COURT GENERAL DOCKET NO. 1351/18
CRIME REPORTS GENERAL DOCKET NO. 54772/13

JUDGMENT NO. 3055
OF 3.17.2021

FILED IN THE
COURT REGISTRY
OFFICE
on 6/9/21

ITALIAN REPUBLIC

[Logo]
IN THE NAME OF THE ITALIAN PEOPLE
COURT OF MILAN
CRIMINAL DIVISION 7

with the following judges:
Honorable Marco Tremolada — Presiding Judge
Honorable Mauro Gallina — Reporting Judge
Honorable Alberto Carboni — Reporting Judge

has delivered the following

JUDGMENT

In the criminal proceedings against:

1. **SCARONI Paolo,** born in Vicenza on 11.28.1946; *free, not attending*, with Defending Attorney Enrico De Castiglione of the Milan Bar

2. **DESCALZI Claudio,** born in Milan on 2.27.1955; *free, not attending,* with Defending Attorney Paola Severino of the Rome Bar

3. **CASULA Roberto**, born in Cagliari on 5.22.1962; *free, not attending,* with Defending Attorneys Guido Carlo Alleva of the Milan Bar and Giuseppe Fomari of the Milan Bar

4. **ARMANNA Vincenzo,** born in Piazza Armerina on 2.27.1972; *free, not attending*
with Defending Attorney Angelo Staniscia of the Rome Bar

5. **PAGANO Ciro Antonio,** born in Toronto (Canada) on 3.10.1962; *free, not attending*
with Defending Attorney Federica Rinaldini of the Milan Bar

6. **AGAEV Ednan Tofik Ogly,** born in Baku (Russia) on 10.25.1956; *free, attending*
Defending Attorney Francesco D'Alessandro of the Rome Bar

Countersigned

Milan, 6/9/2021

THE ASSISTANT ATTORNEY GENERAL

Executive extract sent to:

a) Public Prosecutor's Office

b) Evidence Office

c) File 1

d) Prefecture

II

Extract sent to:
a) Form 21 Public Prosecutor with Gen Docket

b) Police Headquarters

c) Prison

d) Debt recovery office

II

[3 illegible signatures]

7. **BISIGNANI Luigi,** born in Milan on 10.18.1953; *free, not attending*, with Defending Attorney Domenico Franchini of the Milan Bar

8. **FALCIONI Gianfranco,** born in Domodossola 4.14.1945; *free, not attending*
with Defending Attorney Gian Filippo Schiaffino of the Milan Bar

9. **ETETE Dan**, born in Odi (Nigeria) on 1.10.1945; *free, not attending, with* Defending Attorney Antonio Secci of the Sassari Bar

10. **BRINDED Malcolm,** born in Bromley (United Kingdom) on 3.18.1953; *free, not attending*
with Defending Attorneys Marco Calieri of the Milan Bar and Andrea Rossetti of the Milan Bar

11. **COLEGATE Guy Jonathan,** born in Canterbury (United Kingdom) on 8.28.1966; *free, not attending*
with Defending Attorney Giuseppe Bianchi of the Milan Bar

12. **COPLESTON De Carteret John,** born in Tidworth (United Kingdom) on 1.26.1952; *free, not attending*
with Defending Attorney Giuseppe Bianchi of the Milan Bar

13. **ROBINSON Peter,** born in Perth (Australia) on 10.26.1962; *free, not attending*
with Defending Attorney Chiara Padovani of the Milan Bar

14. **ENI S.p.A.**, in the person of its current legal representative*; attending*
with Defending Attorney Nerio Diodà of the Milan Bar

15. **ROYAL DUTCH SHELL p.l.c.,** in the person of its current legal representative*; attending*
with Defending Attorneys Bruno Lorenzo Cova of the Court of Turin and Francesco Mucciarelli of the Milan Bar

CIVIL PARTY:

1. **THE FEDERAL REPUBLIC OF NIGERIA,**in the person of the current Nigerian Ambassador to Italy*; not attending*
with Defending Attorney Lucio Lucia of the Milan Bar

PARTIES LIABLE FOR CIVIL DAMAGES:

1. **ROYAL DUTCH SHELL p.l.c.,** in the person of its current legal representative*; not attending*
with Defending Attorney Bruno Lorenzo Cova of the Turin Bar

2. **ENI S.p.A.**, in the person of its current legal representative*; not attending*
with Defending Attorney Nerio Diodà of the Milan Bar

[3 illegible signatures]

3. SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA Ltd.,in the person of its current legal representative*; not attending*
with Defending Attorney Francesco Mucciarelli of the Milan Bar

4. SHELL UK Ltd., in the person of its current legal representative*; not attending*
with Defending Attorney Francesco Mucciarelli of the Milan Bar

5. SHELL EXPLORATION AND PRODUCTION AFRICA Ltd.in the person of its current legal representative*; not attending*
with Defending Attorney Francesco Mucciarelli of the Milan Bar

[3 illegible signatures]

INDIVIDUALS ACCUSED

of the crimes and administrative offenses listed below:
Scaroni, Descalzi, Casula, Armanna, Pagano, Falcioni, Bisignani, Agaev, Etete, Brinded, Colegate, Copleston and Robinson; as well as Di Nardo, Obi and Alhaji Abubakar Aliyu, against whom proceedings are being taken separately

1) the crime referred to in Articles 110, 112 no. 1, 319, 321, 322-*bis* (2) no. 2 of the Italian Criminal Code; Articles 3 and 4 of Law no. 146/2006, because

Scaroni, in his capacity as CEO and General Manager of Eni

- giving his approval to the intermediation by Obi proposed by Bisignani and asking Descalzi to act accordingly; holding direct contacts with Bisignani;
- being constantly informed by Descalzi of the status of the negotiations and of Etete's role and approving the terms of the deal;
- meeting personally, along with Descalzi, with the President of Nigeria, Goodluck Jonathan, both in the agreement finalization phase (August 13, 2010) and in the final phase, during an electoral rally in Nigeria on February 22, 2011;

Descalzi, in his capacity as General Manager of Eni's Exploration & Production Division since July 2008

- personally maintaining contacts with Emeka Obi and with Eni's operatives in Nigeria, Casula and Armanna, and being informed about the request for fees;
- receiving instructions from Bisignani about how to handle the negotiations;
- agreeing with his counterpart, Malcolm Brinded from Shell, the price of the deal, namely, $ 1.3 billion and, thereafter, until the deal was completed, coordinating with Brinded the position of the two companies, Eni and Shell; keeping Scaroni constantly informed of the status of the negotiations and Etete's role;
- meeting, along with Scaroni, with President Jonathan to iron out the deal;

Casula, in his capacity as the head at Eni for operating and business activities in sub-Saharan Africa, based in Nigeria:

- on NAE's [Nigerian Agip Exploration's] behalf, signing the commitments with Obi and interacting constantly with Obi during the negotiations until shortly before the execution of the "resolution agreements";
- reporting to Descalzi;
- maintaining operating contacts with his counterpart at Shell, Peter Robinson, and scheduling meetings with Shell managers at his home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials;
- attending meetings held at the Attorney General's offices in Abuja (Nigeria) from November 18 to 25, 2010, at which Attorney General Adoke Bello and Alhaji Abubakar Aliyu were present, where the financial terms of the deal were agreed ($ 1.3 billion);
- attending the subsequent meeting with Dan Etete in Milan during the night between November 30 and December 1, 2010, in which Obi and Agaev were present, to settle the issues regarding the fees to Obi;
- preparing, with Obi and Descalzi, the meeting on August 13, 2010 in Abuja with President Jonathan relating to the OPL 245 deal and attending a subsequent meeting with President Jonathan on February 22, 2011;
- coordinating with Armanna;

- supervising the activities of the Eni negotiating team, up to the drafting of the texts of the "resolution agreements";
- being informed of the movements of money after the signing of the "resolution agreements";

Armanna, in his capacity as senior adviser to NAOC (Nigerian Agip Oil Company) and Vice President at Eni, sub-Saharan upstream activities

- having held relations from the very beginning with Obi and Etete, being fully informed of the transfer of most of the amounts paid by Eni to the political sponsors of the transaction and the agreements for the kickback of large amounts to the top managers of Eni and Shell;
- informing Bisignani of the status of the negotiations and receiving instructions as to how to act;
- meeting on several occasions with Attorney General Muhammed Adoke Bello and discussing the topic of the fees to the brokers with him;
- attending meetings at the Attorney General's office from November 18 to 25, 2010, at which Attorney General Adoke and Alhaji Abubakar were present, where the financial terms of the deal were agreed to ($ 1.3 billion);
- in December 2010, receiving an indication from Adoke as to the contractual arrangement eventually adopted, which centered on an active role by the Nigerian government (FGN) which, under the agreements, would transfer the OPL 245 license to Eni and Shell and would receive the "consideration" of € 1,092,040,000 intended for Etete;
- coordinating with Falcioni and Bajo Oyo for the further transfer of the money paid by Eni to the Nigerian government's account at JP Morgan Chase London and subsequently receiving € 917,952 from Bajo Oyo with the false payment reference "Armanna inheritance";

Pagano, in his capacity as managing director of NAE

- signing, on NAE's behalf, the offer presented on October 30, 2010 to the Raiffeisen bank, Obi's adviser, to purchase 100% of Malabu's "participating interest" in OPL 245 against the following payments: $ 207,960,000 to the Nigerian government as signature bonus and $ 1,053,000,000 directly to Malabu;
- attending meetings with Shell executives at Casula's home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials;
- attending the meeting with President Jonathan on February 22, 2011;
- signing, on NAE's behalf, the FGN Resolution Agreement of April 28, 2011;

Guy Colegate and John Coplestone de Carteret, former MI6 officers who had been hired by Royal Dutch Shell Plc respectively as Senior Business Advisor and Strategic Investment Advisor

- communicating with Gusau and other sponsors (ABC Orjiiako; Emmanuel Ojiei) to help Shell with the transaction;
- gathering information about the financial demands of Diezani Alison-Madueke - a former Shell Executive and Minister of Petroleum - and President Goodluck Jonathan, to authorize the deal;
- maintaining operating contacts throughout the course of the negotiations with Ednan Agaev;
- coordinating with Robinson and other Shell executives

Peter Robinson in his capacity as Vice President Commercial for Sub Saharan Africa of Royal Dutch Shell Plc,

- keeping in touch with Colegate and Copleston throughout the course of the negotiations and receiving information from them about the economic demands made by the representatives of the Nigerian Government meeting with Obi several times, in particular in the time leading up to the August 2010 meeting between Scaroni and Jonathan;

- maintaining constant contact with his counterpart Roberto Casula;
- attending meetings at the Attorney General's office from November 18 to 25, 2010, at which Attorney

[3 illegible signatures]

General Adoke and Alhaji Abubakar were present, where the financial terms of the deal were agreed to ($ 1.3 billion);

- reporting to Brinded;

Brinded in his capacity as Head of Upstream and Executive Director of Royal Dutch Shell Plc

- being constantly informed by Robinson, Colegate and Coplestone of the evolution of the negotiations and of the economic demands of representatives of the Nigerian Government and their sponsors;
- agreeing with his counterpart, Claudio Descalzi, on the price of the deal, namely, $ 1.3 billion and, thereafter, until the deal was completed, coordinating with Descalzi the position of the two companies, Eni and Shell and, lastly, requesting personal effort from Descalzi and Scaroni in assuring the success of the deal.

Obi, in his capacity as owner of the company Energy Venture Partners (EVP)

- receiving from Etete the task of finding a buyer for block 245 and agreeing with Etete that the difference – the so-called "excess price" – between the amount that ENI/NAE undertook to pay and the amount accepted by Etete would be kept by Obi, with the provision that such excess price would be used to compensate Obi and his sponsors Di Nardo and Bisignani, Eni and Shell executives and Nigerian public officials, particularly Petroleum Minister Diezani Alison-Madueke;
- on 2.25.2010, signing a "confidentiality agreement" with NAE, based on which Obi received, in effect, an exclusive right to negotiate with Etete;
- acting in agreement with Ednan Agaev, who was acting as a broker in close contact with Shell executive Peter Robinson and with Guy Colegate and John Copleston, advisers to Shell;
- meeting Attorney General Adoke on several occasions and maintaining relations with him, including through persons associated with him, notably Roland Ewubare and Oghogo Akpata; also maintaining relations with Diezani Alison Madueke and with General Gusau;
- maintaining constant contacts with Descalzi, Casula and Armanna and informing them of the status of the negotiations;
- approaching Bisignani and Scaroni through Di Nardo;
- on October 30, 2010, receiving the offer from NAE to purchase 100% of Malabu's "participating interest" in OPL 245 and delivering it to Etete;
- attending the meeting with Etete in Milan on the night of November 30 to December 1, 2010, at which Etete, Agaev and Casula were present, to settle the issues regarding the fees to EVP;
- continuing to maintain contacts with Descalzi and Casula until shortly before the signing of the FGN Resolution Agreement;

Agaev, in his capacity as owner of the company International Legal Consulting (ILC), acting as a broker between Shell and Etete

- being tasked by Etete with providing assistance in the negotiations regarding the sale of Malabu's rights in OPL 245 and agreeing to a "success fee" of 6% of the agreed price;
- meeting with and discussing the terms of the relationship with Etete with Richard Granier Deferre, a fiduciary and formerly Etete's co-defendant;
- maintaining constant relations with Emeka Obi and agreeing with him as to the approach to take with the companies Eni and Shell;

- meeting on several occasions with Peter Robinson of Shell, as well as John Copleston and Guy Colegate, former MI6 officers who had been hired by Shell as Senior Business Advisor and Strategic Investment Advisor;
- meeting several times with the National Security Adviser, General Aliyu Gusau, and obtaining information from him about the financial expectations of President Jonathan and the other members of the Government; putting Gusau in contact with Obi shortly before Scaroni's and Descalzi's visit to President Jonathan in August 2010;
- attending the meeting with Etete in Milan during the night from November 30 to December 1, 2010, at

[3 illegible signatures]

which Obi and Agaev were present, to settle the issues regarding the fees to Obi (EVP);
- keeping in touch with Etete up to the closing of the deal and thereafter.

Di Nardo
- proposing that Emeka Obi act as broker in the purchase of OPL 245 and maintaining constant contacts with him;
- acting as a liaison between Obi and Eni's senior management through Bisignani;

Bisignani
- presenting to Scaroni the possibility of closing the OPL 245 deal through Obi's intermediation and receiving Scaroni's approval;
- meeting Claudio Descalzi at Scaroni's house and confirming that Obi's brokerage was needed, in light of Obi's relationships with Nigerian government circles;
- meeting with Armanna and pleading Obi's cause with him;
- talking to Descalzi about progress in the negotiations and suggesting how they should be handled;
- maintaining constant contacts with both Scaroni and Descalzi while the agreement on the economic conditions of the deal ($ 1.3 bn) was being finalized in November 2010.

Falcioni
- accepting the task, during the concluding phase of the transaction, of distributing the money paid by Eni for the OPL 245 license and, for that purpose, incorporating the company Petrol Service and opening bank account A209798 in the name of Petrol Service CO.LP at BSI Lugano, to which $ 1,092,040,000 was wired on 5.31.2011 (which was returned a few days later by the BSI bank of Lugano to JP Morgan Chase of London for "compliance" reasons);
- maintaining contacts and entering into written agreements with Bajo Oyo to kick back a portion ($ 50 million) of the amount paid by Eni, and informing Armanna of the existing relationships with Bajo Oyo;

Etete, in his capacity as a representative of the Malabu company, since 1998 the fraudulent owner of the OPL 245 exploration license
- commencing negotiations with Eni and Shell, including through Obi and Agaev, for the sale of OPL 245 for consideration;
- receiving from Petroleum Minister Diezani, following President Jonathan's decision, authorization to dispose of 100% of OPL 245;
- carrying out confidential negotiations with Alhaji Aliyu Abubakar, who acted as Goodluck Jonathan's agent;
- accepting, under pressure from the Nigerian Government, a total of $ 1.3 billion, an amount which had been determined by Eni and Shell;
- reaching an agreement on the "resolution agreements" of April 29, 2011 with Petroleum Minister Diezani and Attorney General Adoke, as well as with Eni and Shell;

- receiving from the Nigerian Government, based on the FGN Resolution Agreement, $ 801.5 million and transferring to Alhaji Abubakar Aliyu, directly or through companies associated with him, amounts of money totaling approximately $ 520 million to be used to pay President Jonathan, members of the Government and other Nigerian public officials;

engaging in converging actions aimed at obtaining for Eni and Shell, 50% each of the exploration rights on block 245 in Nigeria in exchange for the payment of $ 1,092,040,000 to Malabu (owned by Dan Etete), the company allegedly owning the rights to block 245, having it been agreed, during the negotiations to purchase the block, that those funds, net of the amounts to be kept by Etete (approximately $ 300 million used by Dan Etete for his

[3 illegible signatures]

own profit and that of numerous other beneficiaries to purchase real estate, airplanes, armored cars and other assets) would in large part be used, as indeed happened, to compensate:

> the President of Nigeria Jonathan Goodluck and other members of the Nigerian Government in office at the time of the events – notably, Petroleum Minister Diezani Alison-Madueke and Attorney General Muhammed Adoke Bello;
> other Nigerian public officials such as the National Security Adviser General Aliyu Gusau, the member of the House of Representatives Umar Bature, and former Senator Ikechukwu Obiorah – all of whom had the ability to influence President Jonathan and the other members of the Government;
> former Attorney General Cristopher Bajo Oyo, for his role in the reallocation of the OPL 245 license to Malabu on 11.30.06 and his subsequent activity as an "advisor";
> and in part retained by brokers and in part paid as kickbacks to Eni and Shell directors;

for the purpose of causing the public officials Goodluck Jonathan, President of the Nigerian Republic and, each to the extent of his/her authority, the Justice Minister and Attorney General Mohammed Adoke Bello and Petroleum Minister Diezani Alison Madueke, as well as, with functions of brokers in the negotiations, the other aforementioned public officials (Bajo Oyo, Gusau, Bature, and Obiorah) to execute, on April 29, 2011, the agreement entitled FGN Resolution Agreement, ostensibly an agreement settling the disputes, which had the effect of granting to Eni and Shell, 50% each, the exploration rights to deep-water block 245 of the Nigerian Republic:

■ without a tender procedure;
■ at a price unilaterally determined by Eni and Shell;
■ in violation of the reservation of shares guaranteed to "indigenous companies" based on the applicable governmental guidelines ("Government's Policy of Indigenous Exploration Programme");
■ with full and unconditional exemption from all national taxes (particularly: *"capital gain tax, taxes on income, withholding taxes, value added tax");*
■ with the provision that a favorable tax arrangement (the one provided by the Deep Offshore and Inland Basin Production Sharing Contracts Act chapter D3, Laws of the Federation of Nigeria 2004) would apply, as well as a grandfather clause in the event of future changes to the tax arrangement;
■ with express limitations and constraints on the power of the Nigerian government, and all governmental entities and agencies, to take over the exploitation of the oil block and;
■ providing for the Nigerian government's obligation to "hold harmless" Eni and Shell from any future legal actions relating to the block and possible adverse rulings and court costs;

to that end, they acted in concert in the payment, on 5.24.2011, by NAE (Nigerian Agip Exploration) of $ 1,092,040,000 into the escrow account of the FGN (Federal Government of Nigeria) at JP Morgan Chase London;

the funds ($ 1,092,040,000) were transferred on 5.31.2011 to the account of Petrol Service Co., a company associated with Falcioni, at BSI Lugano and thereafter, on 6.3.2011, returned by the BSI bank to JP Morgan Chase London for "compliance" reasons;
$ 215 million was blocked on 8.4.2011, as the result of the lawsuit Obi filed against Malabu/Etete before the Commercial Court of London;
$ 801.5 million was wired on 8.24.2011 to Rocky Top's and Malabu's Nigerian accounts, and subsequently:
■ $ 54,418,000 of that amount was withdrawn in cash by Alhaji Abubakar Aliyu;
■ $ 466,064,965.44 of that amount was transferred to a Bureau de Change in Abuja and then transferred in cash within Nigeria – after repeated exchanges into local currency and dollars and after transactions called "forex trades" – by Alhaji Abubakar Aliyu; those funds were used to compensate public officials such as Jonathan, Attorney General Mohammed Adoke Bello, Petroleum Minister Diezani Alison-Madueke, and the National Security Adviser, General Aliyu Gusau;
■ $ 10,026,280 of that sum was paid to the former Attorney General Christopher Adebayo Ojo (Bajo Oyo);
■ $ 11,465,000 of that sum was paid to the former Senator Ikechukwu Obiorah; and, as to the portion paid as kickbacks to Eni directors and executives:

[3 illegible signatures]

■ € 917,852 was transferred on 5.8.2012 to Vincenzo Armanna, to a checking account at UBI Bergamo, by the aforesaid Christopher Adebayo Ojo (Bajo Oyo) with the payment reference "Giuseppe Armanna inheritance";

■ $ 50 million in cash was delivered to Roberto Casula's house in Abuja;

■ at the conclusion of the lawsuit before the Commercial Court of London, two tranches were paid – on March 27, 2014, $ 112,616,741 and then, on March 28, 2014 $ 6,272,955 – to the account of Obi's EVP Energy Venture Partners at LGT Bank Schweitz of Geneva, from which account, on 5.2.2014, a portion of that amount, CHF 21.185 million, was transferred by Obi to the account of Gianluca Di Nardo's FOF Fox Oil Fund Lda at the Safra Sarasin bank of Lugano.

With the aggravating factor of the number of persons and the fact that the crimes were committed by criminal groups operating in several countries (namely: 1. the Obi, Bisignani, and Di Nardo group; 2. the Agaev, Robinson, Colegate, Copleston, Gusau, and Bature group; and 3. the Etete, Granier Deferre, Munamuna, and Gbinigie group).

In Milan, Abuja, The Hague, London, Lugano and elsewhere from the fall of 2009 until May 2, 2014.

ENI S.p.A.

2) the criminal administrative offense under Articles 5, 6, 7 and 25, paragraphs 3 and 4, of Italian Legislative Decree no. 231/2001 with regard to the crime committed specified above, in the interest and for the advantage of Eni SpA:

• by Scaroni Paolo, Descalzi Claudio, Casula Roberto, individuals with senior positions within Eni S.p.A.;

• by Armanna Vincenzo, Pagano Ciro Antonio - Eni employees - as a consequence of the company's failure to fulfil its managerial or supervisory duties

In Milan, Abuja, The Hague, London, Lugano and elsewhere from the fall of 2009 until May 2, 2014.

ROYAL DUTCH SHELL PLC

3) the criminal administrative offense under Articles 5, 6, 7 and 25, paragraphs 3 and 4, of Italian Legislative Decree no. 231/2001 with regard to the crime committed specified above, in the interest and for the advantage of Royal Dutch Shell Plc:

• by Malcom Brinded and Peter Robinson, individuals with senior positions within Royal Dutch Shell Plc;

• by Guy Colegate and John Copleston - employees of the company - as a result of the company's failure to fulfil its managerial or supervisory duties

In Milan, Abuja, The Hague, London, Lugano and elsewhere from the fall of 2009 until May 2, 2014.

FORMS OF ORDER SOUGHT BY THE PARTIES

The Public Prosecutor seeks the following forms of order:

- that, having acknowledged the general mitigating circumstances as equivalent to the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Claudio Descalzi be sentenced to eight years' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Paolo Scaroni be sentenced to eight years' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating

[3 illegible signatures]

circumstances provided for by Article 112 of the Italian Criminal Code, Roberto Casula be sentenced to seven years and four months' imprisonment;

- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Vincenzo Armanna be sentenced to six years and eight months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Ciro Antonio Pagano be sentenced to six years and eight months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Ednan Agaev be sentenced to six years' imprisonment;
- that Luigi Bisignani be sentenced to six years and eight months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Gianfranco Falcioni be sentenced to six years' imprisonment;
- that Dan Etete be sentenced to ten years' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Malcolm Brinded be sentenced to seven years and four months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Guy Colegate be sentenced to six years and eight months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, John Copleston be sentenced to six years and eight months' imprisonment;
- that, being granted the general mitigating circumstances offsetting the aggravating circumstances provided for by Article 112 of the Italian Criminal Code, Peter Robinson be sentenced to six years and eight months' imprisonment;
- that Eni S.p.A. receive a fine of 600 quotas of € 1,500 each, thus totaling € 900,000;
- that Royal Dutch Shell P.l.c. receive a fine of 600 quotas of € 1,500 each, thus totaling € 900,000;
- that the seizure of assets having an equivalent value to $ 1,092,040,000 be ordered against all defendants;
- that the seizure of the proceeds of crime in the amount of $ 1,092,040,000 be ordered against Eni S.p.A. and Royal Dutch Shell p.l.c.;

The Civil Party the Federal Republic of Nigeria asks the Court to find all the defendants guilty, and order them to pay damages to be determined by a civil court and to order the immediate provisional payment of $ 1,092,040,000 by the defendants and the parties liable for civil damages. It joins the motion for seizure made by the Public Prosecutor. Written conclusions and statement of costs have been filed.

The party liable for civil damages Royal Dutch Shell p.l.c. seeks as main form of order that defendants Malcolm Brinded, John Copleston, Guy Colegate and Peter Robinson be acquitted, with the consequent full rejection of the claims for damages made by the Civil Party, the Federal Republic of Nigeria. In the alternative, it asks the Court to reject the request to order repayment and compensation for damages and the request to order the payment of provisional compensation pursuant to Article 539(2) of the Italian Code of Criminal Procedure.

The party liable for civil damages Shell UK Ltd seeks as main form of order that defendant Guy Colegate be acquitted, with the consequent full rejection of the claims for damages made by the Civil Party, the Federal Republic of Nigeria. In the alternative, it asks the Court to reject the request to order repayment and compensation for damages and the request to order the payment of provisional compensation pursuant to Article 539(2) of the Italian Code of Criminal Procedure.

[3 illegible signatures]

The party liable for civil damages Shell Exploration and Production Africa Ltd seeks as main form of order that defendant Peter Robinson be acquitted, with the consequent full rejection of the claims for damages made by the Civil Party, the Federal Republic of Nigeria. In the alternative, it asks the Court to reject the request to order repayment and compensation for damages and the request to order the payment of provisional compensation pursuant to Article 539(2) of the Italian Code of Criminal Procedure.

The Scaroni defense seeks the full acquittal of the defendant.

The Descalzi defense seeks the full acquittal of the defendant.

The Casula defense seeks the full acquittal of the defendant.

The Armanna defense seeks as main form of order an acquittal based on the fact that it has not been proven that an offense was committed; in the alternative, an acquittal based on the fact that the defendant did not commit the offense; in the further alternative, that the aggravating circumstance of transnationality be ruled out and that the case not be prosecuted due to the lapse of the statute of limitations; in the further alternative, the exclusion of the aggravating circumstance of transnationality, recognition of the case set out in the second paragraph of Article 323-*bis* of the Italian Criminal Code, recognition of the general mitigating circumstances and application of the minimum sentence.

The Pagano defense seeks the full acquittal of the defendant.

The Agaev defense seeks the acquittal of the defendant because it has not been proven that an offense was committed or with the broadest possible formula deemed appropriate by this Court.

The Bisignani defense seeks the full acquittal of the defendant.

The Falcioni defense seeks the full acquittal of the defendant.

The Etete defense seeks the acquittal of the defendant pursuant to Article 530(1) or (2); in the alternative, because the act is not a crime under the law.

The Brinded defense seeks the acquittal of the defendant because it has not been proven that an offense was committed or with the broadest possible formula deemed appropriate by this Court.

The Colegate defense seeks the full acquittal of the defendant.

The Copleston defense seeks the full acquittal of the defendant.

The Robinson defense seeks the full acquittal of the defendant.

The Eni S.p.A. defense seeks acquittal by the Court.

The Royal Dutch Shell p.l.c. defense seeks as main form of order the acquittal of the company because the alleged predicate offense does not exist; alternatively, because the company is not liable for the alleged predicate offense pursuant to Article 6 of Legislative Decree no. 231/01; again in the alternative, to declare that there is no need to proceed against the company due to the fact that the alleged administrative offense is time-barred.

[3 illegible signatures]

CONTENTS

[3 illegible signatures]

[3 illegible signatures]

[3 illegible signatures]

[3 illegible signatures]

CHAPTER 1
SUMMARY OF THE TRIAL

On December 20, 2017 the Preliminary Hearing Judge of the Court of Milan, at the end of the preliminary hearing, issued a decree ordering the indictment of the defendants Scaroni Paolo, Descalzi Claudio, Casula Roberto, Armanna Vincenzo, Pagano Ciro Antonio, Agaev Ednan Tofìk Ogly, Bisignani Luigi, Falcioni Gianfranco, Etete Dan, Brinded Malcolm, Colegate Guy Jonathan, Copleston De Carteret John and Robinson Peter, for the crime ascribed to them in violation of Articles 110 and 112(1), 319, 321, 322-*bis*(2) of the Italian Criminal Code, as well as Articles 3 and 4 of Law no. 146/2006, fully reported in the count of indictment, as well as Eni S.p.A. and Royal Dutch Shell P.l.c., indicted for the administrative offense under Articles 5, 6, 7 and 25(3) and (4) of Legislative Decree no. 231/01, ordering the appearance of the above parties before the 10th division of this Court, sitting as a panel court, at the hearing scheduled for March 5, 2018.
Following transfer of the case, ordered by the President of the Court by decision no. 28/18, to which reference is made, the trial was assigned to the panel court of the 7th Criminal Division.
At the hearing of May 14, 2018, during which Asso-Consum joined the proceedings as a Civil Party, the Court, deeming it appropriate to await the decision of the Supreme Court regarding the appeal against the issue of the decree that had ordered the trial, to be examined in chamber on June 12, 2018, adjourned the trial to the hearing of June 20, 2018 in order to deal with the issues regarding the appearance of the parties.
During the hearing, the Federal Republic of Nigeria joined the proceedings as a Civil Party, through special attorney Marco Bava, and requested permission to sue Eni S.p.A. and Royal Dutch Shell P.l.c.. The defense of Casula Roberto objected that the time limit for joining the proceedings and for suing for damages had expired and asked the court to strike out the Federal Republic of Nigeria's request to join the proceedings as a Civil Party, arguing that it had no standing to sue *(legitimatio ad causam)* and that the power of attorney granted to the attorney who had filed in the trial was null and void: on this point, the Casula defense filed an illustrative brief. The defenses of Scaroni Paolo and Pagano Ciro Antonio also joined this objection, asking the court to strike out to remove the other civil parties entering appearances in the proceedings, given that they were associations lacking the standing to sue. The defense of Eni S.p.A., for its part, reserved the right to discuss the appearances entered by the parties once it was authorized to do so and received the summons to appear in court as the party liable for civil damages, while all the other defending attorneys joined the objections raised by the Scaroni and Pagano defenses. The Prosecutor asked the Court to reject the request for the removal of the Civil Party, the Federal Republic of Nigeria, as did the FGN's attorney; the attorneys of the other civil parties that had joined the proceedings also asserted the legitimacy of their action; the Court, having authorized the appearance of the civil parties pursuant to Article 83 of the Italian Code of Criminal Procedure, adjourned the hearing to July 20, 2018 for a decision on the issues relating to the appearances entered by the civil parties.
On that date, the parties took note of the changed composition of the panel since one of the associate judges, Ms. Paola Braggion, had taken a leave of absence and had been replaced by Mr. Alberto Carboni. The parties agreed that this circumstance was irrelevant to the activity carried out up to that point, as the trial proper had not yet started. With regard to the appearances entered by the civil parties, the Court issued the following order:

first of all, the issues relating to the time limit set in Article 484 of the Italian Criminal Code for the entering of the appearance of a Civil Party must be resolved, with particular reference to the inadmissibility of the appearance entered by Marco Bava because he appeared as a Civil Party at the hearing of June 20, 2014.

The factual terms of the issue are not disputed:
at the first hearing of March 9, 2018, before the 10th Division and after verifying the appearances entered by the parties, the Court declared the absence of the defendants and adjourned the trial before the 7th Criminal Division, in compliance with the Presiding Judge's case transfer order;
at the hearing of May 14, 2018, pending the Supreme Court's decision on the attorneys' appeal against the order amending the decree ordering the trial[1], the Court adjourned the trial to the hearing of June 20, 2018, **to discuss the issues relating to the**

[1] Appeal declared inadmissible by the Supreme Court.

parties that had entered appearances[2];

at the hearing of June 20, 2018, the Court heard the comments from the parties on the preliminary issues relating to the parties that had entered appearances. Marco Bava, in his capacity as shareholder of Eni, entered an appearance as a Civil Party and the Civil Party Republic of Nigeria requested the summons of the parties liable for civil damages. The defendants' attorneys then intervened, raising the issues that will be examined below and, as far as it is of interest here, objected that the request for summons was time barred, as was as the appearance entered by the Civil Party, Marco Bava.

The Court reserved its decision on all the above issues, with the exception of the request for summons, ordering the summons of the parties liable for civil damages, pointing out that Articles 83 and 84 of the Code of Criminal Procedure introduce different terms for entering appearances from those provided for civil parties, first of all, because the request for summons of the party liable for civil damages is based on the request of a party, the Civil Party, which has already entered its appearance. Moreover, the time limits envisaged by Articles 83 and 84 are quite different from that envisaged for the Civil Party. While Article 79 of the Code of Criminal Procedure establishes, under penalty of lapse, that the Civil Party may enter an appearance until the requirements set out in Article 484 of the Code of Criminal Procedure have been fulfilled *(Prior to initiating the trial, the President of the bench shall verify that all parties are regularly present),* Article 83 of the Code of Criminal Procedure provides for no lapse and states that the request for summons must be made *"no later than the start of the trial"* and Article 84 of the Code of Criminal Procedure provides that *"A person who is summoned as the person with civil liability for damages may join the proceedings at any stage and instance of the proceedings".*

Having clarified the issue of the admissibility of the request to summon the party liable for civil damages, there remains the different and distinct problem of the mandatory time limit, established by the combined provisions of Articles 79 and 484 of the Code of Criminal Procedure for the appearance of civil parties, in this case, of Marco Bava.

It has already been observed that the fact that Marco Bava entered an appearance at the hearing scheduled to discuss the issues regarding the appearances of the civil parties, pursuant to Article 491 of the Code of Criminal Procedure, is undisputed, with the logical consequence that, should his appearance be considered admissible, it appears evident that at the subsequent hearing the trial would have to regress again to the already concluded phase of the gathering of issues regarding the civil parties, thereby triggering a dangerous mechanism that could extend the phase of preliminary issues limitlessly, having to theoretically foresee the possibility of new appearances even at the subsequent hearing should the Court decide to reserve its position on any objections regarding the appearance of Civil Party Bava. The issue involves the interpretation of the aforementioned rules that have given rise to different interpretations, even by the Supreme Court. It is a debate that, as will be seen better later, reflects the peculiarities of the individual cases. Indeed, the legislation was designed for simple trials, where both the phase referred to in Article 484 of the Italian Code of Criminal Procedure and the one provided for in Article 491 of the same Code are concluded in a single hearing. However, in complex trials, such as the one at issue, the above phases are divided into several hearings, scheduled, as in the present case, according to the recorded instructions of the Presiding Judge, in order to enable the numerous parties [3]to submit their arguments after examining the substantial appearances (Article 484, Code of Criminal Procedure) [4]and to enable the Court to assess and reply to the issues raised by the parties pursuant to Article 491 of the Code of Criminal Procedure. This makes it necessary to divide up the related trial activities, first of all by separating the phase pursuant to Article 484 of the Code of Criminal Procedure from the phase pursuant to Article 491, which logically comes after.

In the present trial, the phase of the parties' appearances, pursuant to Article 484 of the Code of Criminal Procedure, was completed with the hearing of May 14, 2018 when the Presiding Judge instructed that at the following hearing the preliminary issues regarding the appearing parties would be gathered pursuant to Article 491 of the Code of Criminal Procedure.

That said, the Court, having taken note of the debate in Italian case-law, adheres to the interpretation most in keeping with the constitutional principle of the reasonable length of proceedings, well outlined by the ruling of Division 6 no. 10958 of February 24, 2015[5], the most recent development of a by now well established school of thought[6]. We quote here the following

---

[2] See transcript.

[3] The trial involves 15 defendants and 6 civil parties.

[4] The related case binder contains entries of appearance over 100 pages long, including attachments.

[5] Court of Cassation, Division 6, Judgment no. 10958 of 02/24/2015 The appearance of a Civil Party must take place, under penalty of forfeiture, within the term established by Article 484 of the Code of Criminal Procedure, hence until the requirements relating to the regular appearance of the parties have not yet been completed and not until the different term of the commencement of the hearings. (Case in which the appearance of a Civil Party in the hearing following the hearing in which the judge, in the absence of the victim of the crime and his/her attorney, had proceeded to verify the appearance of the parties, declaring the absence of the defendant, was held to be inadmissible).

[6] We report here the prevailing school of thought followed by the case law of the Supreme Court, according to which the appearance of a Civil Party must be filed, in order to be valid, before the requirements relating to the regular appearance of the parties have been fulfilled and not before the different time limit coinciding with the commencement of the trial hearings (for recent case law, see Third Division, judgment no. 44442 of 10/03/2013, filed on 11/04/2013, Rv. 257529; Fifth Division, judgment no. 38982 of 07/16/2013, filed on 09/20/2013, Rv. 257763; Third Division, judgment no. 25133 of 04/15/2009, filed on 06/17/2009, Rv. 243906, concerning a similar case in which the appearance of a Civil Party made after the judge had adjourned the trial to another hearing without commencing the oral argument stage was deemed inadmissible, following the declared absence of the defendant; on the contrary, see Fifth Division, judgment no. 3205 of 10/04/2012, filed on 22/01/2013, Rv. 254383, which upheld the appearance of a Civil Party entered at a hearing in which the judge adjourned the proceedings to remedy the irregularity of the notice given to the defendant - before the completion of the formalities to commence the oral argument stage). This Court fully shares the above case law position, since Article 79 of the Code of Criminal Procedure clearly specifies that the time limit for the appearance of the Civil Party is by the completion of the preliminary requirements under Article 484 of the Code of Criminal Procedure. It is clear from the combined provisions of Articles 79, 484, 491 and 492 of the

argumentative passage as it is particularly relevant to the case: *"In this regard, lastly, it should be considered that the same issues provided for by Article 491 of the Italian Code of Criminal Procedure, which, as is known, also include the appearance of civil parties clearly refer to an appearance that has already been made, so that further appearances "are precluded unless filed immediately after the first verification of the parties' appearances ", since the parties to the trial must raise any issues concerning the appearances immediately and the court must equally promptly decide on such issues, in the moment that follows the verification of the parties' appearances (in this regard see, most recently, Court of Cassation, 6th Division, judgment no. 49057 of 09/26/2013, filed on 12/05/2013, Rv. 258129)".*

It should be noted that while the principles set forth in judgment no. 28157 of February 3, 2015 of the 5th Division of the Supreme Court may seem conflicting, a reading of the entire judgment within the context of the unique procedural situation of that trial confirms the principle set out above. We refer to the summary of the ruling which moved the deadline for joining the trial as a civil party up to the declaration of the commencement of the trial, thus, including the verification phase pursuant to Article 491 of the Code of Criminal Procedure. This ruling cannot be considered acceptable because it expresses a principle of law that cannot be "exported" since it was formulated in the context of a particular case, characterized by the fact that, at the first hearing, although the Court had already begun to deal with the preliminary issues pursuant to Article 491 of the Code of Criminal Procedure, the Court itself, pointing out a nullity relating to the failure to summon a victim of the crime, had adjourned the trial to the subsequent hearing, where the aforementioned victim had joined the trial as a Civil Party. In essence, in that case, the procedural phase had been wound back to that of the proper appearance of the parties pursuant to Article 484 of the Code of Criminal Procedure due to a declaration of nullity. On the other hand, if the principle laid down in the aforementioned judgment were also applied to cases, such as the present one, not affected by any nullity, it would paradoxically be possible for many civil parties to join the trial in several hearings, with the consequence that the phase under Article 484 of the Code of Criminal Procedure would extend over many hearings. In essence, if Marco Bava's appearance at the hearing dedicated to issues regarding the parties who had already appeared were considered to be within the time limit, at the subsequent hearing appearances by further civil parties should also be considered to be within the time limit, thereby reopening the phase of the related issues pursuant to Article 491 of the Code of Criminal Procedure. This scenario, which is usually unlikely in the case at issue is a real possibility given that, like Marco Bava, other Eni shareholders could decide to join the trial as civil parties, thereby excessively lengthening the proceedings, due to the appearance of possible private civil parties, in clear contrast with the constitutional principle of the reasonable length of criminal trials set out in Article 111, paragraph 2 of the Constitution.

Issues relating to the appearance of the Civil Party Federal Republic of Nigeria

With regard to the Federal Republic of Nigeria, the defendants asked for its exclusion as Civil Party on two grounds:

a) From a formal point of view, they questioned the validity of the authentication of the signature of the current Nigerian Ambassador to Italy, Yusuf Jonga Hinna, affixed by Francesco Di Marcantonio, notary in Rome, on March 2, 2018 at the bottom of the deed of "appointment of a trusted attorney and contextual special power of attorney for joining proceedings as a Civil Party", attached to the deed for joining the proceedings as a Civil Party filed by attorney Domenico Carponi Schittar, pursuant to the requirements of legal certainty laid down in Articles 76, 100 and 122 of the Code of Civil Procedure, since the deed was drawn up in Rome, via Orazio no. 14/18, which is the seat of the Nigerian Embassy, hence an extraterritorial location where, pursuant to Articles 27 and 58 of Law no. 89 of February 16, 1913 as amended, Italian notaries cannot exercise their office;

b) From a substantial point of view, the defendants have challenged both the status as injured party and the capacity to sue of the Federal Republic of Nigeria claiming civil damages arising from the harm to an interest which is not covered by the combined provisions of Articles 319, 321 and 322-*bis*, paragraph 2, no. 2 of the Criminal Code - the offense ascribed to the defendants - which the legislator intended to restrict to freedom of competition on international markets;

the Prosecutor joined the attorneys of the Federal Republic of Nigeria arguing that the issue raised was groundless;

with regard to the first objection, of formal nature, it is easy to observe that the customary approach of international public law which placed the representations of foreign states - embassies and consulates, as well as churches and convents - under an extraterritorial regime has long since been abandoned and replaced by the Vienna Convention of April 18, 1961, which was ratified and executed by the Italian State by Law no. 804 of August 9, 1967, which recognizes to buildings and places hosting foreign missions the limited prerogative of "inviolability", implying the preclusion for the sovereign state of the right to enter with its own personnel and means inside the diplomatic office without the owner's consent. Traces of persisting belief in the extraterritoriality of foreign representative offices can now only be found in the case law of the Italian Court of Cassation (the most recent example being Court of Cassation, Division F, judgment no. 34503 of August 26, 2008 - filed on September 1, 2008, Richter and others, Rv. 24067001), which denies the validity of the domicile declared therein. However, the opposite principle has been fully upheld by the same Court, when asked to ascertain the applicability of Italian jurisdiction to a crime committed within a diplomatic office (see Court of Cassation, Division V, judgment no. 35633 of June 25, 2010, Rv. 248894). An isolated

---

Code of Criminal Procedure that the appearance of a Civil Party must be entered, under penalty of forfeiture, in limine litis, that is to say before the requirements relating to the regular appearance of the parties are completed, while it is incompatible with the letter of the law to allow the formalities for the appearance of the Civil Party to be performed up until the opening of the trial pursuant to Article 492 of the Code of Criminal Procedure. It is likewise inadmissible to join two procedural steps that the legislator intended to keep separate (see the grounds of the Third Division Judgment no. 25133 of 04/15/2009, filed on 17/06/2009, cit.). Moreover, the procedural activities described in the above-mentioned articles of the law must follow a precise sequence established by the law and are logically and chronologically distinct from each other. This excludes that the initial verification of the regular appearance of the parties may coincide with the subsequent declaration of the commencement of the trial.

[3 illegible signatures]

judgment of the Court of Cassation, no. 41296 of September 23, 2009, again on the invalidity of electing domicile at consular offices, in line with previous judgments, reiterated the concept of the "extraterritoriality" of diplomatic offices, but gave the term a narrower meaning, i.e. *"understood as exemption from the concrete exercise of Italian criminal jurisdiction also in its procedural aspects".* However, apart from the fact that this limited application of the notion of extraterritoriality has also been superseded by the cited subsequent judgment, this case law ruling is not relevant to the objection discussed here, since the authentication of a power of attorney, even if intended to be used within the scope of criminal proceedings - in the case in question, attached to the appearance of a Civil Party filed by the special attorney - is certainly not a procedural act of criminal law: the rules on the power of attorney and its authentication by a notary are fully regulated by the Civil Code (Articles 1392 and 2703 of the Italian Civil Code), while Article 122 of the Italian Code of Criminal Procedure merely extends the power of authentication, in the context of criminal proceedings, to the party's attorney. In view of the above, the alleged extraterritoriality regime is to be excluded. Therefore, the argument put forward to claim the invalidity of the special power of attorney granted by the Nigerian Ambassador *pro tempore*, Yusuf Jonga Hinna, to Domenico Carponi Schittar, to file the appearance of the FGN as a Civil Party and the consequent request to exclude said Civil Party is unfounded and must be rejected;

with regard to the second objection (no standing to sue), it should be noted that, for the purposes of recognizing the right of the Federal Republic of Nigeria as a sovereign entity to claim damages and remedies under Article 185 of the Italian Criminal Code by joining the criminal proceedings as a Civil Party, it is not necessary here to decide whether the offense at issue is single or multiple, since, even under the most restrictive interpretation, the FGN is certainly, on the basis of the charge, immediately and directly damaged by the alleged offense - as required by Article 1223 of the Italian Civil Code, expressly referred to in non-contractual cases by Article 2056 of the Italian Civil Code. The Court called upon, ex officio or at the request of a party (Articles 80 and 81 of the Code of Criminal Procedure), to assess the requirements for joining the case as a Civil Party, must primarily assess whether the Civil Party has an active subjective position that was affected by the illicit conduct (*legitimatio ad causam*). In this respect, it cannot be denied that the sovereign territorial entity the Federal Republic of Nigeria has standing to sue for the financial and non-financial damage arising from the corruption activity charged against the defendants, since it is assumed that such corruptive conduct has infringed the principle of fair competition in international contracts and thereby affected the revenues from the exploitation of natural resources. The count of indictment, on pages 9 and 10, contains a list of damaging events that can be qualified as cases of loss of earnings on the sovereign assets.
The request for exclusion of the Civil Party due to lack of standing to sue is therefore unfounded and is therefore rejected.

"The matters relating to the appearance as civil parties of RE:COMMON, CORNER HOUSE RESEARCH, HEDA-RESOURCE CENTRE, GLOBAL WITNESS and ASSO CONSUM.

The issues raised by the defendants' attorneys should preliminarily be addressed together because they concern the problem of the standing to sue of the associations representing widespread interests that are considered to have been damaged by the crime under investigation pursuant to Articles 110, 112 no. 1, 319, 321, 322-*bis* paragraph 2 point 2 of the Italian Criminal Code and Articles 3 and 4 of Law no. 146/2006.
The main legislative reference in this matter is the combined provisions of Article 74 of the Italian Code of Criminal Procedure and Article 185 of the Criminal Code, which entitle the party affected by a crime to join the criminal trial as a civil party to claim compensation under civil law. The victim of the crime, i.e. the target of the crime, is, usually, also a damaged party and can therefore bring a civil claim, since there is an obvious link between the crime and the damage suffered. On the contrary, as in this case[7], where the party suing for damages is not the victim of the crime, it is necessary to examine carefully both the holder of the affected legal relationship and the presence of an immediate and direct causal link between the offense and the claimed damage. There is therefore a clear distinction between the victim of the crime and the damaged party, an autonomous subjective category that must be assessed according to civil law. Indeed, although there are no doubts as to the autonomous legal source of civil liability provided by Article 185 of the Criminal Code, nevertheless, the rules on this autonomous source are certainly those of civil law, specifically, as to the matter under examination here, the Articles of the Code of Civil Procedure governing the standing to sue for damages. Therefore, to assess whether the parties in question qualify as parties damaged by the offense, we must refer to the rules on standing to sue, which consists in the right to initiate legal proceedings regarding the alleged substantive relationship[8]. Before carrying out this assessment for each individual claimant, a general introduction must be made on this issue which has been definitively settled by the case law of the Supreme Court.
Following the ruling of the Court of Cassation, United Divisions, judgment no. 38343/2014, we agree that the bodies or associations whose interest has been harmed by a crime can sue as civil parties, provided that their interest coincides with a subjective right or a protected active legal position, hence even if the harmed interest is the interest pursued with reference to specified historical situation, championed by that association and enshrined in its statute as the very reason for its existence and action, and hence the subject of an essential right of the organization. This is due both to the identification between the association and the interest it pursues, and to the close ties between the members and the association, so that the latter, due to the common interest of its members and the harm caused to this, suffers an injury and therefore also a damage, obviously non-financial, as a consequence of the crime. It has been affirmed that there are organizations that have made a specific interest the main object of

[7] In this regard, it should firstly be noted that, irrespective of the matter of the legal rights protected, it is quite clear that the organizations under discussion are not victims of the crime, as they have acknowledged, and, therefore, they are excluded from application of Article 91 of the Code of Criminal Procedure, which extends the rights of the victim of the crime to organizations representing collective interests, including the right to sue as holders, on the passive side, of the underlying legal relationship.
[8] Court of Cassation, Civil Division 1, no. 7776, March 27, 2017.

[3 illegible signatures]

their existence, so that it has become an internal and constitutive element of the association and as such has assumed a substance similar to a subjective right. The evolution of case law has affirmed that collective interests are entitled to protection even in the absence of a specific rule. What suffices is for the association to have made the interest in question the direct object of its activity, and its specific purpose.
These principles have been necessarily specified in order to circumscribe their scope, on account of their case law nature[9], as follows:

- thus, the collective association wishing to sue as a civil party must have been set up prior to the presumed commission of the offense and its sole or main object must be to protect an interest coinciding with the legal right affected by the offense;
- said interest must be indicated in the statute of the association in a clear and tangible manner, such that the interest protected has different and additional characteristics to those of the members[10];
- Moreover, the association must have concretely and continuously carried out activities for the pursuit of the above-mentioned purpose to safeguard a situation with precise time and place characteristics, and this requirement is not met by mere awareness-raising or reporting activity.

Since the subjective position claimed in court by the association is a constitutive element of its claim, at this stage the association has a burden not only of allegation, but also of proof. In this regard, it is clear that the declarations made by the associations in question, i.e. those signed by their Presidents, founders and directors, cannot be elements of proof, since they are "party testimonies", prepared for the trial.

After this general preamble, we will now examine the contents of the deeds of incorporation of the various associations.
The association RE:COMMON was incorporated in Rome on January 31, 2012, at a time prior to May 2, 2014, which was the date of the last step of a corrupt conduct according to the charges started in the fall of 2009. However, the purposes set forth in Article 2 of the association's statute at the time of its incorporation made no reference to the fight against domestic or international corruption. This fact has been confirmed by the association, which has submitted both its 2012 articles of association and its amendment of 2015. On July 4, 2015, the Board of the Association made an amendment to the statute adding point 7 to Article 2, which included among the objectives of the association also *"the fight against corruption and economic and financial crimes, also for the purpose of greater legal compliance and transparency of the economy".* This circumstance in itself excludes that Re:Common could have standing to sue, since at the time of the events at issue, the association did not represent the specific interest affected by the offense. However, we must also examine the further arguments submitted by the association to overcome this formal ground of exclusion.
As for the fact that the original statute included among the many purposes of the association also *"restoring the local communities' sovereignty over the management of natural resources"*, this is, obviously, an entirely generic objective, neither exclusive nor prevalent, also because it is one in a list of equally generic statutory purposes. Lastly, and certainly not least, this purpose does not appear to be directly related to the legal right protected by the offense set forth in Article 322-*bis* of the Italian Criminal Code.
Moreover, at least until October 2014 and therefore well after the time when the crime was committed, the association never carried out concrete activities specifically aimed at fighting international corruption. Exhibit 5 highlights activities aimed at demonstrating the damage resulting from the exploitation of Nigerian natural resources by multinational corporations, and only in Exhibit 6, in November 2013, does it mention the incidence of corruption and corporate crimes in land grabbing, while Exhibits 14 and 18 (March - June 2013) demonstrate only the reporting and dissemination of news on the criminal investigations of the present trial.
Therefore, in light of the lack of a precise objective in the statue, the association certainly cannot be considered to be specifically and continuously established for the pursuit of purposes and for the safeguarding of a situation locally and historically determined by the interests affected by the crime.
Obviously, all the association's activities after May 2, 2014 cannot be considered relevant to the standing to sue discussed here.
In conclusion, the association does not meet the necessary requirements for joining the proceedings as a Civil Party as an entity representing interests damaged by the crime.

Similar considerations can be made with regard to the CORNER HOUSE RESEARCH association, established on December 13, 1999 (Exhibit 3).
Although the association was set up before the crime was committed, in this case too, the purposes set out in the statue are generic and very broad:
- the promotion of education and research on social and economic systems and their impact on the environment;
- the publication of reports and actions to raise awareness, support and advocate for the growth of democratic, fair and non-discriminatory civil societies where communities have control over resources and are not subject to external control;

[9] As observed by the United Divisions of the Court of Cassation in the above-mentioned judgment, "this well-reasoned position helps us to understand the heart of the problem and to identify a regulatory principle that, while maintaining the basic lines of the development of case law, avoids inappropriate outcomes, such as the indiscriminate extension of the standing to sue every time any association claims to be the guardian of the interest affected by the crime. In this regard, the case law has repeatedly stressed the need to refer to a specific historical situation; the actual activities pursued by the association wishing to sue as a civil party are also relevant".
[10] Division 2, Judgment no. 2237 of 2.4.2016 (Rv. 638825 - 01). The associations representing collective interests are entitled to sue as civil parties in a criminal trial, provided that they represent a specific collective interest, they are registered in a special list and they protect an interest that is "additional" and "different" to that of their individual members. Thus, an association that has received no recognition and pursues the generic object of fighting abuses and upholding legality has no standing to sue.

[3 illegible signatures]

- the promotion of human rights and the fair and sustainable use of natural resources, especially in third world countries, etc.

The statute makes no explicit reference to combating international corruption. This fact cannot be obviated by the declaration issued on February 11, 2018 by a representative of the association, Mr. Nicholas Hildyard, qualifying himself as a co-director, certifying that CORNER HOUSE RESEARCH has carried out activities in the field of corruption, in particular by filing complaints, liaising with various international bodies, speaking at conferences and meetings on the subject, carrying out analyses on anti-corruption legislation and carrying out forensic analyses in money laundering proceedings (Exhibit 5). These are wide-ranging reporting and consulting activities, certainly not historically and geographically referable to the crime at issue here, except with regard to the aspects already examined above concerning the collaboration with the Prosecutor for the investigations relating to the case in question, collaboration that began at the end of 2013 with mere requests to the investigating authority to carry out seizures and which developed into actual reports only after the commission of the crime, towards the end of 2014 and in 2015, as stated by the above-mentioned declarant.

The further activities documented were carried out after the commission of the crime.

In this case too, it must be concluded that, in the absence of a specific statutory purpose, the documented activities are not sufficient to demonstrate that the association meets the essential requirements to be able to join the proceedings as a Civil Party as an entity representing interests damaged by the crime, as its sole or main purpose is not to protect the specific interest referred to the historical situation prior to the commission of the alleged crime.

In conclusion, the association does not meet the necessary requirements for joining the proceedings as a Civil Party as an entity representing interests damaged by the crime.

The same reasoning applies to the association GLOBAL WITNESS, established in November 1993, but registered in November 1999 in London.

This association has not submitted a copy of its original statute or any amendments thereof, but merely set out the association's purposes in a written statement by Mr. Simon Taylor, who qualified himself as a director and co-founder. The stated purposes are highly generic[11]; they include the protection of human rights, the fight against abuses against people, organizations and countries, including corruption. This term could have been considered specific and relevant to the subject, but in the subsequent paragraph 5 the declarant offered an authentic interpretation, on behalf of the association, specifying that the protection of human rights is closely related to the fight against environmental abuses and corruption. We quote the entire passage to clarify our assessment of the generic nature of the stated purpose: " *we have always considered these and other specific abuses to be many and varied and often interrelated - and to include, without limitation, issues such as mass extermination, genocide, and other crimes against humanity; abuses of power in the corporate sphere and other types of predatory behavior, such as large-scale corruption; the looting of states by corrupt leaders and insurgent organizations and their business associates; corruption occurring in a number of different forms and the role of its facilitators; and other abusive practices that undermine the accountability of governments and their actions."*

The lack of a fundamental or, at least, prominent role of the specific interest at issue in our case in the association's statutory purposes is reflected in the actual activity of the entity, which, moreover, is merely reported in the quoted statement. In this regard, we refer to our remarks on the preceding association, also because Simon Taylor himself has repeatedly stressed the joint action of Global Witness, Re:Common and The Corner House to further the investigation and reporting activities concerning the corruption case at issue. On this point, apart from the already mentioned fact that these whistleblowing activities began in the final phase of the commission of the crime and continued after May 2014, we should point out that, precisely based on the declaration issued by the association, it is quite clear that this was not the exclusive or at least prevalent activity of the association which, in fact, is also engaged in other areas quite unrelated to the subject such as the deforestation of Cambodia or the "blood" diamond trade in Angola.

In conclusion, the association does not meet the necessary requirements for joining the proceedings as a Civil Party as an entity representing interests damaged by the crime.

The association HEDA-RESOURCE CENTRE (HEDA) was set up on February 24, 2004 with very generic purposes, such as the protection of socio-economic rights and, more generally, of human rights, the protection of the environment and its sustainable use, the protection of vulnerable individuals, children, young people, women, the physically and mentally disabled, prisoners etc. etc., without any reference to the fight against corruption. Consequently, the association was already excluded from the trial at the preliminary hearing.

The party has appealed against its exclusion on the grounds that the formal lack of requirements is due to the fact that, at the time of its incorporation, it could not include a specific purpose in its statute because freedom of expression was severely restricted at the time, soon after the military dictatorship of General Abacha. The association also mentioned, to clarify the period in question, the presidency of Olusengun Obasanjo, who ceased to hold office in 2007. Therefore, clearly this claim, even if applicable to that period, certainly cannot be extended to the entire subsequent period and, also since the association provides no evidence or reasons to that effect. On the contrary, in this regard, it should be noted that the documentary evidence submitted by the association to demonstrate its engagement, which moreover was formal (Exhibit 5) or formally recognized (Exhibit 10, 11), in the area of corruption prevention, contradict the alleged need not to officialize an activity that is presented as largely clandestine.

In any case, even leaving aside the lack of the formal requirement, which, in any case, we consider indispensable, analysis of the documentation submitted by the association shows no activities suggesting that the fight against corruption in international contracts was the main or exclusive purpose of the association in the years preceding the crime. In this regard, it should be pointed

[11] We report an issue with the translation of the words "environmental" and "records" with the term "casellari".

[3 illegible signatures]

out from the outset that all the activities carried out by the association after the commission of the crime[12], including, first and foremost, the collaboration with the Public Prosecutor in the investigations which, by their nature, are subsequent to the commission of the crime, is not relevant to demonstrate that the association meets the requirements for suing, even in the purported exclusively substantial sense.
As concerns the period prior to the commission of the crime, it should be noted that as declared by the association, specifically as stated by its Chairman, Suraju, in 2007, hence at a time prior to the commission of the crime, the association has received recognition for activities in the field of human development, a field much broader than the specific corruption crime at issue. This demonstrates that the association's sole focus is not on the activity that is relevant to its standing to sue in this trial.
With regard to the motions or requests to investigate referred to in Exhibit 5, it should be noted that, since they refer to cases of corruption of Nigerian officials, although they relate in general to the phenomenon of corruption, they are not relevant for determining the association's standing to sue in this trial as a party whose exclusive or main interest is to prevent corruption in international contracts.

The only document relevant to this purpose is the motion to carry out investigations (Exhibit 6) addressed to the Senate and the National Assembly, regarding the matter that later became the subject of the present trial. The generic wording of the motion, and the fact that it is an isolated example, does not demonstrate that the association's exclusive or main activity is to protect the legal rights at issue in these proceedings. In this regard, it should be pointed out that the documents contained in Exhibit 10 and 11 are merely the acceptances of the association's requests to participate in organizations and conventions on the subject of international corruption, but do not demonstrate any specific activity carried out, and therefore cannot compensate for the inadequacies highlighted above, first and foremost the absence of a specific statutory purpose.
We must therefore conclude that the association does not meet the necessary requirements for joining the proceedings as a Civil Party as an entity representing interests damaged by the crime.

The ASSO-CONSUM association was established on July 2, 2002[13] for the protection of consumer rights. Point 4 of its 38-page long statute states that the association's exclusive purpose is to protect with all means the rights and interests of consumers and users... also in order to help eliminate abuses and market distortions, social discrimination, malfeasance and corruption....
Even if one accepts that the generic reference fulfils the formal requirement[14], there is no evidence whatsoever that the alleged purpose is implemented in terms of activity and local presence. Indeed, the association does not appear to have carried out in a concrete and continuous manner activities for the pursuit of said purpose to safeguard a locally and historically determined situation. On the contrary, the documentation submitted (the ruling handed down by the Court of Naples in the trial for crimes pursuant to Articles 434 and 449 of the Italian Criminal Code) shows different activities that exclude that the association's exclusive or main activity meets the requirements for suing in these proceedings. Similar considerations must be made for the recognition deriving from inclusion in the list pursuant to Article 137 of Legislative Decree 206/2005, since such inclusion concerns representation at a national level, which, moreover, was obtained, from a temporal point of view[15], after the commission of the crime and is therefore irrelevant for the reasons given above. In conclusion, the association does not meet the necessary requirements for joining the proceedings as a Civil Party as an entity representing interests damaged by the crime.

FOR ALL THE ABOVE REASONS

Having regard to Article 491 of the Code of Criminal Procedure,

the Court declares

inadmissible the appearance of Marco Bava as a civil party,

orders

the exclusion of the civil parties RE:COMMON, CORNER HOUSE RESEARCH, HEDA-RESOURCE CENTRE, GLOBAL WITNESS and ASSO CONSUM and

[12] See Exhibit 5 second part, 7, 8, 9, 12.
[13] In this regard, the formal objection raised by the defendants' attorneys regarding the lack of personal details of the party in the appearance as a civil party is unfounded, since, in the case in question, the party did not appear personally, but through its attorney Chianese. On this point, we agree with the case law principle issued by the Court of Cassation, Division 1, judgment no. 43723 of November 12, 2008. In order for the appearance of a Civil Party to be admissible, it must include the personal details of the individual appearing, but not also the personal details of the attorney having special power of attorney, for whom only the name and surname are required.
[14] In the general introduction to this section we pointed out that the interest must be indicated in the statute in a clear and tangible manner, such that the protected interest has different and additional characteristics to the interest of its members.
[15] The documentation submitted by the party refers to a Decree of the Ministry of Economic Development dated November 15, 2017.

[3 illegible signatures]

dismisses

the other objections.

After the reading of the order, the defense attorneys of *Eni S.p.A.* and *Royal Dutch Shell P.l.c.* pointed out that their summons as parties liable for civil damages issued by the *Federal Republic of Nigeria* did not comply with the term for appearance and consequently asked to be allowed to file their appearance in that capacity later in the trial. The defense attorneys of *Pagano* and *Robinson*, referring to the briefs already filed, reiterated their request to strike from the trial dossier the documentation not mentioned in Article 431 of the Code of Criminal Procedure. The Court, reserving all decisions, adjourned the trial to the hearing of September 18, 2018.
In that hearing, *Eni S.p.A.* and *Royal Dutch Shell P.l.c.* filed their appearance as parties liable for civil damages and three Shell group companies, *Shell Petroleum Development Company of Nigeria Ltd*, *Shell UK Ltd and Shell Exploration and Production Africa Ltd*, voluntarily filed their appearance in the same capacity. The Court, ruling on the issues raised regarding the contents of the trial dossier, issued the following order:

"on the requests to exclude from the trial dossier the documents on digital media (CD 1, 2, 3) made by the defendants' attorneys at the hearing of July 20, 2018;
having heard the Prosecutor who, at the same hearing, agreed on the unlawfulness of the inclusion of numerous documents in the trial dossier, but argued that the documents highlighted in "bold" in the new list submitted at the hearing were included lawfully having read the briefs filed;
lifting the reservation made at the last hearing, issues the following

ORDER

It is deemed appropriate to clarify, as a preliminary point and in general terms, for the purposes of the examination requested to this Court, that:
- with regard to the documents obtained from abroad, in accordance with the combined provisions of Articles 431, 238 of the Italian Code of Criminal Procedure and Article 78 of the Code implementing provisions, the following documents are lawfully included in the trial dossier: the documents obtained via letters rogatory by the Prosecutor which can be qualified as documentary evidence or non-repeatable acts, in accordance with Article 431(d) of the Code, the documents in respect to which the defenses have been placed in a position to exercise the rights granted by Italian law, in accordance with point (f) of the same Article, and finally those documents to which the parties to the trial give their consent (Article 431(2) of the Code of Criminal Procedure);
- according to constant and settled case law, the requirement to use the Italian language refers to the acts to be carried out in the proceedings, not to documents that have already been drawn up and are to be acquired in the trial, which will need to be translated only insofar as they have a concrete bearing on the facts to be proved. In this case, it will be for the interested party to submit and argue the reasons that make it plausibly useful to translate the act as well as the actual harm that would result from the failure to translate it (see, e.g. Court of Cassation, United Divisions, judgment no. 38343 of 4.24.2014 - filed on 9/18/2014, P.G., R.C., Espenhahn and others, Rv. 26111101);
- the sources of evidence acquired abroad - albeit in compliance with the rogatory procedures - are in any case subject to the examination of admissibility applying to similar national sources of evidence (see, in this sense, Court of Cassation Criminal, Division VI, November 9, 2012 - February 8, 2013, judgment no. 6346). However, as concerns the compliance of the act with the procedural rules, such examination should not be based on strict interpretation, given that rogatory activity must follow the provisions of the foreign system, without prejudice to the limits of the Italian public order which, however, do not coincide with the infringement of all the national rules that establish nullity/non-usability (see Constitutional Court, judgment no. 379/1995);
- the documentation acquired by the Joint Investigative Team set up by the Italian and Dutch investigative authorities under Article 49 of the UNCAC (United Nations Convention against Corruption) of October 31, 2003, an act transposed into European law to implement cooperation between Member States in the fight against organized crime operating on a transnational scale (the third pillar of the European Union) by the Brussels Convention of May 29, 2000 and lastly the subject of Council Framework Decision 2002/265/JHA of June 13, 2002, implemented in Italy by Legislative Decree no. 34 of February 15, 2016, cannot be included in the trial dossier on the basis of Article 431 of the Code of Criminal Procedure, but must first be subjected to the scrutiny required by Article 493 of the same Code. This is because the documentation acquired by the investigative team, under an extraordinary authorization by virtue of a bilateral agreement to operate directly on foreign territory, in close collaboration with the Dutch investigative authority, by resorting to ordinary means of searching for evidence, cannot be qualified as the result of rogatory activity, which would have been subjected to prior examination of admissibility and relevance conducted by the judicial authority within the scope of the procedure, and as such could have been immediately included in the trial dossier in accordance with Article 431(1)(d) of the Code of Criminal Procedure. The documents acquired through the above-mentioned activity cannot be included in the trial dossier pursuant to Article 431 of the Code of Criminal Procedure, but must be examined pursuant to Article 493 of the same Code;
in addition, again in general terms, as concerns the defense attorneys' objections, in the light of the obvious anomaly that occurred in the previous phase as concerns preparation of the trial dossier, which was done by the Preliminary Hearing Judge pursuant to Article 431 of the Code of Criminal Procedure, without respecting the *audi alteram partem* requirement, by means of digitized documents (CDs 1, 2, 3), with no table of contents and no comprehensible logical sequence, and including several duplicates, we

[3 illegible signatures]

must clarify that:

document means any act drawn up before and outside the context of these proceedings;

the seizure and search orders and their enforcement reports drawn up not by the judicial police, but by foreign judicial authorities are acquired as unrepeatable acts pursuant to Article 431 of the Code of Criminal Procedure;

the letters rogatory and the replies of the foreign judicial authority may be acquired, if they refer to eligible documents or acts, and, obviously, used only for the purpose of proving the historical fact in itself, without any element of assessment;

having noted that, in the present case, with respect to the submission of documents in a foreign language in electronic format, none of the parties has complained of the lack of translation into Italian;
with specific regard to the documents contained in the three CDs submitted,

OBSERVES

CD1
With regard to the folder **"Rogatoria Nigeria 26 aprile 2017"** unquestionably containing acts and documents resulting from rogatory activity, the banking documentation in files A, B, C, D, E, F, G, H, I is lawfully included in the trial dossier pursuant to Article 431(d) of the Italian Code of Criminal Procedure, while the following documents must be considered, as also acknowledged by the Prosecution, unlawfully inserted: documents filed by the Public Prosecutor on 4.28.2017 Part I and Part II; translations filed on 6.12.2017 and copies of the documents and reports contained in the **"statement"** folder must instead be considered unlawfully included because they are repeatable investigative activities subsequent to the facts, carried out without the participation of the defense lawyers.
The rogatory folder **"Nigeria 26 aprile 2017 2° integrazione"**, which contains the same documents mentioned above, as well as the file **"deposito al gip"**, a letter accompanying the transmission of documents from the PM to the Judge in charge of the preliminary investigation, must be removed from the trial dossier due to obvious redundancy.
The file **"54772-13 atti court Londra"** contains bank documents of Petrol Service Co. Lp. that is considered to be lawfully included in the trial dossier pursuant to Article 431(d) of the Italian Code of Criminal Procedure. On the other hand, the minutes of the civil case brought before the Commercial Court of London in the proceedings Energy Venture Partner vs. Malabu Oil & Gas Ltd cannot be considered to be lawfully included in this phase, pursuant to Article 431 of the Code of Criminal Procedure, as they are neither documents nor non-repeatable acts, but judicial acts whose admission, pursuant to Article 238 of the Code of Criminal Procedure, must be assessed in the appropriate venue pursuant to Article 493 of the same Code. Lastly, as the Prosecution itself acknowledges, the remaining files must be considered to have been unlawfully included, and must be consequently removed from the trial dossier.
The file **"54772-13 faldone 12"** contains banking documents, lawfully included in the trial dossier pursuant to Article 431(d) of the Italian Code of Criminal Procedure because they were acquired through letter rogatory of 6.19.2015, and a covering letter from the Milan Prosecutor's Office dated 12.14.2015 (page 722).
Likewise, the file **"54772-13 faldone 13"** contains banking and administrative documents lawfully included in the trial dossier pursuant to Article 431(d) of the Italian Code of Criminal Procedure because they were acquired through letter rogatory of 3.8.2016 up to page 195. The acts relating to the internal investigation of Malabu Oil & Gas Ltd must, however, be considered illegitimately included as they relate to investigations carried out after the facts.
The file **"54772-13 faldone 14"** contains miscellaneous documents acquired by the Public Prosecutor through letters rogatory, to be considered lawfully acquired only as to its documentary part, while excluding the minutes of the statements made by Agaev, Tessler and other individuals and the other acts relating to the civil action PVE, which must be removed from the trial dossier.
The file **"54772-13 faldone 15"** contains banking documents that were lawfully included in the trial dossier pursuant to Article 431(d) of the Italian Code of Criminal Procedure, in that they were acquired via letters rogatory, as was file **"54772-13 faldone 16".** On the other hand, file **"54772-13 faldone 17 and 18"** contains banking documents and exchanges of information that were unlawfully included in the trial dossier, at this stage, pursuant to Article 431(d) of the Italian Code of Criminal Procedure, since they are documents acquired as part of the activity of the joint investigative team set up by the Italian and Dutch investigative authorities mentioned above: the documents contained therein must therefore be removed from the trial dossier.
Lastly, file **"54772-13 faldone 20"** contains translations of documents that may remain in the trial dossier only because the originals are lawfully placed in the trial dossier.

