the entirety of the dynamic
5 characteristics are lost because the photocopying process creates a flat,
6 two-dimensional reproduction of the original writing. So by default, when the
7 expert is requested to conduct an examination of non-original documents, they have
8 fewer characteristics to analyse, which means their conclusion is going to be
9 weakened, and there's an entire set of forgery scenarios that cannot be examined at all.
10 Like Photoshop, for example.

11 In the specific report, this is stated as an issue within the body of the report, but it is
12 not clearly stated in the conclusion - in the last three pages, when my colleagues reach
13 a conclusion - and the problem to my eyes with that is, when we read the second
14 group of conclusions from the expert report, where we have the ambiguity of the
15 conclusion, and, most importantly, on the same group of signatures that may have
16 been written by the person of interest, we have signatures that were examined in
17 original form and signatures that were examined in photocopy.

18 So it is not clear to me whether the evidence found by my colleagues on the
19 photocopied signatures were so strong to create the certainty that they -- that their
20 conclusion rises to the level of certainty of the original executed signatures; or, in
21 reverse, if the strength of conclusion for the signatures that were examined in original
22 form is so weak that it should be bundled with the signatures that were examined in
23 photocopy form.

24 Q. [10:30:34] Thank you, Mr Kalantzis.

25 So you mentioned the risk of cognitive bias when you discussed the importance of

1 peer review. Instead of asking you to give another definition, maybe you can give
2 the Court a simple example of how cognitive bias works or how cognitive bias can
3 affect the results of a investigation or study.

4 A. [10:31:26] A simple example would be like this: Let us assume that a client
5 comes to our laboratory and requests the examination of authenticity of their father's
6 will, and they produce the evidence for comparison. And during this
7 communication with the recipient of the mandate, the client states that, "It couldn't
8 have been the testament of my father because he didn't like the person they left the
9 inheritance. And, by the way, on that date mentioned on the testament, my father
10 was in a coma," therefore producing a logical argument that would prohibit that
11 person from signing the report.

12 That knowledge on its own can be biasing to the expert. And if I was to grossly
13 group the effect, I would say that we can have two levels of biased actions from the
14 end of the expert receiving that information.

15 So the first one would be the conscious action, where the recipient of the mandate
16 would think, "Okay, this is, by default, a forgery because the testator was in a coma,
17 so I will go through the material trying to identify the evidence that will prove it was
18 a forgery." So that's the conscious mistake.

19 The subconscious mistake is the brain functions that the expert is not in control of.

20 And as the research and the literature suggests, this is not something that we expect
21 to encounter in, let's say, a crystal clear case, but as we move further away from
22 a definite conclusion, that's where we cannot ascertain that the expert's processing
23 functions will be free of bias.

24 So if in that simplistic example that I gave, the expert did not have enough material
25 and was somewhere within the scale of conclusions, it might be that this knowledge

1 will push him towards one side or the other, without them understanding.

2 So this is a recognised problem. It's unintentional. It's part of the human condition.

3 And for our forensic discipline, the peer review system is one of the most preferred
4 ones deployed.

5 THE INTERPRETER: [10:34:54] Microphone, please.

6 MR PESTMAN: [10:34:56]

7 Q. [10:34:58] Mr Kalantzis, if I can proceed. Are you familiar with the Madrid
8 bombing fingerprint experiment?

9 A. [10:35:06] Yes, I am familiar with the experiment conducted by Itiel Dror, if
10 that's what you're referring to.

11 Q. [10:35:23] Yes, I am. And could you briefly explain what that experiment
12 entailed and what the significance of that experiment was.

13 A. [10:35:32] So this is an experiment that was conducted on the field of fingerprint
14 examination, and the purpose of that was to highlight the reality of cognitive bias in
15 a forensic examination.

16 PRESIDING JUDGE MINDUA: [10:35:52](Interpretation) Mr Prosecutor.

17 MR DUTERTRE: [10:35:53](Interpretation) I tried to let the question go by, but we
18 are not dealing with fingerprints here today. And what is more, the expert is an
19 expert in a completely different area of endeavour, certainly not fingerprints. So I do
20 not see how this question can be relevant, and I object.

21 PRESIDING JUDGE MINDUA: [10:36:26](Interpretation) Counsel, we have two
22 reasons for not eliciting a response, but I do see that the witness would like to say
23 something.

24 Mr Witness?

25 THE WITNESS: [10:36:37] Yes, your Honour.

1 Of course, it is up to the Court to decide whether you want me to proceed with
2 a response. I just want to highlight the following fact: Of course, what the
3 Prosecutor said is true, I'm not a fingerprint expert, even though part of my formal
4 training with Staffordshire University for the post-graduate diploma included
5 fingerprint examination, but the most important aspect is that this experiment does
6 not have to do with fingerprints per se. This experiment uses fingerprints as
7 a relevant trace evidence forensic field - so it's not DNA, it's not completely different
8 in its approach - to highlight how expert -- trained experts, when subject to biasing
9 information, may change their own opinion.

10 And to that effect, we have been studying this for application in our field, and as -- it
11 can be found on my CV note, that is a subject that I have been presenting in
12 conferences and universities.

13 Still, if your Honour deems my presence inadequate to proceed with the response, it
14 is up to you to instruct me not to respond.

15 PRESIDING JUDGE MINDUA: [10:38:15](Interpretation) Counsel, it is true that the
16 witness has provided an explanation, but this is outside of our scope of examination.
17 Move on to another question.

18 MR PESTMAN: [10:38:29] If I may just respond to the Prosecutor - and I know
19 the witness has already explained - but the question is not about fingerprints. It's
20 about the effect of cognitive bias on the study done in this particular case, and,
21 specifically, I think it's relevant and important because it shows, this experiment
22 shows -- and it's not relevant that it was fingerprints, it could be have been anything
23 else, but this experiment shows that even experts are susceptible to cognitive bias.
24 And I think that question is or can be -- that question is really relevant for this
25 particular case.

1 PRESIDING JUDGE MINDUA: [10:39:22](Interpretation) We have understood.

2 The witness has responded, so please move on to something else.

3 MR PESTMAN: [10:39:27]

4 Q. [10:39:28] Maybe we can proceed to the Best Practice Manual, it is attached to
5 your report. You've studied it. Can you briefly explain what the Best Practice
6 Manual is.

7 And maybe it's best to put the first page of the manual on the screen, I'm sorry. It's
8 a public document. It's page number 0004-1177.

9 THE COURT OFFICER: [10:40:15] Could counsel please specify the tab or the full
10 ERN number.

11 MR PESTMAN: [10:40:18] Sorry. It's the first page of tab number 2. Thank you.

12 THE WITNESS: [10:40:35] Okay. So we have The European Network of Forensic
13 Science Institute, which is an organisation, I'm going to call it ENFSI. This
14 organisation has working groups depending on different forensic disciplines. The
15 working group that was responsible for the writing of this specific Best Practice
16 Manual for the Forensic Examination of Handwriting is the European Network of
17 Forensic Handwriting Experts, which I'm going to refer to ENFHEX.

18 The Best Practice Manual is an official document of ENFSI. It is recognised by the
19 European Commission, and it gathers the best practices for forensic examination of
20 handwriting signatures. As such, this document is a recommendation to both
21 member and non-member laboratories of the organisation, which means that member
22 laboratories may choose not to follow the best practices mentioned within the Best
23 Practice Manual, but nevertheless, the Best Practice Manual includes the best
24 approach from a scientific point of view for determining the authenticity of
25 handwriting and signatures.

1 MR PESTMAN: [10:42:11]

2 Q. [10:42:12] Mr Kalantzis, did you play any role in drafting this document?

3 A. [10:42:35] Since September 2019, I was elected in the steering committee of
4 ENFHEX, and the steering committee is responsible for reviewing and writing parts
5 of the Best Practice Manual. So not for this edition but for the next edition, version
6 03, which was completed in October 2020, if I'm not mistaken, and accepted in
7 January 2021, I was involved in rewriting or adding parts of the Best Practice Manual.
8 Furthermore, as part of the STEFA project, specifically, Group 8, I was a member of
9 the team that wrote the new appendix number 5, that deals with digitally captured
10 handwriting and signature examination; that is also now part of the Best Practice
11 Manual. And I am a consultant for the AFORE project, which also completed the
12 writing of several appendices that are included in the next version, which is currently
13 in circulation.

14 Q. [10:44:02] Mr Kalantzis, we are looking on the screen, we are looking at the
15 version -- "Version 02", published in "June 2018". Is this the -- the version that was in
16 force?

17 I'm not sure I'm using the right term, but was this the report used at the time the
18 experts wrote their report?

19 A. [10:44:29] Your Honour, counsel is not using the proper verb. The Best Practice
20 manual is never enforced. That is not the role of the document. That is not the role
21 of the organisation.

22 The role of the organisation, by the extent of the document, is to assist and
23 recommend. Within that context, during the time of the composition of the report in
24 question, that was the official document of ENFHEX; that being a recognised
25 document by the European Commission, was available online publicly to anyone and

1 everyone who was interested. And for ENFHEX member and associate member
2 laboratories, this was also communicated via email.

3 Having said that, there is no requirement and no way of confirming whether
4 a laboratory or the entire staff of the laboratory are in full awareness of the current
5 Best Practice Manual of ENFHEX or whether they are following it to the letter.

6 Still, I need to state that common practice is when -- within the European Union area,
7 when a laboratory, for example, wants to acquire accreditation and they address their
8 national accrediting body, their manuals and their documentations are going to be
9 reviewed according to the corresponding ISO standard and usually the relevant Best
10 Practice Manual from the corresponding working group of ENFSI.

11 Q. [10:46:41] Mr Kalantzis, you read the report written by these experts, and you
12 read the transcripts of the statements they gave in court.

13 Do you believe that expert number 620 and expert number 621 were aware of the Best
14 Practice Manual when they wrote the report?

15 A. [10:47:10] Regarding the document expert, I'm a little bit confused with the
16 numbering, but I think it's clear from context. Regarding the document expert, if I
17 understand correctly, they would not deal with handwriting and signature
18 examination at all. Therefore, I don't see a reason why they should be aware of the
19 Best Practice Manual.

20 Regarding the handwriting expert, it is stated within testimony that they are aware of
21 it, as a document.

22 Q. [10:47:59] Did the signature expert number 620, did this particular expert follow
23 the guidelines of the Best Practice Manual in her report or while writing the report?

24 A. [10:48:15] From reading the report, as it is stated in the second half mostly of my
25 report, there are things that are not written when it is suggested by the Best Practice

1 Manual that they are clearly stated. So in that aspect, they are not mentioned.

2 Of course, I cannot state for a fact whether some of the precautions or some of the
3 procedures were indeed followed. But there are things that I have highlighted that I
4 would expect to find in a report.

5 Q. [10:49:01] Could we please show page 1212 of this document. It's a public
6 document. And then specifically the highlighted section, number 10.

7 Mr Kalantzis, could you explain why this particular section, number 10, is
8 highlighted.

9 A. [10:49:42] This is the highlighted version of the second version of the Best
10 Practice Manual. It is the final version. And to assist the experts and the
11 laboratories to follow the changes that took place from the previous one, the parts that
12 have been changed are highlighted in yellow. So this part here, did not exist in the
13 previous version.

14 Q. [10:50:20] Mr Kalantzis, could you please read section 10.3 out loud so that it can
15 also be translated.

16 A. [10:50:41] The highlighted part you want me to read says: "Once assessed
17 a conclusion is formulated using the relevant conclusion scale".

18 Q. [10:50:55] Did the signature expert follow this instruction or recommendation?

19 A. [10:51:08] I would like, your Honour, to say this: The concept here is that when
20 I, a third expert, is exposed to a report from my colleagues, I'm in a position to
21 understand whether the entire process was followed according to the best practices of
22 our discipline. If definitions and clarifications are missing, then I'm not in a position
23 to assess the report as to whether it has met that criteria.

24 In that sense, point 10.3 requires the conclusion to be stated according to the relevant
25 conclusion scale used by the experts conducting the examination. As discussed in, I

1 think, the beginning of my testimony, there is no clear reference in the report of
2 a specific conclusion scale. Therefore, reading the stipulation of the conclusion on
3 the report in question, I am in no position to assess the strength of the evidence found
4 in support of that hypothesis. That is the problem that can be solved, let's say, if
5 someone follows point 10.3.

6 Q. [10:52:52] Could we please have a look at page number 1186. It's public.
7 Pages -- section or paragraph 5.5 of the same document. We are still in tab 2.
8 Could I -- please, Mr Kalantzis, can I ask you the same question. Could you read out
9 paragraph 5.5, please.

10 A. [10:53:27] Paragraph 5.5 is titled "Peer Review", and it states:
11 "It is important within Forensic Handwriting Examinations that the results of any
12 examinations undergo Peer Review. The Peer Review will cover, as a minimum, the
13 Critical Findings in the case. The Peer Review should also cover the Technical
14 Findings."

15 Q. [10:54:01] And, Mr Kalantzis, can I ask you again, whether you believe or not
16 that the signature expert follows these -- or followed this particular guideline?

17 A. [10:54:18] It is not clear to me what has happened in the sense that I see the
18 names of two experts signing the report, I read the testimony that clearly states the
19 document expert did not go into the analysis part of the signature part of the report,
20 yet, still, the signature expert states in the testimony that that part has been reviewed.
21 So I -- I do not know what has happened.

22 Q. [10:55:05] Can I ask you a completely different question. You are here
23 testifying because we asked you to do so. We invited you to testify. The Defence
24 has asked you to testify. How do you see yourself? Are you testifying on behalf of
25 the Defence, or are you testifying on somebody's else behalf or under a different

1 umbrella?

2 A. [10:55:36] I can clearly state the following: I'm here representing my science
3 and my science alone. I am testifying as to what my training has shown me through
4 this process. I consider myself an expert of the Court.

5 I appreciate how different legal systems may view expert witnesses differently. So
6 I'm not fully aware of how my status is perceived in your Court, your Honour, but as
7 always, including my practice in Greece, it doesn't matter who gives the mandate to
8 our laboratory or me -- or me personally. I am just reporting my scientific findings
9 that I can support in court. So it doesn't matter to me who has invited me and asked
10 me to testify today.

11 Q. [10:56:46] So today, and, in your report, you highlighted basically two
12 or - depending on your point of view - three issues you have with the report: The
13 problem of peer review, the use of non-original documents, and the lack of a clear
14 conclusion scale in the report.

15 My question to you, is, as an independent scientist specialising in signatures, what
16 does this actually mean for the report you studied, the report written by the two
17 experts, which we will not mention by name, what's the consequence for the report?

18 A. [10:57:59] Your Honour, in order to accurately respond, I will first reverse the
19 question, and I will assume that I reviewed the report that had a clear definition of the
20 peer review system that was used; that made certain that the deficiencies of
21 examining non-original material was taken into account and was represented in the
22 conclusion, and that the conclusion was following a specific conclusion scale that was
23 defined.