CD2
The electronic folder named **"documenti forniti dalle autorità olandesi",** unlike what was reported by the Prosecutor in the table of contents provided at the hearing of 7.20.2018, does not contain documents acquired via letters rogatory from the Dutch authorities, following searches carried out "in the Netherlands at Royal Dutch Shell and Adoke Bello", but instead documents acquired by the Joint Investigative Team set up by the Italian and Dutch investigative authorities pursuant to Article 49 of the UNCAC (United Nations Convention against Corruption) of October 31, 2003. These documents were acquired as a result of the Joint Investigative Team activities and should therefore be removed from the trial dossier.
From a material point of view, the e-folder has **four sub-folders,** the first of which, named **"Delivery Adoke",** contains, in no particular order, documents in English, mainly originating from the Nigerian federal government institutions - in particular from the Attorney General of the Federation and Minister of Justice - relating to the management of the dispute that arose regarding the right to exploit the OPL 245 oil block.

[3 illegible signatures]

The second subfolder, named **"Doccs. procedimento in Corte"** contains

- the printouts of emails in English
- a transcript of a telephone conversation dated July 1, 2016, prepared by the Tax Police Unit of Milan, between Simon Henry and Ben Van Beurden;
- a request for documentation and for wiretapping made by the the Prosecutor's Office of Milan to the Dutch investigative authority within the framework of the Joint Investigative Team set up.

The third subfolder, named **"First Delivery Shell"** contains

- printouts of emails in English sent between July 2002 and April 2011 by Shell managers, with attached minutes of business meetings, reports, fact sheets and drafts relating to the settlement agreement being drawn up with the Federal Republic of Nigeria and Malabu Oil and Gas Limited, up to the text of the *"Block 245 SNUD Resolution Agreement"* of April 29, 2011;
- the printouts of miscellaneous documentation from various sources relating to the management of the exploitation of the OPL 245 oil block.

The fourth subfolder, named **"Second Delivery Shell"** is empty.

The folder called **"Documenti forniti dalle Autorità Statunitensi",** according to the Prosecutor, contains documents transmitted to the Italian prosecuting authority by the US Financial Unit, summarizing financial movements on accounts linked to Malabu Oil and Gas Ltd. These are lists and sheets representing financial flows without signatures or indications of origin, except for the accompanying letter contained in the file **"nota n. 549635 del 2014"**, signed by an official of the Financial Intelligence Unit of the Bank of Italy, bearing the date of May 28, 2014, from which we learn that the information was forwarded by the corresponding U.S. FIU, which had collected it on its own initiative for intelligence purposes and for the same purpose shared with the Prosecutor's Office. The inclusion of these documents in the trial dossier is not supported by the provisions of Article 431 of the Code of Procedure; therefore, they must be excluded from the trial dossier.

The folder named **"Documenti forniti da Ednan Agaev"**, as inferred from the submission memorandum dated May 22, 2016 contained in the file **"nota deposito Agaev"**, contains a copy of the Arbitration award rendered on April 18, 2013 by the London Court of International Arbitration in dispute no. 111926 between International Consulting Ltd and Malabu Oil and Gas Ltd, as well as three *"Witness Statements"* filed by Ednan Agaev on October 21, 2011, March 22 and May 31, 2012 in the same arbitration proceedings and all the documents filed by the defending attorney of Ednan Tofik Ogly Agaev in the same proceedings during the investigation phase. In this case too, the inclusion of the above-mentioned documents in the trial dossier is not supported by the provisions of Article 431 of the Code of Procedure, and the documents must therefore be excluded from the trial dossier: the inclusion of these documents in the list of documents that may lawfully be used for decision-making purposes will have to follow the trial rules.

The folder named **"Documenti Regno Unito"** contains three sub-folders. The first, named **"Corrispondenza con UK"**, contains - as reported by the Prosecutor's office itself in the list submitted at the hearing of July 20 - "letters exchanged with the United Kingdom authorities for the purpose of executing the letters rogatory" - i.e. very disparate acts and documents, whose overall lack of relevance to the trial dossier has been agreed upon by the trial parties and which must therefore be removed and returned to the Prosecutor.

The Prosecutor, on the other hand, insists on the appropriateness of keeping in the trial dossier the contents of the second sub-folder, called **"UK - MPS evidence re JPMC"**, which contains documents regarding bank accounts opened at JP Morgan Chase in London, transmitted by the UK authorities. With regard to said documents, Malcolm Brinded's defense attorneys, Marco Calieri and Andrea Rossetti, specifically requested the removal of the file entitled **"2015 10 05 Statement by (DC) Matthew Jones"**, a document bearing the heading *"Witness Statement"* containing the written statement made on October 5, 2015 by Matthew Jones, who identified himself as an Officer of the National Crime Agency, concerning the activity carried to acquire accounting documents from JP Morgan Chase Bank N.A. in execution of the document submission order issued on June 3 and 18, 2013 by the Southwark Crown Court. Thus, this document is a report drawn up by a UK public security official regarding activities carried out in the exercise of his powers, handed over to the Italian Prosecution, once again not included in the list of acts and documents provided for by Article 431 of the Code of Criminal Procedure and, as such, unlawfully included in the trial dossier. This document must therefore be removed and returned to the Public Prosecutor. The same applies to the other two files contained in the subfolder, named **"2015 10 13 Report from MPS to UKCA"** and **"UKCA 14 Oct (misdated Aug) 2015"**, which are communications relating to the request for collaboration made by the Milan Public Prosecutor's Office to the UK authorities.

For the same reasons, we find unlawful the inclusion in the trial dossier of the banking documents contained in subfolder **"UK doc. bank JP Morgan Chase"**, mainly in files **"46 complete.pdf" and "49b complete.pdf"**, which, as shown by the covering letter contained in file **"2014.11.06 letter Met JP Morgan files.pdf"**, were transmitted outside any letter rogatory procedure by the British authority for investigative purposes only: these documents must therefore also be removed and returned to the Public Prosecutor.

CD 3

This CD contains the files included in case binder 14 of the public prosecutor's case file.

The e-folder **"Svizzera. Documentazione bancaria "Di Nardo",** contains the sub-folders **"Chadbourn Advisors LTD", "FOF FOX Oil Fund LDA", "Foxworth Finance SA", "Jennet Management Corp."** These sub-folders contain bank documents lawfully included in the trial dossier because they were acquired via rogatory letter from the Swiss authority, pursuant to Article 431(d) of the Code of Criminal Procedure. The same applies to the contents of the sub-folder **"FOXIN SA"**, with the exception of the folder **"COPY Tesler"**, which contains a video file showing statements made by Jeffrey Tester to the

[3 illegible signatures]

London Metropolitan Police and which therefore must be removed from the trial dossier.
The e-folder **"Svizzera. Documentazione EMMGI",** in the sub-folder called **"documentazione cartacea"**, contains the files called **"01.01.0005 (1)", "01.01.0005 (2)", "01.01.0006"** and **"01.01.0007",** relating to documents found during a search at EMMGI Finanziaria in Switzerland and acquired through international letters rogatory, which were also lawfully included in the trial dossier because they were acquired through letters rogatory from the Swiss authorities, pursuant to Article 431(d) of the Code of Criminal Procedure.
The folder **"Svizzera. Documentazione Granier Deferre"**, in the subfolder **"documentazione cartacea"** contains the files **"02.01.0002", "02.01.0003", "02.01.0004", "02.01.0005", "02.01.0006", "02.01.0007", "02.01.0008", "02.01.0009", "02.01.00010"** and **"02.01. 00011"** pertaining to documents found following a search at Granier Deferre's address on 10.7.2015 in Switzerland and acquired by international letters rogatory, also as such lawfully included in the trial dossier because they were acquired by letters rogatory from the Swiss authorities, pursuant to Article 431(d) of the Code of Criminal Procedure. The sub-folder **"documentazione informatica"** contains documents of various kinds, all lawfully included in the trial dossier because they were acquired by letters rogatory from the Swiss authorities, according to Article 431(d) of the Code of Criminal Procedure.
The file named **"interrogatorio Granier Deferre",** also contained in the folder **"Svizzera**. **Documentazione Granier Deferre",** clearly refers to an investigative activity carried out abroad which cannot be included in the trial dossier, and which must be removed, as well as the letter contained in the file named **"lettera avv. Marc Bonnant",** along with other documents likely to have been used in the course of the above-mentioned interrogation. These are records that cannot be included in the trial dossier.
Lastly, the file named **"lettera MPC del 1.12.2015"** contains an accompanying letter sent by the Swiss authorities to the Milan Prosecutor's Office referring to the interrogation of Granier Deferre mentioned above. This document does not qualify for inclusion in the trial dossier and should therefore be removed.
The **folder called "UK Arcadia"** contains the sub-folders **"natives"** and **"PDFs":** these are paper information documents lawfully included in the trial dossier because they were acquired following an international letters rogatory. Finally, the folder named **"UK Tester interview (audio)"** contains the audio tracks of the statements made by Jeffrey Tesler to the London Metropolitan Police on 1.9.2014 in the context of Case ref. no. jard 163383. This file is a record of an investigative activity carried out by a foreign authority and cannot therefore be included in the trial dossier and must be removed from it.

For all the reasons above
the Court orders

the removal from the trial dossier of the acts and documents identified above, produced in electronic format and, as agreed with the parties at the hearing of July 20, 2018, asks the Prosecutor to remove such documents and prepare an analytical index of the documents remaining in the trial dossier, which will be made available in both digital and paper form".

At that point, in the absence of further preliminary issues, the hearing was declared open, and the Prosecutor outlined the facts referred to in the count of indictment and the preliminary requests, followed by those of the Civil Party and the attorneys of the defendants and the parties liable for civil damages, specifically indicated in the minutes of the hearing, to which reference should be made. The Court reserved the right to decide on those requests at the next hearing scheduled for September 26, 2018.
At said subsequent hearing the Court delivered its decisions on the preliminary requests, issuing the following order:

"> given that during the hearing of September 18, 2018, after the issues relating to the appearance of the parties had been resolved and in the absence of further preliminary issues, the Presiding Judge declared the trial open and the parties, in accordance with Article 493 of the Code of Criminal Procedure made their respective requests in the discovery phase;

> given that, in particular:

a) The **Public Prosecutor** first of all requested the admission of evidence from witnesses and defendants in related proceedings indicated in the list filed pursuant to Article 468 of the Code of Criminal Procedure; he requested the examination of all the defendants; he then filed documents, all in electronic format; he requested the transcription of the tapped telephone conversations from proceeding no. 39306/07 of the Public Prosecutor's Office at the Court of Naples specifically indicated in the memorandum filed with the court registry on November 14, 2018, and lastly, requested the admission of expert witness Dayo Ayoade, Associate Professor at the Faculty of Law of the University of Lagos, to give rebuttal evidence.

b) The attorney of the **Civil Party Federal Republic of Nigeria**, in addition to invoking his powers under the law, requested the examination of the defendants, endorsed the documentary submission made by the Prosecutor and, lastly, requested the examination of the expert witnesses indicated in the memorandum filed on September 17, 2018 as rebuttal evidence.

c) The defense attorney of the party charged with **administrative liability ENI S.p.a.** requested the admission of the witnesses included in the list filed, endorsing the submission made collectively by the defense attorneys on September 17, 2018;

d) The defense attorney of the party charged with **administrative liability and sued for civil damages, Royal Dutch Shell**

[3 illegible signatures]

ENI S.p.A., requested the admission of the witnesses indicated in the list filed;

e) The defense attorney of Shell Petroleum Development Company of Nigeria Ltd, Shell UK Ltd and Shell Exploration and Production Africa Ltd, Francesco Mucciarelli, did not make any independent requests in the discovery phase, but endorsed the objections to the Prosecutor's documentary submission put forward by *Peter Robinson*'s defense attorney, described below.

f) The defense attorneys of **Luigi Bisignani** and **Dan Etete** requested the examination of their clients;

g) The defense attorneys of **Peter Robinson** and **Malcolm Brinded** requested the examination of the witnesses indicated in the lists filed by each and of all the defendants, and objected to part of the documentary submissions made by the Prosecutor for the reasons set out by the *Robinson* defense and reported below,

h) The defense attorneys of **John Copleston De Carteret, Guy Jonathan Colegate, Roberto Casula, Claudio Descalzi, Paolo Scaroni** and **Ciro Antonio Pagano** requested the examination of the witnesses indicated in the lists filed by each and the examination of their own clients, and joined in the objections to the submission of documents by the Prosecutor made by the *Robinson* defense. The defense attorneys of *Casula, Descalzi and Fornari* in particular requested the admission of the documents already submitted collectively by all the defense attorneys;

i) The defense attorneys of **Gianfranco Falcioni, Ednan Tofik Ogly Agaev** and **Vincenzo Armanna** requested the examination of the witnesses indicated in the lists filed by each and of their own clients. Moreover, *Agaev's* defense attorney relied on the Court's assessment of the Prosecutor's submission of Mr. Agaev's statements before the London Court Of International Arbitration;

> since, firstly, there is no doubt as to the admissibility and relevance of taking oral witness evidence, via direct and rebuttal questioning, and of examining the defendants, as requested by all parties;

> given that, with regard to the telephone conversations tapped in proceeding no. 39306/07 by the Prosecutor's Office at the Court of Naples, since, as alleged by the Prosecutor and not denied by any defense, these are the same proceedings pursued in parallel by the Prosecutor's Offices of Milan and Naples, and consequently the prohibition under Article 270 of the Code of Criminal Procedure does not apply;

> given that, with regard to the documentary submission made by the Prosecutor, *Peter Robinson's* attorney, Mr. Padovani, in a brief filed on September 18, 2018, described in court, objected to the admission of the following submissions:

1) Ednan Agaev's witness statement made in Russia on October 21, 2011 and submitted in arbitration proceeding LCIA 111926 "Under the Rules of the London Court of International Arbitration" initiated by International Legal Consulting Ltd against Malabu Oil & Gas Ltd;
2) Ednan Agaev's second witness statement made in Russia on March 22, 2012 and submitted in arbitration proceeding LCIA 111926 "Under the Rules of the London Court of International Arbitration" initiated by International Legal Consulting Ltd against Malabu Oil & Gas Ltd;
3) Ednan Agaev's third witness statement made in Russia on May 31, 2012 and submitted in arbitration proceeding LCIA 111926 "Under the Rules of the London Court of International Arbitration" initiated by International Legal Consulting Ltd against Malabu Oil & Gas Ltd;
4) Arbitration award no. 111926 of April 18, 2013, issued by the London Court Of International Arbitration in the arbitration proceeding initiated by International Legal Consulting Ltd against Malabu Oil & Gas Ltd;
5) Transcripts of the minutes of the hearings held in the lawsuit between EVP (Energy Venture Partner) and Malabu Oil & Gas;
6) The report prepared by the "Ad-hoc committee" concerning the settlement named *"Block 245 SNUD Resolution Agreement"* of April 29, 2011,

this Court highlights, with regard to the first three "documents", that they were statements made by one of the defendants in the context of an arbitration proceeding [16]held abroad, in which the co-defendants of *Ednan Tofik Ogly Agaev* did not participate, which are not admissible and usable pursuant to paragraphs 2 and 2-*bis* of Article 238 of the Code of Criminal Procedure and Article 78 of the Code implementing provisions. The arbitration award, issued abroad by a foreign authority is to be considered inadmissible *a contrario* pursuant to Article 238-*bis* of the Code of Criminal Procedure. The transcripts of the minutes of the hearings held in the EVP (Energy Venture Partner) - Malabu Oil & Gas lawsuit are inadmissible for the same reasons mentioned for the statements by *Ednan Tofik Ogly Agaev.* Lastly, the report prepared by the "Ad-hoc committee", is inadmissible pursuant to Article 234 of the Code of Criminal Procedure, since it contains the assessments made by a Committee specially set up to examine the matter;

> having taken note of the Prosecutor's intention, stated at the hearing, to submit the arbitration award only as evidence of the historical fact that the dispute was settled by the arbitration tribunal;

> agreeing fully with the reasons given by *Robinson's* defense attorney regarding the inadmissibility of the above documents, given that

- ✓ the acquisition and use in criminal proceedings of legal documents produced in the context of different proceedings is governed - by way of derogation from the general principle of the immediacy and orality of the formation of evidence - by Article 238 of the Code of Criminal Procedure and Article 78 of its implementing measures, which expressly refer to minutes of evidence gathered in the context of different criminal proceedings, in Italy or abroad, with the guarantees offered by the principle of adversarial proceedings, or to minutes of evidence gathered in a civil

[16] Mistakenly indicated as having the nature of "voluntary jurisdiction", while it is actually a case of civil jurisdiction exercised by non-state authorities.

[3 illegible signatures]

case closed by a final judgment. In this latter case the law makes no reference to civil proceedings held abroad by foreign authorities, and therefore the acquisition of evidence from such proceedings must be considered *a contrario* excluded by the legislator. Even if one considered such evidence usable, it would still be unusable against the defendants in the present case pursuant to paragraph 2-*bis* of Article 238 of the Code of Criminal Procedure, since the defendants were not involved in the civil lawsuits in question;

- ✓ according to constant case law of the Supreme Court - fully shared by this Court - the use of final judgments for the purpose of proving the facts established therein pursuant to Article 238-*bis* of the Code of Criminal Procedure is only allowed for criminal judgments and not for civil cases, since the two procedural systems' use different criteria to assess evidence; therefore, the judgments made by a civil court, even if final, are not binding in a criminal court but can be freely assessed by the criminal court (see most recently Court of Cassation, 5th Division, judgment no. 41796 of 06/17/2016 - filed on 10/05/2016, Crisafulli and others, Rv. 26804101);
- ✓ the document indicated as the "Ad-hoc committee report" is a written assessment of the events it addresses and has been submitted without any signature or attestation of origin;

> thus this court deems admissible and relevant the evidence requested by the parties, with the sole exclusion of the documents mentioned in points 1 to 3, 5 and 6 above, and with the clarification that the document referred to in point 4 should be acquired only as proof of the historical fact of the judgment, with the exclusion of its declaratory and fact-finding content.

FOR ALL THE ABOVE REASONS

having regard to Article 495 of the Code of Criminal Procedure

THIS COURT ADMITS

The evidence submitted by the parties, excluding only the documentary evidence submitted by the Prosecutor and specifically mentioned in the grounds of the order, which is to be returned to the Prosecutor in the manner established during the verification pursuant to Article 431 of the Code of Criminal Procedure, since it consists of electronic documents, and orders to continue the hearing"

The defense attorneys of Eni S.p.A. claimed that their timely request for examination of the defendants had not been included in the minutes of the previous hearing due to a clerical error and asked the Court to supplement the order and admit the evidence accordingly. No other parties objected to this request, which was granted by the Court. The evidence hearing then began, with the Prosecutor's examination of witness Alessandro Ferri, who was then cross-examined by the defense and re-examined by the Public Prosecutor at the hearing of September 28, 2018.

At the adjourned hearing of October 3, 2018 witness Jonathan Benton was examined. At the end of his questioning, the case was adjourned to the hearing of October 10, 2018, where Descalzi Claudio's defense attorney argued that the telephone conversations already submitted by the Prosecutor and originating from other proceedings were not usable, and filed a brief arguing this point; the other defense attorneys supported this argument, on which the Court reserved its decision, and witness Debra Laprevotte was examined via video conference from the United States of America. During the hearing, with the express consent of the parties pursuant to Article 493(3) of the Code of Criminal Procedure, three diagrams produced by the Prosecutor reproducing the financial flows outlined by the witness were also acquired. The proceedings were then adjourned to October 26, 2018.

At that hearing, the Prosecutor and the attorneys for the Civil Party filed briefs in support of the usability of the wiretaps challenged by Descalzi's defense attorney, and witness Alessandro Ferri was questioned on new issues not previously addressed: after acquiring the documentation submitted by the Prosecutor during the previous hearings, the trial was adjourned to October 31, 2018.

At that hearing, after the acquisition of new documents submitted by the Prosecutor and the defense attorney of Eni S.p.A., witness Luigi Zingales was examined, while at the hearing of November 7, 2018 witness Alessandro Ferri was again cross-examined and re-examined and the Court, lifting its previous reservations, issued the following order:

"> given that during the hearing of October 10, 2018, after the Court had admitted, by order of September 26, 2018, the evidence submitted by the parties, the defenses of Scaroni Paolo, Descalzi Claudio, Casula Roberto and Pagano Ciro objected to the usability of the telephone conversations tapped in proceeding no. 39306/07 by the Prosecutor's Office at the Court of Naples, submitting a brief stating the grounds for their objection;

> given that the defending attorneys of the other defendants all joined in the objection raised;

> considering that the above-mentioned order, in assessing the admissibility of the telephone conversations in question, expressly excluded that they would be used in proceedings other than the one in which they had been ordered, and hence any

[3 illegible signatures]

infringement of the limit under the first paragraph of Article 270 of the Code of Criminal Procedure, in view of the Prosecutor's claim[17] not challenged by the defending attorneys that the wiretaps were obtained under a single proceeding, *"managed in parallel by the Prosecutor's Offices of Milan and Naples";*

> whereas the defending attorneys, to claim that the wiretaps could not be used argued precisely against the required unitary nature of the proceedings initiated by the Prosecutor's Office at the Court of Naples - in which the wiretaps on telephone numbers 392*5441344 (RIT 4239/2010), 334*1846054 and 335*410740 (RIT 4688/2010) were requested and authorized - and the proceedings that have led to the present trial,

>

this Court observes

firstly, that the procedural rule of the non-usability of wiretaps ordered in different proceedings, which is a general rule under the first paragraph of Article 270 of the Code of Criminal Procedure, together with the exception which applies when such wiretaps are essential for proving the crimes, set out in Article 380 of the Code, as repeatedly clarified by the Constitutional Court, when assessing the constitutional legitimacy of Articles 3 and 112 of the Code of Criminal Procedure, stems from the need to establish a balance between the inviolable right to freedom and confidentiality of communications (Article 15 of the Italian Constitution) and the primary interest of the State in administering justice and punishing criminal activities. Achievement of this balance, pursuant to the second paragraph of Article 15 of the Constitution, also requires the absolute reservation of law and the request for reasoned judicial authorization of possible limitations. It should be noted in particular that the Constitutional Court, whenever it has assessed the constitutional legitimacy of the general prohibition under the first paragraph of Article 270 of the Code of Criminal Procedure on the request of a lower court, which complained of the irrationality of the provision, consistently rejected the issue raised and reiterated that it is essential, in order to strike the correct balance, that the judicial authorization for wiretapping be individual and specific to each case, to avoid giving the public authority *"an 'inadmissible blanket authorization' (...) with consequent damage to the 'private sphere' relating to the inviolable right of freedom of correspondence and the connected duty of confidentiality incumbent on all those who for official reasons become aware of facts relating to that sphere"* (see the Constitutional Court, judgment no. 63 of 1994 and no. 366 of 1991). Particularly clear for the purposes of identifying the rationale of the system is the reasoning of judgment 366/91, which states that the fundamental freedom of correspondence *"would be compromised, seriously discouraged or, in any case, disturbed if its guarantee did not involve the prohibition of disclosure or subsequent use of the information that has come to light as a result of a legitimate authorization to carry out wiretaps for the purpose of proving specific crimes in court".*

Having thus briefly acknowledged the constitutional importance of the rights and freedoms justifying the non-usability established by Article 270 of the Code of Criminal Procedure and the binding nature of this provision, it must also be noted that the case law of the Court of Cassation, called upon to provide a clear conceptual definition of *"same or different proceedings"* for the purpose of determining non-usability - as correctly pointed out by the parties to the trial in the briefs filed - has constantly based the distinction on substantial criteria, as opposed to merely formal data such as whether the proceedings are recorded together or separately in the registers kept under Articles 270 and 335 of the Code of Criminal Procedure and 2-5 of its implementing rules, stating that the proceedings can be considered to be unitary where the alleged offenses are closely connected or linked in objective, evidential and finalistic terms, leading to investigations that are intimately and inescapably linked (see for example, albeit incidentally, Court of Cassation, United Divisions, Judgment no. 32697 of 06/26/2014 - filed on 7/23/2014, Floris and others, Rv. 25977601).

Traditionally, the legislative basis for determining the connected or linked nature of separate proceedings is the case of connected offenses under Article 12 of the Code of Criminal Procedure - which is mainly relevant for the purposes of determining geographical jurisdiction - and the joint investigations under the second paragraph of Article 371 of the Code of Criminal Procedure, with the specification that the joining of the investigations cannot rely as evidence on the wiretapping itself, as this would create an interpretative short circuit and clearly evade the prohibition established by law (see, recently, Court of Cassation, 3rd Division, judgment no. 28516 of 02/28/2018 - filed on 06/20/2018, Public Prosecutor Marotta, Rv. 27322601).

Coming to our case, the objection of non-usability raised by the defending attorneys claims that there is no connection or link between the offenses at issue in the proceedings registered by the Public Prosecutor's Office at the Court of Naples under Crime Reports General Docket no. 39306/2007, under which the telephone wiretaps which the Prosecutor wishes to use in this trial were ordered and made, and the offense addressed by our Court, registered with General Docket no. 54772/2013.

The defending counsels observe that the decrees authorizing the wiretaps issued by the Preliminary Investigation Judge at the Court of Naples in the context of the aforementioned proceedings, no. 4688/2010 and 4239/2010 R.R., state that the offenses for which the wiretapping was requested, of which Raffaele Arena and others were suspected, were the disruption of the freedom of auctions (Article 353 of the Criminal Code), fraud in public supplies (Article 356 of the Criminal Code), bribery (Articles 319 and 321 of the Criminal Code) and criminal association (Article 416 of the Criminal Code), all included in an *"extensive investigation into the lawfulness of Trenitalia's awarding of contracts"*, still under way to identify other groups engaging in disrupting bidding procedures, attributable to Trenitalia S.p.A. executives other than those already subject to the precautionary measure issued on June 28, 2010, with the involvement of *Luigi Bisignani*, who is also a defendant in the present trial (so-called "P4" investigation).

The acquisition of the *notitia criminis* relating to the international corruption activity linked to the award of the OPL 245 block to

[17] When requesting the admission of evidence at the hearing of September 18, 2018, the Prosecutor had expressly stated: "these are not wiretaps made in other proceedings, because the proceedings were first initiated by the Judicial Authority of Naples against Nardo. Thus the position, written together with some useful documents, statements and, in particular, the wiretaps, was then transferred to Milan, being the authority having jurisdiction" (see page 13 of the transcripts).

[3 illegible signatures]

ENI S.p.A and Royal Dutch Shell reached the judicial authority six years after the start of the Naples Prosecution's investigation, through the filing by the NGOs Re:Common, Global Witness and The Corner House with the Public Prosecutor's Office at the Court of Milan of a complaint on September 9, 2013, initially registered under proceeding no. 25303/2010 - which ended with dismissal of the complaint - and a copy of which was sent on 9.28.2013 to the Public Prosecutor's Office at the Court of Naples *"in order to be able to assess whether on the basis of the facts submitted by Re:Common and any additional information in your possession any offences by the companies and individuals mentioned in the complaint can be identified".* The complaint filed by the NGOs mentioned the acquisition by the Naples Public Prosecutor's Office of statements made by *Paolo Scaroni* and *Gianluca Di Nardo* regarding the role as "facilitator" of Di Nardo, who was "close to Bisignani", in the OPL 245 affair.
The Public Prosecutor's Office at the Court of Naples - which in the meantime had closed *Luigi Bisignani* 's position in the proceedings through an agreed sentence of 1 month and 7 years imprisonment issued by the Preliminary Investigation Judge by judgment of November 25, 2011 for crimes mainly in violation of Articles 326 and 378 of the Criminal Code as well as Article 416 of the Criminal Code - having received the complaint, on October 21, 2013 entered Gianluca di Nardo in the register of suspects in relation to alleged acts of international corruption in the context of the proceeding under General Docket no. 39306/2007 and consequently opened a separate case (no. 45438/13) which, in addition to the complaint, included a judicial police report dated 10.14.2013. At the same time, the Naples Prosecutor transferred the case to the jurisdiction of the Public Prosecutor's Office at the Court of Milan, excluding any connection between the crime at issue and the crimes prosecuted by the Naples judicial authority.
Hence the absolute independence of the two proceedings and the consequent non-usability of the results of the wiretaps ordered by the Public Prosecutor's Office at the Court of Naples against *Luigi Bisignani*.

The Public Prosecutor, in the brief filed during the hearing of October 26, 2018, argued that there was a clear evidential connection between the two proceedings which were only formally separate (thus claiming their connection pursuant to Article 371 second paragraph point b) last part and point c) of the Code of Criminal Procedure), observing that the requests for authorization for the wiretaps filed on September 10 and 23, 2010 and October 21, 2010 by the Naples Public Prosecutor's Office extended the investigation to include the offense under Article 416 of the Italian Criminal Code, represented by an association *"characterized by the systematic use of unlawful methods aimed at obtaining equally unlawful benefits and advantages",* based on an *"illegal system of acquisition and management of confidential and secret information (also relating to sensitive criminal proceedings under way), for individual gain..."*, *"a sort of hidden superstructure made up of several individuals and intended to clearly influence public institutions and bodies performing public functions or public services, evidently to bend the institutional purposes of said bodies to satisfy individual and private logics and interests"*, whose existence had been largely deduced from the telephone wiretaps (see pages 3 and 4 of the Prosecution's Brief). The Naples Public Prosecutor's Office then carried out further investigative activities, repeatedly questioning *Luigi Bisignani* and obtaining summary witness information from Gianluca di Nardo, Maurizio Basile and from *Paolo Scaroni*, who were questioned on the relations existing between *Bisignani* and ENI's top management and even on the OPL 245 affair (see pages 4-7 of the Public Prosecutor's brief). The minutes of these interrogations and testimonies - contrary to what was claimed by the defending counsels in the briefs filed - were transmitted to the Public Prosecutor's Office at the Court of Milan following an express request made on October 6, 2016.
The arguments submitted by the Federal Republic of Nigeria in the brief filed in the hearing of October 26, 2018 are largely in line with the Prosecutor's argument.
Having read the trial records, this Court must agree with the defending attorneys that there is no connection or link between the offenses at issue in the proceedings registered by the Public Prosecutor's Office at the Court of Naples under General Docket no. 39306/2007, in the context of which the telephone wiretaps requested by the Prosecutor were arranged and acquired, and the crime being tried before this Court, registered under General Docket no. 54772/2013. There is no evidential link between the *notitiae criminis* invoked by the Prosecutor's Office as an element unifying the investigations carried out in parallel by the two distinct investigating authorities.
The investigation carried out by the Naples Public Prosecutor's Office under General Docket no. 39306/2007 was indeed expanded in scope from the original charges concerning individual offenses of disruption of the freedom of auctions, fraud in public supplies and bribery, relating to the management of Trenitalia S.p.A, leading to the allegation of the existence of a criminal association, including *Bisignani* among others.
However, count of indictment no. 4) of the sentencing judgment issued by the Preliminary Hearing Judge of the Court of Naples on November 25, 2011 against *Luigi Bisignani* clarifies the actual substance and nature of this criminal association.
For convenience, said count of indictment is expressly reported here:
"Papa Alfonso, Bisignani Luigi, La Monica Enrico Giuseppe, Nuzzo Giuseppe
4) for the crimes provided and punished under Articles 81, paragraph 2 of the Criminal Code, 416 of the Criminal Code and (for the sole purpose of the dispute) Law no. 17 of 1.25.1982 because, with several actions executing the same criminal scheme, La Monica Enrico Giuseppe Francesco - petty officer of the Carabinieri Police Force based at the Naples Anticrime Division - Papa Alfonso - Member of the Italian Parliament, member of both the Justice Committee of the Chamber of Deputies and the Parliamentary Anti-mafia Committee, former Judge and General Director of the Ministry of Justice - Bisignani Luigi - businessman, mediator and broker, former advisor to top business managers of some of the most important state-owned companies (Eni; Poligrafico dello Stato, Rai, etc.), Ministers, Under-Secretaries of State and other State leaders - and Nuzzo Giuseppe - State Police officer based at the Vasto Arenaccia precinct - promoted, established and took part (together with other individuals belonging to police agencies currently being identified) in a criminal association, organized and maintained in order to commit an unspecified number of offenses against the public administration and against the administration of justice. In particular, in a coordinated and continuous manner, they first illegally acquired, also in violation of Article 326 of the Criminal Code:

[3 illegible signatures]

1) confidential and secret information relating to criminal proceedings in progress, both from judicial and investigative contacts (primarily and mainly in Naples, but also in other locations) and by accessing databanks from the carabinieri and state police offices of Naples and the Naples Prosecutor's Office;
2) information relating to "sensitive data" and strictly personal and confidential data concerning, in particular, top representatives of the institutions and high offices of the State.
Subsequently, such confidential and/or secret information was managed and used - by the association - in an improper way:
1) to commit an unspecified series of aiding and abetting offenses. They did so, and intended to do so, in order to protect their "friends" who were being investigated (and who, for this purpose, were warned of the proceedings in progress) to evade the investigations (even preventing, in some cases, the start of the investigations themselves and the registration of the relative criminal proceedings);
2) in order to obtain money, favors and benefits, in particular from entrepreneurs targeted by the investigations to whom they provided the confidential and secret information from time to time in return for money or other benefits;
3) with specific regard to information relating to "sensitive" and strictly personal data, concerning, in particular, members of the institutions and other state officials in order to "defame" or to then blackmail and exert undue pressure on the same members of the institutions.
In Naples until July 2011"

The subjective and objective scope of this criminal association, as ascertained by the Neapolitan judicial authorities, is clearly completely unrelated to the international corruption case tried in this Court: the only common element, represented by the participation in the association of *Luigi Bisignani,* who is also a defendant in these proceedings, certainly does not suffice to conclude that the two cases are linked for evidential purposes.
More specifically, from the testimony given by Colonel Alessandro Ferri during the hearing of September 26, 2018 before this Court, it was clear that the only elements inherent in the "OPL 245 affair" emerged during the course of the Naples investigation precisely during the wiretapping activities.
For the sake of convenience, we reproduce below the contents of the witness's statement on this point, as contained in the transcripts, which fully confirms the defending counsels' arguments of non-usability of the wiretaps:

WITNESS FERRI - From the content of the complaint regarding the acquisition by two oil companies, referring to the parent company Eni and Royal Dutch Shell PLC, of an oil license concerning the oilfield known as OPL 245, there were two points of interest, from an investigative point of view. The first is that it was mentioned that US and UK judicial authorities had similar... had ongoing investigative, in-depth activities into this purchase and sale by the two oil companies. And the second point of interest, from our point of view, was that these facts, some of these facts related to the buying and selling of this oil asset, had emerged during an investigation that had been conducted by the Naples Prosecutor's Office and that had had as its main focus investigations into a criminal association, which the media had then called P4. So, in the course of these investigative activities, according to the NGOs' complaint, elements relating to this buying and selling activity had emerged. For this reason, as early as October, mid-October, I was instructed by the judicial authorities to go to Naples, to the headquarters of the then Tax Police Unit, which had conducted the investigation under the direction of the Naples Prosecutor's Office, and talking to my colleagues, they showed me what they thought was the evidence that had emerged in their investigation and that could be related to this buying and selling activity. ***They then showed me what were essentially some daily records,*** *transcripts of telephone conversations, and I took note of their content and in fact* ***I was convinced that there were, in those transcripts, potential useful elements that could be further developed****.*
PUBLIC PROSECUTOR – Then, after the Naples Prosecutor's Office registered the notice of an offense and transferred the file to Milan, due to it being its jurisdiction, a file against Di Nardo at that time, you entered more directly into the examination of these materials: the phone calls, the transcripts, etc... I would like to ask you a few questions that may then, I think, perhaps also be useful for the actual transcription activity. How many phone calls, to whom and from whom, have you examined? Then if you have all listened to them again, if there are any... tell me a little bit about how things went.
WITNESS FERRI - In the meantime, I ask permission to consult some material in order to aid my memory.
PRESIDING JUDGE - Of course, so that you are precise, because we need precision for this, you are certainly authorized to consult material, that way you can give us accurate information on phone numbers, figures, information and people. Just tell us what you are consulting.
WITNESS FERRI - I am consulting a few notes sent by the then Tax Police Unit of Naples to my department, that is, the Milan unit.
PUBLIC PROSECUTOR – Into the microphone.
WITNESS FERRI - I am consulting a few notes, sent by the Naples Tax Police Unit, which were sent to me: the first one is dated January 10, 2014, the second one is dated October 16, 2014. ***In which I was sent some phone calls related to three numbers.*** *The numbers were as follows: 3341846054, which my colleagues wrote was "In use by Luigi Bisignani",*
PUBLIC PROSECUTOR – Who was it registered to?
WITNESS FERRI - And this number was registered, at the time of the facts, to a certain Elia Tescione from Naples. The second phone number is 335410740, which my colleagues wrote was "in use by Paolo Pollastri"; my colleagues later told me that this Paolo Pollastri was a sort of driver for Luigi Bisignani. The number in question is registered... at the time it was registered to the company Business Enterprise lite, a company in Turin, where in those years, from which in those years, we are talking about 2010/2011, Luigi Bisignani received income. So he had a working relationship with this company. The third number to which the phone calls refer, which were transmitted in January 2014, was 3925441344; this number was registered to Tommaso Puca, our

[3 illegible signatures]

colleagues told us that it was in use by Luigi Bisignani. ***So, we received a total of about 22 phone calls, split among these numbers, and began listening to them again.***
PUBLIC PROSECUTOR – I would like to clarify just one thing. In addition to the information regarding Pollastri, who you told us was Bisignani's driver, with regard to the other two people, Elia Tescione and Tommaso Puca, were you able to find out what their relationship to Bisignani was?
WITNESS FERRI - No, we didn't find out.
PUBLIC PROSECUTOR – And I'd like to ask you now, since you have listened to these phone calls, were these numbers always used by the same voice that you traced back to Bisignani?
WITNESS FERRI - Yes. from the analysis of the phone calls that were transmitted to us, obviously the calls that in some way concerned our investigative activities were transmitted to us, therefore not all of the calls, but in the calls that we were able to listen to, the voice of these two numbers was always that of Bisignani.
PUBLIC PROSECUTOR – Can you please continue, because... there was then a further transmission?
WITNESS FERRI - Yes. Another useful piece of information to understand the identity of the owner was also reading the daily record, because from reading the record in some way we could... we could also read what the interlocutors on the phone calls had said, which had not been transmitted to us because there was nothing relevant to our aims, but from reading the record we could see, for example, that on the number used by Paolo Pollastri, actually in several phone calls it was Paolo Pollastri who was speaking and not Luigi Bisignani. While in the other two I mentioned, the first and third, it was Luigi Bisignani who was speaking. At least from reading the daily record.
PUBLIC PROSECUTOR – Then there was a further transmission, you said.
WITNESS FERRI - Yes, in October, on the basis of listening to these phone calls, of reading the daily records relating to these calls, we asked our colleagues to transmit further phone calls that we believed were in any case connected to the affair that we were investigating. *Either because they were close time-wise to the phone calls that they had transmitted to us, or because from reading the daily record we thought that the conversation might have some relevance for us. So, in essence, in October of 2010 we were sent additional phone calls, 31 phone calls, in October. And we were also sent a series of daily records relating to the three numbers that had made the calls transmitted to us, and also relating to other numbers. From the overall activity of...* ***what did we do? We re-listened and re-transcribed all the phone calls we had received, trying to better contextualize what was said by the interlocutors, also on the basis of information related to this sale, which we were gradually acquiring and analyzing.*** *And we considered that for at least three conversations, the interlocutor, there are three conversations that are marked by these data: the first two concern the number 3925441344, in this case conversations 316 and 327, in which on the one hand there was certainly Luigi Bisignani, but on the other hand our colleagues in Naples had indicated Paolo Scaroni as the interlocutor. From our re-listening we recognized that voice as Claudio Descalzi, and therefore when we re-transcribed the phone calls we identified Luigi Bisignani's interlocutor differently from what our colleagues in Naples had done; and we did the same thing with reference to phone call no. 1341 from phone number 335410740.*
(...)
PUBLIC PROSECUTOR – You mentioned buying and selling earlier, because in the phone calls there was actually talk of buying and selling. You also know of a Nigerian asset, so they were not very clear. Can you tell the Court what time period these wiretaps cover?
WITNESS FERRI - The ones that...
PUBLIC PROSECUTOR – All those received from Naples. I am interested in the beginning and the end, to understand which period was, so to speak, tapped by Naples.
WITNESS FERRI - The phone calls that we received, I would have to take a look... otherwise I would have to consult the daily records. The phone calls we received were made between September 2010 and November 2010.
...WITNESS FERRI - In February, yes. In fact, at that time, even re-reading, ***I don't know the details of that investigation,*** *by reading the press articles a few days earlier, on February 14, 2011, searches had been carried out on individuals close to Luigi Bisignani and on February 22, 2011 Gianluca Di Nardo had been questioned by the investigators of the Naples Public Prosecutor's Office.*
PUBLIC PROSECUTOR – Alright, thank you. I have no further questions on this point. I would ask you for further contacts, investigative exchanges, which took place, essentially if possible, in a chronological order, which is perhaps the easiest thing to follow. You said that Re:Common referred to investigations of foreign investigative bodies.

Thus, traces of the "OPL 245 affair" emerged during the investigations carried out by the Public Prosecutor's Office at the Court of Naples only and exclusively as a result of the wiretapping activity, as an occasional event, since the Naples investigations focused on the existence of a criminal association and its crimes which had no connection with the subsequent proceedings initiated by the Public Prosecutor's Office in Milan, about three years later, following the complaint filed by Re:Common.
We should also examine from this viewpoint the reasons given for the various requests to prolong the wiretapping, which are clearly set out in the brief filed by the Public Prosecutor. Those reasons mention evidence that emerged from the wiretapping itself, therefore giving rise to the short-circuit of evidence that must be avoided in order to comply with the limit set by Article 270 of the Italian Code of Criminal Procedure.
Therefore, we are clearly dealing with a case of evidential connection, brought about exclusively by the results of the wiretaps, which the above-mentioned case law of the Supreme Court - with which we fully concur - has deemed unsuitable as a basis to determine the unitary nature of the proceedings and thus allow the wiretaps to be used under the first paragraph of Article 270 of the Code of Criminal Procedure.
We also find clearly insufficient, for the purpose of admitting use of the wiretapped evidence, the circumstance, highlighted by the Prosecution and by the Civil Party's attorneys, that the Naples Public Prosecutors, after hearing the wiretapped conversations,

during the interrogation of the defendant Luigi Bisignani and the acquisition of summary information from Gianluca Di Nardo, Maurizio Basile and Paolo Scaroni, on the basis of the results of the wiretaps, asked more probing questions to further investigate the relationships between the parties to the wiretapped conversations, also with specific regard to the "OPL 245 affair", since such questions were a normal and contingent development of the wiretapping activity itself which, not being in any way connected to the scope of the events under investigation in Naples, did not lead to any outcome, but only gained procedural significance following the contacts initiated by the Milan Prosecutor's Office. Indeed, it was only after they acquired the complaint filed by Re:Common on 9.9.2013, that the Naples Prosecutors registered the *notitia criminis* and immediately transferred the documents to the Milan Prosecutor's Office, which has territorial jurisdiction.
Lastly, the argument that the Naples investigations "interfered" in the contacts between Descalzi and Obi is irrelevant, since these are factual occurrences, moreover attributable to press news, as the text of the message quoted in the brief shows. Once again, these are developments deriving from the wiretapped conversations, which were echoed by the press but, in any case, fall within the scope of the above-mentioned evidential short-circuit.
The reference to the statements made by Maurizio Basile, who mentioned contacts and relations concerning the urban development of the area owned by ENI in the Ostiense area, is equally irrelevant.
Therefore, this Court accepts the objection raised by the defending attorneys of all the defendants and rules that the wiretapped conversations from case no. 39306/07 of the Public Prosecutor's Office at the Court of Naples on telephone numbers 392*5441344 (wiretap register 4239/2010), 334*1846054 and 335*410740 (wiretap register 4688/2010) against *Luigi Bisignani* cannot be used in this trial.

FOR ALL THE ABOVE REASONS

HAVING REGARD TO ARTICLE 270 OF THE ITALIAN CODE OF CRIMINAL PROCEDURE

THIS COURT DECLARES

That the telephone conversations wiretapped in case no. 39306/07 by the Public Prosecutor's Office of the Court of Naples cannot be used in the present proceedings".

Lifting previous reservations, this Court also issued the following order concerning the contents of the trial dossier:

"given that, during the hearing of October 10, 2018, the defenses of Ednan Agaev and Ciro Pagano raised some issues regarding the formation of the trial dossier following the Court's order of September 26, 2018. Specifically:
Ciro Pagano's defense, joined by the defenses of Scaroni and Casula, complained that the documents had been submitted without an intelligible table of contents and that there were PDF files containing a variety of completely different documents;
Ednan Agaev's defense requested that, in compliance with the order issued by this Court on September 26, 2018, all documents related to the case "EVP vs. Malabu", currently on pages 1286 - 1342 and 3267 - 3291 of the trial dossier, be removed.

this Court observes

With regard to the issues raised by Ciro Pagano's defense, it should be noted that the trial dossier that the Public Prosecutor "recreated" following the September 26, 2018 rulings was submitted in both hard copy and digital versions. The dossier also comes with a detailed table of contents in which the page numbers are set out in a precise manner.
The two sub-folders *"documentazione informatica relativa ad Arcadia (UK)"* and *"documentazione informatica sequestrata presso Emmgi"* are exceptions to the full intelligibility referred to above. These subfolders were submitted in digital version only and actually contain a number of miscellaneous files not arranged systematically. The tables of contents of these subfolders only list the digital name of the files, thus not clarifying their content.
When questioned on this point, the Public Prosecutor undertook to review the arrangement of these two sub-folders. Therefore, the Court will issue its decision after the Public Prosecutor rearranges these documents.
With regard to the issue raised by Ednan Agaev's defense, it should be recalled that the Court had ordered that the documents containing statements made by the parties involved in the civil case "EVP vs. Malabu" be removed from the trial dossier because they did not meet the requirements of Articles 238 of the Italian Code of Criminal Procedure and Article 78 of its implementing provisions.
In compliance with the Court's order, the Public Prosecutor "included" in the trial dossier only documents pursuant to Article 234 of the Code of Criminal Procedure, indicated as *"Regno Unito, documenti causa EVP",* all submitted by the parties during the course of the civil case, and subsequently duly acquired by the Italian judicial authorities through international letters rogatory.
Their inclusion in the trial dossier is therefore fully lawful.

FOR ALL THE ABOVE REASONS

HAVING REGARD TO ARTICLE 431 OF THE ITALIAN CODE OF CRIMINAL PROCEDURE

[3 illegible signatures]

THIS COURT DISMISSES

the objections raised by the defenses of Ciro Pagano and Ednan Agaev regarding the formation of the trial dossier and reserves its decision on the digital sub-folders *"documentazione informatica relativa ad Arcadia (UK)"* and *"documentazione informatica sequestrata presso Emmgi"* until their rearrangement by the Public Prosecutor.

Lastly, with regard to the usability of the testimony given by witness Benton, which was disputed by the defense counsels, the Court issued the following order:

"whereas, during the hearing of October 3, 2018, the Public Prosecutor's witness Jonathan Benton, at the time of the facts an investigator with the London Metropolitan Police in charge of the investigation concerning the OPL 245 affair, was heard;
whereas, among the various topics addressed during the examination, the witness reported that he went to Nigeria in 2013 and reported the contents of a conversation he had with Attorney General Adoke Bello;
considering that the defendants' attorneys have disputed the usability of said statements because:

1. Adoke Bello was a party later involved in the investigation, a fact which triggered the guarantees under Articles 63 and 64 of the Italian Code of Criminal Procedure;

2. in any case, the prohibition of indirect testimony by judicial police officers established by Article 195(4) of the Italian of the Code of Criminal Procedure applies;

this Court observes

that the objection cannot be accepted because it is unfounded in both of the above respects.
With regard to point 1), it is well known that *"with regard to testimonial evidence, when the role of the person giving evidence is irrelevant, the judge has the power to verify in substantial terms – hence in addition to checking formal indicators, such as whether the witness is also registered as a suspect – whether the witness might be considered a suspect at the time he gives evidence. This assessment, if adequately reasoned, is not subject to judicial review".*[18]
However, the Court of Cassation also specified that, *"as regards the type and substance of the elements that can be assessed by the judge in order to verify the actual status of the witness, only unequivocal indications of perpetration of the offense must be considered relevant [...] the original existence of serious indications of criminal liability cannot automatically be derived from the mere fact that the witnesses were in some way involved in events potentially likely to give rise to criminal charges against them. On the contrary, such events, as perceived by the investigating authority, must have connotations such that their further investigation necessarily requires postulating the criminal liability of all or some of the parties involved (Court of Cassation, Division, judgment no. 8099 of February 27, 2002, Pascali; January 25, 2008, no. 4060, Sommer et al.)".*[19]
Applying these principles to the case at issue, it must be excluded that Adoke Bello might be qualified as a suspect in the OPL 245 affair. Reporting on the status of the investigation, Jonathan Benton stated that he had suspected that some of the current accounts which received sums from the OPL 245 transaction were traceable to family members or associates of Adoke Bello[20]. This circumstance, however, was merely an investigative hypothesis not supported by any concrete evidence that would *necessarily* postulate the existence of criminal liability of the Attorney General. Therefore, Jonathan Benton's feeling of embarrassment and inappropriateness of the meeting cannot produce any legal consequences regarding Adoke Bello's role in the trial, since it must be placed in the context of the witness's knowledge at the time of the facts.

With regard to the applicability of the prohibition of indirect testimony provided for by Article 195(4) of the Italian Code of Criminal Procedure, it has been specified that *"paragraph 4 of Article 195 of the Code of Criminal Procedure precludes, with regard to the content of the testimonies given by witnesses in the manner set out in Articles 351 and 357(2)(a) and (b) of the Code of Criminal Procedure, the "other cases" to which the last part of the provision refers, in which the evidence is admitted under the general rules on indirect testimony, are the cases in which the statements were made by third parties and acquired outside of a specific procedural context for recording testimony, in an exceptional operational situation or case of extraordinary urgency and, therefore, outside an interview between the witness and the judicial police officer, each in his own capacity"*[21].
The rationale of this provision is the need to discourage the judicial police from sidestepping the recording requirements under Article 351 of the Code of Criminal Procedure, while still enabling police officers to relay information obtained in a situation in which it was impossible to record the testimony.

[18] Court of Cassation, United Divisions, judgment no. 15208 of 02/25/2010 (filed on 04/21/2010) Rv. 246584
[19] Court of Cassation, United Divisions, judgment no. 15208 of 02/25/2010 filed on 04/21/2010) Rv. 246584
[20] Transcript of the hearing of October 3, 2018, page 18: "He cannot say that this was a direct suspicion in this specific case, but what he can say is that, in the course of the investigation that they were conducting, there had been money transferred to Nigeria in the past. He remembers this because the money was in US dollars and they had good relationships with the Americans and so they could get information about the transactions. In this case the payment about which they had been able to get information from their American counterparts, they were able to... his investigators gave information that the money had gone to an account not directly connected, but in any case through family, or something like that, connected to the attorney general. He can't say he was certain, he doesn't have sure knowledge that that account was actually connected to the attorney general".
[21] Court of Cassation, United Divisions, judgment no. 36747 of the hearing of 05/28/2003 (filed on 09/24/2003) Rv. 225469

[3 illegible signatures]

However, this obligation does not apply when the police officer is participating in a conversation - even if this conversation reveals elements important for the investigation - that he did not start or, in any case, plan to obtain useful information for the investigation.
Applying these principles to the present case, it must be noted that Jonathan Benton reported the origin of the meeting as follows: *"he had been in the EFCC central offices in Abuja, he had been in Lamorde's office and he was on his way back to the British embassy. Lamorde told him not to call for a driver, that he could use Lamorde's driver. So he got into this big 4x4, bulletproof, huge car, and he thought he was going back to the embassy. Instead, they turned into the street where the Ministry of Justice was. He had been there many times before. He does not remember the name of Lamorde's driver, but he remembers asking, "How come I'm not going back to the embassy?" The driver told him that Lamorde needed him to go there and so he tried to call Lamorde with his cell phone. And Lamorde said to him, "Please, look, Adoke has heard that you are here in Nigeria, he wants to see you, please go see him". It's something that caused me some concern, especially because of the investigations"*[22].
Given this context, it is clear that the conversation in question was not an interview conducted by the parties in the respective capacities of witness and judicial police officer.
The above account also clearly shows that the conversation was not instigated by Jonathan Benton, who on the contrary was essentially forced to meet with the head of the Nigerian judicial system. Even the presence of Jonathan Benton in Nigeria was not specifically linked to the investigations concerning the OPL 245 affair, but was connected to a broader collaboration between the two countries concerning various cases of international corruption.
Moreover, the context in which the meeting took place was undoubtedly exceptional, due to its timing (not prearranged and no real possibility for Benton to avoid the meeting), its manner (absence of third parties and of Benton's colleagues who could assist him in drafting the report), and, lastly, the place where it took place (the headquarters of the Nigerian Ministry of Justice).
These elements allow us to exclude applicability of the obligation to record the statements in the manner set out in Article 351 of the Italian Code of Criminal Procedure. In this regard, the notes that the witness reported to have drawn up are not part of the above obligation, but are merely "notes" to be connected "to the other cases", also provided for by the abovementioned provision.
Jonathan Benton's indirect testimony on what he learned from Adoke Bello must therefore be admitted as it falls within the scope of the *"other cases"* provided for by Article 195(4) of the Code of Criminal Procedure.

FOR ALL THE ABOVE REASONS

Having regard to Article 195(4) of the Italian Code of Criminal Procedure

THIS COURT DECLARES

that Jonathan Benton's statements can be used"

The Court then adjourned the proceeding to the hearing of November 21, 2018.
The defendants' attorneys appeared at the hearing and declared that they were joining the strike called for that day by the Criminal Bar Association, and the Court, having ascertained compliance with the requirements of the code of conduct adopted, pursuant to Article 2-*bis* of Law no. 146 of June 12, 1990, by the bar associations - approved by the supervisory committee on strikes in essential public services by resolution of December 13, 2007 - concluded that the attorneys' right to strike had been correctly exercised and adjourned the hearing to November 28, 2018.
At the hearing of November 28, 2018, Scaroni's defense filed a written statement regarding the procedures for examining witnesses residing abroad. The issue was discussed by the parties together with the matter of the consent to the acquisition of transcripts of statements already made during the investigations. The Public Prosecutor also requested the acquisition of documents already filed with the Court's Registry on November 23, and the Court adjourned the hearing to December 5, 2018 to allow the defending attorneys to submit their motions and the trial to continue.
During the hearing of December 5, 2018 witness Michele De Rosa was heard. During De Rosa's examination, documents submitted by the Prosecution and the Casula defense were acquired; furthermore, after the parties reached an agreement pursuant to Article 493(3) of the Code of Criminal Procedure, transcripts of statements made during the investigation were acquired, and consequently the Public Prosecutor, with the other parties' consent, waived examination of the witnesses no. 16 and 17 of his list.
With regard to the issue of the methods of acquiring the statements of witnesses residing abroad, the following order was issued:

> given that during the hearing of November 28, 2018, as part of the ordinary consultation of the Court with the trial parties to schedule the taking of the admitted evidence, since the Prosecution had announced its intention to request the remote examination

[22] Transcript of the hearing of October 3, 2018, page 17

by video conference of witnesses residing in the United Kingdom (witness no. 19 Alexander Leslie; witness no. 20 Jeffrey Tester; witness no. 22 Gabriel Oziegbe) and in the Federal Republic of Nigeria (witness no. 6 Ibrahim Ahmed; witness no. 8 Idris Akimbajo; witness no. 11 A.W. Obaje; witness no. 13 Bashir Adewuni; witness no. 14 Aminu Ahmed; witness no. 15 Babangida Ahmed; witness no. 16 Alhagi Farouk Suleman; witness no. 17 Isamusa lano; witness no. 18 Hassan Dantani Abubakar; witness no. 21 Umar Bature; witness no. 23 Victor Nwa-for; witness no. 24 Femi Akinmade; witness no. 33 Christopher Adebayo Ojo; witness no. 36 Alhaji Abubakar Aliyu), Mr Enrico de Castiglione, Paolo Scaroni's defending attorney, pointed out that such procedure would undermine the rights of the defense, specifically in cross-examination, and claimed it was unlawful in that it materially affected the right to defense and the effectiveness of adversarial proceedings, outside of the cases specifically provided for by the national legislation implementing the international legislation applying to the Italian State, referring in particular to Article 39 of Legislative Decree no. 108 of June 21, 2017 ("Rules implementing Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters"), Article 14 of Legislative Decree no. 52 of April 5, 2017 ("Rules implementing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, held in Brussels on 29 May 2000"), Article 729-*quater* of the Italian Code of Criminal Procedure, inserted by Article 7(1)(d) of Legislative Decree no. 149 of October 3, 2017, and lastly Article 46(3)(h) and (18) of the United Nations Convention against Corruption (Merida Convention). This objection, argued in the brief filed by attorney de Castiglioni during the same hearing, which was also signed by the defense attorneys of Claudio Descalzi, Roberto Casula, Ciro Pagano and ENI S.p.A., was also supported by the defense of Royal Dutch Shell PLC;
> given that the Prosecutor, while agreeing with the identification of the legal framework governing the matter as set out by the defense attorneys, excluded that the issue could affect the lawfulness of the acquisition of evidence, and only urged the Court to consider whether the examination via video conference should be preceded by the verification of the willingness of the witness to travel to Italy to appear personally before the Court to be examined in the ordinary forms provided by the Italian Code of Criminal Procedure, and to assess the existence and extent of the possible exceptions to such need, stressing, especially with regard to the witnesses living in Nigeria, the significant travel costs from a developing country that would be incurred and the need for timely progress in this particularly complex trial,

this Court observes

with regard to the matter of identifying the legal conditions for hearing witnesses via video conference, the decision must be based on two parameters: 1) The general rules of criminal procedure, contained in Book VII of the Italian Code of Criminal Procedure, from the preliminary phase of the oral argument (see in particular Article 468 of the Code of Criminal Procedure), identify the appearance of the witness in a hearing arranged in advance by means of a writ of summons, authorized by the President of the Court, as the standard method of taking witness evidence in full respect of the
principle of cross-examination; 2) If the witness to be examined "is abroad" and "cannot be transferred to Italy" - meaning that the Court cannot force him to appear, even by collaborating with another authority - "in the cases provided for by international agreements, the questioning and participation in the hearing before the Italian judicial authority (...) can be carried out by means of video conference" (Article 729-*quater* of the Italian Code of Criminal Procedure). With regard to point 2), within the European Union - a supranational legal system to which Great Britain currently adheres, until the "Brexit" agreements are finalized - both the Brussels Convention of May 29, 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, implemented by the Italian Republic with Legislative Decree no. 52 of April 5, 2017, and Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 regarding the European Investigation Order in criminal matters, implemented by Legislative Decree no. 108 of June 21, 2017, respectively through Articles 14 and 39 of the cited implementing instruments, by means of largely similar rules, expressly attribute, in general terms, to the judicial authority of the requesting state the right to make a request to the judicial authority of the requested state to remotely hear the witness by means of video conference. The above-mentioned Decrees also set out the particular cases in which this request can be made (and hence granted), being specifically justified by the personal circumstances of the witness to be examined (e.g. detained in the requested state, or under protection measures, or has "justified reasons" for not travelling to the territory of the requesting state). In this specific case, video-conferencing is the "preferred" mode, prevailing over appearance in court. In the non-EU area, it should be noted that Article 46(3)(h) and (18) of the above-mentioned United Nations Merida Convention, ratified by both Italy and Nigeria, obliges the contracting states to provide mutual assistance both by facilitating the appearance of the witness present in the requested state before the judicial authority of the requesting state and by permitting remote examination via video conference, specifically where it is *"not possible or desirable for the individual in question to appear in person in the territory of the requesting Member State"*.
From what has been said up to now, it is clear that, in the event that a witness is abroad, the standard procedure to be followed in general is that of examination in Court, after summoning him to appear at the hearing, except where particular personal conditions of the witness make it clearly difficult or inappropriate to transfer the witness to the Italian territory. In this case, the preferred mode of witness examination will be via video conference.
Apart from these specific cases, if the witness, duly summoned, has not appeared before the Italian judicial authority and has not has expressed the intention to appear at a later date, and it is therefore necessary to request the judicial assistance of the state of residence, recourse to the hearing via video conference is a fully lawful feasible option, since the states involved in the trial in question (Great Britain and Nigeria) have an obligation to provide this assistance, as an alternative to other types of assistance which are more costly and less suitable to ensure compliance with the *lex loci*.
In this regard, it is worth mentioning what was stated by the Ministry of Justice - the traditional channel for forwarding international letters rogatory - in Circular no. 150574 of 10/26/2017, on the "implementation of Directive 2014/41/EU on the European Investigation Order in criminal matters - Implementation Manual", according to which *"since witness examination via*

audiovisual link allows both the requesting authority and the parties to the national proceedings to participate, albeit remotely, in the gathering of testimonial evidence and to influence said acquisition with maximum approximation to the lex fori (e.g. cross-examination), this option must be strongly considered. In an ideal ranking of techniques for obtaining testimonial evidence abroad, video-conferencing comes immediately after the 'mixed' examination (Article 29(2) of the Decree), as a method capable of annulling the legal distance between the place where the evidence is acquired and the place where it is to be used, and immediately before the delegation of the taking of evidence to the executing authority with mere indication of forms and procedures (Article 33(1)). Therefore, only in the cases in which personal conditions of the witness make remote hearing via video conference the method of choice pursuant to the second paragraph of Article 14 of Legislative Decree no. 52 of April 5, 2017, the third paragraph of Article 39 of Legislative Decree no. 108 of June 21, 2017 and Article 18 of the United Nations Merida Convention. In all the other cases, it is the Public Prosecutor's duty to summon the witness to appear in Court and, if the witness fails to appear or is unwilling to appear, examination via video conference will be allowed. In these cases the Court will find solutions, having heard the parties, to any problems in taking evidence that may arise during the examination and cross-examination.

FOR ALL THE ABOVE REASONS

It is the Prosecutor's duty to summon the witness to appear at the hearing and, if the witness fails or is unwilling to appear at the hearing, to resort to the hearing by means of video conference, obviously, unless certain personal conditions of the witness make remote hearing by means of videoconference the first choice, pursuant to the second paragraph of Article 14 of Legislative Decree no. 52 of April 5, 2017, the third paragraph of Article 39 of Legislative Decree no. 108 of June 21, 2017 and Article 18 of the United Nations Convention of Merida.

Since witness Giandomenico did not appear, despite having been duly summoned by the Public Prosecutor, and provided no justification for his failure to appear, his enforced appearance was ordered for the hearing of December 12,
2018.
During the subsequent hearing, the Court examined the said witness Antonio Giandomenico and Giuseppe Cerrito; on the issue of the admissibility and usability of documents taken from Shell's servers in the Netherlands, the Court issued the following order:

> whereas during the hearing of December 5, 2018, attorney Chiara Padovani, *Peter Lloyd Robinson*'s defending attorney argued that *"forty-six documents extracted, on February 17 and 18, 2016, from the servers of Royal Dutch Shell PLC at the company's headquarters in The Hague and Rijswijk, as well as the summary/transcript of a telephone conversation wiretapped by the Dutch Authorities"* - included in the documents filed by the Public Prosecutor with the Court Registry on November 23, 2018 should not be included in the trial dossier and in any event could not be used for the purposes of the Court's judgment, and filed a brief stating the reasons for her objections as follows:
a) As for the documents extracted from the server, which are electronic documents, there is no evidence of compliance with the provisions of Article 244(2) last part, and Article 247(1-*bis*) of the Italian Code of Criminal Procedure, introduced by Law no. 48 of March 18, 2008, to guarantee the authenticity and conservation of original data and prevent their alteration;
b) As for telephone conversation no. 716 of February 17, 2016, wiretapped by the Dutch authorities, the Prosecution had inappropriately submitted a mere "daily record", drafted in Dutch and transcribed in Italian, of a conversation that had taken place in English;
> given that the defense attorneys of John Copleston De Carteret, Guy Colegate, Malcolm Brinded and Royal Dutch Shell PLC supported this objection;
> considering that the Prosecution asked that the objection be rejected, stressing that, in any case, the documentation had been acquired in the Netherlands via the official letters rogatory procedure, with the intervention of the local judicial authorities, and offering to submit the audio recording of the wiretapped conversation to the Court;

this Court observes

that the entire body of evidence that the Prosecution has requested be admitted to the trial dossier and which is the subject of the above-mentioned objection, is the result of the investigations carried out on Dutch territory by the Joint Investigation Team set up by the Italian and Dutch investigative authorities on February 13, 2016, which, in accordance with its action plan, among other things searched the servers used by Royal Dutch Shell PLC, to extract copies - by printing - of documents stored therein (emails and .doc files) and wiretapped a telephone conversation. On the request of the Milan Public Prosecutor Mr. Sergio Spadaro, dated August 25, 2016, the Court of Rotterdam, by order of September 30, 2016, ordered that the documentation collected by the Investigation Team be made available to the requesting party.
That being said, this Court considers that, under the third paragraph of Article 6 of Legislative Decree no. 3423 of February 15, 2016, invoked by the defense as the basis of its objections, the acts carried out abroad by the joint investigation team - obviously in accordance with the *lex loci*, whose compliance with the fundamental principles of the Member States of the Union constitutes a prerequisite for all the rules governing European assistance on criminal matters and whose observance is supervised by the

[3 illegible signatures]

judicial authority of the State on whose territory the joint team operates - after the Public Prosecutor has lawfully acquired and recorded the evidence, which has *"the same effectiveness as the corresponding acts carried out according to the provisions of the Italian Code of Criminal Procedure"*, during the trial, the Court must only ascertain the *"usability according to the Italian Law"* of the evidence submitted by the Prosecution, by assessing its prior admissibility under Article 190 of the Italian Code of Criminal Procedure. The Court must therefore consider the admissibility of printed copies of emails and .doc files whose original electronic files, following the search, remained in the hands of the original holder. In this regard, this Court believes, in agreement with settled case law of the Court of Cassation, that, by virtue of the principle of the non-mandatory nature of the means of evidence enshrined in Article 189 of the Italian Code of Criminal Procedure, it is possible to allow *"the acquisition and use of copies of documents, even in the absence of the original, where the court considers the copy suitable to ensure the verification of the facts, in the absence of specific complaints relating to the authenticity of the document or of technical defects that may affect its reliability" (see, e.g., Court of Cassation, Division 2, judgment no. 22184 of 05/22/2007* - filed on 06/06/2007, Rigo, Rv. 23701701). The objection raised by the defense with regard to the documents referred to in point a) above must therefore be rejected. With regard to telephone conversation no. 716 of February 17, 2016, the acquisition of a written document summarising the content of a conversation it is clearly not admissible - in the absence of the express consent of the parties - since it is necessary to acquire, with appropriate support, the related audio recording and to transcribe it in the manner and with the safeguards of expert reports.