24 If that was the report, and I was asked my opinion about it, of course, without
25 carrying out the examination myself, I wouldn't be in a position to have an opinion

1 regarding the authenticity of the signatures. But if I was asked if there's anything
2 wrong with the report, I would be in a position to say there doesn't seem to be
3 anything wrong with the report.

4 In our case, it is unclear to me whether all these safeguards have been followed. So
5 if the question is whether there's anything wrong with this report, my response is I do
6 not know because I do not have the tools -- the report is not providing me with the
7 tools to understand whether all the safeguards, the safety procedures were met.

8 MR PESTMAN: [10:59:47] I notice it's almost 11 o'clock. I think that's the time that
9 we break up for ... I have maybe one or two questions left. Is it possible to ask
10 them after the break?

11 PRESIDING JUDGE MINDUA: [11:00:06](Interpretation) No. I would rather that
12 you put your question now, please.

13 Counsel, how many minutes do you need?

14 MR PESTMAN: [11:00:25] A couple of minutes. I understand that I have eight
15 minutes left, and that should be sufficient.

16 PRESIDING JUDGE MINDUA: [11:00:42](Interpretation) A few minutes to conclude
17 your examination-in-chief. Well, then, we will finish this before the break. Please
18 go ahead.

19 (Counsel confers)

20 MR PESTMAN: [11:01:13] Well, I have no proper questions, but I understand there
21 are some formalities I have to deal with.

22 Q. [11:01:16] Mr Kalantzis, in order to get your report submitted so that the judges
23 can take that into consideration when they have to deal -- or rule in this case, could
24 you confirm your report, the annexes attached to your report, and the supporting
25 material you quoted in the report, and do you agree to add all these documents -- or

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1 to submit all these documents formally to the Court?

2 A. [11:02:16] Yes, I confirm and I agree to submit the entirety of the report and the
3 annexes.

4 MR PESTMAN: [11:02:21] And I'm looking at the Court, now, would you like to me
5 read out -- and also to the Prosecutor, would you like me to read out all the MLI
6 numbers, or would it be sufficient just to give the tabs used by us during the
7 examination of the witness?

8 PRESIDING JUDGE MINDUA: [11:02:48](Interpretation) The Chamber does not
9 find that there is any need to have all the numbers. Perhaps, the tab references.
10 OTP?

11 MR DUTERTRE: [11:02:59](Interpretation) As long as it is clear which tabs we are
12 talking about, we can gain some time.

13 PRESIDING JUDGE MINDUA: [11:03:07](Interpretation) Very well. We will gain
14 some time.

15 MR PESTMAN: [11:03:12] We would like to submit documents confirmed by the
16 witness are the report itself, the annexes to the report, and the supporting material
17 quoted and used by the expert. I can give you the tab numbers. Maybe that's the
18 easiest thing to do. It is tab number 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and then 17,
19 18, 19, 20.

20 PRESIDING JUDGE MINDUA: [11:04:08](Interpretation) Counsel, before we wrap
21 up, I think you're going to put the traditional question to the witness. Have you
22 finished?

23 MR PESTMAN: [11:04:18] I'm sorry.

24 Q. [11:04:18] Do you agree, Mr Kalantzis, that these documents will be
25 submitted -- formally submitted to the Court?

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1 A. [11:04:26] Yes.

2 PRESIDING JUDGE MINDUA: [11:04:37](Interpretation) Very well. So the
3 conditions required by paragraph 68(3) have been fulfilled.

4 So this marks the end of the examination-in-chief of this witness. We shall break
5 now for half an hour. It is five past 11. We shall reconvene, therefore, at 11:35 for
6 the cross-examination.

7 The hearing is suspended.

8 THE COURT USHER: [11:05:12] All rise.

9 (Recess taken at 11.05 a.m.)

10 (Upon resuming in open session 11.37 a.m.)

11 THE COURT USHER: [11:37:08] All rise.

12 Please be seated.

13 PRESIDING JUDGE MINDUA: [11:37:30](Interpretation) Court is in session, once
14 again.

15 So now, over to the OTP for the cross-examination of this witness.

16 Mr Prosecutor, please.

17 MR DUTERTRE: [11:37:51](Interpretation) Thank you, Mr President. Thank you,
18 your Honours.

19 QUESTIONED BY MR DUTERTRE: (Interpretation)

20 Q. [11:38:02] Hello, again, Mr Witness. As we saw each other in the courtesy
21 meeting and you made yourself available - and I would like to thank you for that - I
22 would also remind you of the fact that my name is Gilles Dutertre and that I am
23 a representative of the OTP at this hearing.

24 I'm going to be putting a number of questions to you, Mr Expert, with a view to
25 enabling the Chamber to get a better grasp of your expertise, in fact, of your second

1 opinion, to be more precise.

2 I shall start with some contextual questions.

3 Could you please tell the Chamber how many times you were contacted by the
4 Defence for Mr Al Hassan.

5 A. [11:39:11] To begin with, your Honour, I would just want to clarify as to the
6 introduction of the Prosecutor who named my report as a second opinion. I think I
7 understand the context, but to be more precise, it's not a second opinion, as I have not
8 rendered an opinion with respect to the attribution of the signatures to the person of
9 interest. So I'm only rendering an opinion on the way the methodology appears to
10 have or not have been applied to the report of my colleagues. So I'm not aware of
11 a first opinion as to that. So just as a clarification, not to have the misconception that
12 I do have an opinion with respect to the authenticity of the signatures.

13 And then the question was, how many times I was in contact with the Defence team.
14 I don't have the number memorised, but if I'm not mistaken, everything has been
15 recorded, there's a series of emails. If this is required by the Court, I certainly have
16 all the emails and I can make them available. There was an introductory telephone
17 call before the assignment to interview me and to look at my background and assess
18 the possibility of having me as a witness, and there was definitely the preparatory
19 session that took place last Friday, and that was also recorded, if I'm not mistaken.

20 Q. [11:41:11] I thank you, Mr Witness.

21 With regard to the opinion there was a problem of translation.

22 THE INTERPRETER: [11:41:21] Message from the English interpreter: A
23 *contre-expertise* - in English - is a "second opinion."

24 MR DUTERTRE: [11:41:30] *Mais pas en français.*

25 THE INTERPRETER: [11:41:35] Could counsel kindly explain. From the interpreter.

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1 Thank you.

2 MR DUTERTRE: [11:41:40](Interpretation)

3 Q. [11:41:40] So Mr Witness, did you keep any notes from these conversations, the
4 first conversation and that of last Friday?

5 A. [11:41:50] I honestly don't remember for the first contact. Usually when we have
6 the first contact with the client or -- the legal representative would take some notes.
7 And from the last -- the session last Friday, I also took some notes. Yes, that is
8 correct.

9 Q. [11:42:19] Do you recall when that first telephone contact occurred? When was
10 that? At what date?

11 A. [11:42:37] It was certainly November. I don't know by heart the date, but if it is
12 of importance, I can certainly look it up and inform the Court at a later stage. But if
13 you look at the -- the system we have in the lab to give a number to the case, we use
14 the year and the month, and then we have a sequential number, and for
15 court-appointed cases, we start from 51. So in my report in the cover and in the
16 bottom part of each page we have the number "2021.11.51". So that was the first
17 court-appointed case we received in November of 2021; so that's when the first
18 contact was made.

19 Q. [11:43:37] Thank you for having specified that. It was indeed the year that was
20 lacking.

21 Mr Expert, could you say whether you transmitted to the Defence a draft of your
22 *contre-expertise*, of your counter-expertise --

23 THE INTERPRETER: [11:44:07] Which is not true English.

24 MR DUTERTRE: [11:44:10](Interpretation)

25 Q. [11:44:10] -- i.e., a second opinion?

1 A. [11:44:12] Yes, your Honour, there was a draft that was emailed to the Defence
2 team, I think about a week before the final version, and, to my recollection, there is no
3 change or amendment or correction between the two versions.

4 Q. [11:44:30] Could you please specify whether the Defence made any comments
5 on this draft and you didn't take it into account, or did they not make any comments
6 whatsoever?

7 A. [11:44:59] Your Honour, if I'm not mistaken, there were no comments
8 whatsoever. Or -- forgive me for interrupting. Just to clarify, the purpose of
9 the -- of sending the draft was to make certain that there's nothing missing from the
10 technical point of view as this is the first case that I have conducted for the
11 International Criminal Court.

12 I know that it was specified at some point, that, for example, I needed to include the
13 actual papers, scientific papers that I reference in the literature, which was new to me,
14 and we did have a discussion with the Defence team regarding copyright issues,
15 whether I am allowed legally to submit a publication and, again, that I had to include
16 the initial email contact that assigned the case to me.

17 I am not certain whether that type of communication took place before the first draft
18 or after the first draft was sent, but that was the purpose of sending a draft, making
19 certain that there's no technical thing that is missing due to lack of experience.

20 Q. [11:46:32] That's very clear, thank you.

21 Mr Expert, when one is conducting an expert study or a counter-study, if you like, it
22 is important to have elements of the best possible quality, is it not?

23 A. [11:47:02] The general answer to this is yes, but what is required here is to
24 specify exactly what the procedure is so that we know exactly what the material
25 under question is and, therefore, to understand what's the best quality and to avoid

1 the problem in translation.

2 If the mandate required rendering an opinion regarding the authenticity of the
3 signatures and, as a second step, making a critique or an assessment of the validity of
4 the conclusion of the pre-existing report, then of course it would be required to have
5 access to at least the same material in the same form as the previous experts.

6 But in this case, that was not asked by the Defence team. The question to re-examine
7 the entirety of the questioned material and to conduct a comparison with known
8 material from the person of interest was never posed to me. Instead, the question
9 was to review the report and to comment on the methodology that was used in
10 reference to all the material that was provided to me in electronic form.

11 Q. [11:48:44] And specifically, you received tome 1 and tome 2 of the report of the
12 two OTP experts in their French version, did you not?

13 A. [11:49:12] As it is stated in my report and I will -- I don't think we need this on
14 the monitor - or maybe we do - but it's the second chapter of my report, that's item
15 9930 and it carries over to 9931, I did receive copies of the original French versions of
16 their report. I did receive an unofficial translation of the first tome of the report, I
17 received the French and the official English translation of the testimony of the two
18 experts, and I received electronic files of all the material they had access to as well as
19 part of the product of the spectral examination they conducted at their laboratory.

20 Q. [11:50:19] Very well. So a partial summary: So you received tome 1, which
21 was 0064-0175; and tome 2, 0064-0332. And the Defence provided you with an
22 English translation of the first tome, which goes from page 0064-0075 -- 0175 to
23 0064-0331.

24 A. [11:51:19] I'm not in a position right now to confirm the page numbers, but that
25 is correct. That's what I received.

1 Q. [11:51:28] And you do not speak French, do you?

2 A. [11:51:32] Your Honour, I went to a French school from the age of 6 till the age
3 of 18, so I've learnt French since -- from the age of 8 till the age of 18. I'm
4 embarrassed to say that I haven't spoken since. But I consider myself in a position to
5 read. And when it comes to the report at hand, I was in a position to understand the
6 parts of the texts that have to do with my forensic discipline.

7 Q. [11:52:08] Very well, that's an important clarification. But in your work, you
8 based your work on the English translation furnished by the Defence, the first tome,
9 that is?

10 THE INTERPRETER: [11:52:30] Message from the English interpreter: Could
11 counsel please place his microphone closer to himself. Thank you very much.

12 THE WITNESS: [11:52:38] Your Honour, that is not accurate. My commentary is
13 based on the French version. What is evident in my report is that I tried to reference
14 both versions, especially when it comes to the testimony, because I don't know who is
15 going to be receiving the report and whether they are familiar with the French version
16 and so on. I can clarify that the English version, the unofficial translation of the
17 report, as well as the English version of the testimony was reviewed initially to give
18 a more quick understanding of the contents, but when I proceeded to the -- let's say
19 point-by-point evaluation of the documents, I referred to the French version.

20 MR DUTERTRE: [11:53:34](Interpretation)

21 Q. [11:53:36] And with regard to the English version that you said, "unofficial", did
22 you ask the Defence to provide you with an official and certified translation of it?

23 A. [11:54:02] No, I didn't ask for anything official in terms of an English translation
24 of the report because I didn't require such an assistance.

25 At this point, let me just repeat, I think it is clear for the first part of my testimony,

1 and of course I do not object to the questions from the Prosecutor, but most of the
2 comments in my report referred to parts that are missing from my colleagues' report.
3 So we can discuss about language and understanding, but I don't think there's
4 a specific part that could have been misinterpreted.

5 Q. [11:54:54] But can you say that you could work with the French language in the
6 context of your scope of work or field of work?

7 A. [11:55:15] I can certainly testify I would not be in a position to write a report in
8 French. But I have had cases from Switzerland, for example, in the past, and there
9 was no issue accessing and reading from the French original. So depending on the
10 extent and depending on the point of interest, let's say, I feel comfortable examining
11 the specific report in question, even without the English unofficial translation.

12 Q. [11:56:01] I was waiting for the end of the translation.

13 But your French is not up to working on a scientific level in your field of expertise?

14 MR PESTMAN: [11:56:32] I'm sorry to interrupt, but that is the same question the
15 witness just answered.

16 PRESIDING JUDGE MINDUA: [11:56:43](Interpretation) Mr Prosecutor, I do agree
17 with the Defence, the witness has already answered this question on a number of
18 occasions.

19 MR DUTERTRE: [11:56:52](Interpretation) I shall move on, indeed.

20 Q. [11:56:58] I am referring to divider number 1 of the OTP file which is your
21 report, Mr Witness, 0005-9928, and more specifically page 0005-9332.

22 And this is a document that should remain confidential, because it features some
23 names.

24 And we're talking here about individuals who might potentially have assisted the
25 experts in their work and whose CVs should have been attached.

1 And you mention -- and I shall quote the passage substituting the names with codes.

2 So it's towards the bottom of the page, and I quote, in English:

3 (Speaks English) "Within the report itself, only the CV of [620] and [621] are to be
4 found [...], giving the impression that none other these two experts played a role in
5 the assessment of the material, in the examining and evaluation of results, in the
6 conclusion formation or in the subsequent writing of the report.

7 This is contradictory to the testimony of [620], who states that [...] others DID perform
8 peer review of the signature analysis section of the report, but she cannot state their
9 names."

10 (No interpretation)

11 PRESIDING JUDGE MINDUA: [11:59:15](Interpretation) Counsel?

12 MR PESTMAN: [11:59:17] Yes, I'm sorry, I don't want to interrupt, but I understand
13 the Prosecutor is quoting from an excerpt. If we can have the reference, then I can
14 have a look at the quote as well.

15 MR DUTERTRE: [11:59:29](Interpretation) I did give the reference, it's 9932, that
16 page of the report of your very own witness.

17 PRESIDING JUDGE MINDUA: [11:59:44](Interpretation) Mr Prosecutor, I'd like to
18 make the most of it to ascertain whether there has not been a change within your
19 team. It seems that somebody has joined us. This is for the record.

20 MR DUTERTRE: [11:59:57](Interpretation) Indeed, Mr President, I should have
21 made mention of this, and it's Damien Grzeziczak who has joined us.