FOR ALL THE ABOVE REASONS

Having regard to Article 493 of the Italian Code of Criminal Procedure

this Court acquires

Copies of the documents submitted by the Public Prosecutor on November 23, 2018 as set out in PM Folder 2, case binder 3 with the exception of the wiretap transcripts, for the reasons given above.

At the hearing of January 16, 2019, witnesses Aminu Ahmed and Babangida Ahmed were examined via video conference from Nigeria, and the trial was then adjourned to the hearing of January 26, 2019.
At the next hearing, again via video conference from Nigeria, witnesses Victor Nwafor and Ibrahim Ahmed were examined and new documents submitted by the Prosecutor were acquired. The trial was then adjourned to January 30, 2019, when Umar Bature was examined, in the manner provided for by Article 210 of the Italian Code of Criminal Procedure, again via videoconference from Nigeria; Stefano Pujatti was examined in the same manner, and the trial was then adjourned to the hearing of February 6, 2019.
At the hearing of February 6, 2019, the transcript into English and Italian of the telephone conversation wiretapped by the Dutch judicial authority and acquired by letters rogatory was ordered, with a deadline of seven days for submitting the relevant report. By means of video conference from Nigeria, Adebayo Ojo was examined with the forms and guarantees provided for by Article 210 of the Italian Code of Criminal Procedure. The examination of Alhaji Aliyu Abubakar began with the same forms and guarantees, although he asked and was granted the right to choose whether or not to remain silent after becoming aware of the accusations against him made by the Italian judicial authority: his examination was therefore postponed until March 13, 2019, while the trial was adjourned to the hearing of February 13, 2019.
During said hearing, which was attended by the legal representative of Royal Dutch Shell P.l.c., the Court consulted with the parties about the timeframe and forms for taking statements from the witnesses still to be heard, and the deadlines for submitting the reports prepared by the parties' expert witnesses. The trial was then adjourned to February 20, 2019.
At the hearing of February 20, the Court, based on the arrangements made at the previous hearing, gave the parties the deadline of March 22 for submitting the expert opinions, March 30 for submitting replies to expert opinions, and scheduled the hearing of April 3, 2019 to begin the examination of the expert witnesses, where deemed necessary. Witness Gabriel Oziegbe was then examined via video conference, witness Guido Zappalà was examined in court, and lastly the trial was adjourned to February 27, 2019.

During said hearing, after acquiring the documents submitted by the Prosecutor, who also requested the admission of telephone records, witnesses Enrico Caligaris and Donatella Ranco were examined, and the trial was then adjourned to March 6, 2019.
During said hearing, pursuant to Article 210 of the Italian Code of Criminal Procedure, Richard Henry Victor

[3 illegible signatures]

Granier-Deferre was heard via video conference from Switzerland, with subsequent adjournment to the hearing of March 13, 2019, during which Alhaji Aliyu Abubakar appeared via video conference from Nigeria. He requested further postponement of his examination in order to better examine his position in the proceedings, stating that if he was not granted postponement he would avail himself of the right to remain silent; the Court, having heard the parties, granted a new postponement of the witness' examination to the hearing on March 20, 2019.

At said hearing witnesses Angela Fusco and Femi Akinmade were examined; the Prosecutor announced that he had been informed by Emeka Obi's attorney that Obi intended to exercise the right not to answer during his examination pursuant to Article 210 of the Code of Criminal Procedure. The trial was adjourned to the hearing of March 27, 2019, at which the parties agreed the arrangements for continuing of the trial with regard to the examination of the party-appointed expert witnesses and the Prosecutor reiterated his request for the submission of documents from the Shell defense, on which the Court reserved its decision, inviting the parties to state their position, and adjourned the trial to the hearing of April 3, 2019.

At the hearing of April 3, 2019, the parties confirmed their agreement concerning the acquisition of the expert witness reports filed; the Prosecutor's expert, Dayo Ayoade was then examined. Next, lifting its previous reservation, the Court ordered the acquisition of the documents from the Shell defense. The following day, April 4, 2019, another expert witness, Stephen Rogers, for the Civil Party, was heard, and at the hearing on April 10, 2019, Eni S.p.A.'s expert witness, David Kotler, was also heard.

On April 17, 2019 another expert witness for Eni S.p.A., Felicia Kemi Segun, was examined, and subsequently, by means of video conference from the United Kingdom, witness Alexander Leslie was heard: at the end of this examination, the trial was adjourned to the hearing of May 6, 2019.

During the hearing of May 6, 2019, Eni S.p.A.'s expert witness Pasquale Lucio Scandizzo was examined, while Alhaji Aliyu Abubakar, heard as a suspect in connected proceedings pursuant to Article 210 of the Code of Criminal Procedure via video conference from Nigeria, exercised his right to remain silent. The trial was then adjourned to the hearing of May 15, 2019.

At the hearing, in the presence of the legal representative of Royal Dutch Shell P.l.c., documents submitted by the Prosecutor and by the Eni S.p.A defense were acquired and ENI's expert witness Fidelis Oditah was examined, after which the trial was adjourned to the hearing of May 29, 2019.

At this hearing, another expert witness of Eni S.p.A., Barton Legum, was examined and his report was also added to the trial dossier. The trial was adjourned to the hearing of June 4, 2019, where Royal Dutch Shell P.l.c.'s expert witness, Olufunke Adekoya, was examined in the presence of the company's legal representative and documents submitted by Eni S.p.A.'s defense were acquired, after which the trial was adjourned to June 12, 2019.

At said hearing, once again in the presence of the legal representative of Royal Dutch Shell P.l.c., further expert witnesses for Royal Dutch Shell P.l.c., Peter Cameron, Loretta Malintoppi and Dante Quaglione were examined and their reports were acquired to the trial dossier. Meanwhile, since the same defense had decided not to examine expert witness Giannakopoulos, despite the Public Prosecutor's objection, the Court revoked the admission of the evidence. Instead, the parties agreed to derogate from the order of taking evidence under Article 496 of the Code of Criminal Procedure with regard to the examination of the witness Jeffrey Tester, who could not be traced by the Public Prosecutor. At the end of the hearing, the trial was adjourned to June 26, 2019. During that hearing, defendants Ednan Tofik Ogly Agaev and Vincenzo Armanna, whose declarations of absence were revoked, appeared for the first time in Court, and the first defendant, who agreed to answer the questions addressed to him, was examined. The Court then adjourned to the trial to July 3, 2019.

At that hearing, given the absence of the defendants scheduled to be examined in Court, the Prosecutor, pursuant to Article 513 of the Code of Criminal Procedure, requested that the statements made during the investigation by Claudio Descalzi - including via confrontation with Vincenzo Armanna - Luigi Bisignani and Paolo Scaroni be added to the trial dossier, and pursuant to Article 237 of the Code of Criminal Procedure, requested the acquisition of written statements filed with his office, again during the investigation, by Claudio Descalzi and Paolo Scaroni. The defendants' attorneys - with the exception of the defense attorney of Vincenzo Armanna - did not agree to the use of the statements acquired pursuant to Article 513 of the Code of Criminal Procedure against their clients, and Peter Robinson's defense requested that the acquisition of the written statements filed by Claudio Descalzi and Paolo Scaroni be evaluated in accordance with Article 513 of the Code of Criminal Procedure. The Court reserved its decision as to the admission of the submissions requested by the Prosecutor

[3 illegible signatures]

and adjourned the trial to the hearing of July 17, 2019, for the examination of defendant Vincenzo Armanna.
At the hearing of July 17, 2019, with the defendant Vincenzo Armanna in attendance, the Court took the following initial action on the request for acquisition of the statements and written pleadings of the defendants who did not appear, issuing the following order:

"At the July 3, 2019 hearing, the Prosecutor requested:

- the submission and reading pursuant to Article 513 of Italian Code of Criminal Procedure of the transcript of the interrogation of Claudio Descalzi on 6/27/2016;
- the submission and reading pursuant to Article 513 of Italian Code of Criminal Procedure of the transcript of the confrontation between Claudio Descalzi and Vincenzo Armanna dated 7.29.2016, limited to the statements made on that occasion by Claudio Descalzi alone;
- the submission and reading pursuant to Article 513 of Italian Code of Criminal Procedure of the transcript of the summary information provided by Paolo Scaroni before the Naples Public Prosecutor's Office on 3.8.2011 under criminal proceeding no. 39306/2007 RGNR;
- the submission and reading pursuant to Article 513 of the Code of Criminal Procedure of the transcript of the interrogation of Luigi Bisignani on April 16, 2014 by the Prosecutor of Milan;
- the submission pursuant to Article 237 of the Italian Code of Criminal Procedure, and the use against all the defendants, even without their consent under Article 513 of the Code,
    - of the briefs signed by Paolo Scaroni dated 6.15.2016 and 10.5.2016, filed with the Prosecutor's Office at the Court of Milan *"in relation to the invitation to appear as a person under investigation served on June 7, 2016"*
    - of the brief signed by Paolo Scaroni dated 2.1.2017, filed with the Milan Prosecutor's Office at the Court of Milan;
- the submission pursuant to Article 237 of the Italian Code of Criminal Procedure, and the use against all the defendants, even without the consent under Article 513 of the Code, of the written brief signed by Claudio Descalzi filed with the Prosecutor's Office at the Court of Milan on 6.9.2016 *"in relation to the invitation to appear as a person under investigation under Article 375 of the Code of Criminal Procedure, on June 10, 2016, proceeding no. 544772/13 RGNR, served on June 7, 2016".*

The defense attorneys of Claudio Descalzi, Paolo Scaroni, Roberto Casula, Antonio Ciro Pagano, Luigi Bisignani, Gianfranco Falcioni, Malcom Brinded, Peter Robinson, Guy Colegate, John Copleston, Dan Etete, Ednan Agaev, ENI S.p.A. and Royal Dutch Shell:

- did not give their consent for the statements made by the other defendants to be used against them;
- objected to the use of the parts of the transcripts which referred to the wiretaps declared unusable;
- pointed out that the written statements which the Public Prosecutor had asked to acquire pursuant to Article 237 of the Code of Criminal Procedure should instead be classified as statements acquired pursuant to Article 513 of the Code of Criminal Procedure, and consequently objected to their use against them.

The defense of Vincenzo Armanna gave its consent to the use of all the documents submitted by the Prosecutor.

No objection was raised against the acquisition and reading of the transcript of the interrogation of Claudio Descalzi on 6.27.2016 by the Prosecutor, the transcript of the confrontation between Claudio Descalzi and Vincenzo Armanna on 7.29.2016 (limited to the statements made therein by Claudio Descalzi alone) and the transcript of the interrogation of Luigi Bisignani on April 16, 2014. In this regard, it should be noted that all references to the content of the wiretaps that have been declared unusable by this Court are also unusable.
With regard to the transcript of the summary information given by Paolo Scaroni before the Naples Prosecutor's Office on 3.8.2011, these are statements that the defendant made in a different proceeding and acting as a witness. However, the relevant transcript was acquired since both the Prosecutor and the defense had given their consent and, therefore, its content can only be used against Paolo Scaroni. With regard to the written statements filed by Claudio Descalzi and Paolo Scaroni, we must determine whether the defense briefs signed by the defendants and filed with the Prosecutor's Office following an invitation for questioning can be qualified as *documents originating from the defendant* under Article 237 of the Code of Criminal Procedure (and are consequently usable by all parties even without consent) or whether, on the contrary, they should be qualified as transcripts of interrogations under Article 513 of the Code of Criminal Procedure.
In this regard, by judgment no. 37601 of 7/13/2018, the Court of Cassation stated that *"the statements contained in a written brief of the defendant acquired in the trial may be used "erga alios" without limitation, even in the absence of the notices under Articles 63 and 64 of the Code of Criminal Procedure, without prejudice to the Court's obligation to check their reliability, given that such statements, made by the defendant in writing, on his initiative and having ample time to draft their content, cannot be equated to the spoken replies given during an interrogation"*[23].

[23] Similarly, see judgments no. 28036/2013 ("the statements contained in a written brief submitted by the defendant acquired in the trial dossier may be used "erga alios" without limitation, save for the Court's obligation to verify their reliability") and no. 9174/2011 ("the accusations contained in a written document from the defendant, voluntarily shown to the judge during the interrogation and acquired in the trial dossier (Articles 234 and 237 of the Code of Criminal Procedure), can be used against said defendant according to the rules of Article 192(1) of the Code of Criminal Procedure while the statements "contra alios" have the value of mere evidence to be corroborated

[3 illegible signatures]

This Court considers that the defense briefs in question must be equated to interrogations and that, therefore, their declaratory content cannot be used against co-defendants who have objected to their use. Proceeding in order, it should be noted that Article 237 is included in Book III, Title II, Chapter VII of the Code of Criminal Procedure, which has the heading *"Documents".* Article 237 also expressly refers to *documents coming from the defendant* in both its heading and in its provisions.
Therefore, two requirements must be met for this provision to be applicable: (1) the act in question must qualify as a *document*; (2) the document in question must *come from the defendant*.
While there is no doubt that the briefs submitted by the Prosecutor come from the defendants, on the other hand, they cannot be qualified as *documents* according to the definition given by the current Code of Criminal Procedure. As is well known, the fundamental characteristic of documentary evidence is that it has been created outside the criminal proceeding and for purposes other than the proceeding itself. The documents under discussion, on the contrary, were drawn up following a formal invitation to be questioned and were filed precisely for the purpose of replacing the oral presentation of the facts in the presence of the Prosecutor.
Furthermore, it should be added that equating the briefs signed by Claudio Descalzi and Paolo Scaroni to transcripts of interrogation is the only solution consistent with the principle that the statements of a defendant who has freely chosen not to be examined directly of through his attorney cannot be used against said defendant. This is because it would clearly be entirely irrational for a legal system to provide that oral statements made by a defendant during questioning cannot be used against other defendants in the same proceeding, while allowing the same statements to be fully used if they are contained in a written brief replacing the oral statement.
In the light of the above remarks, this Court considers irrelevant the consideration in judgment no. 37601/2018 according to which "*while during questioning the suspect replies to specific questions asked by the questioning authority, in a written brief, the suspect reports the information he chooses without being questioned and having ample time to decide what he intends to report"*.
This reasoning does not explain why the position of the defendant who is not allowed to cross-examine the person that submitted evidence against him should be differentiated according to whether said inculpatory evidence was submitted in the proceedings in oral or written form.
Moreover, it should be noted that the judgments cited above only address the different aspect of the non-usability of written documents due to infringement of Articles 63 and 64 of the Code of Criminal Procedure. Those judgments, however, were issued in the context of interim proceedings or of challenges to judgments based on abbreviated proceedings. Thus, both cases addressed by the above case law did not concern the question of the physiological non-usability in Court of documents acquired during the investigation and in the absence of cross-examination with the defendant.

FOR ALL THE ABOVE REASONS

having regard to Article 513 of the Code of Criminal Procedure, this Court orders the acquisition and reading of all the documents submitted by the Prosecutor within the limits set out in the grounds of this decision."

The examination of the defendant Vincenzo Armanna then began and continued in the hearings of July 22 and 24, 2019, while during the hearing of July 23, 2019 the request made by the attorneys of all the defendants to acquire the investigation report made in the course of another proceeding and the associated video recording was discussed. Consequently, at the hearing of July 24, 2019, in addition to completing the examination of Vincenzo Armanna, who also made voluntary statements, the video recording submitted by the defense of Eni S.p.A. and the associated investigation report were acquired with the consent of the parties. The Court then adjourned the trial to the hearing of September 11, 2019.
At the hearing of September 11, 2019, the expert witnesses of Royal Dutch Shell P.l.c., Martin Ten Brink and lan Craig, were examined and at the subsequent hearing on September 18, 2019, expert witness lain Petrie was examined.
During the hearing of September 25, 2019, witness Paolo Ceddia, for Eni S.p.A., was examined; at the hearing of October 2, 2019, witness Luca Bertelli was examined and the documents submitted by his defense attorney were acquired - while following the waiving of examination, accepted by the other defenses but challenged by the Prosecutor and the civil party, the Court revoked the examination of witness Carbonara, deeming it unnecessary. The Prosecutor requested the acquisition of documents from the Swiss judicial authorities, which had been seized from Emeka Obi and received by letters rogatory, and the trial was adjourned to the hearing of October 30, 2019.
At that hearing, the parties jointly waived the examination of witnesses Kennedy and Nwibani, originally indicated by the Agaev and Eni S.p.A. defenses, and the Court issued the following two preliminary orders:

considering that, during the hearing of July 24, 2019, the Armanna defense requested the acquisition of acts and documents, in particular the wiretaps referred to in paragraph 13 only with the consent of the other parties; having heard the other parties

by further evidence").

this Court observes that

1. The documents regarding the dismissal are admissible and relevant;
2. the search order dated May 28, 2013 is admissible as a record of historical fact and is relevant because it is cited in the witness statements;
3.4.7.19. The blogs and press articles are admissible not with regard to their content, but simply as records of historical fact and are relevant because they are cited in the witness statements;
5.6.8.9.11.14.15.17 the emails are admissible and relevant because they are cited in the witness statements;
10.16. the copies of documents are admissible and relevant;
12. text messages 922 and 1086 are already on the record;
13. the wiretapping daily record is not admissible due to lack of consent;
15. since there is no correspondence between the index heading “emails that prove...” and the document, which does not contain emails, but instead a list of names and dates of emails, the document is not relevant;
18. the printout of an advertising document is admissible and relevant because it is mentioned in the witness statements;
21. the press articles are admissible, obviously not with reference to their content, but simply as records of historical facts and therefore they are irrelevant because they relate to different historical events.

FOR ALL THE ABOVE REASONS

having regard to Article 495(4) of the Italian Code of Criminal Procedure

THIS COURT ADMITS

the evidence offered to the extent specifically referred to in the order, ruling that the inadmissible documents be returned to Armanna's defense attorney, and orders the hearing to continue.

****

> given that Vincenzo ARMANNA's defense has requested a hearing for the examination of the witness “Victor Nawfar”, indicated in the witness list filed on February 23, 2018 as the person who “will be able to make a statement concerning the fact that it was him who informed Mr. Armanna about the alleged delivery of $ 50,000.00 in two trolleys to Roberto Casula’s residence in Abuja, as well as the fact that Emeka Obi was the sole broker of the Italians, and that the Nigerian Government did not allow brokers in the negotiations”;

> given that in the list filed in accordance with Article 468 of the Code of Criminal Procedure, the Prosecutor had in turn indicated as a witness, no. 23, “Victor Nwafor, an official of the State Security Service (SSS) of Nigeria”, indicated as a person with information “on meetings between Goodluck Jonathan and other members of the Nigerian government with Scaroni, Descalzi and other ENI managers, on relations with Vincenzo Armanna and the discussions held with him regarding OPL 245 and on the distribution of the money deriving from the transaction, on what he knows about the transport of cash ($ 50 million in banknotes) to Casula's house in Nigeria, and on other information he has about the facts indicated in the count of indictment”;
> also given that at the hearing of January 23, 2019, following a summons by the Prosecutor, an individual identified as “Victor Nwafor, born on August 15, 1960” appeared at the hearing and was examined by the Prosecutor, while the other parties present, including Armanna’s defense, waived the right to ask further questions in the examination or cross-examination, thereby completing the gathering of the evidence that is considered to have taken place in a single context even if provided by different parties to the proceedings in line with established case law applied and followed in the present trial;
> considering that, despite the small difference in the spelling of the surname in the witness lists of the Prosecutor and of Vincenzo ARMANNAS’s defense attorney, in the absence of differentiating elements, in light of the forename being the same, the similarity of the surname and the specific nature of the circumstances indicated in the lists submitted - with particular reference to the transit through the Nigerian home of Roberto CASULA of a sum of $ 50,000,000.00 in cash - it is evident that the witness indicated by the two parties is the same person;
> therefore, considering that witness Victor Nwafor's testimony has already been taken during the trial, the request made by Vincenzo ARMANNA’s defense attorney to repeat the taking of evidence cannot be granted - due to the lack of any indication that questioning of the witness would provide fresh evidence,

FOR ALL THE ABOVE REASONS

Having regard to Article 495 of the Code of Criminal Procedure

[3 illegible signatures]

THIS COURT DISMISSES

The request for re-examination of the witness Victor Nawfar made by Vincenzo ARMANNA's defense attorney

Witness Stefano Fiotti, indicated by Gianfranco Falcioni's defense, was then examined, and the trial was adjourned to the hearing of November 6, 2019.
During this hearing, witness Giovanni De Berti, called by Casula's defense, was examined and, at the end, the Prosecutor, with the support of the civil party, demanded the examination of the witness Macchi, originally indicated by Gianfranco Falcioni's defense but then waived. The Prosecutor also requested the acquisition of the documents received through letters rogatory from the Swiss Government. The Court, reserving its decision on these requests, adjourned the hearing to November 13, 2019.
At that hearing, witness Keith Ruddock, indicated by Royal Dutch Shell P.l.c.'s defense, was examined, and at the end of the examination, with the agreement of all the defense attorneys and the reservation of the Public Prosecutor, the defense waived the right to examine witness Wetselaar. With regard to the examination of witness Marco Macchi, waived by the Falcioni defense without the Prosecutor's consent, the Court issued the following order:

whereas:
Gianfranco Falcioni's defense has requested the admission of witnesses Stefano Fiotti, Primo Bianchi and Marco Macchi, "*at the time of the facts, tax consultant of Mr. Falcioni and of the companies belonging to him,* who allegedly reported "*on the facts covered by the charge and, in particular, on the operations of the company Petrol Service co. Ltd, as well as on the circumstances concerning the bank account in the name of the same at the BSI in Lugano"*;
– the Public Prosecutor requested the cross-examination of all the witnesses included in the lists filed;
the Court has admitted the requested evidence;
– at the hearing of October 30, 2019, Stefano Fiotti was heard and Gianfranco Falcioni's defense waived the right to examine witnesses Primo Bianchi and Marco Macchi, pointing out that they would have reported on the same circumstances on which Stefano Fiotti had already testified and, in particular, that Marco Macchi was a mere tax consultant and therefore could not provide any additional information to that contained in the documents already acquired; the Prosecutor did not consent to the dismissal of the witness Marco Macchi, pointing out that he could report: "*on the instructions he received as a person trusted by Mr. Falcioni regarding the establishment of Petrol Service Ltd and the reasons why it was necessary to open a current account with BSI Lugano; on the identity of the person who sent him the documents originating from Eni from the email address uustaes@yahoo.com; on the subsequent transmission to Falcioni of documents originating from Eni and the reasons for such conduct";*
referring to the contents of the order of June 12, 2019, by which the Court had shared the view that *"on the subject of the right to evidence, if a party waives the examination of its own witness, the counterparty's objection renders the waiver ineffective"*, without prejudice to the general powers of revocation provided for by Article 495 of the Code of Criminal Procedure;
noting that, on the topic of cross-examination, the Court of Cassation has ruled that *"with regard to the examination of witnesses, if a party has not brought in a witness in its favor, it may not ask, during the cross-examination of the witness brought in by another party, questions on circumstances other than those specified by the party that requested the witness' examination when submitting the witness list. This is to prevent breaching of the time-limits and limits of admissibility prescribed by the Code of Criminal Procedure for the admission of evidence submitted by the parties and the rules concerning the manner of taking evidence"*;
noting that, therefore, the function of the cross-examination, apart from the obvious aim of assessing the witness' reliability, must be limited, on the one hand, to challenging the reconstruction of the facts outlined by the witness during the direct examination and, on the other, to neutralizing the negative effect of the testimony given, so as to lead it in a direction more favorable to the party against whom the witness has been brought in;
considering, as a general rule, that requesting the cross-examination of a witness for the sole purpose of exploring facts not included in the circumstances listed is not part of the function of cross-examination, we must add that a party's right to object to the waiver of a witness cannot constitute an improper means of introducing new evidence, irrespective of the rules laid down in Article 507 of the Code of Criminal Procedure; moreover, taking into account the trial phase, it must be specified that, even if the power of objecting is used appropriately, the evidence must still pass the test of residual relevance in the light of the preliminary investigation carried out, pursuant to Article 495 of the Code of Criminal Procedure;
considering:
– with regard to the first profile indicated by the Prosecutor (*"on the instructions he received as a person trusted by Mr. Falcioni regarding the establishment of Petrol Service Ltd and, above all, on the reasons why it was necessary to open a current account with BSI Lugano")*, since Marco Macchi was introduced by Falcioni's defense with the clarification that he had merely carried out a formal role as tax consultant[25] and the Prosecutor did not provide any elements suggesting that the witness played a different role from said technical/formal role - we do not consider that the standard test of relevance set out in Article 495 of the Code of Criminal Procedure has been fulfilled, in light of the evidence already gathered;

[3 illegible signatures]

– with regard to the second aspect indicated by the Prosecutor *("on the identity of the person who sent him the documents originating from Eni from the email address uustaes@yahoo.com")* this circumstance too, although falling within the general right to object to the waiver, cannot pass the relevance test. In this regard, it should be noted that, since the matter concerns further exploration of documentary evidence acquired during the preliminary investigations, witness Marco Macchi was never heard during the preliminary investigations and his name was not included in the Prosecutor's witness list; furthermore, no investigations were carried out on the identity of the individual who activated the email address, this being an aspect to be investigated before questioning witnesses about it. These considerations show that the Prosecutor himself considered the intrinsic evidential value of the document to be sufficient and, therefore, concluded that further witness examinations on these aspects would be unnecessary; as for the third aspect indicated by the Prosecutor (*"on the subsequent transmission to Falcioni of documents originating from Eni and the reasons for such conduct")*, this point certainly appears to be outside the scope of the right to object, since it is based on an erroneous factual premise: as shown even by the documents submitted in support of the request, the documents originating from ENI mentioned were not transmitted to Gianfranco Falcioni by Marco Macchi, but were sent by Mauro Macchi by email dated June 10, 2011 (Exhibit Emmegi 10). Therefore, it is clear that the witness cannot be questioned about the conduct of a different person, who, moreover, was never questioned on these circumstances and whose examination was never requested by the Prosecutor, thus confirming, once again, that the aspect under discussion, although already known at the investigation stage, had already been considered not worthy of further investigation;
lastly, considering that the issues indicated in the original evidence submitted by Gianfranco Falcioni's defense and, in particular, the availability of the "ENI" documents[4] have already been examined during the testimony of Stefano Fiotti, who certainly played a more significant role than Marco Macchi;

FOR ALL THE ABOVE REASONS

Having regard to Article 495 of the Italian Code of Criminal Procedure, this Court revokes the admission of the witness Marco Macchi.

The Court then adjourned the trial to the hearing of November 20, 2019.
At that hearing, the written expert report drawn up by expert witness Polo and the documents submitted by Robinson's defense were acquired and the following order was read out:

"whereas during the trial, which is now almost at the end of the evidence hearings phase, the Public Prosecutor, during the hearings of September 25, October 2, October 30 and November 6, 2019, requested the inclusion in the trial dossier of the documents received by the Prosecutor's Office through two separate international letters rogatory:

- the first letter rogatory was sent to the Swiss judicial authorities - during the period of the preliminary investigations - on April 26, 2016, concerning "*the evidence found in the suitcase seized from Zubelum Chukwuemeka Obi*" at the domicile in Geneva of a certain Olivier Curiol, consisting mainly of "*passports, laptop, SIM cards and external HD*";
- the second letter rogatory was sent to the authorities of the Federal Republic of Nigeria on May 6, 2019 requesting, amongst other things, documentation on the current accounts in the name of As Sunnah Bdc and Al Gulam Bdc held at the First Bank of Nigeria Ltd, Rocky Top Resources Ltd held at Keystone Bank, an unspecified current account in the name of City Hopper Properties & Investment Company Ltd, on the owner of the real estate identified as Plot no. 3271 Cadastral Zone A06, Maitama, Abuja from 2011 to date, and on the mortgage application made by Mohammed Bello Adoke with Unity Bank Plc;

whereas at the hearing of November 6, 2019 the Public Prosecutor, on the request of the Court, indicated that its request to include the documents in the trial dossier was based firstly on Article 431 of the Italian Code of Criminal Procedure, in particular, on point d) of the Article, which provides that "*documents obtained abroad through international letters rogatory*" may be added to the trial dossier, reserving the right to add their Italian translation at a later time; in the alternative, the Public Prosecutor referred to the provisions of Article 234 of the Code of Criminal Procedure for the purpose of adding said documents to the trial dossier.
whereas the defending attorney of the civil party of the Federal Republic of Nigeria joins the motion of the Public Prosecutor to add the documents to the case file;
whereas lastly, at the hearing of November 6 and November 13, 2019, the attorney of defendant *Claudio Descalzi* objected to the inclusion in the trial dossier of the documents obtained through letters rogatory from the Swiss authority, and further requested - in the event that the Court decided to apply Article 431 of the Code of Criminal Procedure - removal of the documents produced in any civil or arbitration proceedings, of which he provided a list by way of example. Further, the attorney of defendant *Peter Robinson* joined the motion of *Descalzi'*s defending attorney concerning the Swiss letters rogatory - and also objected that the data from electronic devices seized from *Emeka Obi* could not be used due to the absence of the report describing the operations of the Swiss judicial authority and because such media contained personal information, asserting Obi's rights to privacy; the attorneys of all the other defendants joined these motions; as regards the documents obtained through letters rogatory from the Federal Republic of Nigeria that the Public Prosecutor had asked to add to the trial dossier, the attorney of ENI S.p.A. did not object;
lifting the previous reservation made, this Court issues the following

ORDER

[3 illegible signatures]

This Panel sitting en banc **considers** that there are evident systematic reasons for limiting the application of the provision set forth by Article 431 of the Italian Code of Criminal Procedure in the conclusive stage of the preliminary hearing, given that only the Articles in book VII of the Code of Criminal Procedure, or those referred to in said book - hence firstly Articles 493, 495, 515, 187 et seq. of the Code - contain the provisions applicable to the admission of evidence after opening of the evidence hearings, which is strictly based on the principle of adversarial proceedings pursuant to Article 111(4) of the Italian Constitution.
Both settled case law and legal scholarship recognize the *rationale* of the so-called "double dossier" system, whereby two separate types of records are formed, one being the "investigative dossier" (Article 433 of the Code of Criminal Procedure) and the other being the "trial dossier" (Article 431 of the Code). This distinction is based on the different purpose of the two dossiers whereby - upon completion of the preliminary investigation and the preliminary hearing, based on the principle of investigation - the data and documents the parties use for the purpose of their procedural claims are included in the first dossier, while those to be submitted to the Court and used for the final decision (Article 526(1) of the Code) are included in the second dossier.
The specific purpose of Article 431 of the Italian Code of Criminal Procedure and the activity provided therein, in accordance with this function, is to make it possible to identify the acts and documents, including part of those obtained during the preliminary investigations, that are to be submitted to the trial Court and which will be used to support the Court's judgment, including in particular all those categories of documents which cannot be acquired anew during trial (records of unrepeatable investigative actions as specified in points b), c) and d) or documents already acquired with the guarantees of adversarial proceedings (records of evidence gathered during the special evidentiary hearing or records of evidence gathered abroad with the right of being assisted by one's lawyer as specified in points e) and f). Point d) of Article 431 includes among the documents to be included in the trial dossier from the outset those obtained by means of letters rogatory, since these are in general documents that the Court has already judged to be admissible and important for the procedure.
The application of these provisions may raise issues in the preliminary stage of the trial, pursuant to Article 491(1) of the Italian Code of Criminal Procedure, where records of evidence are omitted or incorrectly included in the trial dossier, as has been the case in this trial too. Settled case law of the Court of Cassation has extended the application of this Article to the subsequent phases of the trial, but only in the case of incorrect inclusion or omission of records of evidence[24].
Once the trial has started, the general rule for obtaining any evidence to be used to deliver the judgment, after adding the relevant reports or supporting documents to the trial dossier, is the full application of the principle of adversarial proceedings, based on the request of the parties (Article 190(1) and 493 of the Italian Code of Criminal Procedure), after the trial Court has assessed the legitimacy and relevance thereof (Articles 495 and 190(1) of the Italian Code of Criminal Procedure) and the taking of evidence in the presence of both parties.
Given this very clear regulatory framework, there is no reason to justify the extended application of the provisions of Article 431 of the Italian Code of Criminal Procedure during the trial, disregarding the ordinary rules governing it, only to the types of documents obtained with letters rogatory after expiry of the term for the preliminary investigations. On the contrary, the functional nature of the results of the additional investigations carried out by the Public Prosecutor is specifically governed by Articles 430 and 433(3) of the Code of Criminal Procedure which have led to identification of a "third dossier" (Article 430(2) of the Code of Criminal Procedure) that the parties may access to obtain information for requests to the trial Court, which must be filed and accepted before being added to the Prosecutor's dossier (Article 433(3) of the Italian Code of Criminal Procedure). The rationale underlying this rule is quite clearly that of avoiding the risk of distorting the evidential framework developed in the preliminary investigations, which has been presented to the defending attorneys, by offering "unexpected" evidence. This rationale unequivocally also applies to the evidence gathered through letters rogatory.
In the case in question, both letters rogatory must be included in the additional activity, given that it is not the date of the request that matters, but the date of its results, which is when the investigation activity materializes and hence becomes important for the trial.
The requests made by the Public Prosecutor should therefore be assessed exclusively on the basis of the ordinary principles for the admission of evidence, as mentioned above, on the understanding that the parties have the burden of submitting specific reasoned requests above all as regards their relevance which, in this phase of the trial, includes the criterion of novelty, taking into account the huge documentary and oral evidence hearings conducted in over a year of trial and the obvious need to avoid requests to acquire documents already included in the trial dossier (as is confirmed by a quick check) or documents that have already been declared unusable (documents of civil proceedings abroad) and have been removed since they had been erroneously included in the trial dossier and were therefore inadmissible in terms of content and clearly irrelevant in terms of documenting the historical events, without prejudice to a reasoned request for the cancellation of the related order.
From this point of view, pursuant to Article 234 of the Italian Code of Criminal Procedure, the request to include in the trial

[24] Division 3, **Judgement** no. 12795 of January 26, 2016. The inclusion of records of unrepeatable investigative actions (in this case, a seizure report) in the trial dossier is not subject to preclusions or time-barring. Such records may also be added to the trial dossier in the appeal stage, if the Preliminary Hearing Judge erroneously failed to include them, or if he ordered their inclusion but this was not materially carried out, since the parties do not have the authority to narrow the scope of the documents that, by law, must be included in the trial dossier. (In this case, the Court had deemed that the Court of Appeal had the right to use the records of the special evidentiary hearing not included in the first instance trial dossier).
Division 2, **Judgement** no. 25688 of May 23, 2014. The inclusion of records of unrepeatable investigative actions (in this case, a seizure report) in the trial dossier is not subject to preclusions or time-barring. Such records may also be added to the trial dossier in the appeal stage, if the Preliminary Hearing Judge erroneously failed to include them, or if he ordered their inclusion but this was not materially carried out, since the parties do not have the authority to narrow the scope of the documents that, by law, must be included in the trial dossier.

[3 illegible signatures]

dossier the documents submitted by the Prosecutor and specifically mentioned in the note filed at the hearing of November 6, 2019, resulting from the letters rogatory sent to the Federal Republic of Nigeria, should be accepted: these are indeed banking, corporate and real estate documents that are important to prove the financial flows generated after the payments linked to the issue of the OPL 245 license. On the other hand, no official request for admission to the trial dossier and submission in paper form, which prevails in the event of discrepancy with documents filed in electronic format, were made for records not considered to be of a documentary nature, such as the "statement of Murtala Bashir to EFCC on August 5, 2019" and the "statements made by Patrick Okoye on September 19, 2019", which are indicated exclusively in the filing notices of October 28 and November 5, 2019, as already explained by this Court at the hearing of November 13, 2019. As regards the documents submitted by the Prosecutor relevant to the letters rogatory sent to the Swiss Confederation, it should be noted that in this case a USB pen drive, together with a notice of filing bearing the generic description "*chiavetta Usb (9.786 file, 6 cartelle*)" ("*Usb pen drive (9.786 files, 6 folders*), was filed with the court registry on October 1, 2019. While the notice sent to the Prosecutor's Office by the corresponding office of the Canton of Geneva, dated October 14, 2019, confirms that the records were obtained in compliance with the law of the country that received the letters rogatory, on the other hand, the notice of filing and the content of the electronic media submitted, only allow a very limited assessment by this Court, as mentioned above. Indeed, while the "Chrono-Unprotected" folder contains a single file, in Excel format, consisting of a record of the meetings and contacts by *Emeka Obi* in chronological order over a timeframe which includes the period of interest in this proceeding, and is thus undoubtedly characterized by novelty, admissibility and relevance for evidentiary purposes, the other three folders called "phones", "Pièces_scannéés" and "Raiffeisen" contain many different sub-folders and files - many of which are in a format unknown to this Court, and those that may be opened are in a foreign language - which cannot be identified precisely, making it accordingly impossible to decide whether they are admissible. The reservation on whether or not the content of the above three folders should be added to the trial dossier is therefore retained, and the Public Prosecutor is asked to provide, for the purpose of accepting the request, the table of contents and a description of the aspects of novelty, admissibility and relevance.

FOR ALL THE ABOVE REASONS

this Court allows acquisition of the documents described by the notice filed by the Public Prosecutor at the hearing of November 6, 2019, obtained from the letter rogatory sent to the Federal Republic of Nigeria, as well as the file, in Excel format, stored on the "Chrono-Unprotected" folder on USB pen drive filed on October 1, 2019;
retains the reservation on the request for admission of all the other files stored on the USB pen drive, pending fulfilment by the Public Prosecutor of the burden of specifying and providing the reasons for admission".

Witnesses Lucio Polo, brought by the Casula defense, and Giorgio Vicini, brought by the Eni S.p.A. defense, were then examined. During the examination of the latter witness, further documentation submitted by the Prosecution was acquired and submitted to the witness. Next, the Prosecutor requested the examination of a new witness, Isaac Chinonyerem Eke, pursuant to Article 195 of the Code of Criminal Procedure, in relation to statements made by the defendant Armanna Vincenzo. Armanna's defense, as well as the Civil Party's attorneys, joined this request, requesting instead the revocation of the order by which the Court had rejected the request to take direct evidence from the witness, erroneously named as Victor Nawfar; the other defenses objected and the Court reserved any measure, adjourning the trial to the hearing of November 27, 2019.
At that hearing, the Court preliminarily allowed the examination of Isaac Chinonyerem Eke as a key witness, issuing the following order:

given that the defense of defendant Vincenzo Armanna and the Public Prosecutor requested a hearing to be set for the examination of the witness Isaac Eke, as a key witness of the defendant Armanna pursuant to Article 195 of the Code of Criminal Procedure, Armanna's defense, primarily called him as witness indicated in the witness list filed on February 23, 2018 under a different name, subject to revocation of the order of this court dated September 26, 2019;
given that the main request made by the Armanna defense cannot be granted, since the documentation submitted does not include the new elements required for the revocation of the order, which is fully referred to herein;
ruling that the request pursuant to Article 195 of the Italian Code of Criminal Procedure must be granted in that it is admissible, in line with the legal principle set forth in judgment no. 20804 of 11/29/2012 of the United Divisions of the Court of Cassation and is also relevant in the light of the parameters indicated in the order of this Court of November 13, 2019, taking into account that this is new witness evidence not included in the lists, but introduced by the accusatory statements made by defendant Armanna, since is it not possible to apply to the present trial the limit set by judgment no. 27737/2019, as the request does not appear to be intended to prolong the trial and since the arguments made by the defense in the brief filed on November 26, 2019 must be considered relevant for the subsequent assessment of the evidence

FOR ALL THE ABOVE REASONS

having regard to Articles 495 and 195 of the Italian Code of Criminal Procedure

THIS COURT ADMITS

[3 illegible signatures]

The questioning of witness Isaac Chinonyerem Eke requested by the Public Prosecution and the defense of Vincenzo ARMANNA, reserving the right to decide the manner of the examination on the basis of specific and reasoned requests.

Next came the examination of witness Lorenzo Carpella, requested by the Armanna defense, during which a document submitted by the same defense was acquired. The trial was then adjourned to the hearing of December 11, 2019.

At the December 11 hearing, expert witnesses Pietro Manzonetto for Eni S.p.A. and Homer Moyer for Royal Dutch Shell P.l.c. were examined - after acquisition of their respective written reports. The Eni defense also submitted further documents and at the same time waived witness Shwedler: the reports and documents submitted by Eni were acquired with the consent of the parties; however, the Prosecutor and the attorneys of the Civil Party insisted on examining the waived witness. The Casula defense, on its part, waived the examination of the witnesses Burmeister and Olafimihan. The Court issued the following order:

The counsels for the defendants have waived the questioning of their respective witnesses who have not been questioned to date or whose questioning has not already been scheduled for the hearings of December 11, 18, and 19, 2019.

On November 29, 2019, the Public Prosecutor filed an objection to the waiver of the questioning of witnesses German Burmeister and Nike Olafimihan. Specifically, as regards German Burmeister, the Prosecutor requested that the witness be heard:

- *on the information sent by Copleston to Colegate regarding OPL 245;*
- *on the information received from JP MORGAN regarding issues related to the payment to Malabu of the sum of $ 1,092,000,040 paid into the FGN's escrow account in May 2011;*

on what Giorgio Vicini told him in June 2011 regarding the transfers of the aforesaid funds.

As regards Nike Olafimihan, the Prosecutor requested that the witness be heard:

- *on meetings with the Attorney General in December 2010 and his instructions regarding the payment of fees to Obi;*

on the presentation of Osolake Bayo to Giorgio Vicini and on his knowledge of issues related to the payment to Malabu of the sum of $ 1,092,040.000 credited to the FGN's escrow account in May 2011.

By order dated June 12, 2019, the Court upheld the interpretation according to which *"on the subject of the right to evidence, if a party waives the examination of its own witness, the counterparty's objection renders the waiver ineffective[27]",* without prejudice to the general powers of revocation provided for by Article 495 of the Italian Code of Criminal Procedure. As previously observed, it is necessary to refer to the legal framework on the criteria for assessing requests in the discovery phase:

- immediately after the start of trial, the Court assesses the evidence submitted by the parties, excluding any evidence which is *manifestly superfluous or irrelevant* (Articles 190 and 495(1) of the Italian Code of Criminal Procedure);
- in the course of the evidence hearings, the Court may revoke any evidence that is *superfluous or irrelevant* (Article 495(4) of the Italian Code of Criminal Procedure);

having completed the acquisition of evidence, the Court, if it is *absolutely necessary,* may order the admission of new means of evidence (Article 507 of the Italian Code of Criminal Procedure).

Under the Code of Criminal Procedure, examination of the relevance and non-superfluousness of the evidence becomes more stringent as the trial moves towards the judgment phase. This framework is justified by the greater amount of evidence progressively acquired by the Court with respect to the initial phase of the trial, when the only parameter for determining the admissibility of evidence was the abstract wording of the charge. As the trial progresses, the case becomes more tangible since the parameters of relevance and non-superfluousness are also measured by reference to the evidence gathered along the way. This concept is expressly confirmed by the case law of the Supreme Court according to which "*the judicial power to revoke previously admitted evidence on account of its being superfluous, becomes broader in the course of the trial compared to the start of the trial. Consequently, any objections against non-admission of a key piece of evidence must be assessed, once the Court has stated in the judgment the reasons for revoking previously admitted evidence, by assessing the logical soundness and appropriateness of the reasons given for striking off the evidence, by comparison to the overall collected and assessed evidence.* Consequently, an item of evidence which may in the abstract be relevant in the initial stages may well become less significant if the evidence acquired in the meantime suggests that is it not useful for the purpose of deciding on the case. Similarly, an item of evidence that retains relevance may no longer be worthy of further examination if it has already been dealt with and if no new significant elements can be added to it by the new witness statements. Therefore, it is quite possible that while a theme continues in an abstract sense to be relevant, acquiring new evidence on the same subject becomes unnecessary. In light of this, it should therefore be noted:

- as to the testimony of German Burmeister:

o with regard to the chapter *"on the information transmitted by Copleston to Colegate regarding OPL 245",* that this is an extremely general circumstance given that the OPL 245 affair has involved Shell officials for years and that between John Copleston and Guy Colegate there has been a constant exchange of information regarding multiple aspects. Further, there is no reason to assume that German Burmaister would provide more knowledge and information than the information that the two defendants intended to convey in the emails already acquired, also in view of his managerial role and the time elapsed since the facts. The generic scope of the request for the acquisition of evidence reveals its essentially exploratory nature and hence its

[3 illegible signatures]

irrelevance; ***o*** as regards the chapters *"on the information received from JP MORGAN regarding issues related to the payment to Malabu of the sum of $ 1,092,000,040 paid into the FGN's escrow account in May 2011" and "on what Giorgio Vicini told him in June 2011 regarding the transfers of the aforesaid funds",* it should be noted that two emails, sent by German Burmeister on June 6 and July 22, 2011 in which the witness reported to other Shell managers what he knew about the above topics, have been acquired. In particular, in the email of June 6, 2011 German Burmeister specified that he had learned of the BSI's refusal to receive the money *"on compliance grounds",* adding that [English in source text:] *"we are not part of this so it is difficult to get any more data from JP Morgana for confidentiality reasons".* [Translation resumes:] These aspects have already been explored several times in the evidence hearings. In the email of June 22, 2011, German Burmeister began by saying that he had spoken with *Giorgio* and, subsequently, reported the content of the conversation to the recipients of the message ([English in source text:]*"ENI confirmed that money is still in FGN escrow. ENI's position is that they officially don't know and is not of their business any dealings between Malabu and FGN. ENI together with Shell own the license and we are proceeding with a development to produce FOD soonest."* [Translation resumes:] In this case too, the idea of questioning the witness on this point appears irrelevant for the court's judgment on the case, in light of the cross-examination already done by the Prosecutor on witness Vicini in the hearing of November 20, 2019. Moreover, the nature of the documentary evidence mentioned above suggests that it is very unlikely that the requested hearing of the witness, in the absence of specific indications, could pass the relevance assessment specified above;
- as to the testimony of Nike Olafimihan:
o with regard to the point *"on meetings with the Attorney General in December 2010 and his instructions regarding the payment of fees to Obi",* it should be noted that since the meetings with the Attorney General were a fundamental step in the negotiations, they have been examined in depth both through acquisition of the numerous emails that contain detailed reports on said meetings, and through the questioning of most of the individuals who took part in them. Moreover, Nike Olafimihan participated in the meetings as Shell's legal counsel, therefore his contribution to the negotiations was presumably limited to the technical-legal aspects of the agreement. These aspects too have been extensively examined, including by hearing the parties' expert witnesses. Lastly, for the sake of completeness, it should be pointed out that, as concerns the parameter of relevance for the Court's decision, it does not appear, nor is it suggested, that the witness took different positions from those stated by the other individuals who took part in the negotiations. Therefore, questioning Nike Olafimihan on this point is unnecessary;
o with regard to the point "*on the presentation of Osolake Bayo to Giorgio Vicini and on his knowledge of issues related to the payment to Malabu of the sum of $ 1,092,040.000 paid into the FGN's escrow account in May 2011",* we reiterate our previous remarks on witness Burmeister and we accordingly conclude that hearing this witness too is unnecessary;

FOR ALL THE ABOVE REASONS

the Court, having regard to Article 495 of the Italian Code of Criminal Procedure, revokes the remaining testimonies which the defenses have renounced, including those of German Burmeister and Nike Olafimihan.

The Court reserved any further decision, and set the next trial hearing for December 18, 2019.
At the hearing indicated, the Court preliminarily pronounced the following two orders:

convened in chambers,
given that, during the hearings of September 25, October 2, October 30 and November 6, 2019, the Public Prosecutor had requested the acquisition to the trial dossier of the documentation received by its office following two separate international letters rogatory, including, for what is of interest here, the letter rogatory sent to the Swiss Court - before expiry of the term for the preliminary investigation - on April 26, 2016, concerning "the evidence found in the suitcase seized from Zubelum Chukwuemeka Obi" at the domicile in Geneva of one Olivier Curiol, consisting mainly of "passports, laptop, SIM cards and external HD";

given also that, in compliance with this Court's order of November 20, 2019, the Public Prosecutor has specified the requests for acquisition by filing with the Court registry the documents in paper and electronic form and their list;
considering that the Eni defense has not objected to the submission of those documents and that the defenses of Casula, Pagano and Descalzi also agreed, and also submitted Italian translations of the emails, while Attorney Padovani, defending Mr. Robinson, objected to acquisition of the documents transmitted by the Swiss authority on the grounds that:
- the word file of the chronology was created in 2012, but underwent changes in 2018 and 2019 and the pdf file of the chronology does not have the original date of creation
;
the remaining documents are not accompanied by a report stating their mode of transmission and acquisition, which makes it impossible to verify whether the modes of acquisition comply with the requirements of Italian legislation, in particular the modes of transmission and conservation set out in the Budapest Convention.
Attorney Bianchi, defending Colegate and Copleston, joined the motion, as did the defenses of Shell, Bisignani, Falcioni and Agaev;
whereas this Court shares the Public Prosecutor's argument that legal compliance must implicitly be assumed since the operations were carried out directly by the Swiss Court which produced "forensic copies" of the electronic files which had remained sealed following the party's objection, also in light of the fact that the Italian legislation allows the judicial police to make forensic

[3 illegible signatures]

copies, without the intervention of the defense, pursuant to Article 359 of the Code of Criminal Procedure; and whereas the defending attorney's objections are explained by the formal change to the dates due to the making of the forensic copies and therefore, in the absence of further objections, taking into account that the originals of the electronic documents are kept by the Swiss authority

FOR ALL THE ABOVE REASONS

the Court allows the acquisition of the documents relating to the Swiss letters rogatory referred to in the memorandum filed by the Public Prosecutor on December 5, 2019.

****

whereas:

the defenses of Claudio Descalzi and ENI S.p.A. requested the hearing of witness Martin Schwedler, "who at the time of the facts was a manager of Raffaisen, which acted as a consultant to EVP/Malabu" in order for him to report "on the role of Emeka Obi in the negotiations for the sale of OPL 245, with particular reference to Obi's relations with the company Malabu, his relations with his legal, banking and financial consultants, the structure of the company EVP, traceable to Emeka Obi himself, as well as any other circumstance useful to clarify the offenses listed in the indictment";

- the Public Prosecutor requested the cross-examination of all the witnesses included in the lists filed;
- the Court allowed the taking of said evidence;
- the ENI defense has specified the content of the examination, specifying that the witness would testify on: (i) the origin of and procedures for the appointment as advisor that the bank received from EVP, (ii) the position and role of Emeka Obi and EVP in the OPL 245 negotiation, (iii) the discussions with other international parties interested in OPL 245 and (iv) the contacts made and the meetings held between the representatives of ENI and Raiffeisen Investment AG between the months of March and October 2010";
- by memorandum dated December 10, 2019, the defenses of Claudio Descalzi and Eni S.p.A. requested the submission of material from the "Swiss letter rogatory" and at the same time waived the questioning of Martin Schwedler "in light of the documentation listed above and the additional elements that have already emerged during the exhaustive evidence hearings regarding the role of Raffaisen Bank International AG in the negotiations relating to OPL 245"; that the Public Prosecutor objected to the waiver as he believes it necessary to question the witness about the emails he received even in cc and his relations with Emeka Obi and, in particular, on the activities carried out from December 2010 to May 2011;

whereas:

- the Court has already upheld the case law according to which "on the subject of the right to evidence, if a party waives the examination of its own witness, the counterparty's objection renders the waiver ineffective[27]", without prejudice to the general powers of revocation provided for by Article 495 of the Italian Code of Criminal Procedure;
- this approach has been further clarified by the Court order dated December 11, 2019;

noting:

- that at the hearing of December 18, 2018, documentation from the "Swiss letter rogatory" indicated by the Public Prosecutor and the defenses of Claudio Descalzi and ENI S.p.A. was acquired;
- that this documentation consists of numerous emails between Emeka Obi and Martin Schwedler and three files containing detailed chronologies of events prepared by Emeka Obi; considering that collecting further evidence on the aspects indicated by the Public Prosecutor is now unnecessary because the documentation of the "Swiss letter rogatory" submitted by the Prosecutor clarifies the points raised in his objection to the waiver, given that in the "chronologies" Emeka Obi reconstructed in detail his relationship with Martin Schwedler and his entire involvement in the negotiations, and noting that the emails and annotations in the margin of the "chronologies" must be read in the context of the in-depth evidence hearings held to date, which allow us to contextualize and understand the references to persons and events

FOR ALL THE ABOVE REASONS

the Court, having regard to Article 495 of the Code of Criminal Procedure, revokes the hearing of witness of Martin Schwedler.

Next, having acknowledged the definitive untraceability of witness Jeffrey Tester, the Court granted the Public Prosecutor's request pursuant to Article 512-*bis* of the Code of Criminal Procedure and acquired the minutes of the statements made by said witness outside the trial and the defense of Casula Roberto submitted written reports of expert witnesses Kemi Segun and Kotler supplementing their respective original reports with the additional information requested during previous hearings; at the end of the hearing, the Court adjourned the trial to the next day, December 19, 2019.

At the hearing of December 19, in the presence of defendant Armanna Vincenzo, the defense waived hearing witnesses Ottonello and Osolake - whose examination, with the consent of the other parties, was therefore

[3 illegible signatures]

revoked - while it reiterated its request to examine witness Timi, who had not appeared, requesting that a new hearing be set up for this purpose. However, the Court rejected the request, since the witness, who resides abroad, had stated he did not intend to testify. Next, the Court gave the parties the time limit of January 20, 2020 to file written submissions regarding the remaining acquisitions of evidence in the trial, and adjourned the trial to January 29, 2020.

At that hearing, once again with the defendant Armanna Vincenzo in attendance, witnesses Isaac Chinonyerem Eke and Salvatore Castilletti were questioned. Next, the Public Prosecutor and Armanna's defense requested confrontation between each of the witnesses and the defendant. This request was rejected by the Court, since it was obviously useless to compare totally irreconcilable statements, taking into account that the witnesses were indicated by the defendant Armanna as sources of the knowledge reported by him; defendant Vincenzo Armanna then made voluntary statements. Next, the defenses of Eni S.p.A., Scaroni, Descalzi, Casula and Pagano filed documentation on the main topics covered by Vincenzo Armanna's statements, requesting at the same time the acquisition of judicial police records to enable a comprehensive assessment of the reliability of the statements made during the proceedings by Mr. Armanna, as well as a memorandum containing documents from the letter rogatory with the Swiss Confederation and further documents relating to the Obi/EVP relationship. Pagano's defense also submitted a written brief signed by its own client and the attorneys of defendants Colegate and Copleston submitted further documents relating to the termination of John Copleston De Carteret's employment with Shell International Limited. The Court read out the following order:

"whereas:

– at the hearing of December 18, 2019, the Public Prosecutor requested the submission of the banking documentation sent on December 16, 2019 by the Swiss Confederation in response to the "request for international legal assistance in criminal matters made on May 26, 2014 by the Public Prosecutor's Office at the Court of Milan in the proceedings against ETETE Dauzia Loya and co-defendants";

– this documentation concerns "bank accounts no. 0910660 and 0910661 in the name of Clemon Holding inc at Bancque profile de gestion sa (account opening documentation, correspondence and KYC dossier, asset evaluation, account statements and detailed documents)";

– the request is based on the assumption that the current accounts were traceable to Ednan Agaev and that their examination would reveal transfers of money at a time largely coinciding with that of the facts at issue in the proceedings;

– at the hearing of December 19, 2019 the defense of Ednan Agaev objected to the submission of said documents on the grounds that: documents from international letters rogatory are not automatically included in the trial dossier pursuant to Article 431 of the Code of Criminal Procedure;

– such documents should not be acquired as they would be irrelevant, since there is no proof of the connection between said movements of money and the OPL 245 affair;

whereas:

– as this Court has already clarified in previous orders, the acquisition of records through letters rogatory sent after the start of the trial is subject to the admissibility and relevance assessment provided for by Articles 190 and 495 of the Code of Criminal Procedure;

– the records which the Public Prosecutor wishes to include in the trial qualify as "documents" within the meaning of Article 234 of the Code of Criminal Procedure, since they are banking documents formed before and outside of the criminal proceedings;

– that "the preclusion of requests to admit evidence submitted by the parties after the time limit set in the first paragraph of Article 468 of the Code of Criminal Procedure, does not apply to requests for the acquisition of documentary evidence, which can therefore also be made after the aforementioned time limit";

– in the light of the assessment parameters under Articles 190 and 495 of the Code of Criminal Procedure, the documentation requested for acquisition:

– is not irrelevant since, according to the Prosecution's allegations, the money paid into the JP Morgan account in the name of the FGN, was "partly retained by intermediaries and partly kicked back to Eni and Shell directors"; therefore the transfers of money on bank accounts traceable to the defendants are clearly relevant to the case at least in abstract terms;

– is not manifestly superfluous insofar as in the course of the investigation no other items have been acquired regarding transfers of funds by Ednan Agaev in the period at issue;

– the Court therefore considers that the documentation under examination should be acquired, without this implying any assessment of the actual links of said money transfers to the affair at issue in this trial;

FOR ALL THE ABOVE REASONS

[3 illegible signatures]

the Court, in light of Articles 234 and 495 of the Code of Criminal Procedure, acquires the documentation relating to "request for international legal assistance in criminal matters formulated on May 26, 2014 by the Public Prosecutor's Office at the Court of Milan in the proceedings against ETETE Dauzia Loya and co-defendants" as per the Public Prosecutor's request at the hearing of December 18, 2019"

Having acknowledged the express agreement reached between the parties, the Court, pursuant to Article 493(3) of the Italian Code of Criminal Procedure, acquired the written replies filed within the time limits by the expert witnesses and, pursuant to Article 234 of the Code of Criminal Procedure, acquired the documentation submitted by the defense counsel of Colegate and Copleston, adjourning the trial for any further decision to February 5, 2020, after asking the parties to make and specify all remaining preliminary requests and, having heard the parties, scheduled, in principle, the debate (March 18 and 25, the conclusions of the PM; April 1 or 8, the conclusions of the Civil Party; starting from May 13 or 20, the conclusions of the defenses). Armanna Vincenzo made voluntary statements and filed a written brief.
At the hearing of February 5, 2020 the Court first of all acquired the documentation submitted by the Armanna and Eni S.p.A. defenses, as well as, again with the consent of the parties, the additional notes filed by the party's expert witnesses in the interval. In addition, the Court ordered the acquisition, pursuant to Article 234, of any further submission by the defenses mentioned at the previous hearing, with the exception of the documents relating to the civil action brought by Emeka Obi before the English courts and the judicial police records, while, with regard to the request for submission of the bank documents received by the Prosecutor via letters rogatory from the USA, made at the previous hearing, the Court issued the following order:

Whereas:

- at the hearing of January 29, 2020 the Public Prosecutor had requested the submission of the documentation transmitted on January 28, 2020 by the U.S. Department of Justice, in implementation of the [English in source text:] *"supplement request for legal assistance from Italy in the matter of Eni (Nigeria)",* [Translation resumes:] regarding the company documents of Owen Software Development Co. Ltd;
- the Public Prosecutor has also requested a time limit since the U.S. Department of Justice would send further documentation concerning the bank transactions of that company;
- the request for acquisition and the request for a time limit are based on the following considerations:
    - in 2013, Owen Software Development received $ 5 million from Rocky Top Resources through the account held at Keystone Bank Nigeria LTD;
    - the directors of Owen Software Development include a Shell executive who is alleged to have played a role in the OPL 245 transaction;
    - these circumstances are alleged to demonstrate the kickback to Shell executives of part of the money paid by the oil companies in the context of the OPL 245 deal;

Considering that:

- this Court has already clarified in previous orders, the acquisition of records through letters rogatory sent after the start of the trial is subject to the admissibility and relevance assessment provided for by Articles 190 and 495 of the Code of Criminal Procedure;
- the records to which the Public Prosecutor referred qualify as "documents" within the meaning of Article 234 of the Code of Criminal Procedure, since they are corporate and banking documents formed before and outside of the criminal proceedings;

recalling the principles set forth in the Court order of January 29, 2020, which specified that the information on generic money transfers is relevant pursuant to Articles 190 and 495 of the Code of Criminal Procedure provided that said transfers are made on bank accounts traceable to the defendants and were carried out at or close to the time of the facts at issue in the proceedings;
whereas this Court considers that, in the light of the above-mentioned criteria, the requests cannot be accepted since:

- the documents submitted do not show that among the directors of Owen Software Development Co. Ltd. there were any Shell executives involved in the OPL 245 deal, given that the only names that appear are those of Adeboyejo A. Oni, O. Bayo Olarewayu Alo, George Peterson, Babatunde Ogunnaike, Benjamiin Wilcox and Dapo Oshinusi;
- among the documents requested for submission and those still to be transmitted by the U.S. Department of Justice, there is no mention of any person who is a defendant in the present proceedings and, therefore, it does not appear relevant to reconstruct the financial transfers made by individuals who are not defendants in the present proceedings;
- the considerable period of time that elapsed between the conclusion of the transaction relating to the oil block (summer 2011) and the transfer of money shown in the bank documents (late 2013) would require an additional burden of proof as to the link between the sums transferred to the accounts of Owen Software Development Co. Ltd and the OPL 245 transaction;

in light of the above remarks, this Court considers that both of the documentation already transmitted by the U.S. Department of Justice and that which, according to the Public Prosecutor, is still to be transmitted is irrelevant to these proceedings;

[3 illegible signatures]

this Court, having regard to Article 190 and 495 of the Code of Criminal Procedure, rejects the request for acquisition of the documentation transmitted on January 28, 2020 by the U.S. Department of Justice, in implementation of the [English in source text:] *"supplemental request for legal assistance from Italy in the matter of Eni (Nigeria)".* [Translation resumes:]

Lastly, the Court ordered the acquisition of the documentation submitted during the previous hearing by the Civil Party's attorney and rejected the last requests for the submission of documentation and supplemental evidence pursuant to Article 507 of the Code of Criminal Procedure put forward by the Prosecutor, in particular the evidence of witnesses Piero Amara and Marchese, also supported by the attorneys for the Civil Party and Vincenzo Armanna. With regard to the reasons for the rejection, see the Court's detailed remarks in Chapter 10.3.1 concerning the credibility of the defendant Armanna.

The subsequent scheduling of the hearings was significantly affected by the suspension of ordinary legal activity, first ordered by the Presiding Judge of the Court and then by Decree Laws no. 11 and 18 of March 8 and 17, 2020, respectively, in order to address the Covid-19 virus pandemic, which affected the Lombardy region very heavily.

The hearings of March 25, April 1 and April 8, 2020 originally scheduled for the closing arguments of the Prosecution and the attorney representing the Civil Party were not held, and the Prosecutor took the floor to start his closing argument only at the hearing of 2 July 2020 and continued, at his request, at the hearing on 21 July 2020; the Civil Party delivered his conclusions at the hearing of September 9, 2020 and on September 21, 2020 the discussion by the defenses began - the scheduling of which was also affected by the new wave of the epidemic - in the following order: the Armanna defense (September 21 and filing of the written submission at the hearing of September 30), the Scaroni defense (September 30), the Descalzi defense (October 14), the Pagano, Bisignani and Falcioni defenses (November 25), the Agaev and Etete defense (December 2), the Brinded, Colegate, Copleston De Carteret and Robinson defense (December 9), the Casula, ENI S.p.A., Shell S.p.A., Royal Dutch Shell Defense, Shell Petroleum Development Company of Nigeria Ltd, Shell UK Ltd and Shell Exploration and Production Africa Ltd. defense (January 20, 2021).

At the hearing of February 3, 2021 further documentation submitted by the Prosecutor was acquired and the Prosecutor gave his replies, as did the Civil Party's counsel.

Lastly, at the hearing of March 17, 2021, after the replies of the Scaroni, Agaev and Etete defenses, and the waiver of the right to reply by the other defenses, the Court retired to chambers and, at the end of its deliberations, delivered its judgment, making a public reading of the operative part.

[3 illegible signatures]

CHAPTER 2
THE CRIME CHARGED AND THE INDICTMENT

2.1 Preamble

The expression *Oil Prospecting License 245* refers to the exploration license on the oil block known as "245", an oilfield situated along the coast of the Niger Delta, in the south of Nigeria.

The first award of the license dates back to April 29, 1998, when the military government led by President Sani Abacha and, for the matters under his competence, by Petroleum Minister Dan Etete, granted the exploration rights over the block to the company "Malabu Oil and Gas Limited", which had been established just five days prior by three shareholders, who can be identified as President Sani Abacha, the Petroleum Minister Dan Etete and a Nigerian ambassador[25].

General Abacha died in June of 1998 and the license was confirmed on March 9, 2000 by the new democratic Government, led by President Olusegum Obasanjo, a rival of Abacha. However, after a commercial agreement ratified by the Petroleum Minister was finalized in the spring of 2001 between Malabu and SNUD (a Nigerian Shell Group company), the Government revoked Malabu's license in the summer of the same year without providing any reason or compensation.

Following a public tender, the license was awarded to Shell, which agreed to pay $ 210 million as a signature bonus[26]. At that point, Malabu challenged the revocation and subsequent reallocation, while Shell invested more than $ 350 million in exploration of the oilfield.

Malabu's complaint was declared inadmissible by the court of first instance, but on November 30, 2006 the Government of President Obasanjo intervened once again: on the eve of the appeal judgment, Attorney General Bajo Ojo revoked the exploration license granted to Shell, reawarding it to Malabu which, in turn, agreed to pay the signature bonus of $ 210 million (the so-called Settlement Agreement).

In response to the Government's decision, this time it was Shell that retaliated with court action, filing a lawsuit before the Court of Abuja and, in July of 2007, also initiating arbitration proceedings at the International Centre for Settlement of Investment Disputes (ICSID). The result of the events summarized up to this point was the breakdown of any prospect of exploiting one of the richest oilfields in Africa:

- Malabu appeared to be the holder of the exploration license, but had neither the technical means to search for oil nor the financial resources to pay the $ 210 million signature bonus. Furthermore, Dan Etete was in urgent need of liquidity to settle a fine of € 7 million imposed on him by the French judicial authorities as a result of a money laundering conviction;
- Shell was determined to continue with the legal action undertaken in order to obtain the block again and not jeopardize the considerable investments made, but, on the other hand, it needed to maintain good relations with the Nigerian Government in order to protect its further interests in the African country; in addition, it feared that exacerbating the conflict would lead the Government to cancel any award of the license, reopening the possibility of its award to other ICOs, contrary to its expectations;
- The Nigerian Government intended to finally put one of its main economic assets to good use but, at the same time, had to protect itself both from a possible adverse ruling in the ICSID

[25] Public Prosecutor: Mohammed Sani (50%) Kweku Amafegha (30%) Hassan Hindu (20%): Mohammed Sani represented Sani Abacha, the President of Nigeria in 1998, Kewku Amafegha represented Etete and Hassan Hindu represented a Nigerian diplomat of the time (Hassan Adamu).

[26] $ 2 million were paid and the remaining $ 198 million were deposited in an escrow account.

[3 illegible signatures]

arbitration proceeding and from legal action that could be brought by Malabu in the event that the license was revoked again. Moreover, despite no longer holding any formal public office, Dan Etete continued to represent the interests of the people living in the turbulent area of the Niger Delta and, therefore, his political support was crucial for any government wishing to secure peace in the region[27].

It is in this context that in the fall of 2009 - a period that the count of indictment identifies as the beginning of the criminal conduct at issue in this trial - Eni formalized its interest in acquiring the license, which had already been expressed in 2007. From that moment on, a long process of negotiations began which, at different times and in different ways, involved Eni, Shell, Malabu, the Nigerian Government and various intermediaries.

At the end of the negotiations, on April 29, 2011, three agreements were signed on the basis of which

(i) the Government directly awarded a new license on Block 245 to Eni and Shell in exchange for the payment of $ 1,092,040,000 into a government account held at JP Morgan Bank in London;

(ii) the Government undertook to use this amount to settle the claims made by Malabu, which, in turn, waived all its claims to the license;

Shell withdrew from the legal and arbitration actions brought against the Government.

The sum paid by the oil companies was then transferred by the Government to accounts in the names of companies traceable to Dan Etete and Alhaji Abubakar Aliyu. The latter, according to the Prosecution, acted in the name and on behalf of the President of the Nigerian Republic Goodluck Jonathan, Attorney General Adoke Bello and Petroleum Minister Diezani Alison-Madueke, who thus allegedly received $ 520,482,965.44 as unlawful compensation for the allocation of OPL245 to Eni and Shell.

2.2. The crime of international bribery provided for by Article 322-*bis* of the Italian Criminal Code

The offense alleged, provided for by Article 322-*bis* of the Italian Criminal Code, constitutes a special case of bribery and, as such, is structurally based on an agreement between the private bribe-giver and the bribe-taking public official. This interpretation, shared by the Defense and the Prosecution[28], implies that multiple parties were involved in the perpetration of the offense, despite the fact that the legal provision expressly states that the foreign public officials are not punishable.

The alleged offense must therefore be framed within the scope of the prior international aggravated bribery offense (*corruzione propria*), characterized by an unlawful agreement aimed at obtaining an act contrary to the duties of office in exchange for compensation promised to the public official. The offense consists of an agreement between the private bribe-giver and the public official, prior to the performance by the public officials of the act contrary to their duties of office. The public officials decides to perform the act on the basis of the promise of unlawful compensation which, although paid after the act was performed, determines the final stage of the commission of the crime, representing a deepening of the harm to the legal right.

In accordance with the consistent case-law of the Supreme Court, two conditions must exist for the crime of direct bribery to be committed: acceptance of a promise and receipt of unlawful compensation

[27] Hearing of July 2, 201 [sic], Public Prosecutor: Dan Etete is not only the former Minister of Justice, Dan Etete... of Oil. Dan Etete is the person who, throughout the 2000s, at least up to the years we're talking about, retained exceptional effective, even political, power. He was a player on the political scene, and in several circumstances we have heard him referred to as "a key decision maker". And he was so important that the President needed his support, and so this was a reward for his support.

[28] In the Public Prosecutor's replies, he specified: "we are talking about an offense that involves multiple parties, with a fractionated execution".

for performing an act contrary to the duties of office. The offense arises with the unlawful agreement, since, according to the structure of the gradual offense, the actual implementation of the agreement (the performance of the act and the giving/receiving of the unlawful compensation) are the developments of the distinctive aspects of the offense, which identify the moment when the offense was committed.
These observations are based on the following key passages from the count of indictment:

All of the defendants... *"**engaged in converging actions** aimed at obtaining for the companies Eni and Shell, 50% each, the exploration rights to block 245 in Nigeria in exchange for the payment of $ 1,092,040,000 to the company Malabu (associated with Dan Etete), the supposed owner of the rights to block 245, **with it having been agreed**, during the negotiations to purchase the block, **that those funds**, net of the amounts kept by Etete (approximately $ 300 million used by Dan Etete to profit himself and numerous other beneficiaries to purchase real estate, airplanes, armored cars and more) **would in large part be used, as in effect happened, to compensate the bribed public officials** for the purpose of causing the public officials Goodluck Jonathan, President of the Nigerian Republic and, each to the extent of his/her authority, the Minister of Justice and Attorney General Mohammed Adoke Bello and Petroleum Minister Diezani Alison-Madueke, as well as, with the functions of brokers in the negotiations, the other aforementioned public officials (Bajo Oyo, Gusau, Bature, and Obiorah) **to adopt, on April 29, 2011, the agreement entitled FGN Resolution Agreement**, ostensibly an agreement settling the disputes that had the effect of granting to Eni and Shell, 50% each, the exploration rights to deep-water block 245 of the Nigerian Republic:"*

This premise is essential in order to highlight the differences with other types of extortion or bribery (Articles 317 and 319-*quater* of the Italian Criminal Code), which at the time of the facts were excluded from the scope of criminal relevance, if committed internationally. Moreover, the case law of the Supreme Court emphasizes the agreement as a central element of the crime of bribery; thus the agreement characterizes the offense in order to avoid the danger of equating the crime of bribery just with the bribe paid to the public official. From this principle of law it follows that the conduct implementing the agreement (the bribe to the public official and the unlawful act of the public official) represents an accessory element that deepens the harm caused by the crime, constituting, on the evidentiary level, proof of the agreement, but does not exhaust the proof of bribery, which remains based on the demonstration of the agreement between clearly identified parties. Therefore, even the proof of the bribe or the unlawfulness of the act committed by the official are not considered sufficient, even jointly, to prove the commission of the crime of domestic or international bribery, because these are elements also found in other types of crimes. Specifically, in our system, unlike in other legal systems, unlawful payments characterize three different crimes: corruption, bribery and extortion.

2.2.2 Critical aspects of the indictment

In view of the complexity of the facts, the Public Prosecutor has chosen to adopt a descriptive technique that is affected by intrinsic contradictions and, above all, equates evidence of the facts with typical conduct of the offense, generating ambiguous overlaps and further contradictions, with consequent issues of interpretation, exacerbated by the conclusions, which contain useful specifications, but also differences that have made it even more difficult to identify the boundaries of the charge.

I Critical aspects relate to

(i) the identification of the timeframe of the alleged offense in its two bounding events of the reaching of the unlawful agreement and the receipt of compensation by the public officials;

(ii) the selection of the corrupt public officials;

the recognition of the act contrary to the duties of office;

(iv) the identification of the bribe;

[3 illegible signatures]

(v) the definition of the role of the private corruptors;

2.2.2.1 The timeframe of the alleged offense

the crime of bribery *occurs either with the acceptance of the promise or with the payment - receipt of the bribe. However, if the promise is followed by the payment - receipt of the bribe, it is only at this last moment that, the typical offense is fulfilled and the crime is completed*[29]. The nature of the dual scheme offense therefore requires that a distinction be made between the moment of *conclusion* - understood as the acceptance of the promise or the reaching of the agreement - and the moment of *completion,* i.e. the receipt of the bribe or its use by the public official after coming in its possession. The events preceding and following either end of the timeframe, although they may be relevant on an evidential level, are not typical and therefore should not be included in the description of the crime alleged in the count of indictment.

Against these general principles, the timeframe of the alleged crime reported in the count of indictment is summarized in the expression *"from the fall of 2009 to May 2, 2014".*

The literal wording of the expression used - which identifies a very wide time scale delimited by the prepositions *"from"* and *"to* - evokes the category of permanent offenses, i.e. those crimes in which the offense continues uninterrupted for the entire period taken into consideration. However, this qualification is not appropriate for the crime of bribery which, as mentioned, falls into the very different category of dual scheme offenses. Consequently, interpreting the count of indictment in the light of the legal principles of the offense we must assume that the above starting and end points identify respectively the time of conclusion of the crime with the unlawful agreement for the payment of bribes (fall 2009) and the time of its completion, with the receipt of the bribe by the corrupt public officials (May 2, 2014). However, this interpretation is not satisfactory as it conflicts with the results of the trial hearings as interpreted in the Public Prosecutor's final brief.

Having noted the aporia contained in the count of indictment, in the following paragraphs we will attempt to overcome the weaknesses highlighted by proposing a key to understand the specific timeframe of the alleged crime.

In any case, it should be noted that our decision to describe the timeframe of the alleged crime as a permanent offense is not merely a non-technical use of a criminal law category, but, on examination, is the result of the peculiar approach followed by the Public Prosecutor in identifying the alleged unlawful features of the affair at issue. On the one hand, indeed, the count of indictment distinguishes between unlawful and lawful agreements, stating that the agreements aimed at unlawfully compensating public officials occurred during the *negotiations,* thus suggesting that said negotiations concerned lawful agreements. On the other hand, in the account of events proposed in the Prosecution's conclusions, the unlawful agreements are conflated with the lawful ones, which are alleged to be *mere legal cosmetics*. The Prosecution therefore maintains its claim that there was an overlap, where the "lawful" agreements were nothing more than a cover *(mere cosmetics)* for the unlawful agreements. This approach criminalizes the entire operation that led to the acquisition of the license [30].

---

[29] Court of Cassation, United Divisions, judgment no. 15208 of the hearing of 02/25/2010 (submitted 04/21/2010) Rv. 246583 - 01

[30] To demonstrate our argument that the Prosecution criminalizes the entire negotiations, see the concluding brief written by the Public Prosecutor, which traces almost all the stages of the negotiations, from the fall of 2009 up to the end of April 2011, which led to the Resolution Agreements, as well as to the oral closing argument and in particular (Transcripts of the hearing of July 21, 2020, page 12): "This title of ownership was invalid from the outset. This thing belongs to Nigeria, block 245 belongs to Nigeria. Etete did not pay anything, but assigned it to himself, so in essence all the money which came into the possession of Etete could and had to be partly distributed to public officials, since it is only with the endorsement, support, protection and active contribution of public officials that Etete could carry out such an act"; transcripts of the hearing of July 2, 2020, page 7: "In my opinion, all the negotiations, all the solutions that provided that Dan Etete, that Malabu would take a single dollar for this license, if self-assigned illegally, are themselves illegal. This is a fact. This is a fact that has to be considered and is often regarded as implicit, because these are old things. This is an old but well-known story that was never, ever resolved"; further on: "As early as 2007 Eni, and Shell even earlier, but as early as 2007 Eni had all the information it needed to avoid even sitting down with Dan Etete"; in the Prosecution's brief of January 13, 2021, page 223: "The conflict of interest remains, and should have been a formidable warning to oil companies, an indelible sign of the criminal origin of Malabu's OPL 245 license".

[3 illegible signatures]

The point was effectively summarized in the closing argument of Casula's defense attorney:
"The accusation is clear: the block was originally allocated to Malabu in conflict of interest and should thus be considered unlawful. Any subsequent confirmation or restoration of the rights to the block to Malabu should also be deemed unlawful as it is tainted by the original unlawful license allocation, and itself confirms the original illegality. Any legal transaction relating to the OPL 245 block which presupposed or involved the allocation of legal and economic rights in Malabu's favor would, consequently, be unlawful and any third party involved in it would be held accountable for such illegality. More specifically, in the Prosecution's view, this is a corrupt transaction since the grant of rights to Malabu, being unauthorized, "necessarily" involved the payment of bribes to the public officials responsible for the unauthorized rights allocation. The Prosecution's position, ultimately, is: 'the OPL 245 block is off limits for everyone', as long as the grant of rights to Malabu is presupposed. Accordingly, Eni and its representatives should have taken this approach if they were to remain within the law."

Setting aside, for the time being, sweeping assessments such as the one quoted above, we must examine the count of indictment with a constructive approach and try to identify the beginning and end points of the timeframe of the alleged crime.

2.2.2.1.1 The time of conclusion of the crime: the agreement

All the defense attorneys have criticized the Prosecution's approach, arguing that it fails to identify clearly the exact moment and place in which the alleged corrupt agreement was reached and even to identify specifically said unlawful agreement and, above all, the individuals involved in it. On closer examination, in the count of indictment and during the trial, reference was made several times to various allegedly unlawful agreements concluded between the initial allocation of the license to Malabu in 1998 and the signing of the Resolution Agreements in April 2011[31].

In any case, the count of indictment must be interpreted in the light of what emerged from the hearings and the Public Prosecutor's extensive conclusions and arguments, in which he alleged that the corrupt agreement was reached in three well-defined moments:
In summary, therefore, the final steps of the agreement were, briefly stated:

Atiku Ahubakar, who we've talked about before, I hope you remember his role, was very much against this third term. Obasanjo needed Dan Etete, this is what the Risk Advisory 2007 says. Why am I emphasizing this, why do I feel it is necessary to emphasize this aspect? Because Dan Etete... is the person who, throughout the 2000s, at least up to the years we're talking about, retained exceptional effective, even political, power... And he was so important that the President needed his support, and so this was a reward for his support."
Public Prosecutor, page 9 *"Etete did not want to exploit the license, but sell it for personal gain; but he would have to share the proceeds of the sale of the license with the politicians who helped him get it back, i.e. President Obasanjo, Petroleum Minister Daukoru and Minister of Justice Bajo Ojo.*
Public Prosecutor, PM2-116, *on **April 3, 2007**, ...Obasanjo was still in power, the elections were in April, the elections that resulted in the presidency of Yar'Adua. Diezani was not a minister, of course. Diezani at that time was a manager at Shell. A Shell manager who met with Dan Etete to talk about*

[31] **1998/2011** Public Prosecutor: "The word bribes characterized the entire history of the negotiations over the OPL 245 license, so much so that it was known to all that the sale of the license by Malabu would involve the need for an unlawful agreement so that Etete and the officials who helped him would receive unlawful compensation;
2002 Etete spoke of bribes to senior officials and electoral contributions paid by Shell for the allocation in the 2002 tender and addressed the House of Representatives, which stigmatized the transfer of rights to a non-Nigerian oil company;
2006 Public Prosecutor, page 8, July 2, 2020: "Why was this license re-awarded on November 30, 2006? Well, because in 2001... Obasanjo did two terms, he was planning to do a third term. To do a third term he needed to amend the constitution, to amend the constitution he needed political support. His Vice president,

OPL 245. This email was written by Basil Omiyi, another Shell executive, and it says "I went with Diezani Alison-Madueke, who has some family relationship with Etete, to meet Dan Etete (Malabu) yesterday April 2, 2007, essentially to find out what he had in mind, what other issues were in the mix, as well as to know", this is also important, "how they interpreted the Government's stated objective of preserving Shell's current position on OPL 245", ...So there is this relationship between Etete and Diezani Alison-Madueke, Shell says so, in fact it was also said at the time of Luigi Bisignani's questioning... Obi and Di Nardo took this minister's support for granted... In the same email, in another important passage, he refers to Dan Etete's expectations: "He said that Malabu had neither the people nor the expertise to manage a partner. In short, they just want to be bought out entirely by transferring the deal they had acquired in its entirety to Shell. ***Etete just wants money."*** *And the reason why he had to quickly cash in on these rights is also stated in this email, which says "**During the discussion, he mentioned again the mountain of legal expenses he had incurred over the OPL 245 case (at one point he mentioned a figure of $ 500 million). As important as certain legal expenses may be, I believe that this figure, $ 500 million, does not correspond to legal expenses, it corresponds to gifts to the members of the government who made the materialization, the cashing-in of these unlawfully acquired rights possible.** Diezani became Minister of Transport in 2007, in 2008 Minister of Mines and Steel, and finally Petroleum Minister with Goodluck, which in Nigeria is probably the most important government post, the most coveted, Nigeria's wealth is oil, so much so that Diezani even became President of OPEC, the first [female] President of OPEC.*

June 24, 2008 (23:15)[5] Ann Pickard wrote to Malcom Brinded reporting about a meeting with an executive of the Nigerian national oil company Sanusi Barkindo: in this case there was talk of an unlawful arrangement for the payment of bribes involving President Yar'Adua who, while not wanting to please Etete, had to come to an agreement with Etete because the Petroleum Minister was involved and wanted money because she had debts. Public Prosecutor Spadaro, page 8, "June 24, 2008... in the Shell documents, RDS 283, there is an email that Ann Pickard of Shell sent to Malcolm Brinded about a meeting with the President of NNPC, named Barkindo. And the subject was OPL 245. On OPL 245 he, so the head of NNPC, said the President does not want Etete to take anything. So things are going badly for Etete with Yar'Adua, but MOSP, i.e. the Minister of Petroleum, is involved, and they put "involved" in quotation marks, open parenthesis "He is on the take", meaning "he has to take money, he has to take bribes". Moreover, the Petroleum Minister is, let's say, Odili's godson, Odili was the Governor of Rivers State, who told him that Etete had to be satisfied. So the Petroleum Minister cannot make a move. ***The Petroleum Minister is not Diezani yet, it's someone named Lukman".***

Public Prosecutor Spadaro, "And on ***February 25, 2010*** *Ann Pickard, RDS 416, reiterated this issue by explaining that* ***the agreement*** *was* ***urgently required as consideration for the support given by Etete for the amnesty****. These were the factual conditions that foreshadowed the entry of Goodluck Jonathan, of the Jonathan administration. Before I get to Jonathan I want to mention two more documents, from which it is crystal clear that the Petroleum Minister, Lukman, needed money, and that Etete had to pay bribes. It's an email dated January 5, 2009 from John Copleston in RDS 318, "Saw my Delta guy about 245, talked to Miss E. this morning, said Etete is complaining that he's only going to ratchet up 40 million of the 300 we're offering him, the rest will go to pay bribes." And further on Copleston talks about Lukman, he says clearly "[He] took the job because he needs the money". Here we have evidence that Copleston, and the Shell representatives, knew that Etete would use the bulk of the money he would receive for OPL 245 to pay bribes. He says it, Etete says it. Mrs. Etete says so, at first I wondered who Mrs. Etete might be, because of course one has to ask the questions. But reading other emails, which we will see later, it's clear that when Copleston talks about "Miss E" he's talking exactly about Etete's wife, she's his wife. Of the 300 million that Shell was offering at that moment, as to 20 percent, Etete would only keep 40 million. This is what he says, this is what Shell knows. And Copleston tells Robinson and Colegate."*

1. *November 15, 2010 - agreement on the price to be paid for OPL 245 (Attorney General, Robinson, Casula, Armanna and a representative of Etete were present)*

[3 illegible signatures]

2. *December 15, 2010 - agreement on the new arrangement designed to "build" the deal as a new allocation of OPL 245 by the Government (Attorney General and Armanna were present; Shell accepted the new arrangement and in the following weeks prepared the new contracts; Etete did not object)*
3. *March 26, 2011: agreement on the new draft FGN Resolution Agreement which no longer included Malabu among the parties and did not mention the "consideration" to be paid to Malabu,*

The first is the actual corrupt agreement.
The second is the "legal" arrangement to regulate the payment of the unlawful interests.
The third is an essentially "cosmetic" agreement - and yet it is also the basis of the oldest and most insistent defense argument made by Eni on all occasions (including in Parliament) in which it was asked to clarify the OPL 245 deal".

2.2.2.1.2 The time of completion of the crime: the receipt of the sum or its use by public officials as owners of the benefit

The charge states May 2, 2014 as the date that the crime was committed. This date is mentioned in the count of indictment as the date on which *"a part of this sum, namely CHF 21.185 million, was transferred by Obi to the FOF Fox Oil Fund Lda account of Gianluca Di Nardo at the Safra Sarasin bank in Lugano".*
Without going into detail here, as this would require an extensive presentation of the facts, it is possible, however, to point out that the choice of the Public Prosecutor is certainly not acceptable from a technical/abstract point of view. Indeed, the timeframe of the alleged crime up to 2014 is the result of an erroneous transformation of evidence of the crime (alleged return of the bribe to private parties) into constituting elements of the fact characterizing the offense (*fatto tipico*). As will be seen in more detail below, there is no doubt that Obi and Di Nardo were not public officials and, therefore, the money received by these two individuals cannot be considered as part of the sum intended for the compensation of a public official.
Thus, turning our attention back to the single sums of money received by the public officials, the count of indictment lists the cash movements made through the *bureaus de change* through which the money transferred from the Government's account to the companies traceable to front man Alhaji Abubakar Aliyua was moved:

– *$ 466,064,965.44 was transferred to a Bureau de Change in Abuja and then transferred in cash within Nigeria – after repeated exchanges into local currency and dollars and after transactions called "forex trades" – by Alhaji Abubaker Aliyu; funds used to compensate public officials such as Jonathan, Attorney General Mohammed Adoke Bello, Petroleum Minister Diezani Alison Madueke, and the National Security Adviser, General Aliyu Gusau;*

However, even this information is not useful in identifying the time of completion of the crime because, once again, there is an improper commingling of evidential and "typical" (characterizing) elements. Ruling on a case similar to the one in question, the Supreme Court has clarified that the operations aimed at making it more difficult to trace the money fall outside the 'typical' nature of the conduct and, therefore, do not influence the date of perpetration of the offense:

Court of Cassation, United Divisions, judgment no. 15208 of 02/25/2010 (filed on 04/21/2010): *the crime of bribery, according to authoritative and accepted legal scholarship, was committed when "the individual howsoever manifested his intention to keep the money". Therefore, the circumstance that the shares of the Torrey Global Offshore Fund were registered in the name of MILLS only on February*

29, 2000 is irrelevant, since this conduct was subsequent to the acquisition of the shares themselves, which initially took place anonymously for the purpose, pursued by the defendant, of making it difficult to trace the origin and course of the money: indeed, although the shares were not yet registered in his name, MILLS could have disposed of them even before and in any way, if he had so wished.

Lastly, in his closing argument, the Prosecutor stressed the fact that Attorney General Adoke Bello had used the cash to purchase a property from the company Carlin. This too, however, is merely evidence of the crime, and not indication of the time of its completion since such movements of money concern the subsequent events of the transformation and use of the bribe.
In conclusion, setting aside the Prosecution's theories just discussed, the time of completion of the crime must instead be identified as the moment when, in August/September of 2011, the money from the oil companies was transferred from Malabu's accounts to the accounts of the companies held by Alhaji Abubakar Aliyu. This is because according to the Prosecution's allegations, Aliyu acted in the name and on behalf of the bribed public officials, who, based on this assumption, from that moment on therefore obtained ownership of the aforementioned sums.

2.2.2.2 The bribed public officials

The precise distinction between the bribe-giver and the bribe-taker, which is essential for all forms of bribery, is even more essential for international bribery, since national law excludes the possibility of punishing bribed foreign public officials.
The count of indictment is precise in identifying the position of the bribed public officials *(Goodluck Jonathan, President of the Nigerian Republic and, each to the extent of his/her authority, the Justice Minister and Attorney General Mohammed Adoke Bello and Petroleum Minister Diezani Alison Madueke)* and those indicated as brokers *(as well as, acting as intermediaries in the negotiations, the other aforementioned public officials (Bajo Oyo, Gusau, Bature, and Obiorah).*
The Prosecution's approach that recognizes the latter individuals as intermediaries reflects the fact that those individuals, who held other and different public offices, had no competence in the decision-making process that led to the Resolution Agreements of April 29, 2011 and therefore had no power, in terms of public law, in the conclusion of the agreements.
In the light of this information, the Prosecution's choice not to bring charges against the public officials' intermediaries can be explained (i) either by the Public Prosecutor's acceptance of the interpretation that distinguishes between brokers working on behalf of the private bribe-giver, who are punishable, and the intermediaries of the bribe-taking foreign public official, who are not punishable, (i) or by a broad interpretation of the legislation that excludes the punishability of any foreign public official for the sole fact of the public office held, regardless of whether said public official was acting as bribetaker or mere intermediary.
Whatever the rationale for the Public Prosecutor's choice, there is no doubt that with reference to Bajo Oyo the Prosecution's approach is complicated by the fact that although Bajo Oyo was brought into the case as a witness, in the Prosecution's closing argument he is instead included among the bribed public officials on account of having implemented the re-awarding of the license to Malabu in 2006.

2.2.23 The bribes

The charge brings together the agreements concerning compensation of the brokers, kickbacks to the bribe-givers and payments of bribes to public officials, suggesting that these different categories of payments have been considered equally indicative, from the causal point of view, of the existence of a single bribery pact.
It suffices here to note that the only movements of money reported in the count of indictment that relate to the characterizing aspect (typicality) of the conduct are the transfers of $ 54,418,000 and $ 466,064,965.44 handled by Alhaji Abubakar Aliyu and intended to pay public officials.

With regard to the other amounts, the following can be observed:

- the sum of $ 10,026,280 *paid to the former Attorney General Chrisopher Adebayo Oyo (Bajo Oyo)* was transferred to an individual who had left public office a full four years before the date when the unlawful agreement at issue was allegedly made. Therefore, even if we accepted that this payment was a bribe paid to Bajo Oyo for the reallocation of the license to Malabu under the 2006 Settlement Agreement, this payment would, at most, constitute a bribe to the public official in a case of internal corruption that occurred in 2006;
- the sum of $ 11,465,000 *paid to the former Senator Ikechukwu Obiorah* cannot be classified as a "typical" bribe characterizing the alleged offense because the recipient of the sum did not play any public role in the conclusion of the April 2011 Resolution Agreements;
- the sums transferred to Vincenzo Armanna or allegedly delivered to Roberto Casula are alleged kickbacks to Eni managers;
- the sums paid to Emeka Obi and Gianluca di Nardo are payments to private brokers.

For the sake of completeness, it should be noted that the Prosecutor has requested the seizure of assets having for an equivalent value of $ 1,092,040,000.00, i.e., the full amount paid to the Government by the oil companies. The request to extend the seizure of assets of an equivalent value also to the portion of money received by a private individual such as Dan Etete is a non-standard choice confirming the basic assumption underlying the Prosecution's entire case: "*all the negotiations, all the solutions that provided that Dan Etete, that Malabu would take a single dollar for this license, if self-assigned illegally, are themselves illegal"*[32].

2.2.2.4 The act in breach of the duties of office.

A consequence of the Prosecution's reconstruction, which considers all transactions relating to Malabu/OPL245 to be tainted by illegality, is that, according to this logic, almost all of the numerous government acts that, in various ways, recognized the company linked to Dan Etete as owner of the block are also illegal. Among the documents most frequently cited in the count of indictment and during the evidence hearings are:

- the original license allocation deed to Malabu of April 29, 1998;
- the Settlement Agreement of November 30, 2006;
- the act confirming the reallocation of July 2, 2010;
- the Resolution Agreements of April 29, 2011.

In the grounds of this judgment, we will analyze in detail these documents since, although not all of them are relevant to establish the "typical" elements characterizing the alleged offense, they are nevertheless important to fully understand the case.

Here, it should be clarified that the acts allegedly in breach of the duties of office relevant to the present proceedings are only those adopted on April 29, 2011. This reconstruction is consistent with the wording of the count of indictment, where it states that the sum paid by the oil companies was used to persuade public officials "*to adopt on April 29, 2011 the act called FGN Resolution Agreement"*.

2.2.2.5 The private bribe-givers

The charge does not specify which private parties played the role of bribe-givers and which played the role of brokers, equating them all as material perpetrators of the active conduct attributable to the bribe-giver. All of the defendants must therefore be considered to be accused of being participants in the corrupt arrangement, as indicated by the use of the gerund in the passage of the charge quoted above,

[32] Hearing of July 2, 2020, page 7.

within the sentence starting with *"All of the defendants"*. The listing of all the current defendants and the accomplice Alhaji Abubakar Aliyu followed by the aforementioned plural verbs, with the specification of the convergence of their material conduct, leads to the conclusion that the charge does not identify one or more material perpetrators of the conduct of private bribe-giver, but equates all the defendants, including the accomplice still to be tried, as material perpetrators of the main "typical" conduct. Moreover, the considerations made by the Prosecution in their final replies on the "fractionated" nature of the conspiracy confirm the literal interpretation. However, the gerund *(having been agreed)* used to describe the private side of the corrupt arrangement reveals the generic nature of the charge, which is not made more specific even in the descriptions of the individual conducts. Despite having specified the convergent contribution of each defendant, the Prosecutor has introduced further ambiguities and, in some cases, contradictions in the charge itself, again deriving from the already highlighted lack of clear distinction/overlap between lawful and unlawful agreements.

2.2.2.6 The individual conducts ascribed to the defendants

The lack of distinction between bribe-givers and private brokers is heightened by the ambiguity caused by the description of individual behaviors, which seems to ascribe the same causal relevance to conduct directly aimed at the conclusion of the corrupt arrangement and conduct that can be considered lawful business practice. In particular, for some of the defendants, direct involvement in the payments made to the public officials is specified:

- **Casula** *(scheduling meetings with Shell managers at his home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials);*
- **Pagano** *(attending meetings with Shell executives at Casula's home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials);*
  Etete *(receiving from the Nigerian government, based on the FGN Resolution Agreement, $ 801.5 million and transferring to Alhaji Abubakar Aliyu, directly or through companies associated with him, amounts of money totaling approximately $ 520 million to be used to pay President Jonathan, members of the Government and other Nigerian public officials)*;
- **Obi**[33]*(agreeing with Etete that the difference – the so-called "excess price" – between the amount that ENI/NAE agreed to pay and the amount accepted by Etete would be kept by Obi, with the provision that such excess price would be used to compensate Obi and his sponsors Di Nardo and Bisignani, Eni and Shell executives and Nigerian public officials, particularly the Petroleum Minister Diezani Alison Madueke).*

Falcioni is only charged with conduct implementing the unlawful agreements, linked to the payment of fees to brokers under the agreements with Bajo Ojo: *accepting the task, during the concluding phase of the transaction, of distributing the money Eni had paid for the OPL 245 license and, for that purpose, incorporating the company Petrol Service and opening bank account A209798 in the name of Petrol Service CO.LP at BSI Lugano, to which $ 1,092,040,000 was wired on 5.31.2011 (which was returned a few days later by the BSI bank of Lugano to JP Morgan Chase of London for "compliance" reasons, maintaining contacts and entering into written agreements with Bajo Oyo to kick back a portion ($ 50 million) of the amount Eni paid, and informing Armanna of the existing relationships with Bajo Oyo)*

In contrast, other defendants are charged only with awareness of material conduct attributed to other private bribe-givers:

- **Agaev** *(meeting on several occasions with the National Security Advisor, General Aliyu Gusau, and obtaining from him information on the financial expectations of President*

[33] Who was prosecuted in separate proceedings.

[3 illegible signatures]

Jonathan and other members of the Government);

- **Armanna** *(being fully informed of the transfer of most of the amounts paid by Eni to the political sponsors of the transaction)*;
- **Colegate and Copleston de Carteret** *(gathering information about the financial demands of Diezani Alison-Madueke - a former Shell Executive and Minister of Petroleum - and of President Goodluck Jonathan, to authorize the deal);*
- **Robinson** *(keeping in touch with Colegate and Copleston throughout the course of the negotiations and receiving information from them about the economic demands made by the representatives of the Nigerian Government);*
- **Brinded** *(being constantly informed by Robinson, Colegate and Copleston of the evolution of the negotiations and of the financial demands of representatives of the Nigerian Government and their sponsors);*

The remaining defendants, **Scaroni, Descalzi and Bisignani,** have not been charged with specific material conduct directly involving the financial demands of the public officials.

2.3 Conclusions

In light of the above considerations, and taking into account the importance of providing a constructive, rather than destructive, interpretation of the charge, it is appropriate to clearly establish which is the matter to be decided (*thema decidendum*) covered by the charge. Therefore, it is necessary to focus our attention only on the 'typical' aspects of the offense, leaving aside the numerous items of evidence included in the count of indictment.

Very briefly stated, we can conclude that the Prosecution's allegation is that an unlawful agreement existed between, on the one hand, the managers of Eni and Shell, several brokers and the former Petroleum Minister Dan Etete and, on the other hand, the President of the Nigerian Republic, the Attorney General, the then Petroleum Minister and other public officials acting as intermediaries.

The Prosecution maintains that the negotiations to hash out the terms of the corrupt agreement went on for over a year and were marked by specific points at which the parties reached common ground: November 15, 2010 (agreement on the sum to be paid to the public officials), December 15, 2010 (definition of the legal conditions of the agreement contrary to the duties of office) and April 29, 2011 (conclusion of the agreement contrary to the duties of office).

According to the Prosecution, the subject matter of the unlawful agreement was the following:

- the private bribe-givers allegedly transferred $ 1,092,040,000 to the Government's account at JP Morgan Bank in London. Still according to the Prosecution, although the payment was officially intended in its entirety to resolve the pending disputes over OPL 245, an amount of $ 520,482,965.44 was later transferred from the Government's account to a number of companies in the name of front man Alhaji Abubakar Aliyu, to compensate the public officials;

- the bribed public officials, in exchange for the above sum, allegedly endorsed or signed the Resolution Agreements of April 29, 2011, which the Prosecution claims were acts contrary to the duties of office, as they provided for the direct award of the OPL 245 license to Eni and Shell without prior public tendering, for a price much lower than the economic value of the oil field and under legal/tax conditions incompatible with Nigerian law.

[3 illegible signatures]

[3 illegible signatures]

CHAPTER 3
THE LAWFULNESS OF THE OPL 245 TRANSACTION

3.1 Preamble: criteria for assessing the documentary evidence

At the end of the evidence hearings it was not possible to reconstruct with certainty all the facts at issue in the charge, despite the thousands of documents submitted and the dozens of witnesses and consultants examined and cross-examined. Some aspects of the affair remain partly obscure and can only be the subject of probabilistic or hypothetical reconstructions, based on plausibility criteria. In any case, in the following pages we will set out a chronological account of the facts drawn from the main documentary evidence, divided into time periods.

Specifically, we will first outline the events that took place between 1998 and 2007. At the end of the account of that first period, we will set out the main issues that arose during that period of time and which have been repeatedly raised during the course of the evidence hearings because they are considered relevant to these proceedings. As already mentioned, the basis of the Prosecution's case was explained by the Public Prosecutor as follows: "[The OPL245] *license was invalid from the outset. That thing belongs to Nigeria, block 245 belongs to Nigeria. Etete did not pay anything for it, but awarded it to himself, so in essence all the money which came into the possession of Etete could and had to be partly distributed to public officials, since it was only with the endorsement, support, protection and active contribution of the public officials that Etete could carry out such an act [...] all the negotiations, all the solutions that provided that Dan Etete, that Malabu would take a single dollar for that license, if he had awarded it to himself unlawfully, are in themselves unlawful. This is a fact. This is a fact that has to be considered and is often regarded as implicit, because these are old things. This is an old but well-known story that was never, ever resolved [...] The conflict of interest remains, and should have been a formidable warning to oil companies, an indelible sign of the criminal origin of Malabu's OPL245 license".*

Thus, we will discuss in depth the following points:

1. the lawfulness of the original award of the license to Malabu and the issue of conflict of interest;
2. the lawfulness of the 2006 settlement agreement;
3. the entitlement of Malabu and the Government to act as parties to the negotiations from 2007.

After resolving these issues and clarifying the legal position of OPL 245 at the time when Eni entered the affair, we will resume with the chronological account of the events from 2009 until May 2014. In the subsequent chapters we will discuss and assess in greater detail what happened during this period.

The manner of presentation chosen requires preliminary clarification of the nature and criteria for evaluating documentary evidence. The Prosecutor has attributed unconditional evidentiary value to all the information obtained from the documents, on the assumption that such information comes from a pre-established and unchangeable source: "*there will be no defense argument that can reduce it to ash, it is written in stone, it is a document*".

However, this court cannot share the Prosecution's rock-solid certainty in making this assumption.

As we know, even in the absence of an explicit legal definition, a document can be understood to be a piece of writing suitable to describe a fact. In Italian criminal law, documents are included among the means for obtaining evidence, that is, among the mechanisms through which information useful for making a decision is acquired. The information contained in the document must then be examined according to the reliability and credibility criteria referred to in Article 192 of the Italian Code of

Criminal Procedure and the outcome of such examination will determine its value as evidence. In other words, in the presence of documentary evidence, the judge must follow a logical path that starts from the information contained in the document and which, based on an assessment of the document's reliability/credibility, comes to a specific conclusion as to its value as evidence, i.e. determines whether the facts described in the documents occurred or not.

The logical corollary of the above is that the type of evidential result that can be drawn from a document varies according to the nature of the information it contains. Such information may be a past event (known directly by the author of the document or reported by a third party), an opinion (of a factual or technical nature; of the author of the document or of a third party) or public rumors. Of course, the evidential result obtained at the end of the assessment process cannot exceed the actual information contained in the document. The issue of consistency between the information contained in the document and the evidential result is especially paramount where the information takes the form of an opinion. In that case, even if the information is found on assessment to be credible, its nature as opinion cannot be surreptitiously turned into a fact. We have taken some examples from the vast amount of documents acquired to help clarify the concepts just expressed:

- if the document reports ***a fact***, for example a meeting between individuals, a statement made or an action carried out by someone, its value as evidence, after successfully passing the reliability assessment, will be as proof of the fact that the meeting did indeed take place, the statement was made or the action was carried out. Consider for instance the many emails reporting on meetings and describing the topics discussed, the participants and the opinions expressed by each. These facts may be considered proven as reported if there are no doubts as to (i) the reliability of the author of the email, (ii) the correctness of his/her perception of the events and, if the facts were not witnessed directly by the writer of the email, (iii) the reliability of the sources from which the writer received the information. We can give two examples in which application of the reliability assessment leads to different results:
  - on November 15, 2010 Roberto Casula wrote to Claudio Descalzi that he had attended a meeting with the Attorney General in which *"after an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion".* The reliability assessment requires verifying that Roberto Casula did not deliberately communicate false information or did not misunderstand the outcome of the meeting and that there is no conflicting evidence showing that the events happened differently from what was reported in the email. In this case, the assessment is positive, since Roberto Casula had personally attended the meeting, there are no reasons to assume that he reported false information to his manager and the subsequent development of the affair confirmed what was reported in the email. Accordingly, in terms of evidential result, this document can be considered to be a proof of the fact that, on November 15, 2010, a meeting was held at the office of the Attorney General at the end of which the seller accepted the offer of $ 1.3 billion;
  - on February 28, 2011 Guy Colegate wrote to Peter Robinson and John Copleston: [English in source text:] "*the Chief is back from his high plains slaughtering and will be in ABJ today - he says he spoke with GU and AG yesterday in Lag and NNPC is sorted".* [Translation resumes:] When assessing the document, in addition to the points mentioned above, the reliability of the source used by the author of the email to report a fact which he had not himself experienced must also be checked. In light of the above, the relationships between the parties to the email allow us to conclude that Guy Colegate conveyed a piece of information that was truly known to him, namely the fact that Dan Etete had stated that he had been in Abuja the day before and had resolved the issue with the NNPC after a meeting with the President and the Attorney General. The question remains, however, as to whether the evidential result also includes evidence (i)

that Dan Etete's intervention with the public officials actually took place and (ii) that this intervention was what made it possible to overcome the issues raised by the NNPC. Application of the assessment criteria just mentioned requires that the answer to at least the second question be certainly negative. Indeed, as we will discuss below, Dan Etete cannot be considered a reliable individual and, most importantly, other elements of trial evidence show that in February 2011 he had no such power to influence the President's and the Attorney General's decisions. Moreover, negotiations between the oil companies and the NNPC also continued during March 2011 without any sudden change of direction by Nigerian ministerial offices. Consequently, the assertion set out in the document - that is, the alleged pressure of public officials on NNPC following Dan Etete's request - cannot be considered proven;

- if the document sets out ***an opinion***, be it factual or technical, its only evidential value is to show that the author of the document had a specific belief and communicated it to the recipient of the document. On the other hand, it would be incorrect to rely on the subjective evaluation contained in the document and, by a leap of logic, even before a leap of law, to turn the proof of an opinion into the proof of an actual event. For example:
  - on July 16, 2010 Guy Colegate wrote an email to Peter Robinson and John Copleston discussing the Government's letter of July 2, which had confirmed 100% ownership of the license to Malabu and commented "*this letter is clearly an attempt to deliver significant revenues to GLJ as part of any transaction".* Applying the principles expressed above to the document at issue, it is clear that the only evidential result that can be drawn from it is the fact that Guy Colegate had interpreted the Government's letter as an attempt to "*deliver significant revenues to GLJ".* On the other hand, it would be misleading to transform the account of Guy Colegate's opinion into evidence that the purpose of the *letter* was indeed to "*deliver significant revenues to GLJ";*
  - on December 16, 2010 Vincenzo Armanna informed Roberto Casula that the Attorney General had proposed a new contractual arrangement and closed his email by commenting "*in summary, the overall transaction is identical".* This email sets out both a fact, i.e. the Attorney General's proposal, and Vincenzo Armanna's personal opinion that the new transaction was in substance identical to the previous one. Therefore, the evidential result reached differs according to which part of the email is examined: the first part proves the fact that the Attorney General proposed a new agreement; the second part, however, merely proves Vincenzo Armanna's opinion that the Attorney General's proposal would not have changed the substance of the agreement. However, the evidence of the author's opinion cannot be turned into an objective fact and held to demonstrate that the new structure of the agreement was effectively identical to the previous one;
- if the document reports ***public rumors,*** it cannot constitute evidence, pursuant to Article 234(3) of the Italian Code of Criminal Procedure. However, the reference to public rumors may be included in a document which has a wider scope. In this case, strict application of the abovementioned disqualification as evidence would prevent examination of the other information contained in the document. In these cases, the entire document will be acquired as evidence, with the provision that the portion reporting public rumors cannot be used. For example:
  - on August 22, 2010 Peter Robinson wrote a long email to Malcolm Brinded and, among other things, reported on the *"in country view"* on the reasons that were prompting the President to close the deal. Clearly, this part of the document represents a public rumor and, therefore, the information provided therein cannot be used, pursuant to Articles 234(3) and 194(3) of the Italian Code of Criminal Procedure.

[3 illegible signatures]

Lastly, it must be pointed out that many documents were originally written in English and were only translated for use in the hearings, during the witness examinations.
As regards the need to translate documents, it should be noted that Article 109 of the Italian Code of Criminal Procedure, which provides that "*the documents of the proceeding shall be in Italian*", was interpreted by the Court of Cassation to mean that translation into Italian was required for acts involving the taking of verbal statements, such as the transcripts of the hearing minutes, whereas for documents drawn up in a foreign language, it is up to the party intending to use them in the proceedings to request or arrange for their translation.
For this reason, the parties to these proceedings submitted the translation into Italian of most of the documents (or, in any event, of those deemed most significant in support of their claims) that were originally in English.

3.2 The history of OPL 245: from April 24, 1998 to July 26, 2007

April 24, 1998 Malabu Oil and Gas Limited was founded;

April 29, 1998 the Ministry of Petroleum, headed by Dan Etete, awarded the OPL 245 license to Malabu by letter signed by W. F. Green, Head of Petroleum Resources, on behalf of the Minister of Petroleum Resources. The award was subject to the following conditions:

- payment of application fees of 50,000 naira and bidding fees of $ 10,000 for the block;
- payment of $ 20 million for the signature bonus within 30 days;

award under the "*sole risk* " arrangement, but with the understanding that the Government reserved the right to acquire a share at any time during the term of any subsequent oil mining leases;
compliance with the Petroleum (Drilling and Production) Regulations of 1969 and additional conditions (the company had to be a duly incorporated Nigerian company; foreign participation in the blocks could not exceed 40%; the CEO, whether foreign or Nigerian, had to be an employee of the company; the company was not allowed to enter into joint venture agreements with foreign companies engaged in exploration and production activities in the country);

June 8, 1998 the Nigerian President Sani Abacha died;

24 May 1999 Malabu sent to the Government (a) two cashier's checks totaling $ 2.04 million partially covering the $ 20 million signature bonus; (b) a check for $ 10,000 covering the bidding fees;

May 29, 1999 the new government led by Olosegun Obasanjo was sworn in and Christopher Kolade was appointed to chair a committee tasked with reviewing the contracts, concessions and appointments made by the previous Government;

June 3, 1999 Malabu sent the DPR a bank check for 50,000.00 naira as payment for the application fee*;*

March 9, 2000 the Ministry of Petroleum sent Malabu a letter informing it that the license would not be revoked: *"I am required to inform you that block 245 assigned to Malabu Oil and Gas is not among the blocks that have been revoked as <u>the block was granted before January 1999</u>. You are therefore free to proceed with the development plans in compliance with the provisions of Petroleum Decree no. 51 of 1969".*

March 30, 2001 Malabu entered into a commercial agreement with SNUD and sold it 40% of the rights to OPL 245 in exchange for SNUD's agreement to pay the remaining signature bonus of $ 18 million

to the Government.

March 19, 2001 Malabu informed the Ministry of Petroleum of the progress of negotiations with Shell for the assignment of 40% of the license and announced Shell's intention to pay the remaining portion of the signature bonus on behalf of Malabu;

March 30, 2001 the "Farm-in Agreement" by which Malabu sold 40% of OPL 245 to Shell was concluded;

April 6, 2001 SNUD delivered a check for $ 17,970,000 in settlement of the 1998 signature bonus, to be cashed only upon effective assignment of 40% of the license;

April 9, 2001, the Ministry of Petroleum informed Malabu: *"as a result of your compliance with Articles 1(2)(a) and 1(2)(d) of the Petroleum (Drilling and Production) Regulations of 1969, and the receipt of your cashier's check for the signature bonus and the reserved value of the block, I am writing to inform you that as of this time you may mobilize your resources to commence operations in the awarded OPL";*

May 15, 2001 the *Oil Prospecting License* no. 245 (effective from April 29, 1998) was issued to Malabu;

May 24, 2001 the Ministry of Petroleum sent Malabu the title deed for OPL 245;

July 2, 2001 the Government, by letter from the Ministry of Petroleum, revoked Malabu's license: *"Dear Sir, we refer to our letters P1.BAL/3717/S.399/V.1/3 of April 29, 1998, awarding OPL 245 to Malabu, and PLBAL/3717/S.399/Vol/Temp/5 of May 24, 2001, forwarding the title of ownership to the OPL to your company. I have been instructed to inform you that the award of OPL 245 to Malabu has been cancelled and the title issued has been revoked. We therefore request that you kindly return the block titles in your possession to the Department of Petroleum Resources";*

April 29, 2002 the Office of the Presidential Adviser on Petroleum and Energy invited SNUD to participate in the tender for the OPL 245 block, confirming that the first award to Malabu had been revoked;

May 23, 2002 SNUD was selected as the new contractor to join NNPC in the PSC regarding OPL 245, under the condition that it would pay a signature bonus of $ 210 million;

September 10, 2003 Malabu served the Government and SNUD with a writ of summons before the Federal High Court of Abuja appealing the July 2, 2011 revocation of its license;

October 14, 2003, in the proceedings lodged, the Government filed a reply brief signed by Akinlolu Olujinmi SAN, the General Attorney in office, claiming that Malabu had not paid the signature bonus within the prescribed time limit and that the legal action had been filed after the three-month deadline established by Article 2(a) of the Public Officers' Protection Act (POPA);

December 22, 2003 SNUD and NNPC signed a PSC. Under Point 2) of the PSC, the
9 contractor was to pay a $ 210 million signature bonus: one million was paid at the time of signing, and the remaining $ 209 million was deposited into an escrow account;

May 27, 2005, the Government filed a brief amending that of October 14, 2013, in which it only relied

on the argument that the action brought by Malabu under the POPA was time-barred, implicitly waiving its defense concerning the late payment of the signature bonus;

March 16, 2006, the Federal High Court of Abuja (Justice Nyako) issued its decision, which accepted the objection raised by the FGN and declared that the action brought by Malabu under the POPA was time-barred. The decision stated, *"In the case at hand, the Plaintiff, in paragraph 14 of its Writ of Summons, stated that by notice dated July 2, 2001, it was informed that the Oil Prospecting License had been withdrawn and that the title deed issued had been revoked. The plaintiff filed a lawsuit on that date. The Plaintiff did not invoke malice and bad faith. The proceedings were initiated in September 2003. With the entry into force of the Public Officers' Protection Act, since the second Respondent was a public official like the other Respondents, a dismissal was ordered due to their performance of public functions, the Plaintiff should have brought an action before the Court within 3 months of the occurrence of the events on which the action is based [...]. Accordingly, I find that this action, being institutional in nature, is governed by the Public Officers' Protection Act, and since the Plaintiff has not brought this action before the Court within the given timeframe, it is time-barred and, as such, this Court has no other option than to dismiss it";*

March 31, 2006, Malabu appealed the court's decision (appeal no. CA/A/99/M/06), challenging the conclusion that Malabu's claim could not be upheld by reason of the POPA;

November 30, 2006 the Government entered into a Settlement Agreement with Malabu providing for the re-awarding of the block to the company: "*1) In the spirit of an amicable settlement and without any admission of liability for any alleged wrongful, unlawful, unjust or any like conduct, the FGN agrees to re-allocate the oil block known as and covered by Oil Prospecting License 245 (herein called OPL 245) to MALABU within 30 (thirty) days from the date of this Agreement; 2) The signature bonus in respect of OPL shall be the sum of US$ 210,000,000 million (two hundred and ten million US dollars) payable by MALABU to the FGN. In this regard, the FGN acknowledges that MALABU had hitherto paid the sum of US$ 2,040,000 (two million and forty thousand US dollars) to the FGN in respect of this Oil Block, which sum shall be deducted from the aforesaid signature bonus, leaving a balance of US$ 207,960,000 (two hundred and seven million nine hundred and sixty thousand US Dollars) to be paid by MALABU to the FGN within 12 (twelve) months from the date of the reinstatement of OPL 245 to MALABU. 3) The parties agree that MALABU shall, if it so desires, be at liberty to assign OPL 245 or any part thereof in accordance with the provisions of the Petroleum Act. 4) Pursuant to this Agreement and in consideration of the foregoing, MALABU forever and absolutely discharges and releases the FGN, its Officers, Agents, Agencies and Privies howsoever described or any person acting for and/on its behalf, from all claims and demands which MALABU has or may have, and from all actions, proceedings, obligations, liabilities, losses and damages brought, made, incurred, sustained or suffered by MALABU now or in the future relating to, arising from or howsoever connected with the withdrawal or revocation by the FGN from MALABU of OPL 245. 5) Immediately upon the execution of this Agreement, MALABU shall withdraw, discontinue and terminate its Appeal no. CA/A/99/M/06 now pending against the FGN and its Agencies at the Court of Appeal, Abuja. MALABU shall cause the requisite evidence of this withdrawal/discontinuance to the Solicitors to be delivered to the FGN within 72 hours of the same being withdrawn or discontinued";*

December 1, 2006 the Petroleum Minister informed SNUD of the revocation of the OPL 245 license and informed the company of the Government's willingness to award it a replacement block with comparable mining potential: "*Following a legal experts' analysis of the Respondents' prospects in the appeal by Malabu Oil and Gas, the Government has decided that the best solution in order to avoid exposure to significant damages is an out-of-court settlement. Therefore, Shell is to forgo block 245 to*

Malabu, while Government provides a mutually acceptable substitute of comparable potential against the $ 210 million which Shell has already paid or will be expected to pay as signature bonus";

December 2, 2006 the Minister informed Malabu of the reinstatement of 100% of the OPL 245 license, providing that: *"MALABU OIL AND GAS LTD is required and will have to pay a new signature bonus of two hundred ten million US dollars (US$ 210 million), from which the amount of two million dollars (US$ 2 million) previously paid to the FGN's account in relation to a different oil block will be deducted. The tax conditions of the 2005 PSC will apply to this reinstatement. Malabu must secure its own technical partners and meet the conditions of the award within 90 days thereof [...] MALABU OIL AND GAS LTD shall immediately be able to exercise all rights in connection with and arising from the return of the block (OPL 245) and shall be free to assign, make commitments or negotiate under its restored rights in OPL 245, in whole or in part, with any Third Party in compliance with the applicable laws in Nigeria, including, by way of example, obtaining all necessary consents and approvals";*

January 16, 2007 Malabu withdrew its appeal against the decision issued by the Federal High Court of Abuja on March 16, 2006[34];

January 23, 2007 Malabu filed a Notice of Dismissal dated January 16, 2007 terminating the dispute;

January 24, 2007 the Court of Appeal dismissed the appeal and declared the proceedings against the FGN closed;

February 3, 2007 letter from the Minister of Energy expressing President Obasanjo's wish to build a partnership between Shell, Malabu and NNPC for the exploitation of the OPL 245 block. The letter mentioned a meeting with Malcolm Brinded, who had agreed to negotiate with Malabu;

February, 23 2007 Confidentiality Agreement between Malabu and NAE concerning the assessment of NAE's possible acquisition of the exploration and production rights on OPL 245[35];

February 27, 2007 the Petroleum Minister sent a letter to Malabu indicating the time limit to pay the $ 210 million as twelve months, as provided for in the settlement agreement of November 30, 2006[36];

March 7, 2007 Eni commissioned the Risk Advisory Group to perform due diligence on Malabu;

March 13, 2007 Shell sent a letter to Eni inviting Eni not to continue negotiations with Malabu in light of the pending disputes[37];

April 3, 2007 Shell executive Basil Omiyi wrote: *"I went with Diezani Alison-Madueke, who has some family relationship with Etete, to meet Dan Etete (Malabu) yesterday April 2, 2007, essentially to find out what he had in mind, what other issues were in the mix, as well as to find out", this is also important, "how they interpreted the Government's stated goal of preserving Shell's current position on OPL 245";*

April 11, 2007 the Petroleum Minister sent a letter, in response to a letter from Malabu dated March

[34] Submissions attached to Oditah expert witness report, translation of ENI submissions of 1.29.2020, "general submission memorandum", Exhibit 31.
[35] ENI Submissions of 1.29.2020, "general submission memorandum", Exhibit 33.
[36] Eni Submissions of 9.17.2018, Translation of ENI Submissions of 1.29.2020, "general submission memorandum", Exhibit 34.
[37] ENI Submissions of 1.29.2020, "general submission memorandum", Exhibit 36.

12, to confirm that the FGN would have no back-in rights[38];

May 29, 2007 Umar Yar'Adua was elected President of Nigeria;

July 26, 2007 SNUD brought an action against the FGN before the ICSID for the revocation of the OPL 245 license

3.3 The lawfulness of the award of OPL 245 to Malabu and the conflict of interest

3.3.1 The arguments of the parties

The issue of the lawfulness of the original award to Malabu arises because of the conflict of interest in which Dan Etete found himself at the time the license was issued. Indeed, in 1998 Etete was both Petroleum Minister and the hidden owner of Malabu, which clearly meant he was at the same time the grantor and recipient of the mining license. According to the Prosecution's, this situation constituted a violation of the Public Officials' Code of Conduct contained in the 5th Annex to the 1979 Constitution. Still according to the Prosecution, this state of unlawfulness lasted until 2011, and consequently the negotiations carried out by the oil companies and the subsequent Resolution Agreement were also unlawful;

The point we need to clarify is what kind of flaw, according to Nigerian law, affects an act performed under a conflict of interest. We should therefore ask ourselves whether this act is entirely invalid or whether, on the contrary, it can be annulled and therefore it is left to the initiative of the damaged party to seek its annulment, with the consequence that if the damaged party fails to take action, the flaw of the act can be cured. If the latter situation applies, it is necessary to ascertain whether the Nigerian government took legal action claiming that the act was flawed or it failed to take action or otherwise allowed the unlawful act to be cured.

Proceeding in order, expert witness Oditah explained: "*the consequence, in the case of a transaction that is flawed by a conflict of interest, is that such a transaction can be annulled, but is not invalid. In this context, a transaction is invalid when it has no legal value. And it is invalid from the outset. If, on the other hand, a transaction is annullable, for example a transaction flawed by a conflict of interest, the transaction remains valid but is subject to possible future annulment. However, if the transaction is not annulled, it actually remains valid for all purposes. Thus, to give an example, if the director of a company acquires the asset of a company through another company, in which he/she holds a share, such transaction is annullable. However, transactions flawed by a conflict of interest may be confirmed or affirmed by the beneficiary of a "transaction free from conflict of interest"* [42].

In support of Oditah's approach, we propose a case-law ruling mentioned in the reply report by expert witness Segun, which cites the *Okwudili Ugo vs Obiekwe & Anor* case[39] [40], in which the Supreme Court of Nigeria held that *a contract or other transaction that is induced or tainted by fraud is not null and void but only annullable on the initiative of the injured party and the transaction remains effective until it is declared to be null*.

With regard to the Government's conduct, it should be recalled that the revocation order of July 1, 2001 provided no detail of the reasons for the decision: "*[...] the award of OPL 245 to Malabu has been annulled and the title issued has been revoked".* As stated above, Malabu then took legal action and

[38] Eni Submissions of 9.17.2018, Translation of ENI Submissions of 1.29.2020, "general submission memorandum", Exhibit 39.

[39] Hearing of May 15, 2019, page 10.
[40] (1989) LPELR-3319 (SC);

the Government joined the proceedings on October 14, 2003, filing a brief in which it defended itself on two grounds:

1. the first - later waived since it was never submitted to the court - was the fact that Malabu had not paid the signature bonus within the thirty-day period stipulated in the award letter;
2. the second was that Malabu had filed its suit after the three-month limit from the notice of revocation and that, therefore, the action was time-barred pursuant to the Public Officers' Protection Act (POPA).

No mention was made of the conflict of interest relating to the public office held by Dan Etete at the time the license was awarded.

In order to demonstrate that the issue of conflict of interest had actually been raised, the Public Prosecutor referred to statements made by a government official in an article published by a news agency on August 24, 2002, which reported an interview with Tungi Oseni: "*Lagos, August 23, 2002. The Nigerian government said Friday that it had revoked a license, awarded to Malabu Oil & Gas, because the concession represented an improper gift to Dan Etete, oil minister under the government of former military dictator Sani Abacha. Etete owns Malabu and License 245 was improperly awarded without competitive bidding, a competitive auction, while Etete was a government official. Tungi Oseni, the Government's main advisor on oil issues, said in a statement on Friday. This means the license could be revoked, Oseni said. Malabu is currently putting legal and legislative efforts in place to have this license returned. The government reissued the license to Shell, which agreed to a signature bonus and reserved the charge of $ 200 million, Oseni continued"*[41].

At the Public Prosecutor's request to comment on the value of this document, expert witness Oditah replied: *"This is the first time I see this document, but it is very useful, because it shows that the Government, if what is written here is true, knew about the conflict of interests, and I therefore assume that in 2003, that is, when Malabu filed its lawsuit, if the Government had wanted to, it could have raised the issue of the conflict of interests. But since it did not do so, I think that this constitutes an affirmation, as well as the renunciation to raise the issue of the conflict of interests. I also want to state that the principle of conflict of interest is in actual fact not an absolute principle, it is a principle designed to protect the beneficiary. Therefore, since the beneficiary has not raised an issue of conflict of interest, this constitutes confirmation that such conflict of interest does not exist".*

Moving from the material to the procedural aspect, the expert witness reports pointed out that Paragraphs 12 and 15(l)(d) of the *Code of Conduct* - i.e., the regulatory source governing the regime of the act adopted by a public official who acted in conflict of interest - set out a specific procedure to identify this type of unlawful act. Specifically, a complaint must be filed with the Code of Conduct Bureau and the public official must be tried before the Code of Conduct Tribunal. Under Nigerian law, this Tribunal is the only constitutionally empowered authority to rule on violations of the Code of Conduct.

Lastly, the expert witnesses have pointed out that the Government had, on several occasions, issued acts confirming the first award to Malabu, thus acting in ways incompatible with any intention to claim a conflict of interest. In this light, expert witness Oditah said, "*in my opinion, the Government had eight different opportunities to cancel the award to Malabu, but instead actually confirmed it. The first opportunity was on May 25, 1999 during the Abdulsalami government. On that day, Malabu made an advance payment of the $ 2 million signature bonus, for which the Government issued a receipt. On February 2, 2000, Malabu wrote to the Government reporting that it had conducted two-dimensional seismic investigations, and asked the Government for confirmation that it could go ahead with the activities, hence confirmation of the validity of the award. On March 9, 2000, the Government*

[41] hearing minutes of 6.12.2019, page 28.

[3 illegible signatures]

responded to Malabu by confirming the validity of the license and authorizing the company to continue its oil activities. The third occasion during which the Government could have cancelled the award was on March 30, 2001, when Malabu sold 40 percent of its stake to Shell. The fourth occasion was on April 6, 2001, when Shell paid the Government the balance of the signature bonus, in the amount of $ 17.96 million, which the Government accepted. The fifth occasion was on April 9, 2001, when the Government asked Malabu to start oil operations on the block. The sixth was on April 15 of that year, when the Government issued the license for OPL 245. They confirmed that May 15 was the date of the award of the license to Malabu. And the seventh occasion was on May 24, when the Government issued the deeds, the documents related to the license, to Malabu. The last occasion was in the period between 2003 and 2006, during the dispute that Malabu initiated after its license was revoked. The purpose of the suit brought by Malabu was to obtain a declaration that the revocation was void. At the time, the Government could have blamed Malabu for not meeting the terms of the contract, on account of the conflict of interest. But it did nothing of the like".

3.3.2 Conclusions

The above account of the facts allows us to confirm that the type of unlawfulness characterizing the act adopted in conditions of conflict of interest is that of voidability. Expert witnesses Oditah and Segun's arguments are acceptable because they have indicated the principles of Nigerian law regulating the matter in detail, referring to statutory sources and legal precedents. In the face of this, neither the Prosecution nor the Civil Party have made any counter-arguments.

It is therefore necessary to consider whether the Government's administrative and legal actions to revoke Malabu's license were aimed precisely at asserting the existence of the conflict of interest. In this regard, it is easy to note that neither the revocation order nor the subsequent trial documents made any reference to Dan Etete's role at the time the license was issued to Malabu. Specifically:

- the **Statement of defense** of October 14, 2003 (the Government's brief challenging Malabu's suit for annulment of revocation of the license), claimed that (i) Malabu had failed to comply with the conditions of the issuance of the license set out in the 1998 award letters, namely, it had failed to pay the amounts requested within the thirty-day period set forth therein; and (ii) Malabu's action had to be deemed time-barred under Section 2(a) of the POPA.
- in the **Notice of preliminary objection** of May 23, 2005, the Government announced that in court it would raise the contention that Malabu's suit was time-barred;
- in the **Amended Statement of Defense** of May 27, 2005, the Government merely argued that Malabu's lawsuit was time-barred under the POPA.

We cannot accept the Public Prosecutor's argument that the reasons underlying the revocation emerge from the public statements made by Tungi Oseni. Indeed, it is evident that a simple news agency article with an interview with a ministerial official cannot have the same legal effect as a formal administrative act or the statement of appearance in the proceedings signed by the Attorney General of the time. Indeed, as expert witness Oditah pointed out, the news agency report cited above confirmed that the Government had considered the issue of conflict of interest but, nevertheless, had not formally raised the issue.

In light of the above considerations, we must conclude that the conflict of interest that existed at the time of the award gave rise to a type of unlawfulness that the party concerned - i.e., the Federal Government - never raised using the required legal procedures. On the contrary, in the twenty years following the award, the Government adopted inconsistent measures, most of which actually confirmed Malabu's rights. As will be seen more clearly in the following pages, the last and clearest confirmation measure - adopted by the democratic government led by Obasanjo - was the Settlement Agreement of November 30, 2006. In the months following the Settlement Agreement, the Minister of Energy also

wrote to Malabu confirming the irreversibility of the award: "*The only recognized licensee of the OPL 245 license is Malabu Oil and Gas Limited and not SNUD or anyone else [...] The position of the Nigerian Government is that the Settlement Agreement confirmed in the letters to Shell and Malabu, respectively dated December 1 and 2, 2006, still enjoys the trust and commitment of the Government of Nigeria, and is irreversible"*[42].

The consequence of the foregoing is that in 2009 - the year that the count of indictment identifies as the beginning of the timeframe of the alleged offense - any possible legal aspect relating to Dan Etete's original conflict of interest had become irrelevant and no legal issue could be raised any longer about this specific aspect.

3.4 The 2006 Settlement Agreement

3.4.1 The Public Prosecutor's account of the events

According to the Prosecution, the 2006 Settlement Agreement was the result of an unlawful arrangement for the payment of bribes between Dan Etete and Attorney General Bajo Ojo. The Prosecution alleges that with the Settlement Agreement the Government renounced without any reason the lawsuit which it had won in the court of first instance and recognized in full the claims made by Malabu without receiving any benefit in exchange. This reconstruction of the event is found in the count of indictment, which states that part of the sum paid by NAE and SNEPCO in execution of the Resolution Agreement was transferred "*to Former Attorney General Christopher Bajo Oyo, for his role in transferring the license to Malabu on 11.30.2006 and his subsequent activities as 'adviser'"*;

The actual payment of the money to Dan Etete was confirmed by Bajo Ojo, who, however, specified that he had received the amount as partial settlement of his fees for the professional activity he had carried out for Malabu since 2009.

PUBLIC PROSECUTOR – *Did you receive this money?*
INTERPRETER - *No. only part of it.*
PUBLIC PROSECUTOR – *Can you be more precise?*
INTERPRETER - *He says that he only received 10 million and the rest is still unpaid and he hopes to receive the remaining amount.*
PUBLIC PROSECUTOR – *Have you filed lawsuits to recover this amount?* INTERPRETER - *Not yet, he still hopes that it can be resolved without a lawsuit.*
PUBLIC PROSECUTOR – *Do you remember when you received this $ 10 million?*
INTERPRETER - *He thinks December 2010, he is not sure.*
PUBLIC PROSECUTOR – *Yes. There is actually a transfer of $ 10 million from a company called Rocky Top to your personal bank account, is this the transfer you are referring to?*
INTERPRETER - *Yes, that's the one.*
PUBLIC PROSECUTOR – *So, why is the name of the transferring account Rocky Top and not Malabu? Who is Rocky Top?*
INTERPRETER - *He says that he did not know, in fact he called him to confirm that this was indeed the payment in question and the answer was "yes".*
PUBLIC PROSECUTOR – *And why was it transferred to your personal account and not to the law firm's account? Because I think you do have a law firm.*
INTERPRETER - *Because at that time the law firm did not have an offshore account to receive the payment.*
PUBLIC PROSECUTOR – *But it had an account in Nigeria, yes? The law firm, that is.*

[42] Eni Submissions of January 29, 2020, *general submission memorandum*, Exhibit 39

INTERPRETER - *It did not have a foreign account, he says it was an account that only accepted naira.*

According to the Prosecution, the fact that the re-award of the license to Malabu in 2006 was the result of an unlawful agreement was confirmed by the testimony of Jonathan Benton, who reported a conversation he had with Attorney General Adoke Bello.

INTERPRETER -*[...] he remembers that Adoke said that President Obasanjo had made a mistake but there was no turning back now. He also suggested that as we can all see the OPL 245 matter was a high-level bribery issue, but by this time in the country the thing had been authorized and there was nothing from a legal standpoint that could be done anymore.*
PUBLIC PROSECUTOR – *Did he refer to the fact that there was the intention of the political leadership not to have this investigation?*
INTERPRETER - No,precisely reporting Adoke's words... Adoke referred directly to Obasanjo and said that these decisions had been made from above and nothing more could be done
PUBLIC PROSECUTOR – *No, I think there was a... Obasanjo was President ten years earlier, that's the problem. So I'd like to point out that you stated, I have to read the excerpt... half a line more because otherwise we would not understand [...] "He began to talk about OPL 245, he started from the oldest events and the fact that the indigenous legislation gave local companies the possibility of obtaining licenses, that Obasanjo had re-awarded the license to Malabu and that this had been done not in good faith. He went on to talk about all the other steps of the story... ", do you want me to read the whole thing?*
PUBLIC PROSECUTOR – *So, "He said that the House of Representatives' report, which has been filed with the Court, had created many problems for him and also Global Witness had caused him many problems. I said that the whole thing seemed absurd to me, that I didn't understand how someone could pay less than 10 percent of the value and get all the rights on an oil block. I told him: you are a lawyer, you work in the UK, this doesn't make sense. At that point, he lowered his voice, he looked disapprovingly at the notes I was taking, and said: 'We know that all of this is improper'. I replied by repeatedly using the word corruption, and he said that he agreed with me. He reminded me that he had helped us in the past, 'But now', he said, 'This thing goes straight to the top' and he will never permit an investigation on OPL 245. Then he walked me to the elevator and said 'there is no way ... the top will never allow it'. So I recalled these statements to clarify which "top" we are talking about, whether the leadership of ten years earlier or the current one. Please, can you therefore say...*

3.4.2 The defenses' account of the events

According to the defenses, the Government signed the Settlement Agreement of 2006 because it was likely to lose the appeal despite having won the first instance judgment. To support this argument, the defenses pointed out that the revocation order of 2001 was null and void because it was adopted in the absence of reasons and in breach of the required formal procedures.
Oditah's expert witness report points out that under the First Schedule of the Petroleum Act of 1969 a license can be revoked only in two cases:

- under paragraph 23, it can be revoked in the event of a change in the nationality of the licensee/OPL holder or of the person or entity directly or indirectly controlling such holder;
- paragraph 24 indicates certain violations, such as failure to conduct operations continuously and in a businesslike manner, failure to comply with any provision of the Petroleum Act or the special conditions of the OPL license granted, or in the event of failure to pay due rent or royalties.

None of these violations had occurred on July 2, 2001, and, in any event, no allegations had been made in the revocation order.
In addition, from a procedural standpoint, paragraphs from 25 to 27 of the First Schedule of the Petroleum Act prescribe the following:

a. Paragraph 25: *The Minister shall inform the licensee of the grounds on which the revocation is contemplated and shall invite the licensee to make any explanation if he so desires*.
b. Paragraph 26: *If the Minister is satisfied with the explanation, he may invite the licensee to rectify the matter complained of within a specified period*.
c. Paragraph 27: *If the licensee makes no or no sufficient explanation or does not rectify the matter complained of within the specified period, the Minister may revoke the license.*

In addition, following his inauguration on May 29, 1999, President Obasanjo had appointed Christopher Kolade to chair a committee tasked with reviewing the contracts, concessions and appointments made in the previous years. In compliance with the recommendations of this committee, the DPR, by notice dated July 8, 1999, ordered the cancellation of thirty-one OPLs, which, however, did not include license 245.

As mentioned above, following the lawsuit brought by Malabu, the Government filed its appearance in the proceedings, claiming that Malabu had failed to pay the signature bonus within thirty days and that its suit was time-barred because it was brought after the three-month deadline indicated in Article 2, letter (a) 1 of the Public Officers' Protection Act (POPA). The Government did not repropose its first claim in its new brief submitted on May 27, 2005, where it based its defense only on the argument that Malabu's claim was time-barred. By decision dated March 16, 2006, the Federal High Court of Abuja upheld the Government's defense, declaring that the action brought by Malabu was time-barred as it had been lodged after the time limit established by the POPA. On March 31, 2006 Malabu appealed the decision of the Federal High Court, challenging the Court's conclusion that Malabu's claim was governed by the provisions of the Public Officers' Protection Act.

According to the defense experts, Malabu's arguments would have been upheld on appeal since they were based on sound case law precedents that precluded the POPA from being applicable to the case at issue. Specifically, in the FGN vs Zebra Energy Ltd case, the Government had awarded OPL 248 to Zebra Energy in exchange for a signature bonus of $ 20 million to be paid within thirty days. Zebra Energy paid $ 1 million and was granted various time extensions to pay the remaining amount. Nevertheless, on July 8, 1999, the Government had revoked the license due to the failure to pay the originally established amount. In response to the company's suit, the Supreme Court had affirmed that the parties had signed an intervening agreement which had extended the deadline for payment to July 15, 1999. One of the arguments raised by the Government in its defense was that the company's suit breached section 2(a) of the POPA. However, the Supreme Court rejected the objection, stating that Section 2(a) of the POPA does not apply to cases relating to breach of contract. In essence, the Supreme Court's ruling in the *FGN vs Zebra Energy Ltd* case established that:

- the extension of the deadline for paying the balance of the signature bonus was binding on the Government;
- the award of an OPL license and subsequent acts extending the payment deadline were governed by a contract;
- Article 2 of the POPA does not apply to breach of contract.

Moreover, as pointed out by expert witness Oditah, the Government's decision to abandon the judicial dispute and pursue an amicable settlement with Malabu was also suggested by an important law firm: "*it was the government itself that, in its brief filed in the Icsid arbitration, reference number ARD/07/18, stated that it had received legal advice from law firm Babalakin & Co., in particular the brief was filed by lawyer Aleghi (phonetic), Senior Advocate, as well as future President of the Nigerian Bar. Thus the Government knew that Shell, too, by reason of the judgment issued by the Court in*

[3 illegible signatures]

connection with the Zebra case [...]"[43].