22 PRESIDING JUDGE MINDUA: [12:00:06](Interpretation) Thank you very much. It
23 is noted.

24 MR DUTERTRE: [12:00:12](Interpretation) And I do apologise.

25 PRESIDING JUDGE MINDUA: [12:00:28](Interpretation) I believe the Prosecution is

1 about to continue?

2 Go ahead, Mr Prosecutor.

3 MR DUTERTRE: [12:00:36](Interpretation) Thank you, your Honour.

4 Q. [12:00:39] Mr Witness, the word "assist" was used to provide this mandate to the
5 experts, 620 and 621, the word was "*assister*" in French. Would you agree with me
6 that if this word had not been translated correctly or if it had been translated literally
7 by the translation provided by the Defence, this could have had an impact on your
8 conclusions?

9 A. [12:01:17] It is not clear to me whether we are referring to the mission letter. I
10 think the mission letter was not provided in an English translation to me, and I
11 reviewed it as it was found in the original form. So I don't know if that helps.

12 Q. [12:01:52] You've done well to mention that, but the mission letter actually has
13 been translated and is to be found in D28-0006-4010, page 4018. That is the English
14 version.

15 Now to be quite clear, Mr Witness, the position of the Prosecution - and this is
16 a matter of cultural knowledge of the French context when it comes to experts, I
17 agree - in a French letter, the word "*assister*" is really meant to cover the laboratory
18 assistants or the -- certain other people, but not peer reviewers. Co-experts,
19 laboratory assistants, but not peer reviewers.

20 So my question is this: This criticism that you have made is based on a matter of
21 properly understanding the French context when it comes to experts and a rough
22 translation provided by the Defence, in actual fact.

23 A. [12:03:39] Your Honour, if I understand the position of the Prosecutor correctly,
24 the argument is that the language used for the mission letter was interpreted out of
25 context as to what it means when it says "assist." So I want to clarify this. The

1 mission letter comes into the equation and is reflected in my report trying to reach
2 a logical conclusion in conjunction with the testimony as to whether another trained
3 expert did provide peer review of the work of my two colleagues. Even if that is
4 misinterpreted, and it was not a requirement to include the CVs in their report, it is
5 certainly not clear to me whether either the ACE-V or the double ACE approach was
6 actually used during the examination and the writing of the report.

7 Regardless of the various definition of the word "assistants" in a French letter, as it is
8 stated in my report and mentioned in various parts of the literature, in order for peer
9 review to be effective it needs to be a part of the process. And, therefore, in my
10 opinion, in my understanding, it is not, let's say, a routine light approach to the
11 evidence or the report, it goes further within the report, especially if someone takes
12 into account the possibility of the peer reviewer having another opinion than the lead
13 expert.

14 So in that hypothetical scenario when -- where my two colleagues wrote their report
15 and then another expert assists by providing a peer review, and that person happens
16 to disagree on some parts of the report of the conclusion itself, I think, and that's how
17 I interpreted this part, that their involvement would definitely translate as
18 "assistants."

19 Depending on the laboratory standard operating procedure and the relevant
20 literature for conflict resolution, there should be clearly defined steps that should be
21 taken by the laboratory, the experts and the quality manager of the laboratory to
22 resolve that hypothetical disagreement and be able to reach a conclusion and write
23 a report. And that's why, in my opinion, the presence of a specific trained expert as
24 a peer reviewer is necessary, and it is usually encountered within reports that they
25 also sign the report.

1 Q. [12:06:54] Mr Witness, so you reviewed volume 1 of the report, 129 pages, not to
2 mention the annexes, which total 200 pages and for which there was no translation.
3 And in your 18-page report, if I'm to understand correctly, the only points that your
4 criticisms bore upon was the alleged lack of peer review related to a possible
5 cognitive bias and the lack of a clear conclusion scale, also related to the whole issue
6 of original documents.

7 So those were the only two points that your criticisms dealt with?

8 A. [12:08:04] Yes. From reviewing the methodology and not going through the
9 process of conducting an examination and rendering an opinion on the authenticity of
10 the signatures, those two points were the one -- the ones that could not be evaluated
11 through the report and, therefore, were mentioned in my report.

12 Q. [12:08:44] I'd like to return to a point that we dealt with during
13 examination-in-chief and this has to do with your report, tab 1, Defence binder,
14 D28-0005-9928, page 9943.

15 And this is confidential.

16 And this has to do with page 20 of today's transcript, the real-time French version of
17 the transcript. And I will allow the court officer to put the document up on the
18 screen. And if we could go to page 9943. There we are. If you could scroll down
19 slightly. And we read the following, and I quote:

20 (Speaks English) "[...] it is safe to conclude that no Peer Review (as specified by
21 paragraphs 5.4 and 5.5 of the BPM) has taken place during the examination and the
22 subsequent writing of the report."

23 (Interpretation) If we could now move to page 9946. In actual fact, this page can be
24 displayed publicly. There is no name to be found other than the name of the expert
25 witness.

1 And it reads as follows, quote:

2 (Speaks English) "It is unclear whether there was any kind of actual peer review
3 during the [examination] process of analyzing the evidence or writing the report [...]"

4 (Interpretation) End of quote.

5 I can continue reading the passage if my learned friend so wishes.

6 PRESIDING JUDGE MINDUA: [12:12:12](Interpretation) Hold on, let's see what
7 counsel would like to say.

8 MR PESTMAN: [12:12:16] Yeah, I have no objection but -- and I don't mind citing
9 short quotes, but the sentence continues after the comma, and I think it's important
10 that the whole sentence is read and not just part of the sentence.

11 PRESIDING JUDGE MINDUA: [12:12:33](Interpretation) Very well.

12 Go ahead, Mr Prosecutor.

13 MR DUTERTRE: [12:12:38](Interpretation) Yes, indeed. I was trying to save us
14 a bit of time, but in any event.

15 (Speaks English) "It is unclear whether there was any kind of actual peer review
16 during the [examination] process of analyzing the evidence or writing the report, with
17 strong indications that there was [not] ..."

18 (Interpretation) End of quote.

19 Q. [12:13:02] Mr Witness, on the one hand you say "it is safe to conclude" and then
20 later on "it is unclear whether there was ..."

21 Which formulation is correct? Which wording is the right one?

22 A. [12:13:28] The statement on page 9943 is part of the evaluation of the questioned
23 report according to the Best Practice Manual. According to the Best Practice Manual,
24 as it is specified within parenthesis, it is safe to conclude from the report and the
25 relevant testimony that there was no peer review conducted because those paragraph

1 of the Best Practice Manual, 5.4 and 5.5, do specify that this needs to happen and it
2 needs to be stated. So the specific quote refers to a conclusion that can be logically
3 derived through the context of the Best Practice Manual.

4 The overall opinion, which rests mainly on the report within itself, is the one stated
5 on page 9946, that it is unclear whether peer review actually did took place and that
6 indeed there are strong indications that it didn't.

7 To -- to that effect, as I think I made it clear during the first part of my testimony,
8 everything recorded in my report highlights the inability for another expert, in this
9 situation myself, to confirm whether specific safeguards have taken place.

10 Q. [12:15:08] Mr Witness, now Witness 620 did testify before the Chamber that
11 there was peer review, transcript T-33, page 40, lines 16 to 23. So you are dismissing
12 the testimony given by another witness under oath before this Chamber, aren't you?

13 A. [12:15:55] Your Honour, I don't see how I am doing that. I am trying to read
14 the report, I'm trying to read the testimony, and I'm trying to understand how the
15 report should have been written. I'm not stating at any part of my report or my
16 testimony that a fellow colleague lied under oath. I'm stating the fact that there are
17 statements and requirements, according to my understanding, that are contradictory.

18 Of course we can argue that under the context presented by the Prosecutor, the
19 mission letter did not specify that the CV of this unknown reviewer had to appear
20 within the report. It was my understanding that it had, and still my conclusion is
21 that it is unclear whether a peer review -- whether a structured peer review took
22 place.

23 Going back to my testimony during this morning, according to the literature and in
24 connection to the hypothetical scenario I presented earlier, where the reviewer has
25 a difference of opinion to the lead expert, there needs to be a very specific and

1 structured peer review protocol that includes conflict resolution.

2 I'm just stating that this is a requirement as a safeguard for the scientific validity of a
3 report, and that going through the report, it was not completely obvious to me what
4 has happened with respect to the peer review.

5 And that would also apply to the document expert, which is nowhere mentioned in
6 the testimony with respect to peer review. If I'm not mistaken, during the document
7 expert's testimony, they're asked only whether they reviewed their colleague's part
8 and they state that they didn't. So there is no specific mention -- unless I'm missing
9 something, for which I'm sorry, there is no specific mention of a peer review process
10 or person regarding the document part.

11 Q. [12:18:35] But to conclude on this point, you can't rule out that a peer review
12 was conducted, be it according to the Best Practice Manual or not?

13 A. [12:18:58] No, I cannot exclude this possibility and I think this is clear from my
14 report and statement.

15 To -- if I'm allowed to make a comment, your Honour, I keep making the same
16 comment in the previous section as well. My approach to the report is that there are
17 things that cannot -- been confirmed. That's as far as my assessment goes. I do not
18 have the tools -- I'm not provided with the necessary tools to assess the validity of the
19 methodology according to the two points focused by the Prosecutor.

20 Q. [12:19:49] Thank you for clearing up that point, Mr Witness.

21 I'd now like us to move to tab 17 of the Defence binder. And this is document
22 D28-0005-9729, this is the Best Practice Manual for the Forensic Examination of
23 Handwriting. In the version --

24 THE COURT OFFICER: Could counsel --

25 THE INTERPRETER: [12:20:30] Overlapping.

1 THE COURT OFFICER: -- indicate if this can be --

2 MR DUTERTRE: [12:20:34](Interpretation) Public.

3 More specifically, if we could move to page 9733.

4 THE INTERPRETER: [12:20:42] Correction: 9737.

5 MR DUTERTRE: [12:20:45] (Interpretation) Yes, page 9737. Thank you.

6 If we could scroll down to 5.5.

7 A few moments ago this was read out, but I will read it out and, I quote:

8 (Speaks English) "It is important within Forensic Handwriting Examinations that the
9 results of any examinations undergo Peer Review."

10 Q. [12:22:00] (Interpretation) My question is as follows, Mr Witness: (Speaks
11 English) As such, the peer review is not mandatory, but only recommended, right?

12 A. [12:22:12] Your Honour, as stated in my previous part of the testimony, the
13 entire document is a recommendation. The European Network of Forensic
14 Handwriting Experts is not in a position to enforce anything, regardless of the
15 scientific validity it might have. The concept here is to help -- to assist and guide
16 fellow experts and laboratories. In that sense, we have this document which is
17 a recommendation that includes the best practices of our forensic field and it
18 addresses specific issues and problems in the process. In that sense, the whole
19 chapter is a recommendation. The peer review is a necessary process to ascertain the
20 scientific validity and to minimise subjective error and the possibility of cognitive bias.
21 There could be other approaches, I assume, but I'm not aware of any that I can testify
22 of.

23 Q. [12:23:28] Mr Witness, if we could return to your report, tab 1 of the Defence
24 binder, D28-0005-9928, and if we could go to page 9938, which I believe can be shown
25 publicly, or at least the top of the page.

1 Courtroom officer, if you could kindly scroll down a little bit so that we can see the
2 paragraph in question. Thank you.

3 And I believe we were talking about the conclusion scale and the original documents,
4 if memory serves, and you said, quotation mark:

5 (Speaks English) "This limitation which is correct is nowhere reflected in the
6 conclusion of the report [...] The way the conclusion is stipulated does not present
7 any limitation or constraint for the level of certainty, bundling the questioned
8 signatures on non-original documents together with those on original documents;"

9 (Interpretation) And Mr Witness, I would remind you - before I put my
10 question - that the limitations on the non-originals is clearly mentioned by expert 620,
11 in the report 004-16 -- 175 page 0064-0246.

12 My question to you is this: Now the fact that the limitations aren't mentioned or
13 reiterated in the conclusions, knowing that they were mentioned before earlier on,
14 and that the expert examined these various signatures individually, this has no
15 impact insofar that the conclusions cannot set out or reiterate all the details of the
16 report.

17 A. [12:27:12] Is that the question? Okay.

18 Okay, to begin with, regarding my report, in the very previous page it is clearly
19 mentioned, exactly as the Prosecutor said, the point within the body of the report
20 where the limitations from the examination of a signature from a non-original are.

21 So it is stated and it's clear that the expert will analyse and compare and evaluate less
22 characteristics than the entirety of the characteristics we have in our disposal,
23 something that by definition will limit the certainty of the conclusion that we will
24 reach. Mainly because, as I explained in the previous part of my testimony, we will
25 necessarily constrain our examination only to the two-dimensional pictorial

1 characteristics of the signature.

2 What I'm writing on the next page, which is the initial page the Prosecutor requested
3 to appear, 9938, is that the limitation, what it means to examine a signature from
4 a non-original is not repeated in the conclusion. And I find this problematic in the
5 sense that I am an expert and I know what to look for, but a person who receives the
6 report and is not an expert may have lost this piece of information.

7 Furthermore, and maybe even so more importantly, just like it is mentioned in my
8 report, on the same paragraph of conclusion, we have the inclusion of original
9 signatures - signatures examined in their original forms - and signatures examined in
10 a non-original form. So the question that is unanswered to me at the moment is
11 whether the limitation from examining non-original signatures was not taken into
12 account so that the experts reached the same level of certainty as they did with the
13 signatures that were examined in their original form, or, in reverse, if their findings in
14 the examination of the signatures that were available in original form were so limiting
15 that they dropped the level of certainty to that of signatures that were examined in
16 non-original form. So I would have expected, for example, some sort of clarification
17 or stipulation on the same paragraph explaining this contradiction.

18 Q. [12:30:39] Mr Witness, the fact is that a conclusion does not need to recall all of
19 the elements that arise in the contents of the report.

20 A. [12:30:54] Excuse me, your Honour, is there a question to the statement?

21 Q. [12:31:08] Yes, it is a question. (Speaks English) The fact remains that the
22 conclusion doesn't have to include all matters addressed in the core of a report, isn't
23 it?

24 A. [12:31:23] I will answer like this. What is the purpose of a forensic report?

25 The purpose of a forensic report is to communicate the findings and the process that

1 led to these findings to the recipient of the report. In that aspect, the conclusion is
2 the most important part of the report because it has to include all the information
3 necessary for the non-expert to correctly assess the strength of the evidence. In that
4 context, I believe it should be explained what type of limitation an expert has when
5 they render a conclusion based on the examination of a non-original, and it is that
6 part of the question that I consider is missing.

7 Q. [12:32:39] Mr Witness, (Speaks English) isn't it correct that the scale of
8 conclusion: identification, inconclusive, elimination is also traditionally used in the
9 field of handwriting expertise?

10 A. [12:33:03] Your Honour, I will require some clarification. The broad spectrum
11 of having three categories of conclusion is correct. It is either -- some were towards
12 identification, some were towards elimination or inconclusive, but as I think it is clear
13 from my earlier statement, we can have different scales of conclusions with different
14 levels.