3.4.3 Conclusions

The evidence set forth demonstrates that the Settlement Agreement was lawfully adopted by the democratically elected Nigerian Government. The reasons for this agreement are both the probable outcome of the ongoing legal dispute and, most likely, the Government's assessment of the political balance of the country in view of the forthcoming presidential elections in 2007.

As to the first point, it should be recalled that the revocation of an oil concession must comply with the substantive and procedural rules provided for in Articles 23-29 of the Petroleum Act. Unquestionably, the revocation of July 2, 2001 did not comply with any of these legal requirements, as it consisted of a simple communication made without allowing the license holder to put forward any arguments and without providing reasons for the decision. Moreover, the case law submitted by the defenses shows that Justice Nyako's ruling was at least inconsistent with the position upheld by the Nigerian Supreme Court in similar cases.

This point has been discussed extensively during the trial and therefore requires in-depth discussion. As we have seen, on March 16, 2006, the Abuja Court, by decision signed by Justice Nyako, limited its ruling to the formal matter of the applicability of the POPA and declared Malabu's action time-barred. The decision was based on a ruling of 2005 by the Supreme Court *(NPA vs. Lotus Plastics)*, which - according to the Public Prosecutor - "*established clearer and more modern lines of distinction between private autonomy and the exercise of public powers"*. In the *NPA vs. Lotus Plastics* decision, the applicability of the statute of limitations was distinguished as follows: *(i)* in matters relating to breaches of contract, the applicable statute of limitations is the ordinary one; *(ii)* in the event that the judgment concerns conduct carried out in the performance of statutory functions, the special limitation regime established by the law, if any, applies. Given this classification, Justice Nyako concluded that the Malabu/FGN dispute fell under the second case, and thus was subject to the special statute of limitations under the POPA.

To better understand this decision, we shall first analyze the *NPA vs. Lotus Plastics* ruling. The issue was addressed quite clearly by the Casula defense, and was not specifically rebutted by the Public Prosecutor. We report here an excerpt of the brief summarizing the case that resulted in the precedent cited by Justice Nyako.

In 1993, the company Lotus Plastic Ltd. imported a bus from India to Nigeria. The vehicle was transported by sea to the port of Lagos, where the importer requested that it be stored by the Port Authority at its own expense i.e. by Nigerian Port Authority Plc (NPA) in one of its warehouses. The vehicle went missing, but was retrieved a few weeks later (on May 26, 1993) badly damaged, in a warehouse owned and operated by the NPA.

By a writ of summons of April 10, 1996 (almost three years after the events in question), Lotus Plastic sued the NPA, amongst other defendants, in the Federal High Court of Lagos, claiming damages.

In its defense, the NPA relied also on the application of Section 72(1) of Port Decree No. 74/1993, which imposes a 12 month limitation period from the event's occurrence for instituting proceedings against the NPA or an employee of the company in relation to conduct [English in source text:] "in pursuance or execution or intended execution of any enactment or of any public duty or authority". [Translation resumes:]

The defendant requested a declaration to have Lotus Plastic's action statute-barred pursuant to this legislative provision. Lagos Court allowed the defendant's application and declared the action statute-barred.

[43]Hearing minutes of 5.15.2019, page 34.

[3 illegible signatures]

Lotus Plastic appealed to the Lagos Court of Appeal, which set aside the judgment at first instance, ruling that the facts sub judice pointed to a contractual relationship and that, consequently, the short statutory limitation regime provided for by Article 72(1) Port Decree did not apply. The NPA appealed to the Supreme Court.
The Supreme Court was asked, among other things, to decide whether the NPA's (disregarded) obligation to keep custody of the vehicle was based on a private legal relationship between the parties under a contract of bailment, with the result that the shorter limitation period pursuant to Article 72(1) would not apply; or a public legal relationship arising between the parties based on a statutory duty on the NPA, in which case Article 72(1) would apply.
The Court held that two types of legal relationship existed between the parties in this particular case: a private relationship based on a contract of bailment which they had effectively entered into (by having delivered and received the goods, and paid the fees for this service), and also a public relationship in view of the wording of Article 3(1) and (2) of the Port Decree, which imposes on the NPA a duty to provide, inter alia, "port services [...] in the public interest", which services include "storage of goods".
In view of this dual status of the legal relationship, the Court – relying on English case law precedent according to which it is for the court to decide whether or not a special limitation regime is applicable, based on the particular facts of the case – concluded that the short limitation period provided for by Article 72(1) was applicable in this case, since the legal relationship between the parties was also founded on a statutory duty imposed by the Port Decree.

The summary of the case makes it clear that the *Lotus Plastics* case stemmed from a significantly different situation to the one of the Malabu/FGN dispute.
Thus, the key aspect of Justice Nyako's judgment was not the legal principle taken from the *Lotus Plastics* precedent, according to which the statute of limitations applicable to an action arising from a legal relationship between a public and a private entity depends on the origin of such relationship. The key point of the decision was instead the practical application of this principle to the specific case under examination, especially in view of the fact that in the *Zebra* case the Nigerian Supreme Court had dealt with a similar case to the one involving Malabu. In particular, the case-law ruling had stated that the legal relationship arising between public and private parties in the context of an oil exploration license is contractual in nature. Therefore, revocation of the license when the licensee has complied with all the conditions of the award constitutes a breach of contract and is thus subject to the ordinary statute of limitations. On the contrary, Justice Nyako's ruling had established, without justification, that the revocation of OPL 245 in 2001 had taken place in the cause of public duty, without, however, analyzing in any way the *Zebra* precedent.
Therefore, notwithstanding the inevitable procedural uncertainty that characterizes any dispute, it is evident that the possibility that Malabu might win the appeal was quite tangible. Faced with a likely loss and consequent obligation to pay compensation, the Government therefore preferred to reach an amicable agreement, obtaining Malabu's waiver of any future liability action. Indeed, one of the clauses of the Settlement Agreement reads as follows: *"MALABU forever and absolutely discharges and releases the FGN, its Officers, Agents, Agencies and Privies howsoever described or any person acting for and/on its behalf, from all claims and demands which MALABU has or may have, and from all actions, proceedings, obligations, liabilities, losses and damages brought, made, incurred, sustained or suffered by MALABU now or in the future relating to, arising from or howsoever connected with the withdrawal or revocation by the FGN from MALABU of OPL 245."*
A possible objection to the above argument could be that although on the one hand the Settlement Agreement had neutralized the risks linked to the dispute with Malabu, on the other hand it had opened the doors to a new and more frightening dispute with Shell, which had been deprived of the license

awarded to SNUD in 2002. Such an objection certainly appears well-founded if evaluated *ex post*, i.e. in light of the action taken by Shell at ICSID and the subsequent suspension of any kind of activity on the oilfield. On the other hand, from an *ex ante* viewpoint, it should be noted that, in the context of the Settlement Agreement, the Government had attempted to prevent this eventuality by offering Shell any oilfield of its choice that had a potential equivalent to that of OPL 245. Indeed, at the time it notified the revocation of the license, on December 1, 2006, the Petroleum Minister had also informed SNUD that "*the Government [will] provide a mutually acceptable substitute of comparable potential against the $ 210 million which Shell has already paid or will be expected to pay as signature bonus".*
Statements taken during the course of the trial confirmed that the government at the time was aware of the legal error made in the procedure for revoking the license. Specifically, statements from Ednan Agaev, Bajo Ojo, and Jonathan Benton revealed that President Obasanjo knew that the irregular procedure followed had compromised their possibility to revoke the license.

On this point, Mr. Ednan Agaev stated:
PUBLIC PROSECUTOR – *Did Obasanjo also say why the block had been reallocated to Etete in 2006?*
INTERPRETER - "Obasanjo said that unfortunately, unfortunately for him, he had made a mistake when he withdrew the license".
PRESIDING JUDGE – *A legal error, it seems to me. What type of error? Perhaps he specified.*
INTERPRETER - "A legal error".

Bajo Ojo stated: INTERPRETER -
"*When I became Minister of Justice, I was not aware of this matter and I was made aware of it by the Petroleum Minister, who had been urged by the President to resolve this case that had been submitted to arbitration, but the matter did not seem to be progressing, so the block was losing money precisely because this matter was not moving towards a resolution".*

The relevant passage from Jonathan Benton's testimony is the same quoted above and
8 reproduced here for convenience. However, it should be pointed out that, contrary to the Prosecutor's allegation, the reading of the testimony seems to suggest that the reference to "*high-level corruption issue"* refers to the original 1998 award and not to the 2006 Settlement Agreement.

INTERPRETER -*[...] he remembers that Adoke said that President Obasanjo had made a mistake but there was no turning back now. He also suggested that as we can all see the OPL 245 matter was a high-level corruption issue, but by this time in the country the thing had been authorized and there was nothing from a legal standpoint that could be done anymore.*
PUBLIC PROSECUTOR – *Did he refer to the fact that there was the intention of the political leadership not to have this investigation?*
INTERPRETER - No,precisely reporting Adoke's words... Adoke referred directly to Obasanjo and said that these decisions had been made from above and nothing more could be done.

With regard to the above statements, it should first be noted that Ednan Agaev, Bajo Ojo and Adoke Bello were involved in the affair in various ways and have a legitimate interest in the trial proceedings. Moreover, it cannot be overlooked that their testimonies have not been free of contradictions and that the contents of their statements must therefore be examined with particular caution. Moreover, Jonathan Benton's recollection is far from clear and his account does not allow us to fully understand the nature of the dialogue he had with Adoke Bello. Nonetheless, it is worth noting here that all three parties spoke - at entirely different times and in entirely different contexts - of a legal problem that had

led President Obasanjo to revise the decision to revoke the license. This convergence of narratives is certainly important as it confirms the existence of the legal problem which, as well as existing objectively, was known to the highest representatives of the Government and influenced the decision to reach the Settlement Agreement.

Analyzing now the political motivations, some brief background notes on Olusegun Obasanjo and Dan Etete are necessary.

9 The former was President of Nigeria from 1999 to 2007 and, prior to that, he had long been politically persecuted under the military regime in which Dan Etete served as Minister. This background, in addition to being a reliable historical fact, was mentioned by Ednan Agaev when describing his prior acquaintance with Obasanjo.

PUBLIC PROSECUTOR – *During your career, did you at a certain point meet the President of Nigeria at that time, Olusegun Obasanjo?*
INTERPRETER - "Yes, it is true, I met Mr. Obasanjo, but in 1988, when Mr. Obasanjo was not yet the President of Nigeria, but he was at the head of a military corps.
PUBLIC PROSECUTOR – *Did you meet him on any other occasions? For example, when you were ambassador to Colombia, perhaps?*
INTERPRETER - *Yes, I met Mr. Obasanjo in Nigeria at the time of the dictatorship, when he had been sentenced to death. I joined an international campaign, under the authorization of my Government, to sign the petition and letters to ask for the release and liberation of Mr. Obasanjo. It so happened that the military dictator of Nigeria, Mr. Abacha, died. This coincided precisely with the events regarding Mr. Obasanjo. Soon after these events he visited Colombia, where I was ambassador. And the reason was not just to come and meet me. At that precise moment the new President of Colombia, Mr. Andrés Pastrana, had been elected, and he was the son of our friend, Mr. Misael Pastrana. And so we stayed in Bogotá for a few days".*

On the other side, Dan Etete was a major figure in the Nigerian political arena and his influence went far beyond the prestigious position of Petroleum Minister. In fact, he was considered the leading personality of the entire Niger Delta area and his support was indispensable for the pacification of Nigerian political and social life. The Prosecutor himself stated that *"Dan Etete is not only the former Petroleum Minister. Dan Etete is the person who, throughout the 2000s, at least up to the years we're talking about, retained exceptional effective, even political, power. He was a player on the political scene, and in several circumstances we have heard him referred to as "a key decision-maker".*[44]

This brief historical background makes it clear that the respective personal histories of the key players in the affair had a significant impact when, following the death of Sani Abacha and the seizure of power by Olesegun Obasanjo, the Government revoked the oil license awarded to Malabu. Once again, it is interesting to quote Ednan Agaev's recollections:

PUBLIC PROSECUTOR – *Did you specifically know the reasons why this block had been revoked by Obasanjo?*
INTERPRETER - "Yes, we knew that it had been revoked, because Mr. Etete, who was linked to this block, was a Minister in Abacha's government, and so for completely natural reasons Mr. Obasanjo practically hated everyone linked to Abacha".
PUBLIC PROSECUTOR – *But did Obasanjo tell you that he had revoked the block because Etete had abused his position?*

[44] Transcripts of the hearing of July 2, 2020.

[...] INTERPRETER - *"So Obasanjo was convinced that the block belonged to Abacha and not Etete, and that Etete only took this block because Abacha had died. And it is precisely for this reason that the license was revoked".*

Ednan Agaev's account is fully reliable because it is in perfect logical harmony with the historical/political developments in Nigeria at that time. Indeed, as mentioned above, the Malabu incorporation documents showed that 50% of the shares were actually held by the son of Sani Abacha and that the papers were then tampered with only after the death of the dictator. It is therefore realistic to assume that the revocation of the license was determined by the intertwining of personal rivalries and political motivations rooted in the histories of the key players in the affair. The Settlement Agreement of 2006 is the final act of this process and represents a surprising reversal of the events that had developed in the previous years.

On this basis, we can now consider whether it is reasonable to assume that such reversal may have been due to the corruption of the then Attorney General Bajo Ojo or whether, instead, it is more plausible that the Government's change of tack was due not only to the legal reasons mentioned above, but also to a precise political choice that came directly from the President.

In order to answer this question, we should remember that the main suspicious element casting doubt on the lawfulness of the transaction is the circumstance that, after having managed to cash in on the license, Dan Etete paid $ 10 million into a bank account owned by Bajo Ojo. Bajo Ojo justified the transaction by claiming that he had acted as an advisor to Malabu throughout 2009/2010 and had therefore received the money as partial compensation for his professional services. The explanation, however, is hardly credible for a number of reasons. In particular, it is odd that a legal advisory role lasting little more than a year - moreover provided to a company with no employees, no liquidity and which is substantially inactive - can be remunerated with such high amounts. Moreover, the content of the service was described vaguely, without reference to any actual activity other than a generic search (moreover unsuccessful) for potential buyers.

However, while these aspects can certainly suggest the existence of a previous unlawful agreement, certain considerations must be made which mitigate the impact of this evidence.

Firstly, we should recall the argument that, in any case, the Settlement Agreement made it possible to reach an out-of-court settlement which met objective legal reasons.

In addition, coming to the more strictly political aspects, the revocation of Malabu's license had not been a mere bureaucratic matter, but had been a matter of primary importance, due both to the direct involvement of the President and to the enormous economic value of the oil business. In light of this background, it seems difficult to speculate that President Obasanjo's decision might have been overridden in such an obvious and blatant manner by an independent opposite decision of the Attorney General. On this point, it is also worth remembering that, according to the Nigerian Constitution, the President is the holder of all executive powers and that the various ministers act as delegates of the highest body. Thus, it does not seem reasonable to argue, even in the abstract, that Dan Etete might have resorted to bribing Bajo Ojo in order to get back the license. Such hypothesis would require assuming that Bajo Ojo had agreed to expose himself in person by performing an act in open contrast to the policy of his government in exchange for the mere promise of a consideration that he only received many years later. Moreover, although $ 10 million is objectively a substantial sum, it is quite insignificant if we consider that it represents just 0.9% of the sum that Dan Etete received based on the Resolution Agreement of 2011.

Therefore, a more realistic conclusion is that the signing of the Settlement Agreement was endorsed by President Obasanjo himself, who was motivated both by legal reasons and by the desire to overcome the divisions of the past and strengthen relations with the southern community in view of the upcoming elections in 2007. This theory was confirmed by Ednan Agaev both during his questioning by the FBI

[3 illegible signatures]

and during the trial:
PUBLIC PROSECUTOR – *But did Obasanjo tell you that the block had been reallocated to Etete because he needed the political support of Etete and the senators from the south? The south of Nigeria, obviously.*
INTERPRETER - *"He didn't need political support, but some people were trying to politicize the issue. In any case, the main motivation was legal, the legal motivation.*

PUBLIC PROSECUTOR – *The information is documented, so perhaps it was to help with the accuracy of his recollections. [English in source text:] "Obasanjo want[ed] the support of Governors and Senators from the south, so he gave OPL 245 back to Etete to get support for project's [sic] Obasanjo wanted to do while he was President. Agaev stated that in exchange for getting the oil block back, Etete would get officials in the south to support Obasanjo". This is the statement.*
INTERPRETER - *"I do not see any contradiction between what was recorded by the FBI and what I have said today. Here, it is necessary to make a distinction between legal decisions and political motivations [...]. The FBI asked me specifically about political motivations, and so I explained what the political motivations were.*

Further objective confirmation that the Settlement Agreement had not been an isolated initiative by Bajo Ojo comes from the exchange of letters in early 2007[45] between Malabu, Shell and various Government ministers on the very subject of the revocation. In this correspondence Shell warned the Government not to go ahead with the reallocation to Malabu and the Government reiterated that its decision was irreversible: "*The only recognized licensee of the OPL 245 license is Malabu Oil and Gas Limited and not SNUD or anyone else [...] The position of the Nigerian Government is that the Settlement Agreement confirmed in the letters to Shell and Malabu, respectively dated December 1 and 2, 2006, still enjoys the trust and commitment of the Government of Nigeria, and is irreversible".*[46]
Moreover, President Obasanjo himself had intervened with a letter dated May 3 and had suggested that the parties find a compromise solution, thus clearly endorsing the choice set out in the Settlement Agreement.
On the basis of the above arguments, we can thus conclude that there is no evidence that the license negotiated by Eni and Shell in 2011 was the result of a corrupt agreement between Dan Etete and Bajo Ojo. On the contrary, the documentary evidence reported shows that the Settlement Agreement of 2006 is an act that was approved by the Government and President Obasanjo. Thus, the Settlement Agreement is part of the freedom of determination enjoyed by the government of a sovereign state in the management of its internal affairs and cannot be challenged in court.

3.5 The legitimacy of the negotiations

The arguments provided above establish a first firm point of fundamental importance for understanding the affair: after the Settlement Agreement of 2006, Malabu was the entity recognized by Nigerian law as owner of OPL 245. Moreover, although the original award had been made by a military regime, it was subsequently confirmed by the democratic government led by Olosegun Obasanjo, a person whom the Prosecutor himself recognizes as being above suspicion[47]. It was President Obasanjo himself who, by letter of the Minister of Energy dated May 3, 2007, called for fruitful cooperation between Shell, Malabu and NNPC, thus implicitly reiterating his support for the reallocation of the license to Dan

[45] Eni Submissions of 1.29.2020, *general submission memorandum*, Exhibit 34, 37, 38, 39.
[46] Eni Submissions of 1.29.2020, *general submission memorandum*, Exhibit 39.

[47]Hearing minutes of July 21, 2020, page 8: "Obasanjo is one of the most important politicians in Nigeria and perhaps in the whole of Africa. To give you a tangible example, at Nelson Mandela's funeral Obasanjo was among the front-row participants. This is a person who was held in prison during the Abacha government and fled to Colombia"

Etete's company.

The consequence of recognizing Malabu as the legitimate licensee was that any economic operator interested in acquiring the licensee rights necessarily had to deal with Malabu and its shareholders. Therefore, the legal basis of the Prosecutor's statement according to which *"As early as 2007 Eni, and Shell even earlier, but as early as 2007 Eni had all the information it needed to avoid even just sitting down with Dan Etete",* is not clear. Not *"sitting down with Dan Etete"* would have meant giving up in advance the opportunity to negotiate an exploration license that a democratically elected government had recognized - rightly or wrongly - as being held by Malabu. The Prosecutor's thesis would have imposed upon Eni a sort of self-limitation of its freedom of action which has no basis in any legal norm. It is therefore incomprehensible why the Italian company should have given up pursuing its corporate objectives. Further, it cannot be argued that the past events of OPL 245 had created a situation of suspicion due to the presence of a person of dubious reputation such as Dan Etete and that, for this reason alone, Eni should have refrained from negotiating the acquisition of the license. In this regard, it is worth remembering that any suspicious situations due to the geopolitical context of reference do not in themselves constitute an impediment to the performance of economic activities in developing countries by international economic operators. In other words, Eni (like any other economic operator) is obliged not to commit or be complicit in unlawful acts, but this does not place it under any all-encompassing obligation to refrain from acting whenever there is even a generic doubt that third parties may independently behave in a manner which does not comply with the law. Nor, for that matter, are Eni and Shell required to ensure that the choices made by the Nigerian government best serve the interests of local communities. Indeed, like any economic operator, oil companies legitimately pursue aims of economic profit and their freedom of action, as far as it is relevant here, is limited only by the requirement to comply with criminal law.

Furthermore, any suspicion on the OPL 245 transaction did not arise from the Government's participation in the negotiations for the transfer of the license, as such participation was justified from an economic, political and legal point of view.

From an economic standpoint, it is certainly not unusual for a government to take an interest in the allocation and management of one of the nation's strategic economic assets. Similar methods of intervention are also common practice in our system and often take the shape of the convening of meetings between the stakeholders, organized by ministries.

From a political point of view, it must be considered that the affair in question must instead be viewed within the context of the Nigerian geopolitical system of the time. In fact, the Federal Republic of Nigeria is composed of many states, among which there are marked ethnic, social and religious differences. Moreover, in addition to official authorities there are forms of power management still linked to local powers and kinship systems. As we have already seen, Dan Etete was the main political spokesperson for the community settled in the Niger Delta which, at that time, was being hit by violent conflicts. This background helps us to understand that satisfying the demands of Dan Etete and his area of reference was an element that the Government could not disregard because the outcome of the negotiations would largely determine the future voter support for the politicians in office. Finally, the numerous court and arbitration proceedings involving Shell, Malabu and the Government make it clear that the Government had a direct interest in facilitating the resolution of disputes between the parties and thus emerging unscathed from any liability actions brought against it.

Lastly, the fact that Eni was a party to the resolution agreement of April 29, 2011 despite not having been involved in the original disputes, should not be considered as suspicious. Indeed, it is technically permissible and recurrent in commercial practice for a conflict to be resolved through the intervention of a third party which is interested in taking over the deal and which, in so doing, helps to settle the previous disputes between the original parties.

[3 illegible signatures]

[3 illegible signatures]

CHAPTER 4
TIMELINE OF EVENTS

4.1 2008

January 18, 2008 Guus Klusener reported the outcome of a meeting with the Minister on the OPL 245 issue: [English in source text:] *"The minister started the meeting by saying some time was lost due to a late receipt by them of the suspension notification of the ICSID arbitration. The purpose of this initial meeting was to see if there is common ground between SNUD and Malabu for a commercial settlement [...] Guy responded by saying that clearly Shell prefers a commercial settlement over lengthy litigation and that Shell has worked in good faith on OPL 245, first with Malabu and later with NNPC. Shell's prime interest is to protect its rights under the PSC. Shell has spent a lot of time, money and technology on the block and through all this has created a lot of value [...] Guy stressed that any payments by Shell would need to be in compliance with the law. Shell's business principles and be fully transparent"*[48][Translation resumes:]*;*

June 24, 2008 (11:15 P.M.) Ann Pickard wrote to Malcom Brinded and, reporting on a meeting with an executive of the Nigerian national oil company, Asanusi Barkindo, wrote [English in source text:] "*on 245, he said the president doesn't want Etete to get anything, but mosp is "involved" (i.e. on the take) and beholden ("adopted son ") to Odili, who told him that Etete must be satisfied. So, mosp can't* move"; [Translation resumes:][49]

July 7, 2008 Keith Ruddock wrote to Ann Pickard, Malcolm Brinded, Henry Simon and Guy Outen, *"My main concern in this case is to ensure that whatever deal we make is defensible in the future. Accordingly, despite what Etete may prefer, I believe it is of paramount importance that [...]"*[50]*;*

October 7, 2008 Guus Klusener wrote to Ann Pickard, John Copleston, Guy Colegate and Peter Robinson: *"Well, it seems that Chief E. does not have full control over M or at least not its majority shareholder. I will check the latest news with the CAC on Pecos' shareholders, but we should be able to rely on the CAC data and a board of directors resolution from the registered directors"*[51]*;*

October 17, 2008 Abacha's son's lawyers sent a letter to Shell reminding it to respect property rights;

November 4, 2008 (12:44 P.M.) Guy Colegate wrote to John Coplestone: [English in source text:] "*the source was able to provide a detailed account of UC Rusal/Malalabu meetings held in London (see detail below). He stated the parties were put into contact with each other through an intermediary - General Aliyu Mohamed GUSA U, who met with Ambassador Ednan AGAEV in Abujain Sept 2008. AGAEV is a former Russian diplomat, previously based in Nigeria and is believed to be close to Prime Minister Putin"*[52]*;* [Translation resumes:]

December 1, 2008 Ednan Agaev wrote to John Copleston to set up an appointment with Mohamed Gusau;

---

[48]Public Prosecution Submissions of 3.22.2019, page 33 (RDS 275).
[49]Public Prosecution Submissions of 3.22.2019, page 40 (RDS 283).
[50]Public Prosecution Submissions of 3.22.2019, page 40 (RDS 284).
51Public Prosecution Submissions of 3.22.2019, page 57 (RDS 300).
52Public Prosecution Submissions of 3.22.2019, page 68 (RDS 311).

[3 illegible signatures]

4.2 Period 2009 - January 2010

4.2.1 January 2009 - September 2009

January 2, 2009 a meeting between Obi, Agaev, Robinson and Copleston was held [English in source text:] "*to discuss OPL 245 resolution, issue of contractors rights/equity and valuation"*[53]; [Translation resumes:]

Emeka Obi noted: [English in source text:] *"OPL 245 resolution, issue of contractors rights/equity, valuation [...] First discussions with Agaev and Shell in Connection with OPL 245"*[54] [Translation resumes:];

January 5, 2009 (5:16 P.M.) John Copleston wrote to Peter Robinson and Guy Colegate: *"Saw my Delta guy about 245, talked to Miss E. this morning, said Etete is complaining that he's only going to ratchet up 40 million of the 300 we're offering him, the rest will go to pay bribes. [...]* [English in source text:] *Also says E tried to see YA but this was blocked by MD Yusuf who I have mentioned before (MD gave me the SC judgement (4/3, 7/1) the day before It was announced. He is on our side). YA. Told he is in Germany having liver transplant. Any collateral? Lukman took the job because he needs the money. We may be able to Influence thru MD. Seeing MD next week. Will need to have a script "*[55][Translation resumes:]*;*

53 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChronology (1st round cut)24_8(2)evp comments.pdf."

54 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file 'copi de chrpmp unprotected'

55Public Prosecution Submissions of 3.22.2019, page 75 (RDS 318).

[3 illegible signatures]

4.2.2 October 2009 - December 2009

October 13, 2009 Emeka Obi noted [English in source text:]*"Agaev forwards email he has sent to Etete which discusses Etete's settlement with Shell and informing Etete that he will immediately start to prepare contacts with investors";*[56]

October 15, 2009[57] meeting between Dan Etete, Bryant Orjiako, Umar Bature, Peter Robinson and John Copleston at the end of which the parties agreed to return to the old agreement under which SHELL had 40% of the rights and Malabu the remaining 60% of the OPL 245 license. In light of this arrangement, Dan Etete started to look for a partner to which to sell a 40% stake in order to remain the owner of the remaining 20%. An email John Copleston sent to German Burmeister and Peter Robinson on 10/17/2009 shows this fact: [Italian translation omitted] [Translation resumes:] *We need to make an offer. Stu, is there anything your team can do? Pete: please add / edit / comment as you see fit. John"* [58]*;*

2009 Gianluca Di Nardo reported the 245 affair to Luigi Bisignani because he was a friend of Paolo Scaroni. In that circumstance, Gianluca di Nardo advised Luigi Bisignani to use the services of Emeka Obi, a Nigerian broker commissioned by the seller Dan Etete and with good contacts in government circles. Luigi Bisignani confirmed this circumstance in his interrogation of April 16, 2014, specifying that Gianluca Di Nardo had told him that Eni (in the persons of Claudio Descalzi and Roberto Casula) was negotiating with Emeka Obi and that the main problem was resolving the dispute between the seller Dan Etete and Shell. Paolo Scaroni, in the brief of June 15, 2016, confirmed that in 2009 he was alerted by Bisignani of the possibility to purchase Malabu/Etete's share of the OPL 245 oil license and that the seller was using the brokerage services of Emeka Obi.
In the brief filed on June 6, 2016 Claudio Descalzi stated: *"in 2009, the then CEO of Eni informed me of the opportunity to purchase oil assets in Nigeria, and gave me the name of Emeka Obi, owner of EVP financial and business advisor. I forwarded this reference to the Eni managers responsible for the Nigerian area for verification. At the end of 2009, they told me about the possibility to purchase part of the block held by Malabu, of which EVP was the representative. I confirmed the company's interest in following that acquisition project for the same reasons - validity of the asset and technical synergies - for which the investment had also been considered attractive in the past",*

November 15, 2009 (4:09 P.M.) Emeka Obi emailed a presentation from Eleda Capital Partners to

---

[56] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[57] Public Prosecution Submissions 11.23.2018, PM2, page 2: [English in source text:] "Peter and I met Chief Etete on October 15. Etete accompanied by Bryant Orjiako Green) and Umar Bature (who will report back to Gusau). We proposed (informally and without prejudice) that we turn the clock back to 1999 when Malabu had the block and Shell agreed to farm in for 40%, operate as technical partner and carry Malabu's interest for the remaining 60%. This was the last point at which Shell and Malabu were in agreement and could provide the start point for a new partnership. We would need to re-transact that agreement, but with due allowance for ground truth realities that have taken place since (ie Shell exploration costs and payment of signature bonus). Etete was scornful of the original agreement ("that agreement was no agreement") but nonetheless was in favor of reverting to the original proposal for a 40°% farm in, which he said could provide a framework for taking negotiations forward. But he said Malabu no longer would need to be carried - Malabu planned to bring in two investors to form an operator consortium and that Shell would have to recover its signature bonus from new players. He said that if we do deal successfully, FGN "would not be allowed" to derail. We said that Shell figures suggested $16 billion capex from fid to first oil, and if Malabu no longer wanted to be carried they would have to find their 60% share .... No real reply to this Etete asked Shell to come up with a figure for what they would pay for the 40°% farm-in. We made it clear that after stripping out costs incurred to date the number was going to be very low and almost certainly way off what he was aspiring to. Etete keen though for us to name a figure so we could start negotiating.... We agreed to go back and do some work on this, and get back to him in a couple of weeks - but underlining that Shell internal processes could mean this taking a little longer. Comment: lack of big cash upfront still likely to be main problem and no real indication yet that Etete ready to discard top end expectations. And his chances offinding partners to fund the Malabu 60% have got to be negligible. But we are talking and for the moment he is keen to proceed.... Public Prosecution Submissions of 7.4.2019, page 4.
In this regard, see also the testimony of Umar Bature, hearing of 1.30.2019, page 15.

[58]Translation of Public Prosecution Submissions of June 15, 2019, page 1.

Vincenzo Armanna and Roberto Casula. In the email he referred to previous meetings and proposed a collaboration with Eni[59];

on **November 23, 2009** Emeka Obi met one MM Ibrahim *("SA to thè Minister of Petroleum")* at NNPC's offices [English in source text:] "*to discuss transaction opportunities, including OPL 245 resolution"*[60][Translation resumes:];

November 30, 2009 - December 10, 2009 Emeka Obi noted, [English in source text:] *"initial EVP mandate discussions";* [Translation resumes]

November 30, 2009 Femi Akinmade's PEECO Limited received a mandate from Malabu signed by Rasky Gbinigie to receive offers from [English in source text:] *"well intended Companies who are desiderous in having a relationship with us on this oil block";* [Translation resumes][61]

December 7/9, 2009 Ednan Agaev presented Emeka Obi to Dan Etete[62];

December 9, 2009 the first meeting between Emeka Obi, Ednan Agaev and Dan Etete took place: [English in source text:] "*They discuss Obi having a separate mandate to source a buyer and negotiate the disposal of OPL 245, fees, and the distribution of marketing materials to Obi* " [Translation resumes:][63]; Emeka Obi noted: [English in source text:] *"Obi introduced to Etete as someone that has potential buyers. Obi agrees to work on an independent contract provided that he gets a large fee (more than 6%). All parties agree to the spread/ AMP concept"*[64]*;* [Translation resumes:]

December 10, 2009[65] Emeka Obi noted: [English in source text:] *"meeting between Obi, Agaev and Etete at Etete's house in Abuja. Further discussions on ILC's role, an independent mandate for Obi, Obi's fee proposal, discretion and other related matters " [...] " "ILC drafts, EVP Mandate, EVP Minimum Fee. Chief tells me that he knows that Agaev is not having any success in finding an investor but he still needs him as Agaev's powerful connections with the Russian State will be useful in case Shell tries to sabotage this deal. He said that he had asked around and he was well known for working on big complex deals and had rapport with international companies. I told him that I would be expecting as a minimum, for bringing in an investor, a percentage far in excess of Agaaev's 6%. He mentioned reasons for not disclusing engagement of Agaev/ Obi and levels of fees in Nigeria. We agreed to agree the fees later and agreed that Obi and Agaev should work out the contractual arrangements between their vehicles and then come back to him with proposals. We agreed to discuss the fees later."*[66]. [Translation resumes:]

---

[59] Public Prosecution Submissions 11.23.2018, PM3, page 1: [English in source text:] "Dear Mr. Armanna, Following my earlier discussions with Roberto Casula and our recent meetings, please find attached a brief profile of our firm Eleda Capital Partners. As I explained, we are very experienced and willing to assist Eni/ AGIP in an advisory capacity. Our expertise is well known in the region and we have advised, both on the sell and buy side, on notable m & a transactions in the Oil & Gas sector. Through our professional affiliates and international partners, we are able to dramatically increase our advisory and execution capabilities. I am available, at your convenience, to explore ways in which we can assist ENI/ AGIP in achieving its strategic objectives. Regards Emeka".

[60] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1 st round cut)24_8(2)evp comments.pdf."

[61] Public Prosecution Submissions hearing of 3.20.2019, page 6.

[62] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."

[63] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."

[64] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file 'copie de chrono unprotected".

[65] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comment.pdf."

[66] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file "copie

December 12, 2009 - January 27, 2010 Emeka Obi noted: [English in source text:] *"EVP Mandate drafting and discussion/marketing to NAE."* [Translation resumes:] During that timeframe there were numerous meetings and email exchanges regarding *"EVP mandates"* all based on the assumption that [English in source text:]*"ILC keeps 6% and EVP keeps spread"*[67]*;* [Translation resumes]

December 14, 2009 Obi took note of a meeting in Vienna with Agaev and Etete[68];

December 14, 2009 (12:07 P.M.) Ciro Pagano informed Roberto Casula about a meeting with Femi Akinmade, who had explained to him the status of block 245. Malabu was interested to sell 40% of the license to ENI: "*Last Friday I met, at his request, Chief Akinmade, who described to me the status of Block DW OPL 245. As you know, the block has been the subject of a long dispute between Malabu and Shell. Shell has previously drilled 4 wells, resulting in the discovery of the Zabazaba and Etan oil fields, for which our internal estimates indicate total reserves of approximately 500+ MBO. On the other hand, Malabu and Shell itself estimate reserves of between 600 and 1000 MBO. The long-standing dispute was recently resolved with Malabu being awarded ownership of the Block in Sole Risk with a 50% share (similar to OML 120-121 for Allied) and Shell being awarded the remaining 50% as Technical Partner. Malabu would now like to divest a 40% stake in exchange for the carry of the remaining 10% stake and payment of an entry fee of approximately $ 1/bbl for discovered resources (according to them about $ 400 M, 40% of 1 BBbls). According to Akinmade, in return for the carry, Malabu would waive repayment of past costs, including the signature bonus. Moreover, Malabu would be particularly interested in our involvement, both on account of Eni's financial capabilities and because it wishes to flank Shell with a technically strong partner, to avoid being completely at Shell's mercy. However the competition seems to be strong right now, especially by Sinopec and BG. For this reason too, Malabu has asked us for a simple expression of interest by the end of December. It is also willing to allow us full due diligence to check the status of the block. If we could verify its full feasibility, it would be an opportunity not to be missed as part of our strategy to move to offshore. The first OIL could be extracted from as early as 2014, with our share of production estimated in the range of 60-70 kbopd+. Carbonara will arrive this afternoon in Abuja, at around 4:30 p.m., to talk this over with you"*[69];

December 14, 2009 (12:57 P.M.) Emeka Obi sent an email to Vincenzo Armanna and Roberto Casula in which he stated he had an exclusive mandate for the duration of two months for the sale of OPL 245 and invited ENI/NAOC to express their interest through a non-binding letter of intent by 8 am the

---

de chrono unprotected".

[67] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file "copie de chrono unprotected".

[68] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."

[69] Public Prosecution Submissions 11.23.2018, PM3, page 23: "Last Friday I met, at his request, Chief Akinmade, who described to me the status of Block DW OPL 245. As you know, the block has been the subject of a long dispute between Malabu and Shell. Shell has previously drilled 4 wells, resulting in the discovery of the Zabazaba and Etan oil fields, for which our internal estimates indicate total reserves of approximately 500+ MBO. On the other hand, Malabu and Shell itself estimate reserves of between 600 and 1000 MBO. The long-standing dispute was recently resolved with Malabu being awarded ownership of the Block in Sole Risk with a 50% share (similar to OML 120-121 for Allied) and Shell being awarded the remaining 50% as Technical Partner. Malabu would now like to divest a 40% stake in exchange for the carry of the remaining 10% stake and payment of an entry fee of approximately $ 1/bbl for discovered resources (according to them about $ 400 M, 40% of 1 BBbls). According to Akinmade, in return for the carry, Malabu would waive repayment of past costs, including the signature bonus. Moreover, Malabu would be particularly interested in our involvement, both on account of Eni's financial capabilities and because it wishes to flank Shell with a technically strong partner, to avoid being completely at Shell's mercy. However the competition seems to be strong right now, especially by Sinopec and BG. For this reason too, Malabu has asked us for a simple expression of interest by the end of December. It is also willing to allow us full due diligence to check the status of the block. If we could verify its full feasibility, it would be an opportunity not to be missed as part of our strategy to move to offshore. The first oil could be extracted from as early as 2014, with our share of production estimated in the range of 60-70 kbopd+. Carbonara will arrive this afternoon in Abuja, at around 4:30 p.m., to talk this over with you.

following day: [Italian translation omitted][70]

December 14, 2009 Emeka Obi wrote to a certain Nwakodo (lawyer at Sheridans office) how he intended to set up the negotiations: [English in source text:] *"6. We have been approached by Malibou Oil to assist with the disposal 7. What I envisage is to sign an exclusive arrangement with Malabu to dispose of its interest to one of three prospective investors 8. We will not charge Malabu an upfront fee but instead will cap and agree the purchase consideration with Malabu and agree any proceeds received in excess of the cap will be ours as fees. We would also like to deduct this fee, if any, at source ie from the investor instead of waiting for Malabu to pay" [Translation resumes][71];*

December 14, 2009 Emeka Obi wrote [English in source text:] *"Dinner between Obi and Agaev (and Granier-Deferre & son - per Malabu) in Vienna during which they discuss the EVP and ILC mandates and agreements in respect of the same and the meeting with Etete planned for the following day" [Translation resumes][72]*;

December 15, 2009 Emeka Obi wrote [English in source text:] *"Lunch between Obi, Etete, Agaev, Granier-Deferre and Stefan [Deferre] during which they discuss the transaction in general and Etete signs the ILC Mandate" [Translation resumes][73];*

December 23, 2009 Roberto Casula asked Emeka Obi to contact him as soon as possible and forwarded him his Italian cell phone number *"in addition to the one you already have";* the content of the subsequent conversation can be found in Obi's chronology, where we read that [English in source text:] *"Casula calls Obi and expresses interest orally in OPL 245" [Translation resumes];*[74]

December 24, 2009 (h 12:17 P.M.) Emeka Obi wrote to Roberto Casula (and for information to Vincenzo Armanna): *"Dear Roberto, It was a pleasure to speak with you yesterday. I have noted your interest in participating with the proposed Acquisition of part or all of Malabu Oil's interest in OPL 245. In order to move forward we would require from ENI/NAOC a formal notification of your interest addressed to Energy Venture Partners Ltd - our Principal Investing Company for energy-related transactions. Our other Company, Eleda Capital Partners, will be acting as an advisor to Energy Venture Partners. Following receipt of your letter and discussions with the Principal, Malabu Oil we will advise on your suitability to participate. As I explained earlier, there is significant interest from notable industry players but the Principal looking to avoid a public bidding process and is thus restricting the process to two or three participants. We would be looking to enter into a negotiated sale transaction on a willing buyer - willing seller basis. Once we have received your formal letter of*

---

[70] Public Prosecution Submissions of 11.23.2018, PM3, page 20: [English in source text:] "Dear Sirs, You will recall our recent discussions and offer to provide m&a and other strategic advisory services to ENI/ NAOC. We still remain available to meet and explore the opportunities further. We hope you have had time to review our company profile and identify areas in which we might be able to assist you achieve your corporate goals. In addition to advisory services, Eleda Capital Partners together with its Principal Investing partners is actively building a portfolio of attractive upstream assets in the GOG region. We are able to leverage our tremendous local expertise and relationships to secure prime assets under favourable terms. We would like, from time to time, to include your company in our select list of industry players to whom we will be marketing some of these assets. Recently, we and our partners have just secured, from the Principal, a two month exclusivity on the sale of a substantial interest in OPL 245. We have been tasked to manage the sale to 2 or 3 credible industry players. We are currently in discussions with two prospective buyers and we feel that this is an asset that ENI- NAOC should take a very strong look at. As you may have heard in the market, the situation between the parties have been largely resolved and the Government of Nigeria has given a deadline for the resolution of the matter. As a result the principal is keen to move quickly but there is also keen interest in the market. I am meeting with the principals tomorrow morning and would very much like to include your company in the group of 3. We are being approached by other parties but I feel strongly that ENI would be a strategic fit for the Asset and the Principals. In order to register your interest and effectively facilitate a place for you in the process, I will need from you a noncommittal Letter of Intent signifying your strong desire to particpate. We have one spot left because the Principal, I believe, is keen to avoid a bidding contest and would like to see a carefully managed sale. If you feel that you want to participate in the process, kindly formally register your interest to our London representative. Emeka Obi [Translation resumes:]

[71] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."

[72] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_ EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[73] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[74] Public Prosecution Submissions of 11.23.2018, PM3, page 28.

interest and provided that your interest is acceptable to us (and the Principal), we would expect the following from you immediately:

1. Strong Letter of Intent notifying us of your willingness and ability to proceed with and conclude the Acquisition;

2. Payment of a non-refundable deposit which will be deducted from the purchase consideration due upon closing;

3. Payment of the Process Participation and Data Room fee to allow you to obtain OPL 245 Data, subject to the execution of the Confidentiality & Non-Disclosure Agreement (NDA).

Whilst Items 2 and 3 will be in line with prevailing industry norms they are both subject to mutual agreement. Clearly as this is the first time working with you on a disposal, we would be open to below-market rates but only on the basis that you are prepared for a rapid and efficient closing process. The Principal is keen that this Transaction is concluded within six weeks. Given the limited time and limited slots available for participation, I would urge you to ensure that ENI/NAOC is ready and able to move as planned. Please note that due to the exclusivity provisions, you will be bound to deal exclusively with Energy Venture Partners Limited/Eleda Capital Partners Inc for the duration of this transaction. I look forward to your official letter of interest. Please address it to: Energy Venture Partners Ltd., c/o Eleda Capital Partners Inc 3rd Floor, 70-71 New Bond Street, London W1S IDE.

On a separate note, Eleda Capital Partners is still interested in working with you on a number of consulting engagements that we had previously proposed. We are particularly sharp and knowledgeable in advising you on creating a 1-JV with NNPC. Kind regards, Emeka"[75]*;*

December 24, 2009 (h 12:20 P.M.) Vincenzo Armanna forwarded the email from Emeka Obi to Ruggero Gheller[76];

December 24, 2009 (h 12:37 P.M.) Ruggero Gheller forwarded to Roberto Casula, Ciro Pagano and Vincenzo Armanna the draft reply signed by Roberto Casula to Emeka Obi's request: *"to the attention of: Mr. Emeka Obi. Dear Sir, following our recent conversation and e-mail exchange on the subject, I would like to inform you that NAE Ltd is interested in the acquisition of a participating interest in the deep offshore block OPL 245. We kindly require you to send us an extract of the current mandate from the Principal to you with respect to this opportunity. In addition, we would like to receive a description of the process and requirements for the data evaluation package to be made available to NAE Ltd. Finally, please accept my assurances that NAE is ready and able to move quickly on this opportunity. Speak soon. Best regards"*[77];

December 24, 2009 (h 1:35 P.M.) Roberto Casula expressed his concerns to Vincenzo Armanna about the payment of a non-refundable deposit: *"Vincenzo: I am not aware that it is industry practice to pay a non-refundable deposit! This is a problem!"*[78]*;*

December 24, 2009 (h 1:44 P.M.)[79] Vincenzo Armanna replied that he too is perplexed about the payment of a non-refundable deposit, but pointed out that they were only at the beginning of the negotiation: *"absolutely I agree but I think it is only the beginning of the negotiation..."*;

December 24, 2009 (1:52 P.M.) Vincenzo Armanna wrote to Roberto Casula, Ciro Pagano and Ruggero Gheller: *"I would like to clarify that we don't usually provide non-refundable deposits but that we will pay for access to the data even if everything will be subject to subsequent negotiation"*[80];

December 24, 2009[81] NAE, with document signed by Roberto Casula, replied to Emeka Obi's email

---

[75] Public Prosecution Submissions of 11.23.2018, PM3, pages 27-28.

[76] Prosecution's Submissions of 11.23.2018, PM3, page 27.

[77] Public Prosecution Submissions of 11.23.2018, PM3, page 26.

[78] Public Prosecution Submissions of 11.23.2018, PM3, page 29: "Vincenzo*: I am not aware that it is industry practice to pay a non-refundable deposit! This is a problem!".*

[79] Prosecution's Submissions of 11.23.2018, PM3, page 29: *"Absolutely I agree but I think it's just the beginning of the negotiation...."*

[80] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 47.

[81] Trial dossier, page 3293, ENI Submissions of 4.9.2019, Exhibit 4, no. 3.

[3 illegible signatures]

expressing its interest and:

- asked for [English in source text:] *"an extract of the current mandate from the Principal to you with respect to this opportunity";*
- pointed out that [English in source text:] *"it is not NAE's practice to pay non-refundable deposits"*;
- stated that they were ready to consider paying a fee for access to the data room and asked for the related requirements and conditions [English in source text:] *("we would like to receive a detailed description of the requirements for Payment of the Process Participation and Data Room fee")*.

This is the complete text:*"to the attention of: Mr. Emeka Obi. Dear Sir, following our recent conversation and email exchange on the subject, I would like to inform you that NAE Ltd is interested in the acquisition of a participating interest in the deep offshore block OPL 245. We kindly require you to send us an extract of the current mandate from the Principal to you with respect to this opportunity. In addition, we would like to receive a description of the process and requirements for the data evaluation package to be made available to NAE Ltd. Finally, please accept my assurances that NAE is ready and able to move quickly on this opportunity. We look forward to hearing from you soon. Best regards, Roberto CASULA, Chairman of Nigerian Agip Exploration Ltd (NAE);*

December 27, 2009 (9:28 A.M.)[82] Emeka Obi confirmed receipt of the expression of interest letter and refused to forward a copy of the mandate on the grounds of confidentiality, but offered to send a note from Malabu attesting to the existence of the mandate and to show an extract of the mandate to representatives of NAE: *"Thank you for your Expression of Interest concerning all or part of Malibu's share in OPL 245. Although, due to confidentiality agreements, we cannot authorize you to keep an extract of our mandate with the Principal, we will be happy to allow your representatives to view it in person. We will also be happy to send you a letter from the Principal authorizing us to market the transaction on its behalf on an exclusive basis. In the meantime, I would recommend the payment of a non-refundable escrow, deductible from the purchase consideration at the time of signing, simply as a way of demonstrating a commitment to closing after exclusive negotiations. This is not an unusual request for a transaction of this size and sensitivity, and the Principal has made it clear that we cannot guarantee participation, let alone exclusivity, in the absence of payment of an adequate escrow. Clearly, the form and method of this payment will be subject to discussion between the parties if and when your expression of interest is accepted. I encourage you to review this issue before proceeding further. Once we receive a positive response from you, we will be in a more favorable position to discuss your Expression of Interest with the Principal.*

As soon as your Expression of Interest has been accepted, we will forward instructions regarding:

1. Language and text of the Letter of Intent;

2. Detailed requirements for the payment of the Process Participation and Data Room fee;

3. Form and method of payment of non-refundable deposits for participation and exclusivity. I would like to point out that the Principal is waiting and ready to begin negotiations in the next few days. I look forward to your reply. With kindest regards. Emeka";

December 27, 2009[83] Emeka Obi discussed with Nwakodo some clauses that he wished to be included in his mandate in his favor, to be signed by Malabu;

December 28, 2009[84] meeting between Obi, Armanna and Etete in Abuja at Etete's house to introduce Eni as an investor: [English in source text:] *"Meeting between Obi, Armanna and Etete at Etete's house*

[82] Public Prosecution Submissions of 11.23.2018, PM1, page 1523, *"general submission memorandum"*, Exhibit 49.

[83] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[84] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_I EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[3 illegible signatures]

in Lagos over lunch, during which Eni/NAE is introduced to Etete as a potential purchaser of OPL 245 and the transaction parameters are discussed. [During] the meeting Obi shows Etete the letter from NAE dated 24/12/2009 in which NAE expresses interest in the transaction, but not the payment of a deposit. [When Armanna is out of the room Obi and Etete discuss minimum fee of US$200m for EVP]". In the Excel chronology, the meeting is described as follows: [English in source text:] *"Introduction to investor. Transaction Parameters. EVP showed Etete NAE letter expressing interest stating no deposit. Cannot currently state the exact date of the meeting but the venue was what was said by Chief Etete to be his Lagos residence - a waterside compound in Victoria Island. I really did not want to introduce the investor to Etete until we had executed the contract to avoid the risk of circumvention. I was also worried that Etete would say something that would "scare" them off and that was not a good way to start. Though I had not mentioned the names of any of my prospective investors to Agaev, he encouraged me to take one to go and see the Chief so at least the Chief could reassure his associates that something was going on. The representative and I flew down to Lagos together on an Arik flight from Abuja. Etete came out to meet us on the road to his house because we could not find it. He met us on the road, driving a Mercedes jeep himself, and we followed him in the NAE vehicle to his house. He had prepared a sumptuous lunch of fried chicken for us and after being informed for the first time that the representative was from ENI he went into a long monologue on his great historical relationship with ENI when he was Minister and what a great Oil Company they were and how he has fond memories of interacting with them. Chief then proceeded to drink a bottle of Champagne by himself - I believe the representative and myself were bullied into drinking half a glass each. We then talked generally about the transaction and how speed was of the essence and that money was not the most important thing in his life but he wanted the asset sold to a reputable and credible "name". At the moments when Chief and I were alone, I asked him what he thought. He said that I had done well if this were the kind of investors I would be bringing but he told me that they'd better be serious and that personally I should be careful because these guys were mafia and that they would likely circumvent me after they had gotten what they wanted. We also used private moments to discuss some of the contractual points Agaev had raised with me over the telephone on his behalf. He was very happy until I told him the amount of the fee proposed. Chief did his best to hid[e] his anger in front of the representative and then proceeded to give us a tour of his house and compound. He and I then found another private moment, to quickly wrap up our discussions and he told me "what happened to you? Your father is such a gentleman. You are a shark!" then something about young guys always trying to make money off other peoples' sweat and that he had been sweating over this asset for 10 years etc. etc. I told him it was ok, he should focus on the results and I would not proceed on any other basis. He said ok, he will discuss, think about it and get back to me".* [Translation resumes]

December 30, 2009 Richard Granier Deferre wrote the following notes:

[handwritten illegible]

[English in source text:] **EWK <EVI> MALABU**

1) **Agreed price EVP/MALABU**
2) **Excess price**
   Agreed price EVP/ENl
3) **NRD EVP/MALABU**

30/12/09 EDMAN

1) **Legal structure EVP/ECP**

   Qui signe

2) **When agreed price**

   When non refundable deposit

   When payment in excess

   Amount 35%

3) **Participation Pana: payment in excess**

4) **ENI EVP: NRD**

   Agreed price

   Excess price

5) **Paris signature/? [Translation resumes]**

Richard Granier Deferre explained its meaning in these terms[85]:
PUBLIC PROSECUTOR – *In document number 2, there is handwriting, could you tell us what it says.*
INTERPRETER - "Agreed price, EVP/Malabu", slash.
INTERPRETER - Number 2 "*Excess price, agreed price*, EVP/Eni". Number 3 "NRD: EVP Malabu", "legal structure"...
PRESIDING JUDGE – *At number 1.*
INTERPRETER - "*EVP/ECP", "who signs" in French below. At number 2 "When agreed price".*
INTERPRETER - *"When agreed price, when non-refundable deposit, when overpayment, with an arrow under amount 35 percent. Participation", can't read the word question, "overpayment". 4, "Eni, EVP, NRD", he can't read under NRD, says he sees price but...*
PUBLIC PROSECUTOR – *Could it be agreed price?*
INTERPRETER - *He says it could be, and then "excess price". 5, "signing in Paris" and he can't read the last word.*

PUBLIC PROSECUTOR – *All right, can you tell us when and why you wrote these notes and what they mean?*

INTERPRETER - *"They were written in December 2009, they were about the contract that EVP wanted Mr. Malabu to sign"*
PRESIDING JUDGE – *Malabu, it's a company.*
INTERPRETER - *"Yes. It could be this or some notes he took about this agreement".*
PUBLIC PROSECUTOR – *But do you remember if you wrote these notes during a meeting or, perhaps, were you on the phone?*
INTERPRETER - *He doesn't remember.*
INTERPRETER - *"Before this EVP contract, there was an agreement with a company of Mr. Agaev, which was called ILC. In this agreement Mr. Agaev wanted a 6% commission, there was an exclusivity of two or three months, which was given by Mr. Etete. After this agreement he came with a second EVP*

[85] Transcript of the hearing of 3.6.2019, page 19.

[3 illegible signatures]

agreement, with these... there is no longer talk about commissions, they talk about agreed price and excess price. Success fee that Mr. Agaev wanted to obtain from Malabu on a price that was above the agreed upon price. According to Mr. Agaev, Malabu and EVP had to come to an agreement on the price, under which... everything above the agreed price was to be paid by Malabu to EVP, but this agreement was never signed" as far as he knows.

PUBLIC PROSECUTOR – *Why?*

INTERPRETER - *"Because, I repeat what I have already said many times, between Mr. Etete, Agaev, they did not want to be linked through intermediaries.*

4.2.3 January 2010

January 3, 2010 (h 9:35 P.M.)[86] Ednan Agaev wrote a text message to Emeka Obi suggesting some conditions for closing the deal: *"it will have to be stipulated that the seller will receive his agreed price directly from EVP as soon as the money enters EVP's account; that EVP can keep the difference without the need for further approval; that EVP will automatically pay the consideration to ILC at the exact moment the money arrives. Otherwise, even if just one person should have doubts, the "deal will not work".*

January 4, 2010[87] Emeka Obi forwarded to Ednan Agaev the draft agreements with Malabu that he had prepared with lawyer Nwakodo;

January 4, 2010 (h 15:49)[88] Ednan Agaev wrote a text message to Emeka Obi in which he discussed how to structure the agreements and specified that *"we must remove any reference to the fact that we are assisting him during the negotiations or offering him legal assistance [...] EVP's consideration will be the difference between the offered price and the agreed price";*

January 5, 2010[89] Ednan Agaev drew up the following diagram:

[handwritten illegible]

On this point, Mr. Ednan Agaev has stated: *"I can explain, it is a diagrammatic representation of what I was proposing in the cited text message, that is how I explained to Granier that this scheme could have worked if Obi's idea were to be accepted. And here we see that the purchaser pays X+Y, Y stands for the excess price. And so EVP receives the excess price, pays the agreed price to Malabu, which is the seller, and pays 6 per cent to ILC before this. But this idea never actually worked"[90]*;

January 5, 2010[91] Richard Granier Deferre wrote the following handwritten note which was later seized at his home.

[handwritten illegible]

[86]Trial dossier, page 1287 (English); Trial dossier, page 14121, text message 7.

[87] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[88]Trial dossier, page 1317 (English); Trial dossier, page 14121, text message 11 (Italian): *"I have received the document. I need to work on it. We must remove any reference to the fact that we are assisting him during the negotiations or offering him legal assistance. And we need to eliminate the 2% success fee. We will put the 2% in the agreement between you and ILC (better if you give me another company, such as Eleda Capital). If we include 2% in the agreement between EVP and Malabu, confusion and conflict of interest remain in place. EVP's consideration will be the difference between the offered price and the agreed price. In addition, Eleda Capital will receive a 2% success fee from ILC.*

[89]Prosecution's Submissions of 3.6.2019, page 3

[90]Transcript of the hearing of 6.26.2019, page 31.

[91] Public Prosecution Submissions of 3.6.2019, page 6.

[3 illegible signatures]

Richard Granier Deferre explained its meaning[92] in these terms:

PUBLIC PROSECUTOR – *Document 6. Did you write this document?*
INTERPRETER - "Yes [...] *"X co EVP" an arrow below EVP, in a rectangle "M", at the top "How and where", below M "Management", the two arrows "M1" and "M2", above M1 and M2 "Where and how".* PUBLIC PROSECUTOR – *Then there is a number one.*
INTERPRETER - *"PP3QC 2/3" says he can't read. "KS", but he's not sure. "Trust mistrust".*
PUBLIC PROSECUTOR – *Are these notes that he wrote still based on what Agaev had said?*
INTERPRETER - "No".
PUBLIC PROSECUTOR – *Is this information that he knows directly?*
INTERPRETER - *"No, I had asked myself this question when I made this chart if the transaction was done", he was wondering how Malabu could receive such a large amount of money, M means Malabu. "How could a company like Malabu receive a very large amount knowing that it would be necessary to open accounts for Malabu to receive the amount from the transaction, knowing that Malabu had no management and if the idea was to open two accounts for Malabu, called M1 and M2". He tends to clarify that these explanations that he is giving us at the moment, with respect to what he told the Prosecutor three years ago, have nothing to do with Shell and Eni. Management means the management team of Malabu that did not exist. That it was very difficult to open accounts to receive money, he had put two accounts, M1 and M2 for Malabu, this document was made to explain to Mr. Etete that it would be very difficult to open accounts for Malabu for such a large amount.*

INTERPRETER - *"These were speculations i.e. if Malabu wanted to sign an agreement and receive, accounts would probably have to be opened in Europe, but I did not go any further than this".*
PUBLIC PROSECUTOR – *But is it because it is easier to open accounts in Europe than in Nigeria? Is this why?*
INTERPRETER - *"No. In Europe too it is difficult".*
PUBLIC PROSECUTOR – *So what does M1 and M2 mean?*
INTERPRETER - *"Malabu and Malabu 2".*
PUBLIC PROSECUTOR – *There is only one company, what do the numbers mean?*
INTERPRETER - *"Because I theorized that Malabu could have two accounts, it was a hypothesis that never materialized.*
Ednan Agaev stated: *"I have no idea, but what I may know from Granier's explanations, I should understand that M (phonetic) means Malabu, and so Malabu would have had two accounts. But Granier-Deferre never discussed the issue with me; nor did Etete ever discuss it with me or ask me to help him open the accounts. The problem is that Malabu did not have management. Etete always introduced himself as director and therefore he was a manager"*[93]*;*
January 8, 2010 (8:00 P.M.) Stefano Carbonara wrote to Emeka Obi: *"Dear Emeka, following the recent exchange of emails, I hereby confirm our immediate availability to examine relevant data in a data room according to your instructions (timing, logistics, etc.) Attached is a file containing a checklist of information to be reviewed/assessed. I also kindly request that you complete and return the information requested in the attached Eni Joint Venture Questionnaire in accordance with Eni's Policy on joint venture agreements. Waiting for your feedback, we remain at your disposal for any information*[94]*;*
January 13, 2010 (4:33 P.M.)[95] Claudio Descalzi wrote to Paolo Scaroni: "+ *in December,*

[92] Transcript of the hearing of 3.6.2019, page 22 et seq.
[93] Transcript of the hearing of 6.26.2019, page 32.
[94] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 51.
[95] Attachment to Scaroni's brief of October 15, 2016 submitted by the Prosecutor and acquired at the hearing of July 3, 2019; ENI Submissions of 1.29.2020, *"general submission memorandum",* Exhibit 53.

Eledacapital informed us (on behalf of Indigenous Company Malabu) of the possibility of acquiring up to a 50% shareholding in OPL 245 (50% is currently held by Shell); + on 26 December, we sent Eleda our intention to examine further the proposed opportunity, requesting access to the data room/acquisition of documents (including Malabu's mandate) as well as details of the planned process; + in particular we clarified that it is not our practice to pay "non-refundable" amounts as they requested; + on January 8 we sent Eledacapital a checklist of the data and documents we need for the evaluation; + on January 12 Eledacapital wrote that it would reply shortly";

January 15, 2009[96] Emeka Obi and Ednan Agaev exchanged a few text messages in which they discussed the status of the negotiations for Malabu's mandate to EVP. Ednan Agaev wrote: [English in source text:] *"You have what you wanted in the text: the exclusive control of the excess price and u will also have an agreement with ILC on ur 2pc. What is wrong? Even the control of the non refundable is drafted in a way you wanted. Pls explain. I am already on board and don't know how long shall have the communication. Anyway, we shall talk tomorrow".* [Translation resumes]

January 15, 2010 (3:36 P.M.) Giorgio Vicini wrote to Ciro Antonio Pagano: *"Ciro, feedback on Eleda capital by BNP in a confidential way: BNP says they are a small boutique of 3-4 people headed by the former head of the World Bank in Nigeria. BNP has worked in the past and is still working with them on three projects. They are active in M&A with particular reference to privatization also by virtue of the good local contacts of their boss. BNP's opinion is largely positive"*[97]*;*

January 19, 2009[98] Nwakodo forwarded to Ednan Agaev a new point to be included in the mandate for EVP: [English in source text:] *"This letter Agreement fully records the mandate granted by you to us on the 15th December 2009 and arrangements reached between us in respect of our engagement and the disposal of the OPL Assets".*

January 23, 2010 (4:19 P.M.)[99] Ednan Agaev wrote to Emeka Obi that all the documents had been signed, that the agreement provided for the sale of 40% of OPL 245 (*"The Chief explained that this is what is established by the basic agreement with the Government"*) and that it was necessary to meet in Geneva to establish the *"agreed price";* over the next few minutes the two exchanged further messages and Emeka Obi asked to receive a copy of the documents[100]: "*we have the signed documents to which some small changes have been made in order to clarify that the agreement involves about 40% of 245. The Chief explained that this is what is established by the basic agreement with the Government - and that he will not ask for more than 40%. As to the rest, he has accepted all the terms, including the difference between the prices and the regulation of the refundable [deposit]. We will meet in Geneva to agree on the "agreed price" and on the next steps. He prefers to continue negotiations in Europe, preferably in Italy".*

On this point, Mr. Ednan Agaev has stated: *"As far as I recall, the Chief then agreed with the government that he would have 40 per cent and the rest would remain with Shell"*[101];

January 23, 2010 (4:29 P.M.)[102] Emeka Obi wrote to the REX email address the message [English in source text:] *"Malabu just signed"*, [Translation resumes] a clear indication that - considering the tenor of all the messages exchanged in the previous days - Dan Etete had signed the mandate in favor of EVP;

January 24, 2010[103] Ednan Agaev [English in source text:] *emails Obi with Exclusivity Agreement*

---

[96] Prosecution's Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[97] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 54.

[98] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[99] Trial dossier, page 1318, text message 90 (English); Trial dossier, page 14122, text message 90 (Italian).

[100] Trial dossier, page 1318, text messages 91 to 95.

[101] Transcript of the hearing of 6.26.2019, page 33.

[102] Trial dossier, page 1318, text message 96 (English); Trial dossier, page 3269, text message 96 (Italian)

[103] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

signed by Etete, which includes manuscript amendments by Etete in relation to inter alia receiving a letter of intent from the investor to pay a non-refundable deposit and Malabu only disposing of a 40% interest in OPL 245; [Translation resumes]

January 24, 2010[104] Emeka Obi talked with Nwakodo about the small changes made by Dan Etete: [English in source text:] *"Obi emails Nwakodo regarding Etete's amendments to the Exclusivity Agreement. Obi notes that he has made some limited changes to the Agreement as follows: Page 1: specified 40%) in definition of OPL 245 Assets Page 2: qualify documents to those available in Malibu's possession Page 3: Amended payment instructions in line with their comments Obi asks Nwakodo to PDF only pages 1-3 if he thinks the changes are ok and then send back to Obi for Etete to initial".* [Translation resumes]

January 26, 2010 (9:43 P.M.)[105] Emeka Obi wrote to Ednan Agaev: *"[...] I will also ask all buyers to be very aggressive in terms of timing. This agreement must be closed within one month from today";*

January 27, 2010[106] the exclusive mandate between EVP, in the person of Zubelum Obi, and Malabu, in the person of Chief Dan Etete as consultant, was finalized. Please note that:

- *"This Letter Agreement reproduces in full the mandate given by you to us on December 15, 2009 and the agreements entered into between us on our undertaking and disposal of the OPL Assets. [HANDWRITTEN: for clarity this mandate relates to 40 (forty) percent of the Contractor's Rights and Assets in OPL 245";*
- *You have agreed, pursuant to the Agreement, to sell and dispose of the OPL Assets for an aggregate sale consideration to be agreed with you or following a review of the OPL Assets conducted on your behalf by your consultants and to be contained in a communication to us in the form of a supplement to this Agreement ("Agreed Malabu Price"). As the term is essential and our exclusivity period runs from the date of this Letter Agreement, you hereby undertake to send us written notice of Agreed Malabu Price in the form specified as soon as reasonably practicable but in any case no later than thirty (30) days from the date of this Letter Agreement;*
- *You hereby grant us for a minimum period of three (3) months from the date of this Agreement (the "Exclusivity Period") an exclusive agency mandate to seek and find up to three potential purchasers of the OPL Assets for the purpose of negotiating the sale of the OPL Assets with reference to the Agreed Malabu Price. On such basis, the terms of this Agreement shall apply to any sale of the OPL Assets entered into within such Exclusivity Period or pursuant to this Agreement. After that, our mandate will continue, subject to your right to terminate it in writing with one (1) month's notice.*
- *[...] Withholding of amounts in excess of the agreed consideration: You acknowledge and agree that we shall also be entitled to withhold, as our compensation and payment for procuring the purchaser/investor/buyer, handling the transaction and assisting in the completion of the sale of the OPL Assets, any amounts or payments or consideration in connection with the purchase of the OPL Assets in excess of the Agreed Malabu Price; ii. you shall not now or in the future under any circumstances be entitled to withhold any amounts or payments or consideration in connection with the purchase of the OPL Assets exceeding the Agreed Malabu Price.*
- *Payment of a non-Refundable Deposit: If the proposed transaction for the sale of the*

[104] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[105] Trial dossier, page 3269, text message 114.

[106] Eni Submissions of 9.17.2018, Translation of ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 50; Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_ EU_ 1237667_1_EVPChroology (1st round cut)24 8(2)evp comments.pdf"; Prosecution's Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.

[3 illegible signatures]

OPL Assets is not successful (as we expect it to be) after the identification of potential buyers/investors and provided that the final purchase consideration offered by the buyer is greater than the Agreed Malabu Price, you agree to pay to us an amount equal to one hundred percent (100%) of all cash and other consideration received by you (or on your behalf) as a non-refundable deposit from any potential investor or buyer (or on their behalf) with respect to the OPL Assets or any related transaction, provided that such investor/buyer has been identified or introduced by us or through us.

- *Compensation after termination of the agreement: If, within twelve (12) months after the latest of the termination, the withdrawal of either or both parties or the expiration of the Exclusivity Period or this Exclusivity Agreement, a transaction is entered into or an agreement is reached (whether or not signed) with a potential investor/buyer on the OPL Assets, you agree and shall pay to us the amount received in payment in excess of the Agreed Malabu Price, provided that such investor/buyer has been identified or introduced by us or through us [...]*
- *We will, at our sole option and discretion, direct the purchaser of the OPL Assets (and for this purpose you hereby authorize us and further agree to reconfirm in writing if requested and/or to disclose the contents of this Agreement) to: 3.10.1. Pay to us the full purchase price (including any excess over the Agreed Malabu Price) with the right for us to deduct the excess before paying to you the Agreed Malabu Price in accordance with the same payment terms and conditions as the buyer.*

January 30, 2010[107] Emeka Obi forwarded to Nwakodo [English in source text:] *"a copy of ENIs JVA questionnaire asking for his advice on completing it given EVP is working exclusively for the seller and the fact he has no professional or corporate relationship with ENI".* [Translation resumes]

4.3 February 2010 - October 2010

4.3.1 February 2010

February 2010 Jonathan Goodluck took over interim powers as President of Nigeria due to the health condition of President Yar'Adua.