15 Furthermore, it needs to be specified what the Prosecutor means by saying
16 "traditionally used in the field of handwriting" examination. We do have traditions,
17 but they're different based on continent or school of thought to an extent.

18 Q. [12:33:51] And you have seen this type of scale before?

19 A. [12:34:11] Which type?

20 Q. [12:34:12] The one I just mentioned, identification, inconclusive, elimination.

21 A. [12:34:19] I have seen several different scales, I have published an article
22 commenting on different scales of conclusion used by fellow experts in the Greek
23 legal environment, so yes, I have seen a similar three-point scale.

24 Q. [12:34:45] (Interpretation) Now, Mr Witness, I would like to go on to another
25 point that was broached in examination-in-chief and I would need for you to cast

1 light on the matter.

2 I shall be using document at tab 9, Mr President, your Honours, ERN 0005-9451,

3 bearing the title, and it's public:

4 (Speaks English) "Forensic handwriting for examiners' expertise for signature
5 comparison."

6 (Interpretation) Mr Witness, do you recognise this document? Are you familiar with
7 it?

8 A. [12:35:42] Yes.

9 Q. [12:35:46] I shall now go to page 9452, 9453 and 9454 subsequently.

10 And this is relevant to the question that was broached on page 25, lines 2 to 16 of the
11 transcript, the real-time transcript, French version today.

12 And I do apologise, it's somewhat lengthy. It needs to be contextualised, but I shall
13 be going slowly.

14 And I shall be reading the beginning of the abstract for everyone to be able to
15 understand what it's all about.

16 We need to go up the page somewhat, Madam Courtroom Officer, please, a little bit
17 further up. There we are.

18 "ABSTRACT." A millimetre more, please. There we are.

19 And we read as follows:

20 (Speaks English) "This paper reports on the performance of forensic document
21 examiners (FDEs) in a signature comparison task that was [designated] to address the
22 issue of expertise. The opinions of [the] FDEs regarding 150 genuine and simulated
23 questioned signatures were compared with a control group of non-examiners'
24 opinions."

25 (Interpretation) And now I have two or three paragraphs that are rather lengthy, but

1 we do have to contextualise things. And I shall ask the courtroom officer to please
2 scroll down somewhat. There we are.

3 And I read, open quotation marks:

4 (Speaks English) "Generally expertise in a particular area may be thought of as ability
5 that is superior to that of the average person. To our knowledge, there are only
6 a limited number of published studies [...] that compare FDEs' ability in handwriting
7 identification with that of the average person. Empirical studies on text-based
8 handwriting identification have shown evidence of expertise in trained FDEs [...]
9 These studies by Kam and colleagues compared FDEs' opinions to those of a control
10 group of non-examiners in text-matching exercises. They found that FDEs made
11 significantly fewer errors than the control groups and were significantly more
12 cautious in making decisions, however, the control groups were able to correctly
13 identify similar amounts of writing."

14 (Interpretation) I'm going to go down somewhat in the following paragraph, and I
15 read, open quotation marks:

16 (Speaks English) "Again FDEs made significantly fewer errors than the control group,
17 had a significantly higher inconclusive rate and there was no difference between
18 groups in the raw number of correct opinions."

19 (Interpretation) I'm now going to move on to the next page, which is 9453, and we can
20 go down a little bit, and in the paragraph entitled "Subjects", I read, open quotation
21 marks:

22 (Speaks English) "Thirteen individuals with no document examination experience or
23 any prior professional association with handwriting examination were used as the
24 control group."

25 (Interpretation) I'm now going to be moving on to page 9454 and we shall be going

1 down to "Results of Comparison [...]".

2 And I read:

3 (Speaks English) "Subjects provided opinions on whether each of the 150 questioned
4 signatures were simulated or genuine. Each opinion was considered to be an
5 opinion unit. For the FDE group the total number of opinion [...] was 2550 [...] and
6 the control group was 1950 [...]"
7 1950.

8 "Analysis of opinions as correct, wrong, and inconclusive showed that the FDE group
9 had 1397 correct opinion units [...], 1067 inconclusive opinion unions [...] and 86
10 wrong opinion units [...] The control group had 1113 correct opinion units [...]"
11 inconclusive opinion units, 461, "and 37[7] wrong opinion units [...] Thus the error
12 rate for the FDEs group was 3.4% and for the control group was 19.3%."

13 (Interpretation) Having developed all of this, Mr Witness, is it not true that an
14 average person has the capacity to recognise a signature?

15 A. [12:45:08] Well, the short answer is no. But I'm going to expand through the
16 parts read by the Prosecutor to make that clear.

17 So the Prosecutor initially read a part of the abstract that defined pretty much the
18 research method and the experiment applied to this publication. He then
19 highlighted the part where in the beginning of the publication it is stated why it was
20 necessary by the scientists to conduct this publication, quoting how there's limited
21 number of published studies regarding the superiority of the expertise of trained
22 experts, but I would like to focus the attention of the Court in the date of publication
23 of this very important article, which was 2002. So that initial statement characterises
24 the situation 20 years ago. And then very much correctly, the Prosecutor read the
25 part that it stated that the trained experts made significantly fewer errors. And

1 when I say "significantly", if you go to the numbers, the trained experts had 3.4 per
2 cent wrong opinions versus 19.3 per cent of the untrained experts. This is the
3 important statistics -- statistic, and I will explain why.

4 When we are faced with a case that is complex or we have limited material, or the
5 complexity of the signature is low and so on, the accuracy of the opinion that the
6 trained expert can formulate starts to lose strength.

7 The trained expert, apart from the proper analysis and evaluation of those
8 characteristics, is trained to know the limitation of their methodology. It is clear that
9 the untrained expert is not aware of this. So for the untrained experts, when they
10 encountered within this experiment signatures that the trained experts could not
11 render an opinion, they didn't recognise the limitation of the material, and they called
12 it either genuine or forgery.

13 If we keep reading and go to the paragraph called the "Called opinion" where the
14 inconclusive opinions are removed from the statistics, we can see how different the
15 numbers are, with the trained experts having 94.2 per cent correct opinions with
16 an error rate of 5.8 per cent versus the untrained experts with a correct opinion of 74.7
17 per cent and an error rate of 25.3 per cent.

18 This means that an untrained expert when -- a layperson, when they have an opinion
19 regarding the authenticity of a signature, one out of four, they're wrong. So it is
20 clear to me, if we take into account the error rate, that this publication proves the
21 expertise of the trained handwriting and document examiners versus the layperson.

22 Q. [12:49:35] I haven't really understood when you refer to "untrained experts,"
23 we're talking here about people who do not have a link with this field of expertise.
24 Maybe you could clarify.

25 My question is as follows: The average person in three out of four cases are correct?

1 A. [12:50:01] As to the first part of the question, when I say "untrained expert," I
2 meant in the context of the publication, so I refer to the layperson in that term. So
3 apologies, I will refrain from using that terminology.

4 And again, as I said, yes, they render a correct opinion three out of four versus the
5 trained experts who render a correct opinion 95 per cent of the time. But the
6 importance, especially when it comes to the miscarriage of justice, is the error rate.
7 So the layperson on the same -- on the same phrase also is stated to have an error rate
8 of 25.3, one out of four, wrong versus 5.8 per cent for the trained experts.

9 Q. [12:51:15] I'm going to move on to another point that you have already broached
10 yourself spontaneously in addition to the rest, Mr Witness.

11 Do you know whether the Defence had the signatures on the documents under study
12 in comparison with the documents of comparison, by another expert, that is, of
13 course?