February 1, 2010 - April 23, 2010 Emeka Obi took the following note: [English in source text:] *"preparation of 40% sale process: appointment of EVP advisors/review and collation of Malabu data/prepartions for modalities for AMP"* [108] [Translation resumes]

February 4, 2010[109] Richard Granier Deferre wrote the following memo:

[handwritten illegible]

4 February 2010[110] dinner organized by Emeka Obi (event mentioned in OBI's chronology) at the Principe di Savoia Hotel in Milan with Claudio Descalzi, Dan Etete, Ednan Agaev and Richard Granier Deferre.

February 14, 2010 Emeka Obi took note of the meeting with Roland at AK2s Hotel in London: [English in source text:] *"Introduction to Roland. Puts in call to AG. Denies AG place an agent/ broker*

[107] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active EU 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[108] Prosecution's Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected";*

[109] Public Prosecution Submissions of 3.6.2019, page 1.

[110] Public Prosecution Submissions of 7.3.2019, transcript of interrogation of Claudio Descalzi of 6.27.2016, page 5.

in the transaction. Says AG used to work for Etete and Etete never paid him and owes him money. Has a history of welching on his financial commitments. Told Roland that we had agreed he would pay me $200m"[111][Translation resumes];

15 February 16, 2010 EVP acknowledged receipt of expression of interest to NAE and advised that signing of confidentiality agreement was required for access to blockchain data[112].

15 February 16, 2010 (12:58) Donatella Ranco forwarded to Claudio Descalzi, Roberto Casula, Vincenzo Armanna, Marco Bollini and Guido Zappalà a file called *"draft - confidential"* containing the conditions for moving forward with the negotiation of OPL 245: "7. *confirmation by the Seller of the list and quality of the data available in the data room; 2. signing of the confidentiality agreement; 3. deposit of USD 1 million in escrow ("Data Access Fee" or "Data Fee"); 4. access to the data room for four weeks ("Data Room Period"); 5. The Seller must provide within the Data Room period: a. Evidence of the mandate and exclusive role of consultant; b. Completed questionnaire; c. Evidence of block dispute settlement (Shell vs. Seller and Shell vs. ICSID); 6. during the Data Room Period, Seller shall not grant any exclusivity to any party and shall inform Buyer of the access of third parties to the Data Room; 7. at the end of the Data Room Period: - if Buyer is reasonably satisfied with the documents referred to in clause 4, and with the non-financial due diligence, the Data Fee is released to Seller; otherwise, the Data Fee is returned to Buyer - if the Data Fee is released to Seller, Buyer may submit a (conditional) offer together with a draft Purchase and Sale Agreement ("SPA"). 8. after the submission of the offer, the parties will have a period of three months to negotiate and sign the SPA ("negotiation period"). 9. during the Negotiation Period, the Buyer shall have the right to match any offer Seller may receive from a third party. 10. following the signing of the SPA, Seller shall not accept any offer from any third party.*[113]

February 17, 2010 (2:05 P.M.)[114] Emeka Obi sent the draft Non-Disclosure Agreement (NDA) to NAE and added that after the agreement was signed: 1) he would provide confirmation of the exclusive mandate to EVP by Malabu; 2) Data Room access would be granted 3) documentation on the status of the disputes would be delivered; 4) the due diligence questionnaire requested from Malabu would be transmitted;

February 17, 2010 (19:53) Roberto Casula replied to Emeka Obi by transmitting some revisions made by the competent ENI functions: *"Dear Sir, I am pleased to confirm that the process outlined in your letter is in principle acceptable. With regard to the draft NDA you sent, I am submitting a revised version, which includes some intuitive changes. In particular, as you will see, we need to clarify the issues relating to your right to disclose confidential information and the mandate given to you by Malabu. It is my understanding that access to the Data Room is contingent not only on signing the NDA, but also on our acceptance of the "process package" which, to date, has not been provided to us. I anticipate that other changes to the NDA might be necessary after our review of the package. I would also like to take this opportunity to kindly ask you to consider relevant additional information when uploading data into the VDR, as per the attached list. Looking forward to receiving your feedback on the revised NDA. We remain fully available to review this version with you in order to finalize it immediately. I also confirm our willingness to meet with your representatives at the first available opportunity".*[115]

February 19, 2010 [116] a meeting was held at the ENI offices in San Donato between Emeka Obi,

---

Prosecution's Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected";*

[112] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 55;

[113] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 56.

[114] Prosecution's Submissions, hearing of 2.27.2019, page 4.

[115] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 58.

[116] Public Prosecution Submissions at the hearing of 2.27.2019, page 4; Witness Ranco's Testimony, hearing of 2.27.2019, page 53 et

Roberto Casula, Donatella Ranco, Valentina Ferri and Romina Giordani. Emeka Obi showed the mandate of January 21, 2010 from Malabu to EVP signed by Dan Etete. The document had many omitted parts and Emeka Obi refused to hand over a copy, on the grounds that it contained confidential information between Malabu and EVP. He also informed the meeting participants that the consideration for the sale would have to be paid to EVP and not to Malabu;

February 19, 2010 (3:00 P.M., 3:10 P.M., 3:31 P.M.)[117] there was an email exchange between John Copleston, Peter Robinson and Guy Colegate in which they commented on the general political situation in Nigeria, the appointment of Goodluck Jonathan as President and his relationship with Dan Etete.

Guy Colegate wrote: *"Chaps, News from the Russian front – a mix of good and bad:*

First the good – the valuation on the prize continues apace. Our man is in Paris next Tues for a final figure block valuation to be agreed with his consultants, and the Chief is extremely anxious to deal thereafter.

Now the bad – the chief is sending, letters saying unless a deal comes very soon the contract with our man is void. This may be because of two reasons: 1) he needs to get it over the line because he has promised payday to others or 2) and I suspect more likely – because he has another counterparty lining up. I heard rumours today that CNOOC are sniffing all around it again and may have been in direct touch (they put out a feeler to someone in Shell about it again this week-thought he would find out but he decided to ask me...no smoke without fire...) Not necessarily bad for us-in fact strategically could be more useful-but a likely spanner.

If its a russ/cnooc contest for 40 pc eq/contract I know where I would put my bet - plus we will likely get more cash from CNOOC for remainder – or something else somewhere else to stay in and help...may be that will carry us if indeed they are in mix. Only prob is the line gets further into distance if thats the case... Any news your side from Odein?

Peter Robinson replied, *"Saw mosp today. Seems that our settlement position is broadly ok. But he firm on 50:50. Keen to progress and appears to be very well informed. Clearly well informed on all that is going on, P";*

John Copleston wrote: "*Problem may also be that Etete close to Jonathan, whom he used to employ as a Private Tutor to his kids when he was Oil minister and Jonathan a lecturer at the local tech college in Yenagoa. Etete saw Jonathan last week and thereafter Jonathan asked Odein to reexamine the Shell/Malabu dossier. I'm told Etete now thinks he may be able to get back the whole block, but Odein still trying to be honest broker and get 50/50 signed off by all parties. John";*

Guy Colegate wrote: *"Ok - so the main issues are that Etete is thinking he can get it all; an idea we need to dissuade all parties from, and the second issue is that agreeing to 50/50 without a simultaneous transaction elsewhere, leaving us stuck with a partner that will never be able to support all costs, will give all the empowered investors the run-around. So message to Odein that 50/50 will need huge lifting at center – which I know Pete you have done – and message from you John that there is NO way case will come out of court if the basis is Etete gets most or all of it back – which will kill any follow on deal... can that be got to Jonathan??";*

---

seq. (*"the meeting held on February 19 in Milan, during which we met Emeka Obi, E. O. stands for Emeka Obi, on that occasion we met him in Milan, I met him for the first time there, together with some colleagues, including Valentina Ferri and Romina Giordani, Roberto Casula and I think also a person from the technical area, but I can't remember his name. The meeting actually started the whole process, because it was the meeting during which Emeka Obi was going to show us his mandate from Malabu to handle this transaction, while we had to define the process for handling the transaction. And so it is reported here that the mandate was shown at the meeting, we were able to give it a quick look. My two colleagues Giordani and Ferri looked at the mandate, and they told us that indeed it was an exclusive mandate from Malabu to EVP to manage a competitive process for the sale of a share of the block, and that it contained some omitted passages, and on that occasion we were able to see the mandate. He didn't give us the mandate during that meeting; we asked for it, but it wasn't given to us"* [...] page 59 *"we signed a confidentiality agreement that contained, among its clauses, the assumption that there was a mandate; so for us that meant that if at any point it was found that there was no mandate, the agreement we had signed would not be valid. This was our interpretation, we signed while awaiting confirmation of the mandate, we had seen it, we put it in the recitals, everything was based on existence of that mandate, so if it was found that there was no mandate for us the agreement would be invalid").*

[117] Public Prosecution Submissions of 11.23.2018, PM2, page 5: translation of the Prosecution's Submissions of 6.15.2019, page 4.

[3 illegible signatures]

February 24, 2010[118] the Confidentiality Agreement between NAE and EVP was signed:

- point 1) explicitly refers to a contractual agreement dated January 27, 2010 between Malabu and EVP[119];
- in point 2), NAE entered into a confidentiality obligation in relation to the information contained in the Data Room;
- point 8) states that *"no party shall, without the prior written consent of the other party, disclose to any person [...] or in any way announce that the transaction is or has been under evaluation between the parties, that negotiations or discussions are or have been conducted between the disclosing party and the receiving party, shall not disclose the status of the negotiations (including their termination) or that confidential information has been provided. These obligations shall not apply to communications between the disclosing party and Malabu, [...] Shell";*
- point 11) provides that *"without the prior written consent of the disclosing party, the receiving party shall not contact Malabu's employees, customers, suppliers, or agents in connection with the transaction until the expiration or termination of the EVP mandate [...] the parties acknowledge and agree that the disclosing party is acting on behalf of Malabu";*
- point 16) states that *"this agreement will expire one year from the exact date of this agreement";*

February 25, 2010 (9:15 A.M.) Roberto Casula wrote to Claudio Descalzi: *"Emeka Obi wrote this morning sending the text of the CA reflecting our latest comments. He has already signed it. Now we'll check it out for the avoidance of doubt, and then I'll sign it too"*[120]*;*

February 25, 2010[121]Emeka Obi wrote to Ednan Agaev [English in source text:] *"Once we get ENI officially into the data room as an "anchor tenant", other investors will quickly follow"* [Translation resumes];

February 25, 2010 ENI's Board of Directors was held during which Claudio Descalzi, at the invitation of the CEO, reported on the negotiations underway for the acquisition of OPL 245, specifying that *"the negotiations with the counterparty will be conducted exclusively with the consulting firm Energy Venture Partners and... in parallel with the data room, the non-financial due diligence on the seller will be completed"*[122];

February 26, 2010[123] EVP sent a letter to NAE granting it access to the Data Room;

February 26, 2010 Ann Pickard wrote to Malcom Brinded, Keith Ruddock, Guy Outen and lan Craig: *"The settlement is urgently required (1) in order to balance some deals that have been done for northeners recently and (2) in support of the amnesty given the role Etete plays. Furthermore, Act Pres is from Bayelsa, as is Etete and Etete is lobbying Act Pres very hard" "MOSP has made it clear that if we do not agree they will allow the arbitration to be completed and at that point we will no longer have the block. He has also made it clear that we are going to have great difficulty collecting any arbitration award, getting any arbitration award. I told him that it takes a lot of trust in him to make*

---

[118] Trial dossier, page 3259.

[119] *"in connection with the potential divestiture of a certain portion of Malabu's assets, specifically an interest in the OPL 245 licence, offshore Nigeria (hereinafter referred to as the Transaction), EVP (referred to as the Disclosing Party) in support of specific instructions received from Malabu to this effect and included in the contractual agreement dated 27 January 2010 between Malabu and EVP, is willing to disclose to the Receiving Party certain confidential information relating to the Transaction and previously disclosed to EVP by Malabu [...] The confidential information will be made available primarily through an online data room, to which the Receiving Party will receive access after returning a signed copy of this agreement to the disclosing party";*

[120] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 61.

121 Prosecution's Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[122] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 63.

[123] ENI Submissions of 4.9.2019, Exhibit 4, no. 5).

[3 illegible signatures]

the deal, and he acknowledged that, but he seemed pleased that I had said that. So I think we'd have a better chance of trying to come to a settlement than by allowing the arbitration to continue. The discussion will take place at the end of March, and then there will be a decision a couple of months later".[124]

February 28, 2010 (10:52 A.M.) Guy Colegate wrote to Peter Robinson and John Coplestone: [English in source text:] *"the Chief is back from his high plains slaughtering and will be in ABJ today- he sys he spoke with GLJ and AG yesterday in Lag and NNPC is sorted"*[125].

February 28, 2010 RDS 425 email from Keith Ruddock *"The background is political manoeuvring, which means that the Acting President, the MOSP and others, want to bring Etete to"*, I guess, *"their side, also to obtain his continued support for the amnesty".*

4.3.2 March 2010

5 March 5, 2010 (h 12:30 P.M.)[126] Emeka Obi gave ENI staff access to the Data Room;

March 5, 2010 (6:52 P.M.)[127] Emeka Obi wrote to Roberto Casula and Vincenzo Armanna: *"Dear Sirs, Further to our previous conversation and just to be clear:*

1. *Tomorrow we will have a strategy meeting with the Principal and the consultant team in order to review, among other things, the level and quality of interest received to date. As I informed you earlier, we will only be handling offers from a very small number of participants;*

2. You have now had the opportunity to check our exclusivity mandate (EVP and Malabu of January 27, 2010), as well as the technical, legal and financial data currently available in the data room. Even when you had not yet had a chance to read the actual documents, we had assured you right from the start that we had all the necessary information you required to successfully participate in the procedure;

3. Once we have received your confirmation for entry into the bidding process following acceptance of the requirements, discussions will be held with the Principal and in consultation with the other consultants you will be sent the letter for participation in the process immediately; and given the highly confidential nature and limited participation in the process, you will not be sent the letter for participation in the process until, as a group, we are convinced of your ability to submit a serious bid within the time constraints imposed by the Principal.

Please keep in mind that during the due diligence process you will be allowed full access to all available documentation, access to 3D seismic documentation from a workstation, and you will be able to get all of your questions answered by our team of professional consultants. You will also be given the opportunity to request any additional documentation not made available previously. The Documentation is continually being updated and we clearly understand that greater access to information will result in higher bids. We welcome your participation in this process and look forward to hearing from you by the end of this business day. Regards"

March 6, 2010[128] meeting between Emeka Obi, Dan Etete and Ednan Agaev at the Bedford Hotel in Paris where it was agreed that: [English in source text:] *"(1) they would no longer seek to agree in advance a fixed AMP as a price which was all Malabu would receive with EVP taking any amount achieved from a buyer in excess of that price; (2) the AMP would be set after the Price had been agreed with a third party buyer for the OPL Assets, and the amount of the AMP would be US$200 million less than the Price; (3) otherwise, the EVP Exclusivity Agreement would continue in accordance with its terms; and (4) in any event, EVP should continue to carry out the mandate, for which it would be paid its success fee in the fixed amount of US$200 million. [Translation resumes]*

---

[124] Public Prosecution Submissions of 3.22.2019, page 173 (RDS 416).
[125] Prosecution's Submissions of 3.22.2019, page 612 (RDS 854-855).
[126] Prosecution's Submissions, hearing of 2.27.2019, page 6.
[127] Public Prosecution Submissions of 7.4.2019, page 54.
[128] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

March 6, 2010 (11:42 A.M)[129] NAE confirmed to EVP that it had access to the Data Room and complained about the small amount of data present[130]: *"Following our series of meetings and discussions regarding the above and in particular the execution of the Confidentiality Agreement between NAE and Energy Venture Partners Limited we confirm that we have entered the Virtual Data Room yesterday. It is worth noting that we had the opportunity to read just the title of documents without the possibility to verify neither the quality nor content". We also noticed that no information or documents pertaining to the Shell-Malabu dispute and its status were available or listed. However, we are now prepared to move forward with the process beginning with receipt of the Process Package and full access to the data room as provided in your letter of February 16, 2010. Our aim is to complete the technical and contractual assessment and due diligence as soon as possible";*

March 7, 2010 Claudio Descalzi wrote to Paolo Scaroni: *"it is evident that the documentation contained in the data room is not complete, in particular with regard to the status of art of the relationships with the partner and the questionnaire requested under the 379 anti bribery procedure";*

March 8, 2010[131] EVP sent a communication to NAE in which it expressed low confidence in the company's ability to make an adequate offer within the timeframe: *"Thank you for your letter of March 6 2010 in connection with the proposed sale of a forty percent interest in OPL 245. We have discussed its contents, and reviewed our series of interactions over the last few weeks, with the Principal and the team of advisors. We have also reviewed the level of interest demonstrated by the various prospective participants for the process. We regret to inform you that, due to a collective lack of confidence that ENI/NAE will be able to submit a credible financial offer within the anticipated time-frame and progress matters expeditiously, we are unable to continue further discussions with you in connection with the proposed transaction. Whilst we acknowledge and appreciate that every organization has its own methods and processes for evaluating opportunities, we feel that this is a very specific opportunity and that an appropriate approach will be required to see it through to fruition. Given the tremendous reserves potential of this asset, as well as the level of serious interest that exists in the market, we feel that we would be placing ourselves at a commercial disadvantage, in view of our impending deadline for closing, by allocating further time and resources in a prolonged engagement with ENI/NAE. We thank you for all the effort made so far, by your extremely professional and competent team, and hope that we may be able to collaborate with you on other opportunities in the future. We respectfully request that you destroy the data room index sent to you on March 5 and confirm destruction to us within the stipulated ten day period. In addition, we would like to remind you that NAE (including its employees and associates) are still bound by the terms of the Confidentiality Agreement executed between NAE and EVP on February 24th 2010. Accordingly, we hereby expressly reserve our rights under the terms of the Confidentiality Agreement and otherwise";*

---

[129] ENI Submissions of 4.9.2019, Exhibit 4, no. 7).

[130] [English in source text:] *"we confirm that we have entered the Virtual Data Room yesterday. It is worth noting that we had the opportunity to read just the title of documents without the possibility to verify neither the quality nor content".*

[131] Prosecution's Submissions 11.23.2018, PM3, page 47: [English in source text:] *"Thank you for your letter of March 6 2010 in connection with the proposed sale of a forty percent interest in OPL 245. We have discussed its contents, and reviewed our series of interactions over the last few weeks, with the Principal and the team of advisors. We have also reviewed the level of interest demonstrated by the various prospective participants for the process. We regret to inform you that, due to a collective lack of confidence that ENI/NAE will be able to submit a credible financial offer within the anticipated time-frame and progress matters expeditiously, we are unable to continue further discussions with you in connection with the proposed transaction. Whilst we acknowledge and appreciate that every organization has its own methods and processes for evaluating opportunities, we feel that this is a very specific opportunity and that an appropriate approach will be required to see it through to fruition. Given the tremendous reserves potential of this asset, as well as the level of serious interest that exists in the market, we feel that we would be placing ourselves at a commercial disadvantage, in view of our impending deadline for closing, by allocating further time and resources in a prolonged engagement with ENI/NAE. We thank you for all the effort made so far, by your extremely professional and competent team, and hope that we may be able to collaborate with you on other opportunities in the future. We respectfully request that you destroy the data room index sent to you on March 5 and confirm destruction to us within the stipulated ten day period. In addition, we would like to remind you that NAE (including its employees and associates) are still bound by the terms of the Confidentiality Agreement executed between NAE and EVP on February 24 th 2010. Accordingly, we hereby expressly reserve our rights under the terms of the Confidentiality Agreement and otherwise. Zubelum Obi.* [Translation resumes]

March 10, 2010[132] Donatella Ranco, Marco Bollini, Roberto Casula and Vincenzo Armanna prepared a reply to Emeka Obi in which they confirmed their interest in the transaction: *"Consistently with the approach we adopted since the beginning of our discussions, NAE hereby confirms its strong interest in the envisaged disposal process. Following our series of meetings and communications, your partial disclosure of the Exclusivity Agreement between Malabu and Energy Venture Partners dated January 27th 2010, the signature of the NDA on February 24th 2010 and our assessment of the Virtual Data Room Index, we are willing to proceed expeditiously further with the evaluation of this opportunity and to take the steps necessary to move forward. To this purpose our internal dedicated team is ready to analyze the complete data room contents in order to perform the technical and commercial evaluation to consider the Process Package mentioned in your letter dated February 16, 2009 and other relevant project information as discussed in the past weeks (including the JVA Form filled in by Malabu) as soon as they are received. Subsequently we confirm that subject to our internal corporate approval and satisfactory results of the due diligence on Malabu we will be in a position to submit a conditional offer supported by a manually agreed deposit within a 2 week period. Kindest Regards";*
March 10, 2010 (4:45 P.M.)[133] John Copleston wrote to German Burmeister and Stuart McGeoch: *"Stuart/German F.i. I think Gusau may become a player on PIB – and possibly again on 245, although I don't think we should rush to get this back on his desk!"*
March 10, 2010 (5:05 P.M.)[134] John Copleston wrote to lan Craig and Peter Robinson introducing the figure of General Gusau: *"Gusau is often seen as the 'eminence grise' of Nigerian intelligence. A former Director of Military intelligence, he helped plan the 1985 coup that brought Babangida (IBB) to power, and then served as his National Security Adviser (NSA) from 1985-93. Briefly Chief of Army Staff under Shonekan, he was due to become President in the November 1993 coup that overthrew the Shonekan administration, but was double crossed at the last minute by Abacha and forced into retirement. He and IBB plotted the end of Abacha and oversaw the rehabilitation of Obasanjo, stage managing his accession to the Presidency in 1999, with Gusau then resuming his old job as NSA deliberately so in order to act as guarantor of Northern interests in a Southern regime. But they fell out and he resigned in March 2006 to run for President - but was defeated by the PDP machine, then under Obasanjo's control. He is personally close to the Yar'Adua family, although bitterly opposed to Yar'Adua as President. His appointment again as NSA (for the third time) is a significant political move, particularly when taken with that of Gen TY Danjuma as Chairman of the PAC (Press Advisory Council). Gusau and IBB have always acted jointly, and it is now clear that the heavyweight Northern generals (the caucus that effectively ran the country from 1970 to 2005 when Obasanjo went off the rails) are swinging firmly behind Jonathan, and thus reestablishing themselves as the main power bloc in the country, supported by the Northern establishment (Emir of Kano etc). Jonathan's authority will be substantially enhanced and the Yar'Adua Katsina mafia now start to look very ancient regime (and I suspect will shortly be packing their bags…). The return of Gusau/IBB/Danjuma effectively signals as well the demise of Obasanjo as a political force in this administration (the big question of course is the price Jonathan has had to pay for this support… but this is for another day…). Gusau will become the regime's strongman but also its principal international fixer. For years as NSA he managed Nigeria's most important bilateral relationships behind the scenes and has continued to nurture relationships both in and out of office. He has good links with the US (Bush, Rice, both Clintons more recently, at working level Johnnie Carsons), the UK, France (something for us to beware of - long relationship with Total), Libya (Ghadafi), Saudi (Prince Turki), and so on. He also has extensive business interests and is close to eg Peter Bosworth (Arcadia), Vitol and a variety of service provider/PMCs/Intelligence consultants etc.. In Nigeria he has been pivotal in developing and placing his boys throughout Nigerian public life, and has an unsurpassed ability to manipulate events from behind the scenes. Current GMD Barkindo is one of his boys, and can now be expected to keep his job*

[132] Public Prosecution Submissions of 11.23.2018, PM3, page 52.
[133] Prosecution's Submissions of 11.23.2018, PM2, translations of Prosecution's Submissions of 7.4.2019, page 16.
[134] Prosecution's Submissions of 11.23.2018, PM2, translations of Prosecution's Submissions of 7.4.2019, page 15.

as Gusau will need him to deliver NNPC. Former GMD Funso Kupolokun was also put into the job by Gusau and will be responsive to his bidding. Ditto Speaker of the House Bankole. And many others - in a country where everyone has skeletons, Gusau is the intelligence chief who knows where they are. In industry terms the NSA oversees the Niger Delta and therefore he impacts directly on our business. But more significantly, Jonathan, Gusau and Danjuma are likely to become the key decision makers across government (or their authority invoked to underwrite decisions taken elsewhere), so what remains of the formal machinery of government will mutate into a rubber stamp process – something that has implications for us on all our bilateral issues... I have worked closely with Gusau on and off for the last 20 years, including during two tours as UK Intelligence Rep in Nigeria, and have a good relationship with him. I spoke to him as soon as I heard news of his reappointment and will call on him once he has got his feet properly under the desk again (and the current crisis in Jos, which is his principal focus right now, has eased off a bit…)";

March 10, 2011 (11:17 A.M.)[135] Vincenzo Armanna wrote to Roberto Casula and Donatella Ranco: *"Following is the "final" version that Obi and the Principal would be happy with. I would like to point out that it has been made clear that only after the conclusion of the due diligence and approval process will it be possible to decide whether to make an offer.* [English in source text:] *"Dear Sir, PROJECT CLEAR VISION: Disposal by Malabu Oil and Gas of 40% interest in OPL 245 Consistently with the approach we adopted since the beginning of our discussions, NAE hereby reconfirms its strong interest in the envisaged disposal process. Following our series of meetings, communications, the confirmation of the existence of the Exclusivity Agreement between Malabu and Energy Venture Partners dated January 27th 2010, the signature of the NDA on February 24th 2010 and our assessment of the Virtual Data Room index, we are willing to proceed expeditiously further with the evaluation of this opportunity and to take the steps necessary to move forward. To this purpose, our internal dedicated team is ready to analyse the complete data room contents in order to perform the technical and commercial evaluation, to consider the Process Package mentioned in your letter dated February 16, 2009 and other relevant project information as discussed in the past weeks (including the JVA Form filled in by Malabu) as soon as they are received. Subsequently, we confirm that, subject to our due diligence and approval procedures, we will be in a position to submit a credible, conditional, financial, technical and commercial offer, supported by a mutually agreed deposit, within a 2 weeks period followed by the final negotiating period. Kindest Regards";* [Translation resumes]

March 12, 2010 the second due diligence report on Malabu by TRAG[136]was filed;

March 15, 2010 (10:06 A.M.)[137] Valentina Ferri sent the TRAG 2010[138] and 2007 reports to Donatella Ranco, Roberto Casula, Massimo Mondazzi *("I transmit for your examination the report prepared by The Risk Advisory Group in relation to Malabu Oil and Gas and the status of OPL 245. The update is still in draft form (consultants are awaiting some final feedback). For completeness, I also attach the 2007 report, to which the 2010 report refers. If you have any questions, I will be happy to pass them on to TRAG along with some requests for clarification that I plan to forward later today. Regards Valentina").*

The reports state, among other things, *"We understand from a Nigerian oil industry consultant who is close to the negotiations between Shell and Malabu that discussions had reached an advanced stage in early February and that the parties were close to an agreement. However, the appointment of Goodluck Jonathan as acting president apparently changed that. The source told us that "Etete paid for the education of Jonathan's children back in the day he thinks that he is now in a position to call in that favor. He is therefore, waiting to see if he has the political backing from his fellow Ijaw to push*

[135] Public Prosecution Submissions of 11.23.2018, PM3.

[136] ENI Submissions of 9.17.2018.

[137] Prosecution's submissions of 11.23.2018, PM3, page 56 et seq.

[138] Prosecution's Submissions of 11.23.2019, PM3, page 63: [English in source text:]*"Whatever the formal ownership structure of Malabu, all of the sources to whom we have spoken are united in the opinion that Dan Etete is the owner of the company".* [Translation resumes]

Shell a bit harder". This is echoed by an advisor to the Nigerian government who told us that "Etete thinks that he may be able to get the Shell Licence overturned". However, neither source thought that this was a likely outcome. The consultant noted that Shell has made it clear to the Nigerian government that they will step up their litigation management strategy if anything happens that seems to make a positive outcome for them less likely. The consultant told us that messages to this effect were sent to the government, adding also that it was rumored that Etete had held meetings with Oleg Deripaska's GAZ group to consider options should he be granted unlimited rights to the licence. A Lagos lawyer with ties to the transaction also remarked that General Aliyu Gusau was closely involved in the negotiations. Specifically, it's one of his people, a former security guy and current member of the House of Representatives, representing Malabu at the table [...] Whatever the formal ownership structure of Malabu, all the sources we turned to converge on the view that Dan Etete owns the company".

March 15, 2010 (10:10 A.M.) Roberto Casula forwarded Valentina Ferri's email to Vincenzo Armanna for his comments *("fyi");*

March 15, 2010[139] an agreement was signed between EVP and Raffaiesen: [English in source text:] *"Mandate Agreement - Sell Side between EVP and Raffeisen setting out Raiffeisen's relationship with EVP in this transaction, in which EVP is agent for Malabu. Signed by Obi, Schwedler and Stechow";* [Translation resumes]

March 18, 2010 (2:33 P.M.) Vincenzo Armanna wrote to Roberto Casula: *"Thank you Roberto, I have read the reports, in my opinion: * it clearly emerges that there is no connection, at least documentable/provable, between Mr. Etete and Malabu; * In any case we cannot understand the status of what is happening to Mr. Etete in Paris, it would be best to have at least an extract of the judgment to truly understand the charges and what he was convicted of";*

March 18, 2010 (4:05 P.M.)[140] Valentina Ferri joined the discussions about the conclusions of the TRAG report on the traceability of Malabu to Dan Etete and, writing to Roberto Casula, Marco Bollini, Donatella Ranco and Vincenzo Armanna, said: *"Roberto, if it is felt necessary, we can try to get documents about the judgement convicting Mr. Etete for money laundering, although to me it does not seem to be the most important aspect of the profile emerging from the report. Also, I asked the consultants for more information about Etete's involvement in the Nigerian scandals that in 2007 were reported only as "allegations". With regard to the link between Malabu and Etete, let me remind you that both I and my colleague Romina Giordani saw the mandate to EVP (which was shown to us by Obi) which clearly bore Dan Etete's signature. In addition (but this is actually information dating back to 2007) we have evidence that, at the time, Etete had directly managed the contacts relating to OPL 245 on behalf of Malabu";*

March 18, 2010 (4:44 P.M.) Donatella Ranco wrote to Roberto Casula, Vincenzo Armanna, Marco Bollini and Valentina Ferri: *"Roberto, the information that we had seen the mandate (albeit incomplete) given by Malabu to EVP and signed by Dan Etete (and thus the clear link between Malabu and Etete) is contained in an email I sent to you and Claudio about a month ago. I add for Vincenzo that even before the data room it is necessary to obtain and view the process package. Kind regards Donatella";*

March 19, 2010 (10:55 A.M.)[141] Vincenzo Armanna replied to the conversation on the TRAG relations and wrote to Donatella Ranco, Marco Bollini and Roberto Casula: *"[...] honestly at this point the question arises, if we have no evidence of the relationship between Malabu and Dan Etete, on what grounds we can consider the mandate given to EVP valid if the person that signed it does not appear to have powers of representation?";*

March 22, 2010 (12:36 P.M.)[142] Jonathan Bearman wrote to Peter Robinson: *"This morning Etete told*

---

139 Prosecution's Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

140 Public Prosecution Submissions of 11.23.2018, PM3, page 75.

141 Prosecution's Submissions of 11.23.2018, PM3, page 74.

142 Public Prosecution Submissions of 3.22.2019, page 241 (RDS 484); translation of the Public Prosecution Submissions of 6.15.2019,

[3 illegible signatures]

a contact that he has given exclusive negotiating rights on 245 to Energy Ventures Partners and Emeka Obi. These in turn are talking to the Italians. He says he's going to get the DPR to change his records";
March 22, 2010 (4:18 P.M.)[143] John Copleston wrote to Peter Robinson and Guy Colegate: *"Peter, Emeka Obi is Ednan's local partner with whom we went to Wakkis in November I think. I've since seen him around at the Hilton, but haven't looked into it much. I just checked with Bearman, who thinks Energy Ventures may be connected with Ken Etete. So all of this can be seen with the Nigerian perspective. L Bearman heard this story directly from the Italians - it would seem there is a direct connection there. I will try to connect with Bature again for further clarification John";*
March 22, 2010 (4:25 P.M.) John Copleston wrote to Peter Robinson and Guy Colegate: *"I just found out from contacts in common that Emeka is currently in the UK, so this should be linked with Ednan's visit..."*
March 22, 2010 (4:53 P.M.)[144]SHELL was certain that the counterparty with which Malabu was negotiating was ENI. In an email sent to John Copleston and Peter Robinson, Guy Colegate wrote, *"Gents:*

1) [Italian translation omitted]
2) [Italian translation omitted]
3) [Italian translation omitted]
4) [Italian translation omitted]
5) [Italian translation omitted]
6) [Italian translation omitted]
7) [Italian translation omitted]

8) [Italian translation omitted
9) [Italian translation omitted]
10) [Italian translation omitted]
11) [Italian translation omitted]
12) [Italian translation omitted]
13) [Italian translation omitted]

On this point, Mr. Ednan Agaev has stated: *"From the financial point of view I invested significant amounts, and from the reputational point of view I had to sign the deals, the transactions, and if I failed it was negative for me. For me it would mean that I had failed in the deal". For me this deal was absolutely transparent, it was a transaction with two important international companies, and it could have been positive for my reputation"*[145];
March 26, 2010 (8:35 P.M.) Stefan Wanjek of Raffaisen sent Emeka Obi a list of investors: [English in source text:] *"which in our view should be considered to be contacted in addition to ENI";*[146]
March 29, 2010 Emeka Obi took note of an email exchange with such Fan Hu: [English in source text:] *"assistant with contacts to chinese ambassador to market to chinese oil co (CNOOC,*

page 10.
[143] Public Prosecution Submissions of 11.23.2018, PM2, page 10; Translation of the Prosecution's Submissions of 6.15.2019.
[144] Public Prosecution Submissions 11.23.2018, PM2, page 10: [English in source text:] *"Gents, 1) Confirmed front end buyer is ENI; 2) Energy Venture Partners is Ednan's company with Obi focused on Nigeria; 3) There's a backstory to ENI involvement- will pki from home; 4) The deal is still on but chief can't provide details of shareholders banks etc for Malabu so Eni very nervous; 5) Chief convinced we are in league with Eni; 6) Edn into chief for two mill, richard for twenty; 7) Chief lost his appeal in France against conviction two weeks ago-fined eight mill euro and hasn't paid – travel restrictions now in effect; 8) Edn says we must not contact Eni direct to discuss deal but sign we are aware would be helpful – BUT chief paranoid about being circumvented; 9) Edn very exposed- financially and reputationally (of which more later) clearly worried; 10) Two weeks ago was "90 pc sure deal would fly" now "50/50"; 11) Says fgn chaos re Pres has not helped – asked can we work with fgn to box in chief; 12) Says now beginning to doubt chief has freedom of manouvre and maybe can't deliver but still thinks we can get it done. His and investors deadline end of this month (i.e., a week)".* [Translation resumes]
[145]Transcript of the hearing of 6.26.2019, page 73.
[146] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 69.

sinopec)"[147]**;**

March 30, 2010 Emeka Obi wrote to Stefan Wanjek and Bruce Johnson: *"If you guys have any ideas, we would like if possible to receive some options on how to structure the Malabu carry after the transaction. They are considering having about 10% after completion. Can you propose 2 or 3 possible structures for me to discuss with Malabu in view of D&L comments to include something in the PL (Process Letter)"*[148]**;**

27 March 31, 2010 (3:32 P.M.) Emeka Obi wrote to Roberto Casula and Vincenzo Armanna to introduce his team of investment advisors of Raiffeisen Investment AG (Henning Sechiv, Stefan Wanjek and Sandra Rath): *"Dear Sirs, Please allow me to formally introduce our team of investment banking advisors in connection with Project Clear Vision [...] Later today you will receive from them the Process Letter explaining the rules and procedures governing your participation in our procedure. Malabu's incorporation and ownership documents are contained within the VDR and we are available to submit the JVA form (completed for ENI) at your convenience.*

Stefan will be the first point of contact on a daily basis. I will of course always be available if the need arises. Please send copies of all communications with consultants to me or to the Clear Vision Project Coordinator at Energy Venture Partners Limited at the following email address: cvproiect@envenpartners.com"[149]

March 31, 2010[150] Raiffeisen Bank sent NAE the process letter[151], which states:

- [English in source text:] *"this Process Letter has been prepared by Raiffeisen Investment AG ("RIAG" or the "Advisor") on behalf of Energy Venture Partners Ltd ("EVP"), pursuant to an Exclusivity Mandate from Malabu Oil & Gas Ltd ("Malabu") in connection with the proposed sale of a forty percent (40%) undivided participating interest in the Oil Prospecting License No 245 ("OPL 245"), offshore Nigeria";*
- *"Malabu has engaged EVP, by way of an Exclusivity Mandate to coordinate the disposal of a portion of its participating interest in OPL 245";*
- *"in consideration for being granted access to information in respect of the Asset and the right to participate in the bidding process in accordance with this Process Letter and the Confidentiality Agreement, prospective investors are required to pay a non-refundable participation fee in the amount of EUR 500,000 (the 'Participation Fee"). Payment of the Participation Fee must be made within five (5) business days of receipt, by us, of the acknowledged acceptance of the terms of this Process Letter (beneficiary: Energy Venture Partners Ltd)";*
- *"bids are due no later than 25 April 2010, 17.00 CET. All Binding Bids should be sent only to the attention of the EVP "Clear Vision" Project Coordinator at the contact details given at the end of this Process Letter";* [Translation resumes]

4.3.3 April 2010

April 1, 2010 (1:49 P.M.)[152] Emeka Obi wrote to Vincenzo Armanna: *"sorry, I can't be in Milan by 4 o'clock, I am in Paris in a meeting with the consultants of the principal. I will arrive in Milan at 7 tonight. Apologies to everyone";*

April 1, 2010 (4:52 P.M.)[153] Guy Colegate updated Peter Robinson and John Copleston on the status

---

[147] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".* [Translation resumes]

[148] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 71.

[149] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 74;

[150] Trial dossier, page 1527.

[151] ENI Submissions of 4.9.2019, Exhibit 4, no. 10).

[152] Trial dossier, page 3270, text message 185.

[153] Public Prosecution Submissions of 3.22.2019, page 274 (RDS 517): [English in source text:] *"Just got a call they have agreed to a deal at 1.3 will be papered asap starting Monday- ed said it has been an "absolute theatre" with the chief storming in and out of negs*

of negotiations and reported that he learned from Ednan Agaev that an agreement had been reached for the sum of [English in source text:] 1.3 *USD* ("*ed said it has been an "absolute theatre" with the chief storming in and out of negs since tues");* [Translation resumes]

April 2, 2010[154] Emeka Obi met Claudio Descalzi [English in source text:] "*to discuss bank guarantee, JVA form, deposit, VDR access and pricing structure"*,
April 2, 2010 (3:22 P.M.) Marco Bollini wrote to Roberto Casula: "*Roberto, as mentioned yesterday, I contacted law firm Dewey & LeBoeuf, which was indicated in the process letter as the seller's legal advisor. Indeed they assist them*"[155];
April 6, 2010 (11:03 P.M.)[156] Emeka Obi sent Roberto Casula and Vincenzo Armanna the *JVA form*[157] and other corporate documents of Malabu that had been requested for due diligence [English in source text:] *("1. Completed JVA FORM; 2. Cover note to JVA FORM; 3. CTC of Malabu Certificate of Incorporation; 4. CTC of details of Malabu Shareholders & Directors").* [Translation resumes] The JVA form was signed by Rasky Gbinigie and many fields were empty or had a note that the relevant information would be provided later;
April 7, 2010[158] NAE sent a communication signed by Ciro Pagano to Raiffeisen Investment accepting the terms of the Process Letter of March 2010. The acceptance specified that [English in source text:] "*our acknowledgment of the process letter is made on the assumptions that: 1) we will receive in the next days a written confirmation from Malabu shareholders of the existence of the mandate entrusting EVP to act as Malabu advisor on an exclusive basis in connection with Project clear Vision; 2) NAE team will be provided with appropriate Virtual Data Room password access immediately upon your receipt of this letter";* [Translation resumes]
April 7, 2010[159] Stefan Wanjek wrote to Emeka Obi: *"Dear Emeka, Please let us know if the Seller approved the list of companies to contact. Yesterday we identified the following:*

1. *Exxon Mobile*
2. *Total*
3. *Statoil*
4. *Petrobras*
5. *Chevron*
6. *Addax/Synope*
7. *CNPC*

We'll start contacting them as soon as we get your approval";
April 8, 2010 (1:51 P.M.) Vincenzo Armanna sent to Emeka Obi the communication of acceptance of the process letter specifying some conditions. In particular, he states that "*Our acknowledgment of the process letter is made on the assumptions that a) we will receive in the next days a written confirmation from Malabu Oil & Gas Limited shareholders of the existence of the mandate entrusting Energy Venture Partners to act as Malabu Oil & Gas advisor on an exclusive basis in connection with Project Clear Vision; b) NAE team will be provided with appropriate Virtual Data Room password access immediately upon your receipt of this letter [...]Please note that these are extremely important terms*

since tues. Chief will go home tonight so al bets could be off again but ed says Its first time a handshake on price has happened". [Translation resumes]

[154] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology found in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[155] ENI submissions of 1.29.2020, "*general submission memorandum",* Exhibit 81.

[156] Public Prosecution Submissions of 11.23.2018, PM1, page 565.

[157] Prosecution's submissions of 11.23.2018, PM1, page 446.

[158] Public Prosecution Submissions of 11.23.2018, PM1, page 412.

[159] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf"; ENI submissions 1.29.2020, "general submission memorandum", Exhibit 83.

[3 illegible signatures]

for NAE to be able to progress negotiations on the Clear Vision Project"[160];
April 8, 2010 Stefan Wanjek replied to Vincenzo Armanna: *"[...] The written confirmation from the shareholders of Malabu Oil & Gas Ltd, as you requested, will be provided in the coming days"*[161]*;*
April 9, 2010 (9:30) Emeka Obi wrote to Stefan Wanjek: "*We need to make sure that we are not giving ENI access to sensitive and crucial documents without their unconditional acceptance of the Process Letter. Please send an email to ENI with the following content:*
1. *there appears to have been a miscommunication and the client has clarified that access to the Virtual Data Room (VDR) will not be possible until the Process Letter is unconditionally accepted, as previously stipulated in both the Process Letter (PL) and verbal discussions with the ENI team.*

2. *Although NAE has already confirmed the existence of the EVP mandate (as acknowledged in both the Confidentiality Agreement (CA) signed between EVP and NAE on February 24, 2010 and in NAE's letter to EVP dated March 11, 2010), in response to your request received on April 8 following receipt of the March 31 Process Letter, we have asked Malabu to prepare a new letter that will be delivered to you shortly [...]"*[162]

April 9, 2010 (11:06 A.M) Stefan Wanjek wrote to Vincenzo Armanna: *"Dear Sir, with reference to the communication on the Clear Vision project there seems to have been a misunderstanding about the procedure to be followed. As communicated by our principal, access will not be granted until the terms of the Process Letter have been unconditionally accepted. We remind you that the above was specified both in the Process Letter and in recent discussions between our principal and the ENI team. Although NAE has already confirmed the existence of the EVP mandate (as acknowledged in both the Confidentiality Agreement (CA) signed between EVP and NAE on February 24, 2010 and in NAE's letter to EVP dated March 11, 2010), in response to your request received on April 8 following receipt of the March 31 Process Letter, we have asked Malabu to prepare a new letter that will be delivered to you shortly [...]"*[163]
April 9, 2010 (2:14 P.M.)[164] Ednan Agaev wrote to Emeka Obi: *"Spoke with the Chief He is organizing the signing of the letter. Chairman of Malabu is in Port Harcourt. He will send someone there to get the signature. We shall have the signed letter Sunday";*
April 9, 2010 (3:43 P.M.)[165] Vincenzo Armanna wrote a text message to Emeka Obi asking to be called;
April 9, 2010 (4:32 P.M.)[166] Vincenzo Armanna wrote to Emeka Obi: [English in source text:]*"Until now we try to follow the rules coming from you but more than once there were changes also after confirmation from your side: we requested evidence of Shell acknowledgement of the willingness of Malabu to sell part of its interest, until now we never received it; we asked evidence of the mandate, you show it to us but it was undersigned by someone apparently not duly empowered; We asked to verify the quality and the content of the data room and we have only the chance to see an index. Now you are asking us to accept something without any evidence of your empowerment that is the only condition we put. As you know we are interested on Malabu asset but until now we are aware only of the delay on the reaction of EVP since the beginning of this process, December 27th 2009 and we are aware also of your needs of comfort letters to show to the seller. Everything that we asked it was already written in the past communications that we are ready to submit. It is our interest to go through*

160 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 85.
161 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 87.
162 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 90.
163 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 91.
164 Trial dossier, page 3217, text message 206.
165 Trial dossier, page 3271, text message 210.
166 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_ EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

the process as fast as possible but apparently this is different from yours. What was asked was only to have confirmed your acknowledgement that our acceptance is in the assumption of receiving a duly signed confirmation of your mandate. [Translation resumes]

April 9, 2010 (5:42 P.M.)[167] Vincenzo Armanna wrote to Emeka Obi, copying in Wanjek and Roberto Casula: *"Dear Mr. Obi, in order to avoid any misunderstandings we would like to emphasize that we are not adding any condition, restriction or modification to or through the tender package acceptance letter. We intend to confirm our willingness to go through the valuation process as quickly as possible and we want to assure you that we are acting in good faith and under the assumption of the existence of both the mandate given to you by Malabu and Malabu's right to sell."*

April 9, 2010[168] Agaev wrote a text message to Obi telling him that he had spoken to Etete for the signing of the letter confirming the mandate: [English in source text:] "*Spoke with the Chief He is organizing the signing of the letter. Chairman of Malabu is in Port Harcourt. He will send someone there to get the signature. We shall have the signed letter Sunday."* [Translation resumes]

April 10, 2010 (6:01 P.M.)[169] Claudio Descalzi sent a text message to Emeka Obi to set up a meeting;

April 11, 2010 (7:19) P.M.[170] Ednan Agaev wrote to Emeka Obi that Dan Etete wanted to sign the mandate personally because he claimed to be the owner of block 245 ("the *chief will sign the letter personally, this is his final decision. I am sorry but these are the facts. He said that he is the owner of the block and that he doesn't want to play anymore. He wishes to act openly");*

April 12, 2010 Emeka Obi took note of an email sent from EVP to Gianluca Di Nardo, in which EVP discussed the negotiation strategies for OPL 245 and talked about price and offers, as well as contacts with other investors

April 13, 2010 (8:22 A.M.)[171] Claudio Descalzi wrote to Emeka Obi to arrange a meeting for the following Friday;

April 15, 2010 (11:17 A.M)[172] Emeka Obi wrote a text message to Claudio Descalzi: [English in source text:] *"Having a fruitful and progressive discussions with RC. Would still like to meet at your convenience either Fri night or Sat. I am determined to close and will do everything possible to ensure all parties seller buyer and incumbent operator get all the necessary comfort and structure required for mutually beneficial result";* [Translation resumes]

April 15, 2010 (1:35 P.M.)[173] Roberto Casula wrote to Emeka Obi: *"What about the mandate from the seller?"*,

April 15, 2010 (2:09 P.M.)[174] Emeka Obi replied to Roberto Casula: *"it will arrive";*

April 15, 2010 (9:23 A.M.)[175] Claudio Descalzi wrote to Emeka Obi to cancel the meeting;

April 16, 2010 (5:41 P.M.)[176] John Copleston wrote to Peter Robinson: *"I finally had a 30-minute face-to-face with Gusau this morning - it dragged on a bit and he apologized for it, but he was in great shape and full of energy. Shell / FGN: I said that Shell is eager to have a harmonious relationship with FGN and avoid those frictions that had a tendency to arise in recent years. We wanted to fit into their agenda and align with the FGN's priorities. I was eager to maintain the kind of relationship with him that we had enjoyed in the past to ensure that he was informed about Shell's agenda and to provide a*

---

167 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChrooIogy (1st round cut)24_8(2)evp comments.pdf."

168 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

169 Trial dossier, page 3271, text message 217.

170 Trial dossier, page 3271, text messages 220, 221, 222.

171 Trial dossier, page 3271, text message 227.

172 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

173 Trial dossier, page 3271, text message 244.

174 Trial dossier, page 3271, text message 245.

175 Trial dossier, page 3271, text message 238.

176 Public Prosecution Submissions of 6.15.2019, page 15.

[3 illegible signatures]

direct line to resolve any issues before they became problems. He largely approved of this, saying that the door to his home or office was open anytime, and we agreed to meet monthly (comment: given his schedule it's unlikely that this will be as easy as it sounds, but basically he remains available, friendly, on our side...) • PIB: said FGN intended to move forward with PIB but wanted the IOCs to agree. I said we continued to have major reservations about the existing drafts and said we should make sure Diezani was fully on our side - she had Jonathan's trust and he would support her recommendations. Gusau said Diezani had just returned to Nigeria (was she in the U.S. with Jonathan?) and that we should see her on Monday to make sure she was interested in the Shell case. 245: I summarized the facts of the arbitration proceedings and said we expected a decision around July. I said it was in our best interest to reach an amicable settlement before we were all potentially blocked by legal rulings. I said that we understood that Etete was talking to third parties who were willing to buy his share to work out a deal with Shell, but that Etete was still being difficult and playing games. I said it would be nice if Gusau could put pressure on Etete to bring him back to the table again. Gusau was not interested in the arbitration and was grateful for the face-to-face, seemed a little sad about the news (I think more disturbed by Etete than with Shell) and said he took note (comment: I saw Bature waiting outside and I suspect he and Gusau talked when I left: I'll see Bature later tonight and give you an update)";

April 16, 2010 (7:05 P.M.)[177] John Copleston wrote to Peter Robinson, German Burmeister and Stuart McGeoch: "I *just saw Bature. He confirmed ENI's interest in buying Etete's share and said E is waiting for us - I said that it didn't make sense, we are waiting for E to go back to the 60/40 agreement on the block. Updated regarding arbitration, he understood the need to resolve before the decision, and said he would talk to E about coming back to us (we'll see). Bature is going to Poland on the presidential jet (he is Chairman of the Foreign Affairs Committee) for a funeral, he will be back Monday. PIB. He said he doesn't have a chance to get ahead of the new government in 2011, too many issues to resolve including equity of the community in which the North is very ambivalent. On Gusau's comments, he said that continuing to work on the PIB would be about how to obtain internal alignment between FGN and IOC, the "bill" should be rewritten from scratch";*

April 19, 2010 (9:45 A.M.)[178] Vincenzo Armanna complained to Emeka Obi about gaps in the documentation: *"Dear Mr. Obi, please find attached our summary report of the VDR documents. Based on these documents we lack information on: * Contractual framework for Malabu; * Relationship between Shell vs Malabu after June 2007; * Shell's proven knowledge of Malabu's intention to sell; * To date, Mr. Carbonara has not been granted access; * Access to the workstation for seismic and well data has not yet been ensured; * Framework for preparing the offer; We confirm that, to date, we have not received any letter confirming your mandate as we requested; this is a mandatory document to finalize our internal authorization processes. We are waiting to receive details for the next steps in the process and the requested information as well as the documentation to be able to draft our offer";*

April 19, 2010 (10:32 P.M.)[179] Emeka Obi replied to Vincenzo Armanna's requests that "*the confirmation of our mandate in the specific format you requested will be forwarded to you as soon as we receive it".* This is the complete text: *Dear Sirs, Thank you for your email.*

1. While we have informally discussed the framework for the bid, please be informed that the framework will be formally provided to you tomorrow. As we already explained, you must rely on certain assumptions when drafting your offers. These assumptions, where necessary, will be subject to confirmation and approval by the appropriate authorities.

[177]Public Prosecution Submissions of 6.15.2019, page 13.
[178]Public Prosecution Submissions of 11.23.2018, PM3, page 80.
[179]Public Prosecution Submissions of 11.23.2018, PM3, page 80.

2. All documentation available on the materials, in connection with third parties, has been made available in VDR, except for documentation protected by Confidentiality Agreements between Malabu and such third parties.
3. To the best of our knowledge, Malabu does not require the approval of any third parties (including Shell) to solicit investors or offers for a portion of its share in OPL 245. As explained in the Process Letter, the conclusion and the terms of this transaction are subject to all applicable notification requirements, consent and approval by authorities established by law;
4. We believe that the matter of Mr. Carbonara's access has been resolved;
5. After the Process Letter, we have not yet received a request from you to access the workstation. If you request access now, we will try to make arrangements to provide you with access;
6. As explained above, confirmation of our mandate in the specific format you requested will be forwarded to you as soon as we receive it.
We would be happy to answer any additional questions or provide further assistance related to the Clear Vision Project. If you have specific questions and answers to ask (Q&A), please be advised that there is an established mechanism to do so and we will be happy to forward relevant questions to the consultants and Malabu in order to provide you with formal responses.
We would appreciate it if you could send us your specific requests well in advance of the deadline for submission of the offer to ensure you have adequate time for follow-up. Furthermore, we have noticed that, although on April 7, 2010 you accepted the conditions set forth in the Process Letter, we have not yet received from you the proof of your payment of the mandatory participation fee. In line with Section 4 of the Process Letter (on page 10), we reiterate that this payment was to be made within 5 business days of acceptance. Please proceed immediately with the payment and forward us proof of payment. We remain at your disposal to assist in the preparation of your offer. Kindest regards, Emeka";
April 20, 2010 (7:52 AA.M.)[180] Donatella Ranco wrote to Roberto Casula, Marco Bollini Valentina Ferri and Vincenzo Armanna: *"Roberto, With regard to the payment reminder referred to in the last paragraph, we would like to remind you that our acceptance of the process package was "qualified" in some points, among which the one for which the payment was conditional upon our receipt of* [English in source text:] "*written confirmation from Malabu Oil & Gas Limited Shareholders of the existence of the mandate entrusting Energy Venture Partners Limited to act as Malabu Oil & Gas Limited advisor on an exclusive basis in connection with Project Clear Vision".* [Translation resumes] *And they have not provided said document yet, as is also evident from point 6 of the attached email. I would like to take this opportunity to ask about the status of the 379 process and to point out that it is perhaps appropriate to request an extension of the April 25 deadline: they are late in providing the term sheet (framework for the offer) and the transaction documents and we have a Board meeting on the 23rd to which I am not sure we are still in time to submit the initiative";*

April 20, 2010 (12:36 P.M.) Vincenzo Armanna wrote to Emeka Obi and Stefan Wanjek: *"Dear Sirs, we thank you very much for your prompt reply. As stated in the text and attachment of my last communication, we need as soon as possible the following documents:*
- *Copies of the Farm-In, Heads of Agreements, Deed of Assignment and Operating Agreement entered into between SNUD and Malabu;*
- *The Attachment to the Title Deed signed by the Ministry of Petroleum on May 15, 2001;*
- *Duly signed copy of the Escrow Agreement between SNUD and FNG;*
- *Copy of the judgment of the Federal Court of Nigeria (Case no. FHC/ABJ/CS/420/2003) dated March 16, 2006;*
- *Confirmation that the Signature Bonus ($ 210 less the amount paid) was paid within 12 months of*

[180]Public Prosecution Submissions of 11.23.2018, PM3

reinstatement as provided for by the Settlement Agreement or confirmation that said deadline was extended by the FGN;

- *Court documents confirming that the lawsuit (no. CA/A/99/M/06) has been annulled and withdrawn;*
- *Court Order of January 24, 2007;*
- *Arbitration Award no. 12136/MS dated November 23, 2004 regarding the Shell/Malabu arbitration;*
- *Any documentation after June 8, 2007, between the parties involved (Malabu, SNUD, and FGN);*
- *Transaction Documentation/Term sheet.*

We have already stressed the urgency and obligation to receive in writing both evidence of your mandate from Malabu and the final framework for drafting the offer in order to complete our internal authorization processes";[181]

April 20, 2010 (1:58 P.M.) Vincenzo Armanna wrote to Donatella Ranco, Roberto Casula, Marco Bollini and Valentina Ferri: *"If all agree, if we don't receive what we need by the end of the day, we will communicate our inability to make an offer in less than two weeks from the receipt of term sheet and transaction documents. Regards Vincenzo";*

April 20, 2010 (2:16 P.M.) Roberto Casula wrote to Vincenzo Armanna, Donatella Ranco, Marco Bollini and Valentina Ferri: *"EO just called me. He wants a list of priorities, i.e.: 1) what is essential for us to have right away and 2) what can be postponed. He is discussing with the advisors the structure of the offer and in particular two options to confirm the interest to the seller a) cash deposit and 2) exclusivity fee";*

April 21, 2010 (7:53 A.M.)[182] Claudio Descalzi wrote to Emeka Obi: *"I should be back in Milan later today. If you can make it back today, I'd like to meet up with you later. Regards";*

April 21, 2010

April 21, 2010 (9:57 A.M.) Vincenzo Armanna wrote to Emeka Obi: *"Dear Mr. Obi, this is to confirm what has already been communicated to you, in order to simplify the work you will have to do; the required documentation is listed according to priority: 1) written and duly signed evidence of EVP's exclusive mandate"*[183];

April 22, 2010[184] Raiffeisen Investment notified NAE of an update of the process letter which postponed the deadline for submitting offers to June 7 and requested a preemptive bid by April 27";

April 22, 2010 (8:43 P.M.)[185] Malcolm Brinded wrote to Peter Robinson and other SHELL officials to report on a conversation he had had with Claudio Descalzi: [English in source text:] "*Claudio opened by explaining that Malabu (M) had approached ENI as a potential partner to whom M wish to sell down 40% of "their 50%" [...] Claudio acknowledged that ENI had been suggested to Malabu as potential partners by the FGN [...] Also clear that he understands the importance of locking down some key aspects with the FGN as part of any deal, including the PSC terms, license duration [...] Note that Claudio is personally very close to Jonathan Goodluck - since Jonathan and Claudio met in Bayelsa in 1995/6 when they were both much more junior, and have stayed close as they've developed their careers over the years. This is clearly a privileged relationship and Claudio is hence able to give direct messages to the AP in a way which I doubt we can match. Claudio will see the AP week of May and will have dinner with him "as a friend";* [Translation resumes]

April 27, 2010[186] NAE forwarded to Emeka Obi a document signed by Ciro Pagano containing a [English in source text:] "*preliminary non binding proposal to acquire a 40% participating interest in OPL 245 offshore Nigeria and in any relevant license, production sharing agreement and any other ancillary documents".* [Translation resumes] Specifically:

---

[181] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 99.
[182] Trial dossier, page 3272, text message 282.
[183] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 101;
[184] ENI Submissions 4.9.2019, Exhibit 4, no. 12.
[185] Public Prosecution Submissions of 3.22.2019, page 278 (RDS 521).
[186] Public Prosecution Submissions of 11.23.2018, PM1, page 415; ENI submissions of 4.9.2019, Exhibit 4, no. 14.

- the amount offered ranges from $ 717 million to $ 462 million depending on the applicable tax regime;
- the proposal is conditional, among other things, upon:
    - *"satisfactory conclusion by NAE of the due diligence as per paragraph 6 below (6. Due Diligence: taking into consideration the limited data made available so far by the seller, in order to possibly later submit a binding offer and sign the SPA, NAE requires prior completion of the due diligence process through access to additional data as may be required by NAE",*[187]
    - *SNUD's approval of the sale of the asset;*
    - *the settlement of any existing disputes/claims on the asset;*
    - *NAE's receipt of an irrevocable letter from NNPC/DPR confirming that they will not exercise any back-in right";*

April 27, 2010 (6:38 P.M.)[188] Emeka Obi informed Vincenzo Armanna that the offer had not been accepted;

in the months of May and June[189] a [English in source text:]*" a number of meetings took place between Etete, Obi and Agaev in Paris to discuss the sales process. At one such meeting, Etete informed Obi that he had secured approval from the Government for Malabu to sell 100% of the OPL Assets and that the*

mandate should extend to trying to sell up to 100% of the OPL Assets. Accordingly: (1) the parties agreed to vary EVP's Mandate and understood that the EVP Exclusivity Agreement was varied such that it would extend to EVP's mandate for a sale of up to and including 100%) of the OPL Assets; and (2) at around this time, Mr. Obi informed EN1 that 100%> of the OPL Assets was now available for sale"; [Translation resumes]

April 30, 2010 (1:54 P.M.) Paolo Ceddia sent to Claudio Descalzi a "note for the CEO" in which he specified that "*Malabu has appointed the company Energy Venture Partners Limited (EVP) and the Austrian bank Raiffeisen Investment AG as advisors for the sale process [...] within the framework of the tender rules, on April 27 two preliminary and non-binding valuations of the above mentioned 40% share have been submitted, according to the two applicable tax regimes. The values shown are $ 460 million (2005 PSC contractual reference) and $ 620 (2000 PSC contractual reference). It has been made clear that any binding offer will be subject to the ENI Board of Directors and to the resolution of the Board of Directors of the Nigerian company NAE"*[190]*;*

4.3.4 May 2010

May 2, 2010 (10:08 A.M.) Claudio Descalzi sent to Paolo Scaroni the note drafted by Paolo Ceddia on April 30[191];

May 5, 2010 Nigeria's President Umaru Yar'Adua died;

May 6, 2010 Goodluck Jonathan became the new President of Nigeria;

May 7, 2010[192] Emeka Obi noted: [English in source text:] *"Obi meeting with Malabu. Obi notes make reference to comfort (not personal, decision making powers, nominate) and to a file of documents. Malabu releases letter dated 8 April 2010 confirming EVP mandate";* [Translation resumes]

---

[187] [English in source text:] "satisfactory conclusion by NAE of the due diligence as per paragraph 6 below (6. Due Diligence: taking into consideration the limited data made available so far by the seller, in order to possibly later submit a binding offer and sign the SPA, NAE requires prior completion of the due diligence process through access to additional data as may be required by NAE"; [Translation resumes]

[188] ENI Submissions of 9.18.2018, Exhibit 192.

[189] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[190] ENI Submissions of 1.20.2020, *"general submission memorandum",* Exhibit 107.

[191] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 110;

[192] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

May 7, 2010 (8:24 P.M.)[193] Vincenzo Armanna wrote to Roberto Casula "*V complained about the lack of information on the activities done in the last three months; V. said he had lunch with Fortunato who described us as fair and transparent; Fortunato also pointed out that we spend the right amount and that he prefers us to anyone else and that he would tell us too, stressing the importance of finding a solution quickly; V. said that whenever we wish he can arrange a lunch with Fortunato to confirm what was said; V declared that they will give the letter to the boy but that he wants more information; V declared that he will receive official confirmation from the competent authorities about both the title and the law; V has asked the usual things to have proof of our intentions*";
May 10, 2010[194] meeting between Claudio Descalzi and Malcom Brinded, the contents of which are summarized in a note from Shell executives [English in source text:] ("*Nigeria Briefing Note MB meeting with Descalzi 10 May 2010'"):* [Translation resumes] *"based on the information we have:*

- *ENI has agreed on the terms of the transaction, which in our opinion amount to a total of $ 1.2 billion, in instalments, with an upfront payment of 300 million (same amount as the 2008 agreement), percentage point value, for 40% of the block;*
- *Malabu stays in for 5% with an investor taking another 5%;*
- *However, we understand that ENI's lawyers, saying that Etete is not listed as a shareholder nor as an executive of the company, cannot sign anything and go ahead;*
- *Therefore, Etete has been advised that he has 10 days to officially become a majority shareholder and/or executive with shareholders' approval to execute the transaction;*
- *No commitment with government on settlement agreement since MoP (Diezani) was appointed. She will try to focus on 245 in the next week when she returns from Houston";*

May 11, 2010[195] Emeka Obi noted: [English in source text:] *"Malabu writes to the AG seeking Goodluck Jonathan's endorsement of the 30 November 2006 settlement agreement";*
May 11, 2010[196] NAE received a communication from Malabu dated April 8, 2010 and signed by Rasky Gbinigie and Seidougha Munamuna confirming that *"there is a limited exclusivity mandate until the end of May 2010 between Malabu and EVP with respect to proposals to sell, lease or dispose of part of Malabu's interest in the 40% OPL 245. EVP is authorized, on behalf of Malabu, to provide business, technical and operational data and other confidential information, including 3D seismic data belonging to Malabu and relating to Malabu's operations to assist in the valuation of the OPL 245 asset. Evp is also authorized, on behalf of Malabu, to receive financial offers and binding proposals from AGIP NIGERIA Limited - ENI However, EVP is not authorized to approve, on behalf of Malabu, any offer Malabu receives or to enter into a sale or lease agreement on behalf of Malabu in connection with the proposed sale. All offers received by Malabu in connection with proposals to sell, lease or dispose of part or all of Malabu's interest in Oil Exploration License 245 will be subject to evaluation and approval by the shareholders and directors of Malabu oil and gas limited";*
May 11, 2010 (2:40 P.M.) Valentina Ferri wrote to Vincenzo Armanna: *"Vincenzo, the procedure provides for the Note to be sent, signed by the Manager, (i.e. the Managing Director of NAE) to the Anti-Corruption Unit, i.e. to the attention of Michele De Rosa (I suggest sending everything via email to optimize time). The Note must be accompanied by any documentation that may assist in assessing the scope and outcomes of the due diligence performed. Regards, Valentina";*
May 11, 2010 (5:34 P.M.)[197] Vincenzo Armanna wrote to Ciro Antonio Pagano and Roberto Casula:

[193] Public Prosecution Submissions of 11.23.2018, PM3.
[194] Public Prosecution Submissions of 11.23.2018, PM2, page 18; Translation of the Prosecution's Submissions of 6.15.2019.
[195] [Translation resumes] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[196] Trial dossier, page 3292.
[197] Prosecution's submissions of 11.23.2018, PM1, page 952.

[3 illegible signatures]

"Ciro, I'm sending you what has been prepared for 379. It incorporates the suggestions of Marco Bollini. It should be forwarded to Michele.Derosa@eni.com. The word document, given the 379 procedure, should be printed on headed paper, then signed by you and, lastly, scanned and attached to the forwarding of this email. Please copy me in both for filing and in case the anti-bribery unit haM.s any further inquiries or requests to make";

May 12, 2010 10:09 P.M; 10:11 P.M.)[198] Ciro Pagano forwarded Vincenzo Armanna's email to Michele De Rosa - at the time head of ENI's anti-corruption legal unit, attaching Malabu's mandate to EVP dated April 8, 2010 and the Malabu JVA Form Submission. TRAG 2007 and 2010 reports were then sent[199];

May 21, 2010[200] Emeka Obi met Roberto Casula and Vincenzo Armanna: [English in source text:] *"Issues include confirmation of shareholders, Malabu standing, Shell arbitration, participation fee, Shell mechanism and text of an FGN letter*"; [Translation resumes]

May 21, 2010 Emeka Obi noted an email from Bayphase to EVP [English in source text:] *"Forwarding recommendation and list of investors to approach. Should widen the pool given ENI's weak reserves position"* [Translation resumes] Among the Milestone Events, the following is reported: [English in source text:]*"EVP starts contacting additional investors";* [201]

May 21, 2010 (11:47 A.M.) Valentina Ferri forwarded to Ciro Antonio Pagano the additional information requested by Michele De Rosa[202];

May 24, 2010 (2:56 A.M.)[203] Emeka Obi sent to Vincenzo Armanna and Roberto Casula a reminder of the payment of the participation fee of $ 500 thousand provided for in the process letter of April 7, 2010. The following is an excerpt from the process letter in which it was agreed that *"in view of the access to information with respect to the asset and the right to participate in the bidding process in accordance with this process letter and the confidentiality agreement potential investors are required to pay a non-refundable participation fee of € 500,000";*

May 25, 2010 (7:28 P.M.) Michele De Rosa asked Ciro Antonio Pagano and Vincenzo Armanna for further clarifications on the transaction, in particular regarding the outcome of the due diligence, the structure of the transaction and Malabu's role[204];

May 25, 2010 Adoke Bello petitioned the President of the Republic and, three days later, an assistant to the President notified the Petroleum Minister and the Attorney General of President Goodluck Jonathan's approval of the reallocation of OPL 245 to Malabu, under the terms proposed by Adoke Bello;

May 27, 2010 (1:21 P.M.) Marco Bollini sent Michele De Rosa a draft of the offer letter which took into account the comments made by the anti-corruption office[205];

May 27, 2010 (15:26) Donatella Ranco sent Claudio Descalzi a "note for the managing director" in which she highlighted the importance of making a pre-emptive offer in order to acquire the right to negotiate on an exclusive basis and specified that the process would in any case be subject to a series of conditions[206];

May 27, 2010[207] [English in source text:] "*President Goodluck Jonathan approves the terms of the 30*

---

198 Public Prosecution Submissions of 11.21.2018, PM1, 952.

199 In this regard, see also transcript of the hearing of 12.5.2018, page 16.

200 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

201 [Translation resumes] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "*copie de chrono unprotected";*

202 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 116.

203 Public Prosecution Submissions of 11.23.2018, PM3, page 116.

204 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 119;

205 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 121.

206 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 120.

207 [Translation resumes] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24 8(2)evp comments.pdf".