14 A. [12:51:50] For clarification, the question is whether I have knowledge of another
15 handwriting expert rendering an opinion on the same material approached by the
16 Defence? The other is -- the answer is no, I have no -- no knowledge of something
17 like this.

18 Q. [12:52:21] So you did not ask when you were talking to the Defence whether
19 they had had those signatures examined themselves for purposes of comparison in
20 a counter-expertise study?

21 A. [12:52:39] No, I didn't enquire as to that as that would be irrelevant to the task I
22 was assigned to do.

23 Q. [12:52:56] So the Defence merely asked you to hone in on matters of
24 methodology. But would it not have been better, Mr Expert, for you to be asked to
25 examine those signatures for the counter-expertise study to be complete, would it not

1 have been more relevant?

2 A. [12:53:27] I will begin my response by stating that in the translation, the
3 beginning of the question of the Prosecutor was given to me as, the Defence asked me
4 to hone in on an aspect, and I just want to clarify that if that is interpreted as focus,
5 then I was not focus -- I was not asked to focus on any aspect of the report. I was
6 asked to review the report as to the methodology. "Focus" - in my
7 understanding - implies to select something out of many.

8 With respect to the question of the Prosecutor, if one wants to have an opinion
9 regarding the connection of the execution of the questioned signatures to the person
10 of interest, then, of course, a full examination of all available material needs to be
11 conducted.

12 So if I am to look at my report and its contribution to the Chamber, the contribution
13 would be that we -- it might have problems, it might not have problems, but we have
14 no tools to evaluate that. And, as I said, I have no opinion whatsoever as to the
15 authenticity of the signatures in question.

16 Q. [12:55:08] And you yourself, did you suggest to the Defence that you do the
17 work of comparing the signatures -- the questioned signatures with the comparison
18 signatures?

19 A. [12:55:21] No, I don't think I did request anything of the sort. I was given
20 a very specific mandate and I just acted on it.

21 Q. [12:55:42] But don't you think that it would have been timely to come to
22 a conclusion to --

23 THE INTERPRETER: [12:55:52] Counsel's microphone is very far away. Could he
24 put the question again with the microphone closer, please. Microphone closer,
25 please, Counsel. Question again.

1 THE COURT OFFICER: [12:56:04] Could counsel please repeat the question.

2 MR DUTERTRE: [12:56:12](Interpretation)

3 Q. [12:56:15] Would it not have been timely to suggest to them that a complete
4 examination of the comparison and questioned signatures be conducted to have
5 a truly useful counter-expertise, Mr Witness, that could provide conclusions?

6 THE INTERPRETER: [12:56:38] The interpreter has her microphone -- has her sound
7 volume up full. She can only just hear counsel.

8 THE WITNESS: [12:56:46] So the question of the Prosecutor is twofold. One part
9 has to do with my role suggesting to the Defence team as to the actions they need to
10 take. The second part is a comment on the usability of my report to the Chamber.
11 As to the first part, I might be mistaken as this is the first time I interact with your
12 Court, so apologies if I am mistaken, but I honestly didn't know I had the luxury of
13 suggesting a strategic approach to the Defence. It was certainly not made clear to me
14 and we didn't have these type of discussions of meeting -- or meetings of strategy.
15 So I didn't even consider the possibility of suggesting an extra step when it came to
16 my mandate.

17 Now regarding the -- I didn't have the time to write exactly how the second part of
18 the question of the Prosecutor was translated to me, but whether or not my report is
19 useful to the Chamber or not, that is obviously up to your Honours to evaluate.

20 I think to highlight the possibility that there might be errors made in previous steps of
21 the process is valid enough and, ideally, there shouldn't be anything for me to write
22 a report on.

23 MR DUTERTRE: [12:58:40](Interpretation)

24 Q. [12:58:41] And one last question or a penultimate question, Mr Witness. You
25 responded to my question as to whether you suggested to the Defence to do the entire

1 job --

2 (Overlapping speakers)

3 (Speaks English) "No, I don't think I did request anything of the sort."

4 (Interpretation) "I don't think", do you know or do you not know? Do you
5 remember or do you not remember?

6 A. [12:59:10] I definitely don't remember suggesting this and I would find it
7 extremely out of context and practice within this cooperation to suggest such a thing.
8 I was contacted with the specific mandate, I went through the process of registering to
9 the table of experts of your Court. I didn't know that that could even be a possibility.
10 So I honestly cannot tell you that I clearly remember every day of the past -- I don't
11 know how many months it is, but it would really surprise me if I went forward with
12 something like that. That was not the mindset I had during my collaboration with
13 the Defence team.

14 And, obviously, if -- if that was a step taken, then that would automatically mean that
15 I would require access to the originals, I would have to enquire about the process of
16 having the second peer reviewer of our laboratory somehow accepted to the Court
17 and so on.

18 So by definition, it would be a very complex process and I didn't consider it at all.

19 Q. [13:00:41] Thank you, Mr Witness. I have no further questions for you during
20 this cross-examination and I thank you for being so cooperative in helping with the
21 work of this Court.

22 And I will hand over to you, your Honour.

23 PRESIDING JUDGE MINDUA: [13:01:02](Interpretation) Thank you very much,
24 Mr Prosecutor.

25 I now turn to the Legal Representative of Victims, I saw that you asked for permission

1 to address the Court. Did you still want to put some questions?

2 MR KASSONGO: [13:01:21](Interpretation) Thank you, Mr President, your Honours.

3 We thank you for offering us this opportunity to put a number of questions to the
4 witness.

5 In light of the expert report provided and the second opinion report and the answers
6 provided in cross-examination, we wish to indicate that we do not wish to put
7 questions to the witness, but we do thank the Chamber for this opportunity.

8 PRESIDING JUDGE MINDUA: [13:01:53](Interpretation) Thank you very much,
9 Counsel, for clarifying that point.

10 Naturally, well, it is 1 o'clock, I think we can continue for a few more moments, and I
11 now turn to the Defence to ask whether they have any further questions.

12 MR PESTMAN: [13:02:12] No, your Honour, we have no additional questions.

13 PRESIDING JUDGE MINDUA: [13:02:24](Interpretation) Very well. Thank you
14 very much, Mr Pestman.

15 I believe we have concluded with this particular Defence witness, P-501. No one
16 wishes to continue and so we have now come to the end of the witness's testimony.

17 Mr Witness, on behalf of the Chamber I would like to thank you most sincerely for
18 answering the questions in a very specific manner and with such goodwill.

19 Your testimony is now over and I thank you once again.

20 (The witness is excused)

21 PRESIDING JUDGE MINDUA: [13:03:21] (Interpretation) Before adjourning, as is
22 the case, as ever, I would like to thank everyone who took part in today's hearing,
23 parties and participants, the court reporters and interpreters, and of course, I'm not
24 going to forget our security officers, nor shall I forget the members of the public in the
25 gallery and those listening in from far away.

Trial Hearing
WITNESS: MLI-D28-0501

(Open Session)

ICC-01/12-01/18

- 1 I would like to ask the Defence, where do we go from here? We have finished.
- 2 Tomorrow there is no hearing. What is the next step?
- 3 MS TAYLOR: [13:04:09] Thank you very much, Mr President. The next witness
- 4 will be D-500, that's Dr Sommerlad. He'll be testifying on the 25th, I believe.
- 5 Thank you very much.
- 6 PRESIDING JUDGE MINDUA: [13:04:29](Interpretation) Perfect. Understood.
- 7 We shall now adjourn.
- 8 The Court stands adjourned.
- 9 THE COURT USHER: [13:04:37] All rise.
- 10 (The hearing ends in open session at 1.04 p.m.)