[3 illegible signatures]

November 2006 settlement agreement";

May 28, 2010[208] Stefano Pujatti received an email from ENI with an attached note addressed to the Board of Directors concerning the acquisition of 40% of OPL 245 from Malabu;

May 28, 2010 Giuseppe Cerrito, head of planning and control at NAE, received from Ciro Antonio Pagano the email, written by Emeka Obi on May 24, 2018, with attached an invoice of € 500,000 issued by EVP requesting payment by way of participation fee. Attached to the email there was an excerpt of a contract, unsigned, on Raiffeisen Investment Bank letterhead. Giuseppe Cerrito drafted the request for authorization of payment addressed to Ciro Pagano, who approved it[209];

May 28, 2010 (8:07 P.M.)[210] Giuseppe Cerrito forwarded the email to Vincenzo Armanna asking to have "*a copy of the contract to complete the payment file"*. Vincenzo Armanna did not reply to the email and Giuseppe Cerrito attributed such behavior to reasons of confidentiality, since he had not been involved in the deal thus far[211];

May 31, 2010 (10:13 A.M.)[212] NAE paid the participation fee and Giuseppe Cerrito confirmed the payment to Emeka Obi with an email at 9:13 am ("*Dear Sirs, I confirm that we have made this morning the payment of the participation fee of € 500,000. Find attached the receipt of the bank remittance as proof");*

4.3.5 June 2010

June 2, 2010[213] Raiffeisen Investment notified NAE that the bid submission deadline had been postponed to July 7;

June 3, 2010 Eni's Board of Directors was held during which the progress of negotiations was reported[214];

June 4, 2010 (9:31 A.M.) Claudio Descalzi wrote to Donatella Ranco, Vincenzo Armanna, Guido Zappalà, Paolo Ceddia, Marco Bollini and Roberto Casula: "*given the postponement of the date for the submission of bids to July 7, before submitting the bid I want to wait for the results of the D&M review and I would like Roberto to make a further step with Shell. I will also meet Malcolm Brinded if necessary"*[215]*;*

June 12, 2010[216] Emeka Obi wrote a note about a breakfast meeting with Descalzi to inform him of the possibility of buying 100%: [English in source text:] "*Obi breakfast meeting with Descalzi. Obi notes include reference to fight with Shell being avoided and problem caused by changed structure - does not want to go back to board and look stupid' [...] "EVP informs of potential opportunity to acquire 100%. ENI wants no fight with Shell, will speak to GEJ about Shell, Board approval was on basis of 50/40/10 - does not want to go back and look stupid, wants a solution acceptable to Shell, may consider spin-off to 3rd party eg Chinese"*[217]*;* [Translation resumes]

---

208 Transcript of the hearing of January 30, 2019, page 36: *"May 28, 2010, I received an e-mail from a colleague who, for information, sent me an e-mail with an attached note for the Eni Board of Directors. This note for Eni's Board of Directors recommended the acquisition of 40 percent of OPL 245 by purchasing it from a company called Malabu Oil and Gas. So that was the first time I saw it, precisely because there was this note, which then, if I'm not mistaken, was sent to the Board of Directors of Eni in early June 2010 and [...] I only received it for information purpose, indeed I think the note was already the final version to be sent to the Board".*

209 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 125.

210 Prosecution's Submissions at the hearing of 12.12.2018.

211 Transcript of the hearing of 12.12.2018.

212 Prosecution's Submissions of 11.23.2018, PM3, page 119; with regard to the payment of the participation fee, Michele De Rosa stated (hearing of 5.12.2019, page 27): *"It's not entirely unusual... actually it's called, actually you can call it however you wish, but in my head it was an access fee, that is, a fee for access to documentation. It's not entirely unusual".*

213 ENI Submissions of 4.9.2019, Exhibit 4, No. 13) [English in source text:] *("final submission deadline for binding bids has been extended until 7 July 2010, 17:00 CET, and it envisaged that the sale and purchase agreement and/or the farm-in agreement will be executed between Malabu and the selected bidder by the end of July 2010"*). [Translation resumes]

214 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 128.

215 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 129.

216 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

217 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.

[3 illegible signatures]

June 13, 2010 (10:02)[218] Guy Colegate wrote to Peter Robinson and John Copleston that ENI was in contact with Petroleum Minister Diezani Alison Madueke and Goodluck Jonathan. *He added that "Chief has bought off Chief Justice who supplied him with "a worthless piece of paper telling me (our friend) that Chief owns Malabu" and that* [English in source text:] *"our friend says all parts in place- gov on board".* This is the full text of the email: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted]

June 16, 2010[219] NAE sent to Raiffeisen Investment the second offer signed by Ciro Pagano *"to acquire a 40% participating interest in OPL 245"*. The economic terms are the same as those of the offer of April 27, 2010, but at point 2) it is specified that [English in source text:]*"in consideration of the granting of the Exclusivity Period, NAE is willing to pay to Malabu an Exclusivity Fee of USD 5 million"* provided that "*NAE, Malabu and any applicable Nigerian authority will enter into good faith discussions in order to confirm, amongst others, the final ownership rights of OPL 245, the non-existence of any NNPC back-in rights related to the asset";* [Translation resumes]
June 16, 2010[220] Guy Colegate wrote an email to Guy Outen in which he said: *"FYI- the glacier grinds forwards – Diezani will be looking for a favorable solution – will let you know outcomes. Our source is dubious on value of meeting – he knows Diezani is looking to finalize the issue of profits on behalf of her boss - this and the XOM issue all indicate where her priorities lie now ahead of elections";*
June 16, 2010[221] (3:57 P.M.) Guy Colegate wrote to Peter Robinson and John Copleston: "*Chaps our friend called - he just had a call from Diezani - she wants to meet him in St. Petersburg next week- on the subject of our favourite block.. He is undecided about whether to attend. Chief will be in Paris at same time sorting legal issues. I shall try and meet our friend next week in advance of proposed Diezani dates. He is due in Rome with ENI early next and will get a view script from there. He asked my input on value of meeting. Your thoughts/ideas for input??";*
On this point Ednan Agaev denied being the person Guy Colegate was talking about: "*I have never met Diezani, I have never received telephone calls from her. I never met her, I never spoke to her on the telephone, not even accidentally, by chance. I have never been to the Eni offices in Rome"*[222];
June 16, 2010 the independent appraisal of D&M requested by ENI arrived[223];
June 17, 2010 (6:42 P.M.)[224] Emeka Obi forwarded to Wanjek and Rath a draft response to the ENI offer stating that [English in source text:]*"the offer and proposal are not entirely consistent with what Malabu and ourselves had envisaged";* [Translation resumes]

---

[218] Prosecution's Submissions of 11.23.2018, PM2, page 27: [English in source text:] "*Pete, Our friend tells me his clients have been in touch with our ex-employee and her alleged squeeze- hence movement In the capital. I reiterated our position - he says theirs is same - they will not be part of any solution that sees chief holding 100pc of block to start off with - that will see them out of deal space - they will not butt heads with us on this. As fall back suggest we work up nuclear option as discussed. Am trying to fix a OTR meet with the gentleman who chaired commission that took asset off the chief in 2000 – he will have knowledge of what shareholding was behind chief hopefully. Will let you know where/when its might happen. Anyways- our friend says all parts in place – gov on board, his client and us – he says only chief can sink it- which he does not rule out. His client wants chief out the picture - incl off the paperwork for any transaction – chief's rep will cause them issues if he has direct line of sight on paper to consideration. So other shareholders/directors will sign off. Chief has bought off chief justice who supplied him with " a worthless piece of paper telling me (our friend) that chief owns malabu - I told chief to save it for his children as it has no legal value" So bottom line- the Milan mob aren't looking to shortcut this in any way- they want it all clean with all parties".* [Translation resumes] The meaning of the terms used is explained by Guy Colegate himself in an email a few minutes later: [English in source text:] *"Guy, Fyi -"Our ex-employee" is Diezani. "Her alleged squeeze" is President Goodluck. Let's see what happens this week- first time new minister has indicated a resolution is now on table to her".* [Translation resumes]
[219] Public Prosecution Submissions of 11.23.2018, PM1, page 419 (incomplete); ENI Submissions of 4.9.2019, Exhibit 4, no. 15).
[220]Prosecution's Submissions of 11.23.2018, PM 2, page 29; Translation of Prosecution's Submissions of 7.4.2019, page 48.
[221] Prosecution's Submissions of 11.23.2018, PM2, translations of Prosecution's Submissions of 7.4.2019, page 48.

[222]Transcript of the hearing of 6.26.2019, page 34.
[223] ENI Submissions of 1.29.2020, *"general submission memorandum",* Exhibit 130.
[224] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

June 18, 2010[225] the Minister of Justice informed Malabu that, in response to a request to this effect from Malabu on May 11, 2010, the President had confirmed the reallocation of 100% of OPL 245 to Malabu in accordance with the provisions of the 2006 Settlement Agreement;
June 22, 2010 Emeka Obi and Geoff Eyre (Bayphase) Sandra Rath and Stefan Wanjek exchanged views on other potential investors[226];
June 28, 2010 Emeka Obi noted: [English in source text:] "*Bayphase provides update on contact with 10 investors including BP, Addax, Petrobras, Tullow, Statoil, ConocoPhilips, ONGC Videsh, Repsol, Lukoil"; [227]*
June 29, 2010 Emeka Obi proposed to Bayphase and Raiffeisen a scheme to attract new investors[228];
June 30, 2010 (9:23 P.M.)[229] Femi Akinmade wrote to Claudio Descalzi: [English in source text:] "*Chief Dan Etete has confirmed that OPL 245 has now been given 100% to Malabu and Shell is out. He is now in Paris, If Eni is interested we have to move now. Sinopec, Cnooc, Gazprom would be competitors. I am yet to be placed back on contract with eni even though I have been rendering services. I learnt something would be done for me in July. I have informed Ciro and Roberto by e-mail about the opl 245 situation. "Dear Claudio, compliments of the season, best wishes. I hope this email finds you well.* [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] *Kind regards, Akinmade".*

4.3.6 July 2010

July 1, 2010[230] Emeka Obi noted: [English in source text:] "*RIAG (Wanjek) and Bayphase (Eyre) exchange emails regarding the provision of revised economic models";* [Translation resumes]
July 1, 2010 (3:33 P.M.) Ciro Antonio Pagano forwarded to Roberto Casula a news release from the Platts news agency reporting FGN's confirmation of Malabu's ownership of OPL 245[231];
July 2, 2010[232] the Minister of Petroleum informed Malabu that the President had confirmed the award of 100% of block OPL245 to Malabu, subject to payment of the balance of the signature bonus of $ 210 million within ninety days *("in relation to the Settlement Agreement between the Federal Government of Nigeria and Malabu Oil and Gas ltd dated November 30, 2006, OPL 245 is hereby awarded to your company, subject to payment of the sum of $ 210 million as signature bonus to be paid to the account indicated by the Federal Government [...] within ninety days from the date of receipt of this letter. Please note that failure to pay the above amount within the required period will result in revocation of the award without further notice from this office").*
July 5, 2010[233] Raiffeisen Investment informed NAE on behalf of EVP that Malabu had rejected the offer of June 16, 2010 as well, and invited ENI to participate in technical sessions with Bayphase Limited in the event that it needed technical clarifications;
July 7, 2010 (2:43 P.M.) Roberto Casula wrote to Stefan Wanjek: *"Dear Mr. Wanjek, with reference to your proposal to organize a technical session in London, I confirm the availability of two Eni*

---

[225]Prosecution's Submissions of 11.23.2018, PM2, page 25 [English in source text:] ("*Mr. President has approved and directed the Ministry of Petroleum Resources to implement and give full effect to the Terms of Settlement Agreement dated November 30, 2006 between Malabu Oil and Gas and FGN").* [Translation resumes]
[226] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 136.

[227] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "*copie de chrono unprotected".*
[228] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 140.
[229]Submissions at the hearing of 3.20.2019. Asked about the expression "I *am yet to be placed back on contract", Femi* Akinmade explained: "*It means that when I retired I still had a relationship with Eni on a contractual basis, let's say consulting. And the contract was over, it had expired. And so I was still looking for other work"* (page 27 of transcript of 3.20.2019).
[223] [230]Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[231] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 141.
[232]Public Prosecution Submissions of 11.23.2018, PM2, page 23.
[233] ENI Submissions of 4.9.2019, Exhibit 4, no. 16).

geologists to meet with your technical advisors, Bayphase Limited, next Friday July 9, 2010"[234].

July 9, 2010 [235] Emeka Obi noted: [English in source text:]*"Meeting between ENI Geology Team, RI AG and Bayphase to discuss reserves evaluation and to undertake gap analysis (at Bayphase's offices - starting at 9.30am)*"; [Translation resumes]

July 9, 2010 (8:53 A.M.) [236] John Copleston wrote to Peter Robinson and Guy Colegate to report on the contents of a meeting with Ednan Agaev after he talked to Gusau: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] John".
July 12, 2010[237] Raiffeisen Investment informed NAE that [English in source text:] *"all investors will have the option to bid for and acquire, subject to all necessary Nigerian Government regulatory approvals, 100% of Malabu's interest in OPL 245*"; [Translation resumes]
July 12, 2010[238] Raffeisen forwarded an email received from Petrobas: [English in source text:]*"We have been informed that OPL- 245 still belongs to Shell, although the CA is on behalf of Malabu Oil and Gas. As we have some partnerships with Shell around the world and we feel that this farm-in analysis might cause some inconvenience for Petrobras, we are declining from analyzing this opportunity. We appreciate that you considered Petrobras in this opportunity, however our management advised us not to move forward";* [Translation resumes]

July 12, 2010 Raiffeisen wrote to ONGC Videsh: *"Dear Mr. Das, thank you for your interest in Project Clear Vision. As previously indicated by Geoff, Raiffeisen Investment AG is the advisor of Energy Venture Partners Limited on the sale of an interest in an offshore field in West Africa. As per your request, I am attaching the CA [Confidentiality Agreement]. After you sign the CA, we will be happy to meet with you, when it is most convenient for you, in order to discuss the object and process of the sale. Please keep in mind that due diligence has already begun and the virtual data room is already*

[234] ENI Submissions of 1.29.2020, "general submission memorandum", Exhibit 145.
[235] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[236] Prosecution's Submission of 11.23.2018, PM2, page 31: [English in source text:]*"I saw Ednan again after his meeting with Gusau and then he phoned from the airport last night as Gusau had asked to see him for a second time on the way out. Ednan said he had spoken to Eni again Thursday morning who confirmed that "highly confidential discussions had taken place with Peter Voser around the concept of Eni taking 100% of245 from Malabu, and then, post transaction, transferring 60% of the block back to Shell. Ednan appears confident that the outcome of these discussions was positive, ie that a deal in principle along these lines has been agreed. He believes as discussed during meeting with Peter that Chief maybe settle for something in $1.5/2 billion range for the whole 100%. At meeting with Gusau, Gusau confirmed that Etete had good relationship with Jonathan who had agreed to re-award the block back to Malabu, and that a document reflecting this had been drawn up - but Gusau did not have a copy. He said FGN was anxious to settle 245 as rapidly as possible and that CNPC 3d managed to get to Jonathan and were in discussions about buying the block from Malibu. He urged Ednan to get Eni to settle quickly to pre-empt the Chinese. Ednan asked about Shell and Gusau said that Jonathan appeared ready to ignore Shell interests in his desire to get a rapid solution and close out the 245 saga. Ednan said that Eni would need to get access to Shell data before they could make a final valuation and he expects Eni will shortly approach Shell to request this. Gusau asked Ednan to drop round again on his way to the airport. At this meeting Gusau emphasized again FGN desire to get closure on 245 in the shortest possible time (I think was after a conversation with Jonathan but not entirely clear), and again urged Ednan to deliver the Italians. Ednan in turn stressed to Gusau the need to get Etete to settle at a realistic price (i.e., as above). Comment: CNPC may well be a bluff to put pressure on Eni to settle quickly, although we know they were interested in the block In 2008. Ednan is seeing Etete again this morning in Paris and will then await more news on the Eni/Shell CEO exchange - and if a deal has been agreed as he outlines, we will presumably share data with Eni before they make a final offer. Ednan files to Guinea later today on another business trip and will not be back in Europe for several days. We will keep in phone contact and he is on for a meeting with Guy in Paris on 15 July".* [Translation resumes]
[237] ENI Submissions of 4.9.2019, Exhibit 4, no. 17).
[238] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[3 illegible signatures]

active. Please do not hesitate to contact us if you have any further questions"[239]*;*

July 13, 2010[240] Emeka Obi wrote to Ednan Agaev: [English in source text:] *"A letter from Govt to Malabu confirming the reinstatement and the terms will make everything go a lot quicker";* [Translation resumes] Ednan Agaev replied: [English in source text:] *"Signed by whom?";* [Translation resumes] Emeka Obi replied: [English in source text:] *"Ministry or Department of Petroleum Resources. It will solve two key problems - strengthen the buyer's hands in negotiations with the incumbent and convince the incumbent that the options are limited. This will give them an explanation to their internal organisation that their options are limited and that they must negotiate in a sensible manner. Right now the incumbent is hiding behind the lack of a definitive statement";* [Translation resumes]

July 13, 2010 (12:36P.M.)[241] John Copleston wrote to Peter Robinson and Guy Colegate: [English in source text:] "[...] *MD reminded me that Jonathan used to be employed by Etete to tutor his children back in the days when Etete was Minister and Jonathan a humble lecturer. MD says Jonathan still sees Etete as his Oga. Not ideal..";*

July 14, 2010 (9:23 P.M.) Emeka Obi sent to Ednan Agaev and Dan Etete the draft SPA: "*Dear Sir, We bring to the attention of Malabu the current draft of the Sale and Purchase Agreement concerning the transfer of 100% of the rights on OPL 245. This document is being finalized and - once reviewed by Malabu's legal team and finalized by EVP and its legal team, subject to final approval by Malabu's directors - will be forwarded to potential Buyers for their comments. I will also make hard copies available to facilitate review. We are still making the necessary revisions. I have just returned from a trip and will be available to meet with you tomorrow to discuss the document and status of the transaction*[242]*;*

July 14, 2010 letter from the Minister of Petroleum to the Attorney General: *"I have been asked to inform you that the President's directive on the above matter has been duly implemented by this Ministry following the issuance of a new Letter of Award of OPL 245 by the Minister of Petroleum Resources to M/S Malabu Oil and Gas, the Federal Government and Malabu Oil and Gas having concluded the out-of-court Settlement Agreement in relation to said oil block"*[243];

July 15, 2010 email exchange between Emeka Obi and his advisors on the different assessments of the block made by Bayphase and Eni[244];

July 15, 2010 meeting in Paris between Dan Etete and Guy Colegate;

July 15, 2010[245] Emeka Obi took a note on a meeting in Paris with Dan Etete and Ednan Agaev to confirm the fee of 200 million: [English in source text:] *"Obi, Etete and Agaev meet at Hotel Le Bristol. Obi reconfirms that the fee he requires is US$ 200 million. Malabu admits meeting but denies US$ 200 million fee discussed. Etete said that minimum purchase price Malabu would accept for 100% of the*

---

239 ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 148.

240 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

241 Public Prosecution Submissions of 3.22.2019, page 328 (RDS 571).

242 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 151.

243 ENI Submissions of 1.29.2020, "*general submission memorandum",* Exhibit 149.

244 ENI submissions of 1.29.2020, "*general submission memorandum",* Exhibit 152.

245 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

OPL Assets would be US$ 2.2 billion"; [Translation resumes]

July 16, 2010 (2:13 P.M.)[246] Guy Colegate wrote an email to Peter Robinson and John Copleston in which he mentioned a meeting in Paris and FGN's letter confirming 100% of the license to

Malabu: [Italian translation omitted]
[Italian translation omitted]
1) [Italian translation omitted]
2) [Italian translation omitted]
3) [Italian translation omitted] [Italian translation omitted]
4) [Italian translation omitted]
5) [Italian translation omitted] [Italian translation omitted]
6) [Italian translation omitted] [Italian translation omitted]
7) [Italian translation omitted]
[Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted]
8) [Italian translation omitted] [Italian translation omitted]
[Italian translation omitted] [Italian translation omitted] [Italian translation omitted]
[Italian translation omitted]

July 18, 2010 (22:33)[247] Peter Robinson wrote to Malcom Brinded and other SHELL officials: [English in source text] *"I was surprised when we got confirmation that this had actually happened (but still trying to source the actual letter), Jonathan still sees Etete as his oga Jonathan tutored Etete kids way back) and we don't think what has happened is informed. Minister is not helping though. I have an option developed but high stakes and I am trying to check "up and down sides" currently in Abuja. I think we have quite some leverage but need a couple more days. I agree that we need to consider strategy/tactics post arbitration award. This has started in country but will need to escalate to*

[246]Prosecution's Submissions of 11.23.2018, PM2, page 34 (Italian translation in Prosecution's Submissions of 6.15.2019 page 34): [English in source text:] "No pki-*apologies its died*. [judge's comment: likely an expression to communicate that the cell phone battery was dead]. *Long meeting yesterday in Paris- salient points: 1) Etete claims he has and has shown (though not copied) a letter from President reiterating malabu's 100pc equity/contract "award"; 2) This letter clearly an attempt to deliver significant revenues to GLJ as part of any transaction; 3) Our source says this letter "has really damaged deal" as etete now "uncontrollable"- he stated deal was almost there on a proposed 50/50 split with RDS. / made no comment; 4) Italians look like they might abandon whole thing as they realise there will be no RDS agreement on this basis and the letter has torpedoed reasonable discussion with chief; 5) Etete has proposed shell buy back in to "his block"-! politely suggested he might be being slightly unrealistic given present legal position. I stated that in addition to our own valuation of our block which we expected to realise there was the issue of the appraisal costs thus far; 6) Source stated he met GU in abuja last week- also present was dezani and aliyu. Source stated GJL said Italians need to deal quickly as "the Chinese were very Interested and premier hu jintao had discussed the block personally with him" - may be a GU/Etete bluff- but clear driver Is to get cash onto system asap; 7) Source described GLJ as "very unsophisticated" with a "very simple" view of the sector. Source stated GLJ made no ref to RDS position in block" merely that he as president had restated malabu's rights" Comment: it is of interest that the purported GLJ signed letter has not been shared with ENI and that the FGN has made no public comment. Personally I think this is a kite fly cooked up by Etete and GLJ largely due to etete's relationship as oga* (judge's comment: boss) *to GLJ in his previous incarnation. I also don't believe GLJ or Dezani understand our/legal position- this is about personal gain and politics. Suggest we might make a formal representation on the matter??; 8) was informed today that Credit Suisse london have been approached to manage a transaction on 245. Not sure who proposed client Is but will find out later today through a contact. Summary- this appears to be in Its death throes as far as ENI concerned largely due to "that Idiot letter" as our friend called it. We could poss put it back on track if we lobby thru abuja (40pc of a deal is more money to the key stakeholder than no deal). We might also check back thru bejing if any approach has been made (CNPC allegedly named by GLJ)- there could be an opportunity there for us that might unlock it if we want to get creative. Or we could Just let it expire and see what happens next in arbitration and grind onwards Guy".* [Translation resumes]

[247] Prosecution's submissions of 3.22.2019, page 333 (RDS 576); translation during the hearing: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted]

you/Keith In next month or so if we are unsuccess Malcolm, this administration is the same as previous (in some regards far worse). Also, I believe that back channel to president will work better than formal channels'';

July 18, 2010 (9:53 P.M.)[248] Ednan Agaev wrote to Emeka Obi about being busy "*with the Rusal people";*

July 19, 2010 letter from Raiffeisen to Petrobras for the participation in the sales process[249];

July 19, 2010[250] Emeka Obi noted: [English in source text:] "*Obi meeting with ENI at 5pm to discuss status, possible collaboration with another investor, Shell technical session";*

July 20, 2010 letter from Raiffeisen to Statoil for participation in the sale process[251]

July 20, 2010[252] Sunmonu Mutiu (Managing Director of Shell Petroleum Development Company of Nigeria) wrote to Peter Robinson and Ian Craig: *"I have just finished my discussion with him. He raised the issue of 245 without any prompting from me. I told him that we heard about the rumor circulating that the block was 100% awarded to Etete and therefore we would not accept it. I also told him that arbitration is not our preferred approach, but in this case it would be preferable to stay in arbitration to ensure that justice is done. I also pointed out that the government's reputation is also at stake, as all other international investors will be watching and, moreover, Etete will not be able to sell the block while the litigation is ongoing. He then clarified that he was actually aware of the plan to award the block 100% to Etete but that the ultimate plan was to go 50-50 between us. He then asked if we would be willing to buy all or part of Etete's interest. I said that even if we are not interested there would be other IOCs interested as long as there were no impediments";*

July 22, 2010 (20:24)[253] Claudio Descalzi wrote to Emeka Obi: "*Good evening. I'm back in Abuja. I have some news. We can meet when you return to the same location";*

July 23, 2010[254] John Copleston wrote to Peter Robinson and Guy Colegate: *"245: Ojei's key message was that 100% was a distraction and was done only to save Etete's face. Etete was ready to get out of the block entirely as long as Shell paid him an agreed-upon sum, such as $ 1 billion, to convince him to get out of the block entirely. Whether the $ 1 billion actually represented a 100% or 50% estimate was irrelevant: the issue was what needed to be done to get him out. [...] Ojei suggested $ 1 billion as an indicative sum but the key question was whether this was close to what Etete was thinking of in order to settle or whether Etete would again bring up absurd talk of sums of over $ 3 billion. Ojei seemed very confident that Etete would do as he was told once an agreement in principle was reached. Based on experience I would see it differently, but ultimately we don't know what pressure Ojei is able to exert through Jonathan and Dieziani. Ojei relayed Ednan's assertion that high-level negotiations had already taken place in Europe between Shell and the other party's CEOs (we never called Eni by name) and said he expected a call to meet with both leaders in Europe shortly, where an agreement on the above issues would be reached by both parties. His ego knows no bounds so I'm not sure how we're*

[248] Trial dossier, page 3273, text message 358.
[249] ENI submissions of 1.29.2020, *"general submission memorandum",* Exhibit 154.
[250] Prosecution's Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[251] ENI submissions of 1.29.2020, *"general submission memorandum",* Exhibit 155.
[252] Public Prosecution Submissions of 6.15.2019, page 36
[253] Trial dossier, page 3273, text message 376.
[254] Public Prosecution Submissions of 6.15.2019, page 38.

going to handle this. But, the way I see it, the next step for us is to work with Eni offline to find a way to handle this together in order to reach a mutually satisfactory outcome";

July 25, 2010 (6:06 P.M.)[255] Emeka Obi wrote to Ednan Agaev: *"I am in Rome. I met with the boss of Nigeria yesterday in Milan. I have to meet with the big bosses in Rome tomorrow. I can't be in Paris before Tuesday";*
July 27, 2010[256] Emeka Obi met with Claudio Descalzi: [English in source text:] *"Obi meeting with Descalzi at 7.40am. Discussion points include RC to meet SNUD. Hard to adjust price without new data";* [Translation resumes]

July 28, 2010[257] Emeka Obi noted: [English in source text:] *"Meeting with Etete (first after 15/07/2010). Etete confirms Obi should go ahead with carrying out EVP mandate. Malabu denies that Etete met Obi on 27 or 28 July 2010 or that he wanted EVP to continue or resume mandate" [...] 'Agaev - preliminary indications are for a price of $2.2bn for 100% subject to legal protections; Etete - gross undervaluation, will give EVP MBU comments on SPA tomorrow July 28, wants OPL 246 pricing precedents followed, price adjustment mechanism to be incorporated, leaving Paris on Monday night, Refused to email SPA comments. EVP - offer pending finalization of SPA, internal EN I deadline for August 10 due to visit to GEJ and closing for summer holidays" Obi commented: "this is our first meeting since I walked out on him on July 15 th 2010 over the $200mm. He gives me the SPA and tells me to get on with the transaction (implication he has accepted the $200m fee and I should continue)"*[258]*;* [Translation resumes]

July 28, 2010[259] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Dear friend, don't worry. We learned that we mostly should just disregard whatever he says. Let's give him time to think about the misery he will have to face if doesn't behave like a mature person and he will finally accept the professional way of functioning. Have safe flight and enjoy NY. Let's stay in touch! All the best*"; [Translation resumes]
August 2010

4.3.7 August 2010

August 2, 2010[260] email exchange between Emeka Obi and Wanjek: [English in source text:]*"Obi emails Wanjek in Rath, Schwedler, Stechow and Obi saying he agrees with Wanjek's previous email saying "we strongly recommend to get the international lawyers on board asap. It might also help to speed up things considerably if the lawyers of both parties sit together and start discussing SPA matters directly. " Obi says "I agree with you 100%. I had proposed this to the Seller> Don I worry, the seller will come round!";* [Translation resumes]
August 6, 2010[261] Emeka Obi met in Milan with Roberto Casula and noted: [English in source text:] *"Obi meeting with Casula. Value of block discussed - SNUD claims $1bn, ENI's view is $700m – $1.1lbn. Malabu has until end of September (90 day deadline). Casula criticises Bayphase valuation*

[255] Trial dossier, page 3273, text message 399.
[256] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[257] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf.".
[258] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.
[263] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[264] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[265] Trial dossier, page 45, text messages 434-436

of OPL 245"; [Translation resumes]

August 6, 2010 (2:13 P.M.)[262] Emeka Obi wrote to Ednan Agaev [English in source text:] *"Essentially we need the following prior to official submission: 1. Letter from authorities to Malabu confirming that (i) Malabu's right to OPL 245 is on the sole risk basis; (ii) Malabu can sell up to 100 percent; (iii) there is no restriction on percentage sold to foreign investor or IOC; (iv) same rights and fiscal regime applicable to Malabu will be applicable to the buyer even if the buyer is a foreign entity or IOC. 2. A mutually acceptable SPA";* [Translation resumes]

August 6, 2010 (5:54 P.M.)[263] Donatella Ranco wrote to Roberto Casula, Guido Zappalà, Romina Giordani and Valentina Ferri: *"I'll be brief: we would like to see Shell data, then do a CA with them. As you know we have strong confidentiality/exclusivity with EVP-Obi, so I think it would be necessary to get their waiver to be able to talk with Shell. How about writing them a simple email, such as: "With reference to the contacts/discussions on the matter (i.e. 245), we would like your permission to speak with Shell in order to discuss with them and gain access to some of their data, as part of the sales process you manage and in order to find a mutually convenient solution. If, on the other hand, a more "aggressive" approach were possible (e.g.: you should know that I am talking to Shell to see their data. I am entitled to do this so I am just informing you) it would be better, but I doubt it. Try to draft an email, which Armanna or Roberto could send? Thanks Donatella p.s. Next we would make an agreement with Shell both for confidentiality and to agree that we will not compete with each other in entering 245. The arrangement might say that we will try to enter, either as a first party or a second party, paying Malabu and thus solving the litigation problem, and Shell will enter as the second party with a 40-50% share, not putting any more money in and releasing the bonus to the government. Let's start thinking about it".*

Roberto Casula replies: *"ok for me thanks. I will have it sent to Vincenzo";*

August 7, 2010 (11:53 A.M.)[264] Vincenzo Armanna forwarded the request to be able to discuss directly with Shell to Emeka Obi. Emeka Obi noted[265]: [English in source text:] *"Armanna emails Obi cc Casula and Pagano asking for EVP's and Malabu's permission to discuss OPL 245 with Shell, as per Article 8 of the Confidentiality Agreement. Obi forwards this to Wanjek and Rath asking "Please can you check with the lawyers if its ok for EVP to go ahead and give this consent for ENI to have formal discussions with Shell. I think I sent you earlier the CA executed between ENI and EVP";* [Translation resumes]

August 9, 2010 (6:45 A.M.)[266] Ednan Agaev wrote to Emeka Obi *"my friend's mobile number is +2348035886622. He's waiting for your call";*

August 9, 2010 (6:19 P.M.)[267]Emeka Obi wrote to Aliyu Gusau: **"***Good evening Sir, our Ambassador friend asked me to see you. I am in Abuja and available at your convenience. Regards Obi";*

August 11, 2010[268] Emeka Obi noted [English in source text:] *"meeting with Malabu. Agenda includes Obi's role and common objectives";* [Translation resumes]

---

266 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

263 Public Prosecution Submissions of 11.23.2018, PM3, page 121: [English in source text:] *"Dear Sir, We make reference to the CA executed on February 24, 2010 between Energy Venture Partners Limited (acting on behalf of Malabu Oil and Gas Limited) and Nigerian Agip Company Limited in connection with the potential divestment by Malabu of Malabu's interest in the OPL 245 off-shore Nigeria. As provided under art. 8 of the CA, we kindly ask your prior written consent (to be granted also on behalf of Malabu) to discuss with Shell and to have access to Shell information regarding OPL 245. We believe that any possible discussion with Shell and the sharing of information on OPL 245 will facilitate the consummation of a transaction beneficial to all parties involved".* [Translation resumes]

264 Trial dossier, page 1540.

265 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

266 Trial dossier, page 3274, text message 467.

267 Trial dossier, page 1374 (text message 468).

268 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[3 illegible signatures]

August 11, 2010[269] Emeka Obi noted the meeting with Aliyu Gusau: [English in source text:]*"Obi meeting with General Aliyu Gusau NSA regarding Etete, help with MoP, indemnities, confirmation letters relating to fiscal terms"*; [Translation resumes]

August 11, 2010 (9:58 P.M.)[270] Emeka Obi wrote to Vincenzo Armanna authorizing the exchange of information with Shell;

August 12, 2010 (10:42 A.M.)[271] Emeka Obi wrote to Diezani Alison Madueke: *"good morning "auntie". Would very much like to see you very briefly and of course at your convenience to discuss two very important and pressing issues. Regards. Emeka Obi";*

August 12, 2010 (10:17 A.M.)[272] Emeka Obi wrote to Ednan Agaev: *"can you call your friend please? We need to conclude before they arrive tomorrow. I also need to see the lady. Regards";*

August 12, 2010 (11:10 A.M.)[273] Emeka Obi wrote to Rath, Schwedler and Wanjek: [English in source text:] *"requesting "detailed update/status on the interactions with the other investors notably Statoil, ONGC and Petrobras. I am feeling a bit out of the loop" [...] Today's tough because I have meetings with the Minister of Petroleum and ENL Plus all the ENI top guys from Milan are meeting the President tomorrow morning".* Wanjek replied shortly afterwards: *"Statoil: will not pursue the transaction as long as we can't provide any recently dated documents re the current ownership status. I have been asking to send a written request which I expect to receive tomorrow. Last contact: call today morning ONGC: has promised to send NDA, after an update call today morning ONGC requested a kind of liability statement in the NDA saying that EVP/Malabu is entitled to provide information re OPL 245. reason for that is again that at any circumstances ONGC wants to avoid a conflict with Shell. Petrobras: situation unchanged, our contact hasn't been yet available for a follow-up, messages and request for call back have been left. Conclusion is that an actual written statement issued by any authority or the president himself seems to be the only document which would give potential investors more comfort. Otherwise all seem to be scared to get in conflict with Shell";* [Translation resumes]
August 12, 2010 (2:07 P.M.) Claudio Descalzi wrote to Emeka Obi: *"Tomorrow morning before the meeting with the President we can try to have a fast meeting. Please try to organize with Roberto. If not possible we'll see in London."*[274]
August 12, 2010 (6:40 P.M.) Emeka Obi wrote to Roberto Casula confirming that he had received a request from Claudio Descalzi to organize a meeting[275];

August 13, 2010[276] there was a meeting at the President of Nigeria's residence between Goodluck Jonathan, Paolo Scaroni, Claudio Descalzi and Roberto Casula.
In this regard, Claudio Descalzi stated: *"in the summer, we usually made a tour of some African capitals, in the countries in which we operate. The visit to Nigeria was part of that tour and we planned to talk about a number of issues concerning our activities in the country, including OPL 245. We wanted to give a heads up to Jonathan that we would try to reach an agreement with Shell on the OPL issue. I remember that the night before the meeting with Jonathan, all of us at Eni met at Casula's*

269 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667 1 EVPChroology (1st round cut)24_8(2)evp comments.pdf."
270 Trial dossier, page 1540; ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 156.
271 Trial dossier, page 3274 (text message 485).
272 Trial dossier, page 3274, text message 484.
273 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
274 Trial dossier, text message 489.
275 Trial dossier, text message 492.
276 Email dated 8.22.2010 from Peter Robinson to Malcom Brinded, "OP245 Brief for ECMB call with descalzi"; Trial dossier, page 3274, text message 489.

home in Abuja; there were Scaroni, Casula, Ciro Pagano, Armanna too I think, and others. At one point Obi came to say hello and he also met Scaroni. I can't say for sure why at that time I felt it was necessary to meet with Obi, as shown by the text messages. Probably we needed to see him to discuss again about our approach in order to submit a common offer along with Shell and understand whether in the meantime Obi had received feedback from the Nigerian government[277];
August 13, 2010[278] Emeka Obi noted the meeting at Roberto Casula's house: [English in source text:] *"Obi meeting with [RS/CD - Descalzi?]. P told them that Shell had come to see him - proposal that the three companies should work together and submit a joint proposal. FGN available to help where needed. CEO concerned about election season, must ensure due process and compliance. EVP - must avoid death by committee" [...] "Follow on meeting after GEJ. GEJ Agreed Joint proposal may be submitted. Private sector solution is encouraged, FGN available to help where needed. Full support. CEO concerned about getting into "election season", must ensure due process and compliance. EVP - must avoid death by Committee"* [Translation resumes] Obi commented: [English in source text:] *"ENI seeking EVP to do research and assist with FGN view and Fiscal terms"*[279]*;* [Translation resumes]

August 14, 2010 (2:22 P.M.)[280] Emeka Obi wrote to Wanjek and Rath: [English in source text:] *"I met with the ENI Global CEO (Paolo Scaroni) and the COO (Claudio Descalzi) yesterday in Abuja after their meeting with the President of Nigeria and Minister of Petroleum. The President and Minister confirmed that: 1. Malabu has 100% of the block and is free to sell; 2. Government is amenable to a private resolution of the Shell matter ie ENI (or another buyer), Malabu and Shell should work something out and submit a joint proposal if they choose; 3. Government is fully supportive of ENIs participation and acquisition of the asset; 4. Minister would do whatever possible to assist and facilitate the closing of the transaction including providing all necessary statutory approvals as appropriate; 5. They want this transaction closed and like yesterday; 6. There may be NNPC back-in rights but this is to be discussed and confirmed by the Minister. Obi says the plan for the next steps and how to reach an acceptable price. Obi says "We now need to be extremely careful because if we are unable to create the right atmosphere and get the right deal for Malabu in the immediate future (2-4 weeks), this transaction will overtake us (EVP & RIAG) and the Parties will work something out amongst themselves. That is why it is critical to bring in the competition regardless of the challenges";* [Translation resumes]

August 14, 2010[281] Emeka Obi noted [English in source text:] *"Obi meeting with General Aliyu Gusau NSA for post mortem of GEJ/ENI meeting. The General agreed to talk to Etete who can be difficult at times";* [Translation resumes]

August 14, 2010 (4:13 P.M.)[282] Ednan Agaev wrote to Emeka Obi: *"I'm planning a meeting with the Dutch in London. Are you there Tuesday?";*
On this point, Ednan Agaev stated: *"they knew that I did not have direct contacts with Eni, but I told them that Obi did have contacts with Eni, so it would be very easy to have a direct conversation with Obi, who could explain Eni's position to them [...] They were not sure that Obi had the right contacts*

[277] Public Prosecution Submissions of 7.3.2019, transcript of interrogation of Claudio Descalzi of 6.27.2016, page 7.
[278] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[279] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
[280] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[281] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf"
[282] Trial dossier, page 3275, text message 505.

with Eni but it was clear that Obi had brought Eni in and so he was the person to contact. Shell just wanted to check whether it was true that Obi was representing Eni, but the problem was that Eni never gave any mandate to Obi. So Obi never had a written document, no written proof that he was representing Eni. In fact he was not representing Eni, he was an independent broker. And the people from Shell who were responsible for security at Shell had some doubts and did not know if they were talking to the right person. Colegate and the other one asked me several times whether I was convinced that Obi was actually representing Eni... that he had contacts with Eni[283]*;*

August 16, 2010 (5:29 P.M.)[284] Wanjek wrote to Emeka Obi: [English in source text:] *"if EVP and its advisors (RIAG/Bayphase) would get the chance to discuss some valuation topics (in particular their expenditures and allocation of value to derisking the block/goodwill) face-to-face with Shell, this would have a positive impact on the whole transaction"* [Translation resumes]

August 17, 2010 (4:45 P.M.) Claudio Descalzi forwarded to Paolo Scaroni the draft of the courtesy letter to President Jonathan with reference to the meeting of August 13: *"[...] We are also committed to expanding our activities in the upstream sector, in line with the Government's production and reserve growth targets. In this regard, we look forward to various opportunities, in collaboration with NNPC and NPDC, with the goal of significantly increasing our operations"*[285]*;*
August 18, 2010[286] Emeka Obi noted, [English in source text:] *"Obi meeting with Peter Robinson. Current issues and scenarios discussed";* [Translation resumes]

August 20, 2010[287] Emeka Obi noted: [English in source text:] *"Letter from Etete to Minister of Petroleum Resources querying the 90 days to pay the signature bonus and stating that it should be 12 months per terms of settlement";* [Translation resumes]
August 20, 2010 (6:17 P.M.)[288] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"I had a call from the dutch. They said Malcolm will call early next week Claudio. They want this conversation to be as candid as possible to have the clarity about the deal structure. They say they are ready to go with Claudio's company but they want to clearly know what is their interest and how it will be covered";* [Translation resumes]
August 22, 2010[289] Peter Robinson wrote Malcom Brinded an email with the subject line *"OPL245 Brief for ECMB call with Descalzi". "Background information;*
OPL 245 receiving attention recently at Presidential level:

- *Letter To Malabu restating Malabu's ownership of the Block approved by President (although we now believe this is seen as a mistake);*
- *Meeting between President, Broker working for Etete, National Security Adviser (NSA) and Emmanuel Ojei (CEO of Emo Oil and close friend of President). We are told that at this meeting there was support for a solution on basis of 50:50 (Mutiu separately spoke to NSA and NSA unprompted raised 245 and that 50:50 was the right way*

[283] Transcript of the hearing of 6.26.2019, page 40.
[284] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[285] ENI submissions of 1.29.2020, *"general submission memorandum",* Exhibit 157.
[286] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[287] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[288] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[289] Public Prosecution Submissions of 3.22.2019, page 335 (RDS 578).

[3 illegible signatures]

forward). Our knowledge about this meeting should not be disclosed;

- *Mutiu meeting with President in which 245 was discussed;*
- *ENI (Scaroni led) meeting with President (13th August) where we are told (via the Broker) that 245 was discussed in detail (unfortunately we have no feedback from ENI about the meeting — Casula lost his mother and thus not available to talk);*
- *The letter re-affirming Malabu's 100% in the block requires Malabu to pay the Signature bonus ($209 mln) by 2 October, 2010;*
- *Malabu is unable to do this without a transaction. However, the Attorney General is already positioning to provide more time to Malabu – so unlikely to be a deadline that drives Etete's behavior;*

- *It appears that ENI/Broker are discussing a deal construct whereby ENI purchase 100% of block from ETETE and "gift" back to SHELL a percentage – circa 25%. This is despite previous MB/Descalzi discussions based on 40/10/50 split (ENI/Malabu/Shell), the unacceptability of anything less than 50% made clear;*
- *In country view is that the President is motivated to see 245 closed quickly – driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence – reinforces need for a solution quickly;*
- *ENI asked Shell to provide it with the data on OPL 245. Ian has responded to Casula on what is required from ENI but we are yet to receive response. Clear that ENI need access to Shell data to move the transaction forward;*

Recommended discussion points with ENI

- *Confirm that ENI is indeed serious about transacting on 245 and that meeting with President was positive (did ENI make any proposal or get a desired direction from President?) to allow a transaction to move forward;*
- *If needed, reiterate that a 50:50 settlement is minimum acceptable position for Shell;*
- *Propose that it now seems that the best way forward is for Shell and ENI teams to meet, agree a transaction structure and for ENI to then make an offer to Malabu (via the Broker — they are not directly in contact with Malabu/Etete);*
- *Once that is done, look for political pressure on Etete to force him to close on the basis of the transaction proposed".*

August 24, 2010 (12:09 P.M.)[290] Emeka Obi wrote to Ednan Agaev: [English in source text:] *"The dutch and the Italian will meet today. Key issues percentage for the dutch and release of data";* [Translation resumes]

August 26, 2010 (7:43 A.M.)[291] Peter Robinson wrote to Malcom Brinded and lan Craig: *"Malcolm, lan, After the call with Claudio, Roberto Casula called me last night. I was surprised and he said this was his first business call. From this I gathered that ENI is prioritizing 245. We have agreed to a data room in Houston beginning 6 September (pending the CA that will be put in place early next week - ENI has met the requirements in lan's email). In addition, we have decided to arrange a business meeting (Roberto represents Eni) for September 2 (or thereabouts) in London in order to find a*

[290] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[291] Public Prosecution Submissions of 11.23.2018, PM2, page 40 (Italian translation of the Public Prosecution Submissions of 6.15.2019, page 40).

[3 illegible signatures]

mutually acceptable transaction to be submitted to Malabu and the Government. Ednan (the broker) is already fully informed (by ENI) and is with us. He is trying to lobby Abuja to turn the 2 October deadline (for the payment of the signature bonus) into a peremptory deadline. Incidentally, I am not aware of any Bayelsa Senators trying to insert themselves into the process as Claudio said. However, Lee Maeba (NCD / PIB - Senator Rivers) is lobbying the President to resolve 245 (at least that's what he told me). Peter";

August 27, 2010[292] the Minister of Justice sent a communication to the Petroleum Minister specifying that the deadline for Malabu to pay the signature bonus was twelve months and not just three months (*"The signature bonus related to OPL 245 will be in the amount of US$ 210,000,000 (two hundred and ten million US dollars) owed by MALABU to FGN. In this regard, FGN acknowledges that MALABU had already paid to FGN the sum of US$ 2,040,000 (two million and forty thousand US dollars) in connection with said oil block, which will be deducted from the aforementioned signature bonus, resulting in a balance of US$ 207,960,000 (two hundred and seven million nine hundred and sixty thousand US dollars) to be paid by MALABU to FGN within 12 (twelve) months from the date of reaward of OPL 245 to MALABU. This clause was inadvertently left out in my aforementioned letter and, consequently, was not reflected in the letter sent by your Ministry to Malabu Oil and Gas Limited. It would therefore be appreciated if your Ministry's letter to Malabu Oil Limited could be amended accordingly to reflect the additional period of 9 (nine) months within which Malabu will pay the signature bonus in line with the Agreement");*

August 27, 2010 (8:47 P.M.)[293] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Agaev forwards to Obi an email from Obazee on behalf of Etete 27/08/2010 16:53 attaching a letter from the attorney general dated 18/06/2010 confirming reinstatement of license to Malabu. Obi thanks Agaev, saying he will forward the document to the appropriate parties. Obi sends the letter to Wanjek, Rath cc Schwedler, Ogh and Okusami saying "Please find recent correspondence from the Federal Government of Nigeria confirming Re-instatement to Malabu. Wanjek asks whether the document can be given to potential investors";* [Translation resumes]

August 28, 2010[294] Emeka Obi noted a meeting with Claudio Descalzi: [English in source text:] *"Obi breakfast meeting with Descalzi at 9.30am regarding valuation, Shell %, ENI offer and next steps. CD angry that Etete had denied to GEJ that he had been discussing OPL 245 with ENI, NDA signed between Shell and ENI, data room open for 6/7 Sept, ENI offer by mid-Sept or earlier, need assistance to eliminate NNPC back in rights" [...] "Update on meetings with MoP, Etete denied to GEJ that he had been discussing with ENI on OPL 245, NDA signed between Shell & ENI, Data room open for Sept 6/7, ENI offer by mid Sept (could be earlier if licence terms confirmed earlier, MoP meeting set for Vienna for Sept 24. Need assistance to eliminate NNPC back-in rights";* [Translation resumes] Obi commented: [English in source text:] *"ENI getting annoyed with Etete's lies and attempts to discredit ENI with GEJ. Etete trying to use FGN to force out EVP"* [295]; [Translation resumes]

August 29, 2010 (10:03 A.M.)[296] Peter Robinson sent an email to John Copleston and other officials with a file attached called [English in source text:]*"shallow water and 245"*. The email reads: *"Guus, Mutiu, John, Consider the attachment as a draft but still as basic guidance for decisions associated with SWL and 245, especially with third parties who wish to be involved in the matters. I also believe*

---

[292] Trial dossier, page 1136; ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 159.

[293] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[294] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[295] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*

[296]Public Prosecution Submissions of 3.22.2019, page 337 (RDS 580).

that if such involvement is considered the right course of action for us - the best thing is to ensure that both issues progress in parallel and not sequentially. Comments etc are welcome".
In the document, we read: [English in source text:] *"EC MB call with Claudio Descalzi (CD) where CD gave a short account of his meeting with P:*

- *Said they indeed talked about 245; told the P that ENI were talking to Shell; and that they intend to go ahead only if Shell were in agreement;*
- *Said the P wanted to understand what type of contract ENI will work with; CD said it would be a JV with Shell/ENI/Malabu; but legal points need to be clarified and ENI want to move these along first;*
- *CD stated that the P said he wants to see this resolved ASAP. Wants the production; (has been stalled since 1998-2000) and said that this was a "normal commercial issue between you (ENI), Malabu and Shell" (indicating he doesn't want to be involved directly);*
- *CD offered to meet him again to discuss the proposal when ready";* [Translation resumes]

4.3.8 September 2010

September 1, 2010 (5:51 P.M.)[297] John Copleston wrote to Peter Robinson: *"P had good session with NSA. He says new letter from Minister extends Malabu signature bonus deadline to 9 months. But Pres keen for resolution. He says 50/50 deal was as put to him by Mutiu. They still see solution as Eni buying out Malabu "100 percent" and then Eni doing 50/50 with Shell - so not sure anything has changed other than deadline for Malabu to come up with sig bonus money. Also confirmed Ojei discussed SWL with Pres and Pres will sign off on whatever we agree with Ojei. Also talked politics. He is running and will quit NSA job once primaries open";*
September 2, 2010[298]Emeka Obi noted, [English in source text:] *"Obi meeting with Guy Colegate [Shell?]. Obi notes action points for EVP and for Colegate. Walk away price noted as $1bn. Action points - boost valuation, flexibility on percentage, fiscal terms";* [Translation resumes]

September 3, 2010 (12:24 P.M.)[299] Ednan Agaev forwarded the following message (which he had clearly received from someone else) to Emeka Obi: *"Spoke to Pete re your proposed deal - it will be VERY difficult to get across the Board. We will work it hard our side but it will still need at least 1.3 bill to us in cash to exit completely. This means block value needs to he 3.8 bill minimum to get 2.5 bill to chief and his sponsors - and the 1.3 to us for 100pc… will be tough... we think best case assumptions might make it 3.5 bill - u and Emeka need to help us on selling in Abuja to earn commission! I think I need to get chief to sell at 2 to make it work."*

September 7, 2010 Emeka Obi noted a meeting with Stefan of RI AG [English in source text:]*"Contact ONGC, Statoti, Petrobras, Geoff should prepare marketing into two lists- Shell dependent/Shell neutral, revise teaser and issue, send AG letter re Malabu reinstatement to Geoff/ Bayphase"*; [Translation resumes] Obi commented: [English in source text:] "*EVP bring other credible bidders into process to put competitive pressure on Shell/ENI to maximize price and to have alternative bidders who can proceed if Shell/ENI screw up"*[300]**;** [Translation resumes]
September 9, 2010 (8:11 A.M.)[301] Roberto Casula wrote an email to Donatella Ranco and Vincenzo Armanna with the subject line *"urgent 245 - meeting with shell on Tuesday, September 8":*

[297] Public Prosecution Submissions of 11.23.2019, PM2, page 47 (Italian translation of Public Prosecution Submission of 06.15.2019).
[298] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[299] Trial dossier, page 3276, text message 576.
[300] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
[305] Public Prosecution Submissions of 7.4.2019, page 167

"Donatella/Vincenzo please make any changes/comments you deem necessary. By 09:30 please because then I will be boarding. Thanks, bye.
Shell: Robinson, Guus, German
Eni: Casula, Ranco, Armanna
The meeting allowed:
- an update of the respective positions;
- discussion of the applicable contractual framework for the bid;
- outlining of the timing and manner of the next steps
1) We briefly informed Shell of our meeting with the president in August, specifically that our involvement is welcome and that we have written to the Minister, at her request, to notify her of our interest and for clarification on the agreement and back-in rights (which NNPC intends to exercise). The impression is that Shell, no longer having contacts with the seller, has as its only lever the arbitration, which they believe they can win, but is counting on the ENI solution. In this sense I agree that we should present an offer for the entire block only in the name of ENI but with an agreement between us that specifies how much they participate in terms of money and shares.
2) We agree to work on a concession-type arrangement because it is consistent with the sole risk allocation to Malabu. Shell considers that its old 100% contractor group in the 2000 PSC is equivalent to 50% equity on the concession and therefore in addition to the bonus it is not currently willing to contribute any more money. Interesting that in discussions with Ajumogobia to end the dispute, they offered 300 million for 20%> first party equity (50% more than our current calculations of the value of the first party). Given the doubt about the NNPC's back-in rights that could halve the value of the block, the consideration to be paid to Malabu should be equal to the amount deposited in the escrow account (210 million + interest) + our offer. The possibility of their further contribution is also linked to the possibility of reselling part of their share at a premium. The impact of the PIB on the asset's value needs to be clarified: for Shell with the Senate version, not only is there no loss of value but value is actually increased through the benefits of consolidation.
3) Shell agrees with the timeline to close the deal by September. They will be doing some checks in the next few days on the NNPC's position and possible price expectations. They will also prepare a draft Shell-ENI agreement to settle financial commitments and shares. We will finalize the technical assessments with the data room information, run again the economic models for possible PIB impact, and define a bid range for 100% of the block. Aim is to meet around Thursday of next week";

September 9, 2010[302] a confidentiality agreement was entered into between SNUD and NAE as a result of which SNUD granted NAE access to its data regarding the production potential of OPL 245;

September 15, 2010 (1:23 P.M.)[303] Emeka Obi sent NAE a letter from the Attorney General dated June 18, 2010 communicating the President's approval of the Settlement Agreement between Malabu and the FGN dated November 30, 2006 *("The President, after due consideration of your complaints and following research conducted on this matter, has approved the full implementation of the Settlement Agreement dated November 30, 2006")*;

September 17, 2010 there was a meeting in Abuja between Roberto Casula, Peter Robinson, German Burmeister and John Copleston. In an email sent at 8:57 a.m., Peter Robinson wrote to Roberto Casula: *"Tonight we will be 3 people. Myself German and John Copleston (he is one of my political people based in Abuja)";*

[302] Public Prosecution Submissions of 7.4.2019, page 78.
[303] Trial dossier, page 1541.

September 17, 2010 (9:51 A.M.)[304] Emeka Obi noted down a message from Ednan Agaev and the following conversation: [English in source text:] *"got a message from my friend we met in Nice, that tonight the spagetti lovers will put the number on the table which will be around 800 min. Are u aware?". Obi says yes. Agaev says they'll speak later as he's flying and says "Papa may not accept". Obi says "I know they are meeting today but I have no idea yet what the number is". Agaev repeats "The number is 800 mln". Obi says "I doubt it". Agaev says they'll speak later";* [Translation resumes]

September 18, 2010 (00:16 A.M.)[305] Wanjek forwarded to Emeka Obi an email he had received from Petrobras: [English in source text:] *"We understand that Nigerian Govt recognizes Malabu as the owner of OPL-245, however we heard from Shell that some legal actions were still being taken to resolve the dispute. For this reason, our management has already decided not to pursue this opportunity'';* [Translation resumes]

September 19, 2010 (4:44 P.M.) Roberto Casula wrote to Claudio Descalzi to update him on the negotiations following the meetings with Shell[306];

September 20, 2010[307] Emeka Obi noted: [English in source text:] *"Obi meeting with Descalzi (Milan airport). Discuss valuation ($1.2 - $1.5b), Shell and ENI joint bid for 100%, Etete attempts to discuss ENI direct, back in rights and reserves figures"* [...] "pp"[308]; [Translation resumes]

September 21, 2010[309] Obi noted down a meeting with Claudio Descalzi: [English in source text:] *"Obi meeting with Descalzi at 2.30pm regarding (i) valuation & structure, (ii) Shell, (iii) rumours and (iv) bid acceptance strategy. Notes that ENI will buy 100% and that offer will be ready by the end of September" [...] "Val range $1.2 - $1.5bn. Might get up to $1.8bn if fiscal terms right. Exploration upside maybe $70m-$100m; Valuation boosters - PIB, Fiscal license year, back in rights, final offer by end Sept 2010, Many experts have worked on price including Gaffney Kline, Reserves - 376mbl, trying to get Shell to pay some cash, Shell proposing 50/40/10, ENI considering 100% then spin off, Need to minimize negotiations with one price revision, S preparing draft JOA, need to work on fiscal terms with NNPC, Shell desederate to do this deal as proposed, No mention of alleged calls from Papa, Gas utilisation an option, EVP should meet with Etete and RC - Etete is making excuses at highest levels, Price & Structure not yet finalized with Shell - still need to get back in Data Room. EVP: Bid Acceptance strategy- avoid failure of direct negotiations (Shell experience), Do not present a WIP, Verbal offer and then SPA, let system work, Once offer accepted then formally present it. Met Marco Alevera"*[310]; [Translation resumes]

September 22, 2010[311] **(9:33 P.M.)** Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Papa is desperate. Wants to come to Paris to "save the deal". I think strategy was right. Let's prepare the*

---

304 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

305 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

306 ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 163;

307 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

308 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*

309 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

310 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*

311 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

Sunday meeting now. "To save the deal" he will be realistic on his expectations", [Translation resumes]

September 23, 2010 (7:21 P.M.)[312] Peter Robinson updated Ian Craig, German Burmeister and Guus Klusner on the status of negotiations: *"Ian, attached is the note we discussed today. Guus is working on note around legal issues as we discussed. It will be with you tomorrow. This afternoon we had further meeting with Roberto. Clear that they are focused on a deal around 245 and giving it priority: Roberto in Milan tomorrow for head office 245 discussions and meeting Etete for the first time next Tuesday in Paris. Today was a very open, cooperative meeting. Don't want to change the note (else it will never get to you), but the following from today's meeting: ENI maintaining $800mln as max value; They believe that a headline price of $1.5bln does the trick with net cash to Etete of $1bln, $200mln as sig bonus to FGV with the delta from $1.5 'cosmetic' (but with some credible negotiating logic); However, this logic, combined with their $800mln, still leaves a gap (Y) they want filled by Shell. We continue to maintain Y=0 but concede on sig bonus while making clear we are outside mandate in saying so; Their logic in presenting to Board is to show that they are paying the same as Shell. However constructed, this will be a key driver. This is a key point, we can negotiate around this. They broadly happy with documents (settlement agreement, JOA etc) that we provided; Clear that this Y conversation will only close at MB/CD level and CD planning to speak with MB early next week; They asking questions on Shell appetite for 3rd party investor post settlement who enters paying a premium that offsets to Etete. They say they have no such party in sight but suspect they have a plan. I indicated (same any premium paid caveat about authority that dilution that leaves us whole on value would be something we would consider. They say that they have, in their economics, adopted the Shell development plan - have not looked any alternative. Happy to discuss further as required. German Guus, please add as needed";*

Attached to the email was the document titled *"OPL245 brief"*[313]which reads:
[English in source text:] *"in discussions with ENI, they have approached the issues on finding a settlement as:*

$$X+SB + Y = Z$$

Where:
- *X is value that ENI prepared to pay to secure 50% of the Block;*
- *SB is Signature Bonus to be payable to FGN (by Shell);*
- *Y is any amount that Shell is prepared to pay to supplement the amount paid by ENI to Etete and thus "ensure" success;*
- *Z is payment to Etete that will be acceptable to all players in Abuja"* [Translation resumes]

[•••]
Price 1.5
Etete 1.0
Y 800 mln to Shell
2 *FGN View of 245*
In 2006 as settlement of disputes between FGN and Malabu, FGN (re)awarded OPL245 to Malabu conditional on a signature bonus of $2.10mln being paid. Payment never made. In June 2010, Attorney General wrote to Malabu confirming allocation to Malabu and giving explicit control of the Block to Malabu. Whereas the 2006 letter was silent in many areas, the 2010 AG letter explicitly deals with rights to operate and sell all rights, including contractor rights. This letter was followed by a similar letter from MOP [Ministry of Petroleum] to Malabu awarding the reaffirming the 2006 position of FGN provided the signature bonus was paid within 90 days (from July 3 2010). We are told but have

[312] Public Prosecution Submissions of 11.23.2018, PM2, page 55; Public Prosecution Submissions of 3.22.2019, page 346, (RDS 589).
[313]Public Prosecution Submissions of 3.22.2019, page 349 (RDS 592).

not seen the letter, that the 90 day period referred to above has been extended to somewhere upward of 9 months. The AG has told Mutiu that "Shell made a mistake by putting signature bonus into escrow, thereby recognizing a dispute over ownership existed". The AG has written a "full brief on 245" for the President. The MOP has requested the regulator (DPR) to Issue the license to Malabu. There is no evidence that since the departure of Adumegobia as Minister of State, any part of Government either cares about, or comprehends the BIT Issue.
The sentiment in Abuja has moved against Shell In the last 12-24 months from:

- *• (Lukman) - Etete should get nothing - but not going to take any action; to*
- *• (Ajomegobia) - post amnesty need to support Etete so 50:50 split is only way forward; to*
- *• (Diezani/AG/President) - Etete owns the block 100 % and taking action consistent with this;*

6 ENI Involvement
Etete has appointed a broker to sell his interest in the Block. Initially we believed that they were looking at Russian interests as the buyer. In March 2010 (at the time of PCN discussion) we had indications that ENI were in some way becoming involved. ENI have a confidentiality agreement with the Broker and are constrained in talking directly to either Etete or Shell (according to ENI). We are told by ENI that the trigger for their interest in 245 was a request from Berlusconi which in turn was a result of a Russia Italy government to government engagement. This suggests (but we have no firm confirmation) that 245 may be part of something beyond simply buying into deepwater Nigerian block".
September 24, 2010 (1:11 P.M.) Emeka Obi wrote to Roberto Casula: [English in source text:] *"The investment bank will be sending you a letter shortly in connection with process. Also, in order to streamline the process, our advisors would like a small pre-bid session with your team for early next week in order to discuss the potential structures and assumptions of your proposed bid";* [Translation resumes]

September 27, 2010[314] Emeka Obi noted, [English in source text:] *"Obi meeting with Desclazi at 8.15am. Discuss alternative structure of Shell/ENI deal, Shell's reluctance to commit cash, Shell arbitration" [...] "Structure of ENI/Shell deal, Possible offtake 25%-50% to KNOOC (EVP should encourage KNOOC, 50% ENI, 25% Shell, 25% KNOOC, 50% too much for Shell, Must take tough negotiating stance - Shell reluctant to commit additional cash to deal. SNUD must contribute at least $400mm including payment of Sig Bonus, Discussed shell arbitration, ENI wants to divest on-shore assets and migrate to off-shore: do I know any buyers? Will follow up with RC"*[315]*;* [Translation resumes]

September 27, 2010 Emeka Obi noted a meeting in Paris with Ednan Agaev, John Copleston and Guy Colegate: [English in source text:] "*Shell - had dinner with ENI/ NAE team in Abuja last Friday, Curious about EVP's friends in Nigeria and other mise info, EVP should release pressure on ENI guys - they are thinking EVP may be working with some Nigerian interests and Shell, Can't delay Arbitration any longer, NPV is $3bn - nobody will pay $3bn or NPV = 0, $1.2 bn fair for 40%>, ENI very ben conservative on reserves, EVP should avoid a competitive bid by bring other buyers in but Shell will facilitate an ENI spin off to a 3rd party if its helps ENI raise price, EVP and ILC should put pressure on Malabu to accept the price which is fair instead of trying to pressure Shell and Eni to raise price, Data is Data - can't adjust it to make it more appealing, EVP should earn its $20m by putting pressure on the Seller, Best option is to focus on the ENI deal as FGN already involved, Shell has limited traction*

[314] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
315 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*

with the FGN";[316] [Translation resumes]

September 28, 2010 (11:42 A.M.)[317] Ednan Agaev wrote to Emeka Obi: [English in source text:]*"The indian lawyer for Chief is trying to do a deal with us - he has called Pete and tried to call Brinded - saying he is acting for Chief and Chief will want 2 billion and our 4 onshore blocks we are selling!! Pete has told the Italians this - Chief has cancelled meeting with italians- we are meeting them in London tomorrow - I sense everyone thinks Chief is too crazy and might give up on it all..";* [Translation resumes]

September 28, 2010[318] Raiffeisen Investment transmitted the *Process letter* where the date for submitting the bids was changed to October 15, 2010 and two meetings were proposed (October 1 to agree on the structure of the bid and carry out further checks with Bayphase; October 5 to discuss the draft SPA);

September 29, 2010[319] Roberto Casula reported to Marco Bollini, Donatella Ranco and Vincenzo Armanna on the contents of a meeting in London with some SHELL executives, during which the documents to be signed were discussed (a settlement agreement with the FGN; a Heads of Agreement between ENI and SHELL; and the SPA between ENI and Malabu). He mentioned a final price of around $ 1.2 million: *"Here in London we met Shell (Robinson, Atemie, Klusener, Koop, Burmeister), we in this case being, in addition to myself, also Bollini, Ranco, Armanna and Giordani. Situation: We discussed and agreed two documents: the Settlement Agreement (with the Federal Governments) and the Heads of Agreement (between us and Shell). Tomorrow we are going to exchange the "clean" copies. As regards the HoA, we still have to finalize the attachment indicating the price of our offer for 100% of the block, and how this is shared between us and Shell. Shell wants an offer to be submitted next week, also because they know of your trip to Nigeria, which they believe could be of vital importance. We have told Shell that should it go higher than one billion (as is likely), they will have to supplement their contribution otherwise a deal cannot be reached. As an aside, we discussed a price of around $ 1.2*
1.2 billion. Shell would be willing to grant us the right to recover past costs in order to increase our share and supplement amounts for the balance. The key issue will be to understand over the coming days whether the deal can be clinched at this price. Brinded will have to go back to the board, but given previous results he will only do so if the deal is certain to be clinched. To facilitate our negotiations, they are prepared to freeze the arbitration proceeding. As regards the seller, we are in contact with Eleda and its adviser Raffeisen; on Friday they are going to send us the draft of the SPA,

316 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.

317 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

318 ENI submissions 4.9.2019, Exhibit 4, no. 18).

319 Public Prosecution Submissions of 11.23.2018, PM3, page 142: *"Here in London we met Shell (Robinson, Atemie, Klusener, Koop, Burmeister); We in this case being, in addition to myself, also Bollini, Ranco, Armanna and Giordani. Situation: We discussed and agreed two documents: the Settlement Agreement (with the Federal Governments) and the Heads of Agreement (between us and Shell). Tomorrow we are going to exchange the "clean" copies. As regards the HoA, we still have to finalize the attachment indicating the price of our offer for 100% of the block, and how this is shared between us and Shell. Shell wants an offer to be submitted next week, also because they know of your trip to Nigeria, which they believe could be of vital importance. We have told Shell that should it go higher than one billion (as is likely), they will have to supplement their contribution otherwise a deal cannot be reached. As an aside, we discussed a price of around $ 1.2 billion. Shell would be willing to grant us the right to recover past costs in order to increase our share and supplement amounts for the balance. The key issue will be to understand over the coming days whether the deal can be clinched at this price. Brinded will have to go back to the board, but given previous results he will only do so if the deal is certain to be clinched. To facilitate our negotiations, they are prepared to freeze the arbitration proceeding. As regards the seller, we are in contact with Eleda and its adviser Raiffeisen; on Friday they are going to send us the draft of the SPA, and a meeting will be held at headquarters in order to reach an understanding on the structure of the offer. Tuesday 5th, on the other hand, another meeting will be held to finalize the SPA."*

[3 illegible signatures]

and a meeting will be held at headquarters in order to reach an understanding on the structure of the offer. Tuesday 5th, on the other hand, another meeting will be held to finalize the SPA";

September 29, 2010 (8:44 P.M.)[320] Stefan Wanjek (Associate Director at Raiffeisen Investment) wrote to Roberto Casula and Emeka Obi for information: *"Dear Sir, Further to our letter of September 28, we are forwarding for your internal review the first draft of the Clear Vision SPA. Review to be completed by Friday morning, October 1, 2010. We hope to receive a compare version from you with comments and explanations in mark-up mode, prior to the rescheduled legal meeting next Tuesday morning. Please confirm which location between London or Milan is the most convenient for you for the legal meeting. We would also still like to meet with your team on Friday in Milan to discuss the technical and financial aspects of the proposed transaction. Therefore, please give us confirmation regarding availability/timing and location for the Friday meeting. Kindest regards, Stefan Wanjek, Associate Director Raiffeisen Investment AG"*

September 30, 2010 (10:50 A.M.) Roberto Casula replied to Stefan Wanjek: *"We agree to meet on Friday at 2pm at our offices (Eni Exploration and Production, via Emilia 1, san Donato Milanese). Please refer to Ms Donatella Ranco. We kindly ask you to provide us with the draft SPA as soon as possible. Regards, Roberto Casula";*

4.3.9 October 2010.

October 1, 2010[321] there was a meeting in the offices in San Donato between the ENI managers led by Donatella Ranco, Emeka Obi, financial advisors from Raiffeisen Investment and engineers from Bayphase; Stefan Wanjek of Raiffeisen wrote to Donatella Ranco: "*Dear Donatella, please find below the list of participants in the meeting that will be held today at our offices*:

- *Emeka Obi, EVP*
- *Martin Schwedler, Member of the Executive Committee, Raiffeisen Investment AG*

---

[320] Public Prosecution Submissions of 7.5.2019, page 191.

[321] Public Prosecution Submissions of 11.23.2018, PM3, page 147: *"At the request of EVP, this afternoon we met with Emeka Obi accompanied by Raffeisen financial advisors and Bayphase engineers. For Eni, in addition to myself, the following were present: Castiglioni, Tonna, Bollini, Marchini, Giardini, Colombi and Giordani. They were fundamentally interested in understanding the reason for the discrepancy in the asset's valuation from a technical standpoint, and whether, as a result of the information received from Shell, any improvements to the technical assessment were expected. Some rough guidance has been provided, the underlying message being that technically the asset is not better than previously assumed (actually, the opposite). From their point of view, they merely indicated a lower risk assessment and better expectations on cost trends (without providing details). On the other hand, they did not challenge the overall approach. On the structure of the deal, we have made it clear that we are thinking of an all-inclusive agreement between the seller, ourselves, Shell and the government that allows the disputes to be closed, confirmation of the applicable fiscal terms and the re-issue of the license to us and Shell. We anticipated that the offer will likely be for 100% of the asset, assuming no NNPC, and specified that in deciding the price we will need to take into account the need to accommodate Shell (bonus and past costs), with which discussions are ongoing. Emeka suggested that if there is a substantial gap between the price offered and the seller's expectations, an attempt could be made to close the gap with payments in kind (unspecified) or overriding royalties. Emeka also asked whether a back-in from NNPC could be a deal breaker (there is probably an expectation that the back-in right could be traded for advantageous tax terms), and was given the answer that in such case the price would hardly be interesting and that anyway Eni wants a significant share of interest. The general perception is that the seller's expectations do not take into account the ongoing dispute with Shell and the consequent need to accommodate Shell and/or the government. However, while in the event of a victory for Shell its right to compensation would affect the Government and therefore could produce a negative impact on the asset, if Shell lost the case, the asset would increase in value. From a seller's perspective, it should not be excluded that waiting for the outcome of the arbitration could be beneficial. Another consideration is that a 100% offer is contractually better for us than the preliminary offer in June at 40%>, which included a carry for Malabu and a first party. It would therefore be logical that they do not expect a proportionally lower offer, which would mean around USD 1300 million (net of the bonus). That said, it is obviously not sustainable to offer the value of 50% of the asset (around 800 million) to get 100%, half of which is to be allocated to Shell. Shell should either reduce its share or contribute new cash to the price. Also keep in mind that even if their arbitration is successful, their license would not be returned to them and enforcement to obtain payment of damages would be difficult. Conversely, our intervention in the settlement would make it possible to increase the value of the asset, on which, once the dispute is closed, Shell could make a dilution towards third parties at a premium. Therefore, it seems to me that there are grounds for us to ask Shell to make a contribution towards the price (alternatively, it could be convenient for us to wait for the outcome of the arbitration and subsequently buy the free asset). EVP will send us the draft SPA and we will meet to discuss it next week. It would be convenient to pursue the discussions with Shell in parallel, so that we can clarify the full picture of the deal."*

[3 illegible signatures]

-Stefan Wanjek, Associate Director, Raiffeisen Investment AG
- Geoff Eyre, Managing Director, Bayphase Ltd
- Ivan Djokic, Senior Advisor, Bayphase Ltd
We would very much like to meet with you today at 2:00pm.
Kindest regards,
Stefan Wanjek";

October 1, 2010[322] Donatella Ranco wrote to Claudio Descalzi and Roberto Casula: *"Here is a summary of the meeting and some observations. At the request of EVP, this afternoon we met with Emeka Obi accompanied by Raiffeisen financial advisors and Bayphase engineers. For Eni, in addition to myself, the following were present: Castiglioni, Tonna, Bollini, Marchini, Giardini, Colombi and Giordani. They were fundamentally interested in understanding the reason for the discrepancy in the asset's valuation from a technical standpoint, and whether, as a result of the information received from Shell, any improvements to the technical assessment were expected. Some rough guidance has been provided, the underlying message of which is that technically the asset is not better than previously assumed (quite the opposite). From their point of view, they limited themselves to indicating a lower risk assessment and better expectations on cost trends (without providing details). On the other hand, they did not challenge the overall approach. On the structure of the deal, we have made it clear that we are thinking of an all-inclusive agreement between the seller, ourselves, Shell and the government that allows the disputes to be closed, confirmation of the applicable fiscal terms and the re-issue of the license to us and Shell. We anticipated that the offer will likely be for 100% of the asset, assuming no NNPC, and specified that in deciding the price we will need to take into account the need to accommodate Shell (bonus and past costs), with which discussions are ongoing. Emeka suggested that if there is a substantial gap between the price offered and the seller's expectations, an attempt could be made to close the gap with payments in kind (unspecified) or overriding royalties. Emeka also asked whether a back-in from NNPC could be a deal breaker (there is probably an expectation that the back-in right could be traded for advantageous tax terms), and was given the answer that in such case the price would hardly be interesting and that anyway Eni wants a significant share of interest. The general perception is that the seller's expectations do not take into account the ongoing dispute with Shell and the consequent need to accommodate Shell and/or the government. However, while in the event of a victory for Shell its right to compensation would affect the Government and therefore could produce a negative impact on the asset, if Shell lost the case, the asset would increase in value. From a seller's perspective, it should not be excluded that waiting for the outcome of the arbitration could be beneficial. Another consideration is that a 100% offer is contractually better for us than the preliminary offer in June at 40%>, which included a carry for Malabu and a first party. It would therefore be logical that they do not expect a proportionally lower offer, which would mean around USD 1300 million (net of the bonus). That said, it is obviously not sustainable to offer the value of 50% of the asset (around 800 million) to get 100%, half of which is to be allocated to Shell. Shell should either reduce its share or contribute new cash to the price. Also keep in mind that even if their arbitration is successful, their license would not be returned to them and enforcement to obtain payment of damages would be difficult. Conversely, our intervention in the settlement would make it possible to increase the value of the asset, on which, once the dispute is closed, Shell could make a dilution towards third parties at a premium. Therefore, it seems to me that there are grounds for us to ask Shell to make a contribution towards the price (alternatively, it could be convenient for us to wait for the outcome of the arbitration and subsequently buy the free asset). EVP will send us the draft SPA and we will meet to discuss it next week. It would be convenient to pursue the discussions with Shell in parallel, so that we can clarify the full picture of the deal."*

October/November 2010[323] Stefano Pujatti became more directly involved in the transaction, as he

[322] Public Prosecution Submissions of 11.23.2018, PM3.
[323] Transcript of the hearing of 1.30.2019, page 36.

was appointed by Giovanni Grugni - head of the tax department at the central headquarters - to deal with the problems related to tax impact: VAT charges, withholding tax, stamp duty. This tax information was collected by the Tax department of NAE, in particular by the Nigerian tax manager, and then sent to the ENI tax department which sent it to management. However, NAE did not have the contractual documentation, and the information it provided was generic information relating to the sale of an asset;

October 4, 2010[324] Emeka Obi noted a meeting with Claudio Descalzi: [English in source text:] *"Obi meeting with Descalzi at 8.15 am. Issues discussed include sticking point with SNUD" [...] "Political situation in Italy/ Nigeria, Nigeria legacy issues, Deal with Shell not yet finalized, EVP needs to help apply pressure to get Shell to make some cash payment, Offer and Price should be ready by end of the week, No possibility of asset swap with Malabu, looking for help with sale of on-shore assets (poor pool of local buyers), No deal until SPA signed"*[325]*;* [Translation resumes]

October 4, 2010 email exchange between Emeka Obi and his advisors regarding the status of negotiations with other investors[326];

October 4, 2010 (2:24 P.M.)[327] Ednan Agaev wrote to Emeka Obi: *"Are you aware that the top Italian is going to meet Goodluck?";*

October 4, 2010 (2:25 P.M.)[328] Emeka Obi wrote to Ednan Agaev: *"on the 7th";*

October 4, 2010 (2:28 P.M.)[329] Ednan Agaev wrote to Emeka Obi: *"Yes, the Dutch have assured us that they will try to persuade the top guy to push the cash before that";*

October 4, 2010 (2:32 P.M.)[330] Emeka Obi wrote to Ednan Agaev: *"Yes, I told them to make an effort. Do u think I need to call my friend and ask him to advise Goodluck to recommend to Paolo to ignore the Dutch if they don't pay?";*

October 4, 2010 (5:46 P.M.)[331] Peter Robinson wrote to Roberto Casula. *"Roberto, I am now in The Hague - in Paris on Wednesday. We need to make sure that all documents are finalized by Wednesday. Let me know if your worries are over. Peter";*

October 5, 2010[332] Raiffeisen Investment sent to Donatella Ranco the draft sale and purchase agreement between NAE and Malabu for the purchase of 100% of OPL 245 that would be negotiated in October: "*Dear Donatella, I am sending the Clear Vision SPA document for review and comment by ENI/NAE attached to this email. EVP's advisory team is available in the London and Milan offices to discuss your comments on the Agreement later this week. Please send us your comments in writing, as soon as possible, in order to facilitate a reasonable discussion regarding them this week. It should be noted that all Transaction Documents will be subject to final approval by the Shareholders and Directors of Malabu. Please be advised that while Templar continues to be our consultant on Nigerian law matters, we have replaced our international consultant with Shearman & Sterling";*[333]

October 6, 2010 Emeka Obi wrote about his meeting with Claudio Descalzi: [English in source text:] *"Informed of 100% availability, Says wants no fight with Shell, Board approvals already on basis of 50/40/10 - will look stupid to go back, Will talk to GLJ about Shell, Wants a better deal/fiscal terms to*

---

324 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

325 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "*copie de chrono unprotected*".

326 ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 166.

327 Trial dossier, page 3277 (text message 701).

328 Trial dossier, page 3277, text message 702.

329 Trial dossier, page 3277 (text message 703).

330 Trial dossier, page 3277 (text message 704).

331 Public Prosecution Submissions of 7.4.2019, page 203

332 Trial dossier, page 1543.

333 ENI submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 167

[3 illegible signatures]

boost valuation, maybe an after part-sale to another buyer perhaps Chinese[334]; [Translation resumes]

October 8, 2010[335] Peter Robinson wrote to Malcom Brinded, lan Craig and Maarten Wetselaar: *"Below is summary on basis of discussions with ENI today. However, before starting 245 commercial terms, during the meeting I received a text from Floris Ansingh who is working very hard to stay involved following initial contact via Ceri a couple of weeks ago. Message is that 1) a representative of Etete really wants to meet me urgently to discuss 245 and 2) TOTAL are about to table draft offer on 245. I told Roberto this and he went away and made some calls. On return he asked for private discussion and first asked whether "Shell was in any discussion with Total on 245" – I said no. He then said that he had "confirmed" that Total indeed where preparing an offer for 100% of 245 – working through a northern nigerian general (they are in akpo with danjuma). Further that their actions on 245 were linked to yellow blocks and indigenous consortium. Specifically Total were looking to take the Shell and Eni shares with indigenous players on 30 and 34 (at least) but were not ready and hence stalling us. This may explain why Jacques spent so much time asking about our valuation (as Ian mentioned in the call today). This information Roberto is sharing with Claudio. I cannot assure you that all of the above is fact but there is a consistency with other information we have received. Having said that, it is clear Eni are very unhappy with total at moment following 1) tullow pre-emption on eni that was total/Chinese backed ($1.4bln) and*
2) a "French centric" anti tar sands campaign following acquisition by Eni in Congo (at expense of Total). I would suggest that you do ask YL [Yves Louis Darricarrere - President of Total Exploration and Production] *about this. On 245, one approach would be an advise to YL not to get involved in a block disputed by Shell. The other, if they are interested in 245, would be that they cooperate with Eni and Shell not "compete". I have not discussed latter with ENI."*

October 8, 2010 (11:34 P.M.)[336] Peter Robinson wrote to Roberto Casula: *"Roberto, I would like to thank you and the team for today. After the text I showed you, I was asked to meet face-to-face with Bitu Bhalla - a representative of Etete. He asks for "Shell's" discussions on the rules. I can see the pros and cons, but I would only want to do so with the full knowledge and support of Eni. Perhaps we can discuss next Sunday/Monday in Venice".*
October 9, 2010 (8:38 A.M.) Roberto Casula forwarded Peter Robinson's email to Vincenzo Armanna, Donatella Ranco, and Marco Bollini for their comments *("Fyi");*
October 11, 2010 (7:03 P.M.)[337] Malcolm Brinded informed Peter Robinson and Ian Craig of a

334 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
335Public Prosecution Submissions of 6.15.2019, page 54.
336 Public Prosecution Submissions of 7.5.2019, page 207. Peter Robinson wrote to Roberto Casula: <
337 Public Prosecution Submissions of 11.23.2018, PM2, page 58: [English in source text:] *I have agreed with Claudio and then cleared with Peter (and confirmed back to Claudio) the following deal:*
Headline $1.3 bln offer
Eni put in $980 mln
Shell - put in $210 signature bonus
- and $25 mln interest from sig. bonus
- and $85 mln cash
Shell keep 100% of the cost recovery
Eni are operator
We have not agreed anything for if the necessary amount goes above $1.3 bin (I had earlier offered to give Eni right of first refusal for our further dilution and to mutual pre-emption rights. He did not mention these issues today - but I would not plan to take them off the table as this is a very high trust discussion) Our firm intent is to keep it at this number • which has the advantage that Malabu gets well over $ 1bln (=1090). Claudio says that Eni have info that Total made an offer of $1.2 bin (!) already.... (i am convinced YLD did indeed NOT know) and that CNOOC are back ready to negotiate with M. Think you (Peter I assume) need to talk to Roberto asap about the tactics to make the offer to Malabu and who should do this. For what it's worth - here's my view: 1 think Eni should lead this and should offer $1.25 bln take it or leave it for 36 hours- M to renounce any and all claims and to commit to deliver all the other crucial confirmations we would need from Nigerian Govt (including re licence period; fiscals etc) M will probably then still ask for $1.5+... Then we move to 1.3 limit for another 36 hours and that's it. An absolute condition for me of this is that M are 100%> out of the block 11 (i.e.no deal whereby M holds on to 10% etc) But I leave you two to determine tactics. We need to move fast I think as the

[3 illegible signatures]

meeting with Claudio Descalzi in which the points of the offer for 100% of OPL were outlined. Specifically: *"Ian, Peter, I have agreed with Claudio and then cleared with Peter (and confirmed back to Claudio) the following deal. Headline $1.3 bln offer; Eni put in $ 980mln; Shell – put in $210 signature bonus ($ 25 mln interest from sig bonus; $85 mln cash); Shell keep 100% of the cost recovery; Eni are operator. We have not agreed anything for if the necessary amount goes above $ 1.3 bln [...] Our firm intent is to keep it at this number – which has the advantage that Malabu gets well over $1bln (=1090)". Claudio says that Eni have info that Total made an offer of $1.2 bln (!) already and that CNOOC are also back ready to negotiate with M.";*

October 11, 2010[338]Emeka Obi noted: [English in source text:] *"Obi meeting with ENI representatives and EVP's advisors regarding SPA draft";* [Translation resumes]

October 12, 2010 email exchange between Emeka Obi and his consultants regarding the status of the negotiations with Eni[339];

October 12, 2010 (8:37 A.M.)[340] Guus Klusener wrote to Peter Robinson and John Copleston commenting on the danger of the French oil company TOTAL entering the negotiations: *"Pete, John, From our friend:*

1) 1) He stated he "told Italians Paris was involved" – he knew BiBal and his ex-Saudi sidekick were lobbying there and with the far east. Our friend sort of ducked the issue about a figure being placed on table as to what Paris had bit-but was clear to me that the 1.2 probably came from him and his wide boy friend from Lagos – so I think a certain amount of gaming involved. So basically our friend talked up the threat and figures. Funny how the end deal is pretty much exactly what our friend JC and I discussed in Paris a month ago as being where it would likely end up from It side.

2) Italians contacted Paris "at highest level "and were told that whilst junior levels had been in discussion With BB and his "client" that was now killed. Paris HQ believed (as does our friend and John and I) that the Chief is absolutely toxic from a French perspective given legal issues and "couldn't do it if they wanted to".

3) BB, Ex- shell sidekick and Chief likely still far east focused.

Our friend says "ignore all this nonsense- they cant get Abuja lined up on it- do not engage with them at all in any way" – (Pete- suggest you ask MB for permission to apply legal coup de grace to this distraction- happy to help out as BB London-based.)

4) Our friend's principal in his home country discussed this deal at length Sunday night. He was very focused on what the Italians would get, how much they wanted in etc etc. Our friend confirmed it is directly linked to South Stream from his principals perspective- which is why there was a G2G angle. His principal also killed Parisian interest btw.

5) Our friend says its a done deal with his principal, the capo de tutti capos in Rome (not Milan) and us/Milan. Only unknown as ever is the client.

6) His principal asked about a "mid-sized" (circa USD1 bill) opportunity for biggest company – our partner in flagship there. He would like onshore/shallow offshore. I said was a linkage to the third phase of the flagship possible. He said was very very sensitive but possible.

7) I will meet with him Thursday in Paris.

---

wolves are indeed circling. I do not have any mandate to go above the proposal as above (i.e., above 1.3) - and I very much doubt I would get it, as getting Peter to agree to put the above 85 min cash on the table was naturally difficult. But he agrees we need this resolved. Malcolm". [Translation resumes]

338 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

339 Eni Submissions of 1.29.2020, *"general submission memorandum",* Exhibit 174.

340 Public Prosecution Submissions of 11.23.2018, PM2, page 57.

[3 illegible signatures]

I'm at home call me if you need to decipher anything";
October 12, 2010 (10:02 A.M.)[341] Guy Colegate wrote to Peter Robinson and John Copleston:
"Pete, John From our friend
1) He stated he "told Italians Paris was involved" – he knew BiBal and his ex-Saudi sidekick were lobbying there and with the far east. Our friend sort of ducked the issue about a figure being placed on table as to what Paris had bit-but was clear to me that the 2 probably came from him and his wide boy friend from Lagos – so I think a certain amount of gaming involved. So basically our friend talked up the threat and figures. Funny how the end deal is pretty much exactly what our friend JC and I discussed in Paris a month ago as being where it would likely end up from It side.
2) Italians contacted Paris "at highest level" and were told that whilst junior levels had been in discussion With BB and his "client" that was now killed. Paris HQ believed (as does our friend and John and I) that the Chief is
absolutely toxic from a French perspective given legal issues and "couldn't do it if they wanted to".
3) BB, Ex- shell sidekick and Chief likely still far east focused.
Our friend says "ignore all this nonsense- they cant get Abuja lined up on it- do not engage with them at all in any way" – (Pete- suggest you ask MB for permission to apply legal coup de grace to this distraction- happy to help out as BB London-based.)
4) Our friend's principal in his home country discussed this deal at length Sunday night. He was very focused on what the Italians would get, how much they wanted in etc etc. Our friend confirmed it is directly linked to South Stream from his principals perspective- which is why there was a G2G angle. His principal also killed Parisian interest btw.
5) Our friend says its a done deal with his principal, the capo de tutti capos in Rome (not Milan) and us/Milan. Only unknown as ever is the client.
6) His principal asked about a "mid-sized" (circa USD1 bill) opportunity for biggest company – our partner in flagship there. He would like onshore/shallow offshore. I said was a linkage to the third phase of the flagship possible. He said was very very sensitive but possible. I will meet with him Thursday in Paris.
I'm at home call me if you need to decipher anything".
October 12, 2010 (5:14 P.M.)[342] Emeka Obi wrote to Ednan Agaev: [English in source text:] *"Tell them not to panic. There r other ways to achieve the same result. This way, Papa will never accept";* [Translation resumes]

October 13, 2010 (00:28 A.M.)[343] Guido Zappalà wrote to Stefan Wanjek: [English in source text:] "*Dear Stefan, with a view to expedite our discussions of the SPA, I enclose the main terms of the Settlement Agreement we discussed at our last meetingA This summary will give you a good understanding of the content of the document (which we should anyhow be able to share with you very soon). As far as our next engagement is concerned, we are again reviewing our schedule and will confirm tomorrow whether we can meet on Thursday. Talk to you soon. Guido"*; [Translation resumes] at **1:45 P.M.** Guido Zappalà added: [English in source text:] "*Dear Stefan, further to my message below, I can confirm that we were able to adjust our schedule and, therefore, we are ready to meet with you and your team tomorrow at our offices in San Donato Milanese, starting from 09.00 hours. Please confirm your availability for the meeting as soon as possible. Thanks Guido";* [Translation resumes]

[341] Prosecution's Submissions of 7.4.2019, page 117.
[342] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[343] Prosecution's Submissions of 7.4.2019, page 290.

October 13, 2010[344] Raiffeisen Investment postponed the date for the presentation of the bids to October 25, 2010;

October 13, 2010 (10:50 A.M.)[345] Roberto Casula wrote to Peter Robinson: *"Peter, this is the revised draft of Attachment A. I trust that you will print it out for signing tonight. I await your confirmation. Roberto";*

October 13, 2010[346]Emeka Obi noted: [English in source text:] *"Obi visits Descalzi at ENI at 17:05"* [Translation resumes]

October 13, 2010 the Heads of Agreement was entered into between NAE, SNUD and SNEPCO[347];
October 13, 2010 (4:22 P.M.) Claudio Descalzi wrote to Paolo Scaroni to update him on the status of negotiations[348];
October 13, 2010 (8:01 P.M.)[349] Stefan Wanjek wrote to Guido Zappalà: [English in source text:] "*as indicated earlier today please find attached our mark-up to your latest version of the draft SPA dated Oct 11. Please note that the numbers on second level have been changed as the file we received has been corrupted. To our understanding the meeting will start at 11:00am CET at your offices which I'd kindly ask you to confirm. Besides myself the participants to the meeting tomorrow from our side are*

* *Emeka Obi*
* *Martin Schwedler*
* *Kenneth MacRitchie*
* *Sandra Rath*

Thanks and regards, Stefan
Stefan Wanjek
Associate Director Raiffeisen Investment AG" [Translation resumes]
October 14, 2010[350] there was a meeting at the San Donato offices between Guido Zappalà, Emeka Obi and Raiffeisen officials Martin Schwedler, Kenneth MacRitchie and Sandra Rath;

October 14, 2010 (10:06 A.M.)[351] Emeka Obi and Ednan Agaev exchanged a series of text messages urging each other to reassure their respective interlocutors. Emeka Obi wrote, *"you and I are legally working for the seller so we need to make sure we meet our basic legal obligations";*

October 14, 2010[352] Guy Colegate wrote to Peter Robinson and John Copleston, *"lots of sharks*

---

344 Trial dossier, page 1545.
345 Prosecution's Submissions of 7.4.2019, page 209.
346 Prosecution's Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
347 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 177.
348 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 176
349 Prosecution's Submissions of 7.4.2019, page 288.
350 Eni Submissions of 9.18.2018, Exhibit 178.
351 Trial dossier, page 3278, text message 751.
352 Prosecution's Submissions of 3.22.2019, 408 (RDS 651, 652): [English in source text:] *1) Our friend is optimistic - he doesn't believe there is any other serious offer. He says Chinese may be aware of the italian deal and are waiting - they want it to be rejected knowing we will all give up and they will come in at a lower value per pc point and try take lot for under 2 post any court decision. Friend states he spoke with cnpc, sipc, cnooc, oxy, perenco and nexen early this year before he was directed at milan - none of them wanted it so not concerned now; 2) The floris nonsense rumbles- providing a distraction as chief believes floris (bitu balla) can "control MB" and get a better offer - which is what he (floris) is selling. Clear floris has no understanding of what's actually going on - he seems to think milan is offering independent of us to chief and we would like to challenge on price - so he is trying to set up a comp bid between RDS/ENI over an asset we own. Pure opportunistic chancer. Seems he has no idea on history and is seeking a success fee thru getting access to MB. A legal letter as discussed will kill it and remove the distraction; 3) Chief driving our friend mad - on phone all the time (incl at 0400 this am) - he (chief) walked past me in hotel lobby at lunch - I was my usual sartorial self so he didn't notice me - probably pegged me as a cleaner. Fine by me. Anyways chief was called by ministers office (Diezani) early am asking if he had signed and being asked what exactly what consideration was - he ducked; 4) Lots of sharks circling- OJ. Dez, gusau plus all the bullshitters in middle. Friend*

circling - OJ. Dez, gusau plus all the bullshitters in middle";

October 15, 2010 (8:32 A.M.)[353] Emeka Obi wrote to Ednan Agaev: *"You have to explain to your friends that there is an information leak here and someone here in Nigeria is telling papa that we are helping the Italians and the Dutch to screw him over. So we have to at least on the surface keep our behavior from jeopardizing the agreement";*

October 15, 2010 (7:37 P.M.)[354] Emeka Obi wrote to Donatella Ranco: [English in source text:] *"Donatella, Good Evening. Please can we have the latest draft so I can get consensus as quickly as possible. We will keep it strictly within the advisors, for now, just to identify the key points for resolution. And thanks for the wonderful lunch and fruitful discussions. We are confident that significant progress has been made on both sides. Like we said, we are committed to find acceptable solutions to all pending items within a very short time frame. I will provide an update to you tomorrow as appropriate. Regards Emeka";* [Translation resumes]

October 15, 2010 (7:48 P.M.)[355] Donatella Ranco wrote to Emeka Obi: [English in source text:] *"Emeka, I hope you could catch your plane. As agreed, please find attached the draft version of the SPA we discussed today for your confidential consideration. In yellow the sections which need to be agreed upon. The Settlement Agreement referred to in the document is the one I gave you yesterday. Waiting for your update. Best Regards Donatella Ranco";* [Translation resumes]

October 16, 2010[356] Claudio Descalzi and Emeka Obi met in Piazza Duomo in Milan;

October 18, 2010 (3:14 P.M.) Guido Zappalà sent a note to Roberto Casula summarizing the points of disagreement with Malabu in the negotiation[357];

October 19, 2010 (11:05 A.M.)[358] Stefan Wanjek wrote to Guido Zappalà and Donatella Ranco: [English in source text:] *"Dear Guido, As indicated yesterday by phone we'd ask you to send the list of CPs as discussed at our meeting on Friday. We will revert to you with a proposal for the further procedure once we have received the list. Thanks and regards, Stefan";* [Translation resumes]

October 19, 2010 (11:38 A.M.)[359] Guido Zappalà wrote to Stefan Wanjek: [English in source text:] *"Stefan, I attach the list of conditions precedent discussed at our last meeting on Friday. As you can appreciate, the list is somewhat simplified compared to the conditions contained in the draft Settlement*

---

thinks he can fight them off but says he needs time to manage chief as he is" a lunatic" - hence 25/10 spa/final bid date; 5) Italians (claudio) called friend last night and gave strong message that its a once and final offer - don't expect any neg room upwards. 6) Friend needs deal - he cannot let his RF principal down badly on this. Mr. P wants scaroni to fid south stream asap and this is all part of the game. There seems some other issue at work between RF and It that makes It Gov anxious to conclude as well - unsighted; 7) Friend says gzpm International (ivanov) want a deal in nig- ca I bill. But he is not sure how serious they are - I offered potential role in Mauritius - he said might be interesting and wants to talk to principal on it. 8) Discussed Sun energy group - he said he knows them - it went badly with Itera - and Russ dont like them any more - says they haven't got cash they claim they have - took a pounding thru itera venture. No interest RF side to work with them. 9) Olaeum - reckons its Swedish money only - says time not playing - though richard garneire D says he met RF mr T last week. We should push laborde to roll out russians in geneva next week. Friend says he doesn't think there is any chance RF mr T will be at the meet but if he is that's all the indication we need re Intent and we should start getting serious quickly. Summary - more moving parts than ever. We should get a view of sending a cease and desist to floris and his little lawyer chum. If legal ok it think we should get it out into the ether asap. They will likely continue to bullshit but we can send on to chief through usual channels to nail it". [Translation resumes]

353 Trial dossier, page 3278, text message 762.

354 Prosecution's Submissions of 7.4.2019, page 288.

355 Prosecution's Submissions of 7.4.2019, page 287.

356 Trial dossier, page 3279, text message 790.

357 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 179

358 Prosecution's Submissions of 7.4.2019, page 287.

359 Prosecution's Submissions of 7.4.2019, page 286.

[3 illegible signatures]

Agreement delivered to you earlier. In light of our ongoing discussions, and depending on their results, this list may be subject to further adjustments. Please advise on your plans for the rest of the week as a matter of urgency. Regards Guido"; [Translation resumes]
October 19, 2010 (2:54 P.M.)[360] Emeka Obi wrote to Roberto Casula: [English in source text:] *"The Seller is in Paris. We are trying to build consensus on the one or two outstanding points. We understand need to move quickly but submission is not the issue, acceptance is. Anyway, we will try to have chapter completely closed by end of this week. Call you later";* [Translation resumes]
October 19, 2010 (5:22 P.M.)[361] Emeka Obi wrote to Martin Schwedler of Raiffeisen Bank: *"we really need to find a bank or escrow agent for the payment asap. The Purchaser, as you know, has agreed to pay the fee. Pls use your contacts it is critical. Anywhere but UK, France or Italy";*

October 20, 2010[362] Emeka Obi noted down: [English in source text:] *"Meeting between Obi, Etete and Agaev at Hotel George V to discuss SPA draft. Etete says Obi should hurry things up so that we would get his USS 200 million";* [Translation resumes]

October 20, 2010 (11:04 A.M.)[363] Guido Zappala wrote to Stefan Wanjek: [English in source text:] *"Dear Stefan, I make reference to my message below, and to your message of yesterday advising that you would confirm (by yesterday) your availability to meet this week in order to continue our discussions on the SPA. This is to confirm that our team is ready to restart discussions as of today and at any time it may be convenient for you. This is also to reiterate that we are still waiting a confirmation from you and your team to restart such discussions as a matter of urgency. Please advice as soon as possible. Thank you very much. Guido";* [Translation resumes]
October 20, 2010 (12:43 P.M.)[364] Stefan Wanjek wrote to Guido Zappala: [English in source text:] *"Dear Guido, Thanks for your message. We welcome your interest to move forward quickly and we also confirm our full commitment to finalize the SPA discussions promptly. In this regard, we will forward you a mark-up of the SPA later today and will propose a conference call for tomorrow to discuss any outstanding points. We will also be available to meet with your team, possibly on Friday this week, if the need arises following our call. Once again, we thank you for the high level of commitment demonstrated to the process. Kindest Regards, Stefan";* [Translation resumes]
October 20, 2010 (1:21 P.M.)[365] Guido Zappala wrote to Stefan Wanjek: [English in source text:] *"Dear Stefan, thank you for your reply. As stated, we are ready for a conference call and/or meeting you at any time from now. Of course, having in our hands your next draft of SPA would render any meeting more fruitful. We hope to receive your draft very soon so that we can reengage into discussions as soon as possible. In general, we would suggest that face-to-face meetings are usually more productive if at all possible. Thank you for your kind cooperation and talk to you soon. Regards. Guido";* [Translation resumes]

October 21, 2010 (10:56 A.M.)[366] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Papa keeps doing his stupidities. His nephew was trying to reach the top level of the dutch, but was blocked by Peter. My friends complain that he may provoke a storm. I shall complain to Richard now".*

[360] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24 8(2)cvp comments.pdf."
[361] Trial dossier, page 1287, text message 829.
[362] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667 1_EVPChronology (1st round cut)24_8(2)evp comments.pdf."
[363] Prosecution's Submissions of 7.4.2019, page 286.
[364] Prosecution's Submissions of 7.4.2019, page 286.
[365] Prosecution's Submissions of 7.4.2019, page 285.
[366] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[Translation resumes]

October 22, 2010[367] Raiffeisen postponed the date of the presentation of the bids to November 1, 2010;

October 22, 2010[368] Femi Akinmade wrote to Vincenzo Armanna *"Dear Vincenzo, Please confirm that PEECO must provide technical services concerning the block. Sincerely Ernest Akinmade";* Vincenzo Armanna replied: [English in source text:] *"Dear Akinmade, I confirm you that we need your support to the negotiation with Shell and to understand possible evolution of the fiscal terms".* [Translation resumes]

October 23, 2010 (3:34 P.M.)[369] Femi Akinmade sent an email to Vincenzo Armanna analyzing all the knots in the negotiation point by point. Femi Akinmade specified that the answers to the questions had been given to him by Dan Etete, on whose behalf he was acting as an agent[370]: *"Dear Vincenzo, The situation is as follows*
A - He showed me a request from the Buyer that was given to HIM.

1) Malabu to guarantee block will be on sole risk basis post closing consistent with 2000 PSC i.e. 50/50 regime and no royalties due to water depth.
Answer - The Deepwater Decree will be applicable for the Fiscal regimes. Malabu has no power to alter the Decree. Even if it is a JV arrangement so long it is in Deepwater, the fiscal terms will be applied.

---

367 Trial dossier, page 1552.

368 Prosecution's Submissions of 11.23.2018, PM3, page 190.

369 Prosecution's Submissions of 11.23.2018, PM3, page 197: [English in source text:] *Dear Vincenzo, The situation is as follows A- He showed me a request from Buyer which was given to HIM.*
1) Malabu to guarantee block will be on sole risk basis post closing consistent with 2000 PSC i.e. 50/50 regime and no royalties due to water depth. Ans-The Deepwater Decree will be applicable for the Fiscal regimes. Malabu has no power to alter the Decree. Even if it is a JV arrangement so long it is in Deepwater, the fiscal terms will be applied.
2) Malabu to guarantee fresh OPL in Eni's name for ten years plus 20 years OML. Ans-So long Malabu was not able to operate due to litigation and the Signature Bonus Payment by Malabu is still outstanding, whenever Malabu pays the Signature Bonus that is when the OPL would take effect. Malabu expects the buyer to convey through Malabu the cheque or transfer made out to the Federal Government for payment. Malabu would not accept Signature Bonus payment from Shell's escrow account which would make the OPL retroactive.
3) Stabilization Clause-This is within the regulatory ambience of the petroleum laws as they affect all operators with their agreed JOAs and not only in the case of Malabu. 4) No NNPC back-in rights. Ans-This has been affirmed in the Minister's letter of April 11 2007 clause 7 and reconfirmed in the President's letter to Malabu asking all Government agencies not to interfere in the ownership structure of the block but as required by Malabu.
5) No transaction taxation-CGT, VAT etc. Ans-These are outside the purview of Malabu but are issues that can be discussed.
6) Eni inherited Shell's past costs to be acknowledged as tax-treatable for PPT. Ans-Malabu does not want to recognize Shell in this proposal from Eni. Malabu has nothing to do with Shell as regards their past costs. They can present their case to FGN and could be compensated by the FGN. It is not a Malabu issue. I discussed the position of the Seller as presented to the Buyer. Ans- There is no pending litigation. The litigation ICSID Case no ARB/07/18 between SNUD and FGN claimed by Shell as pending has been ruled. Eni could get a copy of the ruling if so wish. Therefore, there is no pending settlement that should be a Condition Precedent.
THE POSITION IS THIS:
1) Malabu wants to deal and complete all the negotiations with Eni then Eni can decide to deal with Shell. If Malabu has interest in Shell, Malabu would have considered Shell.
2) The transfer of any interest of Malabu in the block to Eni or any other party would be made based on the Court Settlement, The Presidential Approval and the Petroleum laws of the Federal Republic of Nigeria.
3) The Presidential Approval supersedes approvals being sought from the Ministries. Malabu would only sell to a Buyer who would comply with the Nigerian Petroleum Laws. I asked if he could reconsider his position and support a Tripartite Agreement. Ans-He needs to see what it entails. However, he wants to keep Shell out of his business. As far as Eni is concerned, no official Offer has been presented to him by Eni for consideration. At no time did he request for a deferment of the submission of Proposals for the block. What he is looking for is
-a market driven Offer as the Farm in Fee
-to retain 15% carried interest in the block or US$5/bbl overiding royalty and
-to be the Nigerian Content Partner in the business of the block.
He said all sorts of figures and conditions are being branded as Offers from Eni, he believes there will be a better understanding of Eni's position tomorrow. The latest he said he heard of Eni offer was US$1.5b now thereafter US$1.0b at drilling??
He told me he wants to conclude the block issue next week by all means. Hope to hear from you". [Translation resumes]

370 Transcript of the hearing of 3.20.2019, page 39: *"all of these positions are Etete's".*

2) Malabu to guarantee fresh OPL in Eni's name for ten years plus 20 years OML. Answer - So long Malabu was not able to operate due to litigation and the Signature Bonus Payment by Malabu is still outstanding, whenever Malabu pays the Signature Bonus that is when the OPL would take effect. Malabu expects the buyer to convey through Malabu the cheque or transfer made out to the Federal Government for payment. Malabu would not accept Signature Bonus payment from Shell´s escrow account which would make the OPL retroactive.
3) Stabilization Clause - This is within the regulatory ambience of the petroleum laws as they affect all operators with their agreed JOAs and not only in the case of Malabu.
4) No NNPC back-in rights. Answer -This has been affirmed in the Minister's letter of April 11 2007 clause 7 and reconfirmed in the President's letter to Malabu asking all Government agencies not to interfere in the ownership structure of the block but as required by Malabu.
5) No transaction taxation-CGT, VAT etc.
Answer - These are outside the purview of Malabu but are issues that can be discussed.
6) Eni inherited Shell's past costs to be acknowledged as tax-treatable for PPT.
Answer - Malabu does not want to recognize Shell in this proposal from Eni. Malabu has nothing to do with Shell as regards their past costs. They can present their case to FGN and could be compensated by the FGN. It is not a Malabu issue. I discussed the position of the Seller as presented to the Buyer.
Answer - There is no pending litigation. The litigation ICSID Case n. ARB/07/18 between SNUD and FGN claimed by Shell as pending has been ruled. Eni could get a copy of the ruling if so wish. Therefore, there is no pending settlement that should be a Condition Precedent.
THE POSITION IS THIS:
1) Malabu wants to deal and complete all the negotiations with Eni then Eni can decide to deal with Shell. If Malabu has interest in Shell, Malabu would have considered Shell.
2) The transfer of any interest of Malabu in the block to Eni or any other party would be made based on the Court Settlement. The Presidential Approval and the Petroleum laws of the Federal Republic of Nigeria.
3) The Presidential Approval supersedes approvals being sought from the Ministries. Malabu would only sell to a Buyer who would comply with the Nigerian Petroleum Laws. I asked if he could reconsider his position and support a Tripartite Agreement.
Answer - He needs to see what it entails. However, he wants to keep Shell out of his business. As far as Eni is concerned, no official Offer has been presented to him by Eni for consideration. At no time did he request for a deferment of the submission of Proposals for the block. What he is looking for is -
- a market driven Offer as the Farm in Fee-
- to retain 15% carried interest in the block or US$5/bbl overriding royalty and to be the Nigerian Content Partner in the business of the block. He said all sorts of figures and conditions are being branded as Offers from Eni, he believes there will be a better understanding tomorrow. The latest he said he heard of Eni offer was US$1.5b now thereafter $1.0 billion at drilling?? He told me he wants to conclude the block issue next week by all means. Hope to hear from you. Best Regards Femi Akinmade";

October 23, 2010 (16:04)[371] Femi Akinmade wrote to Vincenzo Armanna: *"Dear Vincenzo, Following my email on what really transpired I have been thinking of the way forward. The SPA without Shell will look okay to Malabu and can be negotiated with Malabu. We can in parallel prepare an Assignment documentation for SNEPCO which can be signed back to back with the SPA by NAE and we can accelerate to get Ministerial approval. It is a good thing that NNPC will not be involved in this case. We only need to work with DPR. If there is any agreement between NAE and SNEPCO this can*

[371] Prosecution's Submissions of 7.5.2019, page 263.

give comfort To SNEPCO pending the Ministerial Approval. We need to get the Schedules 5 executed by Malabu as part of the SPA and Schedule 6 executed by SNUD as part of the Assignment documentation to be filed on behalf of SNEPCO. What is left is an acceptable proposal to be made and agreed with Malabu. Please let me know your thoughts".
Vincenzo Armanna responded immediately, *"I think it could work, let me look into it further";*
October 24, 2010 (5:15 P.M.)[372] Ednan Agaev wrote to Emeka Obi: *"Someone from inside italians told Papa the reason of all the troubles is that EVP is too greedy".*
Emeka Obi responded *"It's a trick";*
October 24-26, 2010[373] Vincenzo Armanna and Femi Akinmade stayed at the same hotel in Paris. Akinmade's travel and hotel expenses were paid for by NAOC and Vincenzo Armanna[374];
October 25, 2010 (11:38 A.M.)[375] Vincenzo Armanna wrote to Emeka Obi: *"Just write us the instruction to comply with... the Bank... The account and so on";*

October 25, 2010 (12:34 P.M.)[376] Vincenzo Armanna wrote to Donatella Ranco, Roberto Casula, Enrico Caligaris and Romina Giordani: *"I apologize to everyone, but I would like to point out that rumors report the presence of a Chinese delegation in Nigeria that has or is meeting the main players involved in the affair. In addition to this, I think we should submit an offer so we can start a direct and formal negotiation with the seller and avoid that elsewhere something different is closed and we are excluded, by now everywhere in Nigeria the word is that we are not really interested. I think it would be appropriate that any changes to our bid come from a formal request of the seller or his advisors. Today there is only the fact that we have not made an offer, only we know that it is because we cannot find a middle ground with the advisors, but it is better to at least formally start a negotiation with an offer that could later be completely revised. This is my personal opinion";*
Donatella Ranco replied: *"Vincenzo, I'm not sure I fully understand the purpose of your e-mail, but I will clarify a few points. First, as you know, our (corporate) involvement in the 245 entry process is governed by an agreement (NDA) signed with EVP that places clear constraints on our ability to speak with anyone other than EVP and its consultants. If we decide to negotiate directly with the seller (and I cannot comment on this opportunity, as I have no information on our possible relations with the seller), we will have to examine ways and means of making exceptions. At this time there is no binding offer that should/may be modified. We have merely submitted a non-binding preliminary offer, which, as such, may be revised in whole or in part, at our discretion. I'm not clear what you mean by the phrase "I think it would be appropriate that any changes to our bid come from a formal request of the seller or his advisors"; if we submit an offer, it can be part of the process managed by the bank, which currently has a deadline of November 1, or we can depart from it if we so choose. As for requests, I have no evidence of any contact with the seller. The fact that we have not, to date, submitted a new offer is not due to the fact that "we cannot find a middle ground with the advisors"; an attempt has been made to finalize an SPA (on the text of which considerable progress has been made) with the advisors, trying to bridge the divide between their requests and those of the potential partner (obviously preserving our interests). Regardless of the complexity of the exercise, the advisors to date have no intention of signing any SPA before receiving an offer. Therefore, the decision to submit the bid will likely have to disregard the signing of the SPA, which is not contemplated by the advisors. As for submitting a bid anyway, I agree an internal discussion is appropriate";*
Vincenzo Armanna replied: *"Donatella, Clearly it was never my intention to say or assume to talk or*

[372] Trial dossier, page 3280, text messages 869 and 870.
[373] Prosecution's Submissions at the hearing of 3.20.2019, pages 2-3.
[374] Transcript of 3.20.2019, page 31, Femi Akinmade: *"As I told you, Armanna said that I had to go to Paris, as I said. So if he asked me to go to Paris, the purpose of going to Paris was to be there and to convince Etete to accept what that offer was...whatever that offer was, the purpose was to convince him to accept it".*
[375] Trial dossier, page 3280, text message 875.
[376] Public Prosecution Submissions of 11.23.2018, PM3, page 217.

exchange information directly with the seller but it was and it is my intent to point out that we have not yet made any kind of offer, even conditional, because we are negotiating the contents with the advisors, I'm referring to the SPA. The Advisors are probably negotiating with someone else as well. I would suggest submitting our offer to the advisors as soon as possible to avoid delay due to a preliminary negotiation based only on what has been said by the advisors and requesting that we start a direct and formal negotiation with the seller, clearly supported by the advisors. In any case, this is my suggestion stemming from a concern that may be unfounded but which I certainly wouldn't rule out. I've never had a negotiation happen before initiating it. The basis for making the offer is the agreement with Shell and nothing else, at least I think so, correct me if I'm wrong"

October 25, 2010 (5:17 P.M.)[377] Ian Craig sent an email to Malcom Brinded with the document *"OPL 245 status update - October 27, 2010"* attached. In the document, we read: among other things: [English in source text:] *"Attorney General (PR informal meeting 26 Oct)*

- *In unambiguous language, Etete will be told to accept the offer;*
- *Failure to do so will result in block being put "back in the basket";*
- *Shell (ENI) will have option if this is the situation;*
- *AG was to brief Mr. President last night;*
  Understands (although not in detail of terms) the need for settlement agreement;
- *Expects finalization can happen quickly, but willing to mutually suspend arbitration if this is not possible (and fact he used the standard "in next 2 week" probably means we will need to suspend);*
  (As an aside, unprompted, he was critical of people interfering and giving bad advice to Etete. He raised Bitu Bhalla, describing him as "an alcoholic who is a disgrace to the profession");
  [Translation resumes]

October 27, 2010 (1:09 P.M.)[378] Roberto Casula wrote to Claudio Descalzi, Donatello Ranco, Vincenzo Armanna and other officials: *"Yesterday evening Shell met informally with the Attorney General, who said that the seller is under general watch to close, because if it does not sell, the block will revert to government control and will be reawarded at that point"; (Shell says with priority given to them, while other sources say by means of a call for tenders); The seller was informed of the importance of the multilateral settlement agreement with the Authorities. I've also spoken to Emeka Obi. There are still two issues concerning the latest draft of the SPA: the first concerns the escrow account, while the second concerns the Deed of Assignment. The seller thinks that although it has nothing against the re-issue of the license in the name of ENI and Shell, the price should reflect Malabu's willingness to withdraw its lawsuits. Furthermore, he believes that by tomorrow they'll be ready to receive the offer, but he will give us the go ahead";*

October 27, 2010 (1:23 P.M.)[379] Ednan Agaev wrote to Emeka Obi: *"Orange are creating a mess. They try to impose a confusion in Abuja, which may backfire. Advise ur friends that if the number is less then 1.5 there is risk of uproar in Abuja. Which will be directed at them. The dutch strategy is to*

[377] Prosecution's submissions of 3.22.2019, page 430 (RDS 673).

[378] Prosecution's Submissions of 11.23.2018, PM3, page 230.

[379] Trial dossier, page 3280, text message 900.

deteriorate the relations of ur friends with Abuja";

October 27, 2010 email exchange between Raiffeisen, EVP and Eni regarding the involvement of escrow agents[380];

October 27, 2010 (5:14 P.M.)[381] Femi Akinmade wrote to Vincenzo Armanna: *"Dear Vincenzo, my warmest regards";*
Vincenzo Armanna replied **(6:50 P.M.): "***everything is going well, tomorrow the boy will get in touch with the seller. I'll call you later";*
October 27, 2010 (6:03 P.M.)[382] Ednan Agaev wrote to Emeka Obi: *"Just landed in Moscow. Dutch have created a mess. Attorney General will come to Paris tomorrow to meet with Papa";*

October 27, 2010 (8:36 P.M.)[383] Emeka Obi wrote to Wanjek, Rath and Schwedler [English in source text:] *regarding the need to urgently source an escrow agent. He notes "Just to be clear - the whole world is breathing down my neck (the Government, the Purchaser(s), the Seller). Believe me, you have no idea. We cannot allow ourselves to be seen by the Principals as an obstacle to the successful conclusion of effectively THEIR transaction - this is the easiest way for us to not get paid. Just to reiterate, submission and acceptance of the binding offer MUST take place in the next few days but we need to present the Seller with all the documentation required for the Seller's consideration and allow reasonable time for comments, changes and approval";* [Translation resumes]
October 27, 2010 (9:22 P.M.)[384] Emeka Obi informed Claudio Descalzi that the next day he would deliver the final draft of the SPA to the seller and that he would immediately let him know his comments;
October 28, 2010 (7:05 A.M.)[385] Femi Akinmade wrote to Vincenzo Armanna: *"Dear Vincenzo, The stay has been extended and the flight has been delayed one day since I've had no call from you. I'm still waiting. Femi";*
Vincenzo Armanna replied, *"I'm sorry, there was an internal delay";*
October 28, 2010 Emeka Obi took note of a meeting with Dan Etete: [English in source text:] *"DLE complained - claimed threats, ENI must show seriousness to close transaction, No formal letter/offers received addressed to Malabu to date, has an offer for $4bn to be closed by Nov 4 in Intercontinental Hotel, Vienna; Wants to do the deal with ENI due to closeness between ENI and DLE when he was MoP, claimed Shell tried to sabotage Eni on numerous occasions in the past, Does not want Shell name on document or deal is dead, has another $4.5bn offer from a sovereign Govt Company oil co, his initial expectations were $2.3bn for 40%, OPL 246, Halliburton probe cleared him, $2-$2.2bn not acceptable, he wants to keep 15% interest and EVP should explain to ENI in their best interest to have son of Bayelsa present, transaction taxes should be paid by Buyer, Sig Bonus must not be paid by Shell but in two cheques ($2.04m to MBU and $207.96m to FGN, All fiscal terms already approved by Mr President, Acceptance /formal offer by Nov 1, rumours that ENI and Shell have approved a payment to EVP of $85m by buyer - he is ok with that and can assist, Wants to incorporate documents into SPA - Presidential approval, AG letter, Fiscal terms, Shell's actual exploration expenses is about $95m, ready to consider additional post - closing payment consideration, Peter Robinson is a thief and a liar, Malcolm (Brinded) knows his job is on the line, Exxon Mobile is interested, Wants payment guarantee for the payment balance, $1.5bn acceptable now plus second payment/ MBU keeps 15%, EVP should*

[380] Eni Submissions of 1.29.2020, *"general submission memorandum",* Exhibit 180.
[381] Prosecution's Submissions of 7.5.2019, page 300.
[382] Trial dossier, page 3280, text message 902.
[383] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[384] Trial dossier, page 3280, text message 903.
[385] Prosecution's Submissions of 7.5.2019, page 308.

get proposal from ENI on amount/timing of second payment (adjustment), Can't accept Shell name on document at any price, Will pay ILC no problem - he has told Agaev already, Accepts EVP position that no formal offer until price and terms (SPA) agreed to avoid back and for on a deal, EVP to send schedule events/ timetable to completion. Come back with proposals from ENI for paying the balance (adjustment) but not too far in the future" [386]; [Translation resumes]

October 28, 2010[387] there was a meeting between ENI's negotiation team and Emeka Obi. Donatella Ranco wrote to Roberto Casula and Claudio Descalzi: *"This afternoon Emeka should come to us with his team to finalize the SPA. We have lightened our requests on some important points in order to close quickly; this is acceptable only if, before the signing of the SPA with the Seller, the agreement between the Government, Shell and us has been finalized under the terms agreed with Shell. Otherwise, we would be taking unwanted risks. So please confirm whether the intention is still to have the agreement between the Government, Shell and us signed prior to the signing of the SPA. That said, the points that I still anticipate being critical are:*
+ amount to be deposited in account at the signing: considering the complexity of the deal and that, if the deal does not go to closing, there will probably be a long dispute to place the blame, the amount should be limited. We would adjust on 5%>-10% of the price, they have expectations close to 100%. I will consult with you to decide the number;
+ our right to terminate if assets lose value for reasons attributable to them or the Government, in the period between signing and closing: they are positioned on a threshold of 700 million, unacceptable. We will propose to remain silent on the topic
+ they want to impose an obligation on us to ensure the closure of Shell / Government disputes. Dangerous obligation, as if it is not obtained they could place the blame of not closing of the deal on us and therefore withhold the deposit. Acceptability depends on whether three-way agreement (Government Shell and us) is signed before SPA.
+taxation: to guarantee their obligation to pay taxes we ask that part of the price remains locked in escrow. Again, if there is a three-way agreement and therefore tax exemption is granted, the critical issues will be mitigated. As for the margin on the price, we have made some valuations with Ceddia from which it appears that, compared to the maximum offers considered to date:
- with discount rate at 12%, we still remain close to NPV zero for a 200 half-us/half-Shell rebid;
- shell should drop to 47% for a rebid of 100 only at our expense, and 45% for a 200 rebid only by us. Best regards. Donatella"
October 28, 2010 (5:07 P.M.)[388] Femi Akinmade wrote to Vincenzo Armanna: *"Dear Vincenzo, it's 18:00 here and I'm still waiting and the Seller is impatient with me since the boy's friend confirmed to him that it would be done today without fail. I came here not fully prepared for additional expenditure. I planned to be here for two days but I'm glad I extended my stay to today. I plan to leave tomorrow morning, staying longer I would have financial difficulties although it seems no one is interested. I have not been able to guarantee a place yet. I hope my presence here is still useful and necessary. My concern, as you know, is that the seller is impatient and I'm doing everything I can to get them to take us seriously. I hope this delay is resolved soon because I need to know what to do. Let's get in touch, I can't avoid it for too long";*

Vincenzo Armanna replied: *"the boy is going there. It is important to know what will happen...he will explain everything. Let me know when you can";*

[386] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.
[387] Public Prosecution Submissions of 11.23.2018, PM3, page 236.
[388] Prosecution's Submissions of 7.5.2019, page 308.

October 28, 2010 (7:16 P.M.)[389] Donatella Ranco wrote to Claudio Descalzi: *"Emeka came into the office for precisely 10 minutes, because he then had a flight (it seems he was going to the Seller). He quickly (!!!) set out his position, which we need to discuss later on this evening when he reaches his destination (time unknown). Save for the check that we will do this evening (if he calls us), I understand that the most important pending points are: - the amount of the deposit: they insist on 100%, and even if it were to be reduced, I fear that we would be very far from the 5%-10% that we have in mind; - the possibility for us to terminate if, between the signing and the closing, the value of the assets is greatly reduced for reasons attributable to them or the government: they want a threshold of 500 million. Probably the greatest damage could come from the license being issued under conditions unacceptable to us (extra bonuses or other work commitments or other), so we will try to reach a compromise by eliminating the clause but putting among the CPs that the license must be under conditions acceptable to us. On the other points, from what I understand in the 10', we should be able to close. I'll update you. Donatella";*

October 28, 2010 (7:33 P.M.)[390] Emeka Obi wrote to Claudio Descalzi complaining about the fact that ENI's guys *"keep having to go back and forth checking facts and laws",* while in the evening he would have to meet the seller and it would be necessary to be *"clear and specific"*.
October 28, 2010 (7:40 P.M.)[391] Ednan Agaev wrote to Emeka Obi: *"Situation is becoming dangerous for us. Papa called me just now and said that Italians (or maybe dutch?)*
10 *informed him that italians gave the offer to u today and u disappeared from the screen. Pls call me. I have to cool down the man otherwise the dutch may use him to do the damage. Actually they also keep calling me and asking where are the documents and why nothing is moving? Pls advise. If I don't have information and don't control Papa, he will go to someone else and we shall lose the situation";*

October 28, 2010 (8:59 P.M.)[392] Femi Akinmade wrote to Vincenzo Armanna: *"The owner called me to report that the boy called him - after the owner had called Moscow - to say that he is in town and asking when he can see the owner. The owner requested tonight, so the owner is expecting the boy. I'm waiting";*
October 28, 2010 (9:39 P.M.)[393] Femi Akinmade wrote to Vincenzo Armanna: *"Moscow is now where Moscow is. The boy has had no contact with the owner for some time. Does the boy have the documents? Who is the recipient of the document? When is the kid coming since I'm leaving in the morning? The owner is upset because nothing has gone as planned. Has anything happened to change things? Best Regards Femi Akinmade";*
October 28, 2010 (9:56 P.M.) Vincenzo Armanna wrote to Femi Akinmade: *"not everything is going to plan, the boy is wasting our time, the offer will be sent to the boy tomorrow...";*

October 29, 2010 (6:35 A.M.) Marco Bollini updated Michele De Rosa on the transaction[394];

October 29, 2010 (9:14)[395] Emeka Obi complained to Claudio Descalzi about the behavior of ENI officials: *"I have the impression that your guys think they have a clearer view of the situation with Nigeria and the seller. So it might be better if they go ahead and make the offer to the seller*

[389] Prosecution's Submissions of 11.23.2018, PM 3.
[390] Trial dossier, page 3280, text message 913: *"Good Evening Sorry to bother you having some problems on the SPA. Your guys keep having to go back and forth checking facts and laws especially on a key item we have been discussing and essentially agreed for weeks. The Seller needs to get a complete picture of what is expected from the Seller and what the Seller must commit to deliver. I need to see the Seller tonight and need to be clear and specific. Available to speak of your convenience";*
[391] Trial dossier, page 3280, text message 914.
[392] Prosecution's Submission of 7.5.2019, page 318.
[393] Prosecution's Submissions of 7.5.2019, page 304.
[394] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 183.
[395] Trial dossier, page 3280, text message 922.

themselves";

October 29, 2010 (10:03 A.M.)[396] Emeka Obi wrote to Claudio Descalzi: *"Honestly it is better if they go ahead and make their offer";*

October 29, 2010 (11:23 A.M.)[397]Ednan Agaev wrote to Emeka Obi: *"I spoke to Pete, he is sending a note to Roberto in which he expresses all our disappointment for not having closed the SPA yet - he also stresses that there are leaks regarding the details of the agreement and therefore it will soon be impossible to execute it. Pete, like me, believes that it is absolutely essential to get the SPA to the Chief today so that the pressure from AG is successful, otherwise everything could end by the weekend. When do you and Richard think you will cut the credit to the Chief?".*

October 29, 2010 (10:53 P.M.) Donatella Ranco wrote an email to Claudio Descalzi and Roberto Casula in which she explained that after the meeting with Raiffeisen and Emeka Obi the text of the SPA had largely been agreed upon,
11 save some points of disagreement that were listed in the message[398];

October 30, 2010 (6:52 P.M.)[399] Vincenzo Armanna sent the "*offer for the purchase of 100% of the shareholding of OPL 245"* [400] signed by Ciro Pagano to s.wanjek@raiffeseisen-investment.com and cc Emeka Obi and Ciro Pagano. The offer envisaged a total consideration of USD 1,260,960,000 (USD 207,960,000 paid *directly to the Nigerian government as a release from any claims in respect of the premium for signing the asset;* USD 1,053,000,000 *will be paid directly to Malabu);*

October 31, 2010 (4:58 P.M.)[401] Emeka Obi wrote to Vincenzo Armanna *"Just to confirm that the two documents, received from ENI yesterday NAE Offer for 100% of Malabu's interest in OPL 245 and Proposed SPA), have both been physically delivered today, in paper and electronic format, to the representatives of Malabu Oil and Gas. We will review the details of the offer, both internally and with Malabu, and will provide feedback and proposals for the next steps";*

October 31, 2010[402] EVP delivered ENI's offer to Malabu; at the bottom of the document there was a handwritten note, dated 10.31.2010 and signed by Dan Etete, which read:*"Att. Mr. Ciro Antonio Pagano – AGIP/ENI – Italy. Your offer is totally unacceptable. This also the mention of Shell in the document is not very unacceptable but a gross insult. It must be very clear that Malabu Oil x Gas Ltd has no business transaction with Shell…"*
October 31, 2010[403] Emeka Obi noted: [English in source text:] *"Meeting between Agaev and Etete attended in part by Obi. Agaev handed Etete a letter from EVP enclosing the ENI/NAE letter. Malabu, by Etete, told Agaev that the offer was not acceptable and rejected it by a letter to NAE dated 31 October 2010";* [Translation resumes]
October 31, 2010 (9:36 P.M.)[404] Emeka Obi wrote to Wanjek, Rath and Schwedler: [English in source text:]*"Whilst Malabu's lawyers are reviewing the SPA proposed by ENI, following our negotiations, we expect to receive some comments and feedback tomorrow. Anyway, preliminary indications are*

396 Trial dossier, page 3280, text message 926.
397 Trial dossier, page 3281, text message 930.
398 ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 184
399Public Prosecution Submissions of 11.23.2018, PM3, page 250.
400Trial dossier, page 3294.
401Prosecution's Submissions of 11.23.2018, PM3, page 250.
402 Public Prosecution Submissions of 11.23.2018, PM3, page 263.
403 Public Prosecution Submissions of 11.23.2018, PM3, page 263.
404 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

that: 1. Malabu does not want SNUD mentioned in the SPA document and any mention of SNUD must be in a separate document; 2. Malabu believes that License/ Fiscal Terms have already been confirmed and there is no need for any further confirmations; 3. Buyer should pay all taxes. My personal assessment are these are a negotiation ploy - which is an ok strategy as long as it's not pushed too hard. Whilst we await their detailed comments, let's try to develop an effective negotiation strategy - my understanding is that both parties would like to reach agreement and close in the coming days"; [Translation resumes]

October 31, 2010 [405] Emeka Obi noted: [English in source text:] *"Chief Etete instructs Obi to reject the ENI/NAE offer on behalf of Malabu";* [Translation resumes]

4.4 November 2010 - March 2011

4.4.1 November 2010

November 1, 2010 (1:56 P.M.)[406] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Let's be cool. He will accept. He still think he can deal directly. Let him face the reality";* [Translation resumes]

November 1, 2010 (21:32)[407] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"Do u have any ideas? My assessment: he will finally agree with the actual offer, but he will hate us all and will try to make us unhappy with the results. If u can get an improvement, even a slight one, that will be face saving for him. And he will be cooperative. Anyway, for the time being better to leave him in the dark and wait for his reaction'"* [Translation resumes]

November 2, 2010 (3:41 P.M.)[408] Femi Akinmade asked Vincenzo Armanna *"do you know anything about this first document?"* and attached a letter rejecting the offer dated 10/31/2010 and signed by Dan Etete. The letter was identical to the one forwarded by Diane Arnold to Ciro Pagano, but was written on Malabu letterhead and signed by Dan Etete[409];

November 2, 2010 (4:48 P.M.)[410] Ednan Agaev wrote to Emeka Obi: *"Alscon has one week to put the dredging money in the escrow account otherwise SPA falls through*

November 2, 2010 (4:54 P.M.)[411] Ednan Agaev wrote to Emeka Obi: *"Who decided? They will never put the money in an escrow account and at worst they will go to arbitrage and eventually FGN will lose. Could you kindly let me know who made this decision - the parliament or the government? Thank you";*

Emeka Obi replied: *"Parliament";*

November 2, 2010 (6:04 P.M.)[412] Ciro Pagano received a rejection notice on plain paper signed by

[405] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[406] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

[407] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[408] Public Prosecution Submissions of 11.23.2018, PM3, page 257.

[409] Public Prosecution Submissions of 11.23.2018, PM3, page 261.

[410] Trial dossier, page 3281, text message 961.

[411] Trial dossier, page 3281, text message 962.

[412] Public Prosecution Submissions of 2.27.2019, page 27.

[3 illegible signatures]

one Diane Arnold from the email address dianedetalle@gmail.com: *"Dear Sirs, We hereby acknowledge receipt of your offer for OPL 245 dated October 3, 2010.*
1. We are absolutely perplexed by your offer. Let's be clear that this transaction has nothing to do with Shell and companies related to Shell. Malabu Oil and Gas Ltd has no business relationship with Shell. Therefore, what AGIP does with Shell is entirely your business; Malabu has nothing to do with Shell or any other third party. Malabu Oil & Gas Ltd will never do business or negotiate with AGIP where Shell and its related companies are also involved.
2. Price: Malabu Oil & Gas Ltd accepts only US$ 2.2 billion (two billion two hundred million US dollars), no more, no less, (b) Malabu Oil & Gas Ltd will retain 15% of the equity and contractor's rights in OPL 245.
3. The payment of the signature bonus by Nig. AGIP Expl. LTD must be issued through 2 bank checks in the following order: (a) US$ 207,960,000 million (two hundred seven million nine hundred sixty thousand US dollars) to the FGN. The check must be delivered to the FGN with a Malabu Oil & Gas letterhead. The contents of this letter must be discussed with AGIP prior to its delivery, (b) The second check or bank transfer must be in the amount of US$ 2,040,000 (two million forty thousand US dollars) to Malabu's designated account.
4. Malabu Oil & Gas Ltd does not need any further approvals from any government agency, ALL transactions must be in accordance with the gracious approval of His Excellency the President and Commander-in-Chief in the Deep Offshore Decree. You must understand very well that there is no PSC [production sharing contract] in this OPL 245 block. No back-in rights, in accordance with the out-of-court settlement between the FGN and Malabu Oil & Gas LTD which was approved by the Federal Court of Appeal in Abuja in 2006.
5. Also, regarding the 10-year issue, there is no ambiguity. The date and time are calculated from when Malabu Oil & Gas Ltd pays the Signature Bonus to the FGN
6. Nig. AGIP Expl. Ltd has nothing to do with any transactions or claims from Shell on behalf of the FGN. You are not agents of the FGN. You do not have these negotiating powers.
7. I would like to remind you that you are buying or will be awarded the assets of the company and are not buying Malabu and Gas Ltd. Malabu Oil & Gas Ltd. exists.
8. You will pay all fees and taxes in accordance with the applicable provisions of the Petroleum Act.
All other minor details can be addressed before the transaction is finalized. Lastly, this transaction must be closed and completed by the end of the business day on Tuesday, November 2, 2010. If this does not happen, Malabu Oil & Gas Ltd will finalize the deal with other interested investors without giving you any notice. Diane Arnold";

November 2, 2010 (7:98 P.M.)[413] Vincenzo Armanna forwarded Diane Arnold's communication to Emeka Obi, writing: [English in source text:] *"we received the attached letter. We don't know who is signing, what is the role and the power of attorney in the Company (Malabu). Nevertheless, we would like to understand how we have to position this communication into the process that you are managing and what would be the meaning";* [Translation resumes:]

November 3, 2010 (1:00 P.M.)[414] Emeka Obi communicated the rejection of the offer by Malabu to Vincenzo Armanna, Roberto Casula, Ciro Pagano and the men at Raiffeisen: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted]

[413] ENI Submissions of 4.9.2019, Exhibit 4, no. 20.
[414] Prosecution's Submissions of 2.27.2019, page 30: [English in source text:] *"Please be informed that, following internal discussions and discussions with representatives of Malabu, Malabu has declined to accept your offer as proposed. We will provide a detailed explanation of the reasons shortly together with some possible scenarios for moving forward. We look forward to speaking with you further".* [Translation resumes]

November 3, 2010 (3:00 P.M.) [415]Ednan Agaev wrote to Emeka Obi that *"[Etete] will lose his block - we have learned that GU has ordered that it be revoked by the end of the week. Even if that were to occur, it would still be positive for us";*

November 4, 2010[416] Emeka Obi noted: [English in source text:] *"Obi meeting with Descalzi and Casula at 8.30am regarding rejection, strategy and next steps" [...] "EVP showed letters confirming receipt of offer, rejection. Discuss rejection of offer, complained of internal mole causing shift of goalposts and compromised the strategy, discussed pricing, strategy and timing. Discussed payment of deferred consideration and Shell's contribution, EVP said "I told you so" over (i) SPA first and (ii) no mention of Shell name (on document); Guy's negotiation strategy. EVP internal wish-list: halt everything/send message, tell Shell: no way and force them to renegotiate. Once SPA and all (transaction) documents signed submit revised offer in One week. ENI - offer is best offer from $1.3bn. How much is principal shareholder of Malabu getting (50%?); Can't believe in deep-throat - only 3/4 aware of transaction terms (mole must be ENI Nigerian staff, Missed Saturday acceptance deadline because we held submission back due to pressure, need Shell in the deal, need to find deal, only the three of us should sit down and close this deal (CD, MB and ZCO). What is the meaning of the letter sent by Malabu (Diane letter) - it is causing serious compliance issues (EVP says: believe to be from Malabu using an employee or consultant. Need to send a message that the deal is dead and the seller will contact EVP, let's start other opps, Shell desperate to do deal"* [Translation resumes][417]

November 4, 2010 (12:38 P.M.)[418] Emeka Obi wrote to Vincenzo Armanna and Ciro Pagano in response to the email of November 2 which asked for explanations about the letter signed by Diane Arnold: *"Dear Vincenzo, thank you for your email. According to my information, the person who signed the document is a freelance administrative assistant/consultant of Malabu. This person appears to have been asked to confirm independently the decision notified to EVP and to put in writing that Malabu did not accept your offer of 30 October. Outside of this confirmation that the offer was not acceptable to Malabu, and to the best of our knowledge, everything else with respect to the ClearVision Project remains unchanged. While it is unfortunate that Malabu and ENI could not agree on the terms of the OPL 245 transaction, we obviously appreciate both the interest shown and the resources deployed by ENI for OPL 245 and look forward to discussing other opportunities with you in the future".*

November 4, 2010 (13:29)[419] Vincenzo Armanna forwarded the communication from Emeka Obi to Donatella Ranco, Marco Bollini, Franco Magnani and Roberto Casula;
November 4, 2010 (7:20)[420] Peter Robinson wrote to Malcom Brinded and others: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian translation omitted] [Italian

[415] Trial dossier, page 3281, text message 983.
[416] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[417] [417] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "*copie de chrono unprotected*".
[418] [418] Transcript of the hearing of 2.27.2019, Casula defense submissions; ENI Submissions of 4.9.2020, *"general submission memorandum"*, Exhibit 192.
[419] ENI Submissions of 4.9.2019, Exhibit 4, no. 20
[419] [420] Prosecution's Submissions of 11.23.2018, PM2, page 68: [English in source text:] *"unfortunately, Malabu have formally rejected the offer made by ENI. No reasons as yet but door remains open in their response. We believe it is the chief being told by someone that a better offer (Chinese) is imminent. No information to suggest this serious. At this point agreed with Eni that we just stay silent and see whether by the end of the week the chief is convinced by his advisors to change his mind. No change in offer will be made. If there is no movement by Friday, I believe our best option will be back to AG and make clear offer rejected and consequences".* [Translation resumes]

translation omitted]

[Italian translation omitted]

November 4, 2010 (8:43 A.M.)[421] Emeka Obi wrote to Ednan Agaev: *"[...] now the focus is on two other blocks that I have submitted. Have already sent the message to Abuja yesterday so everyone knows who to blame [...] I need to get more deals going";*
November 4, 2010 (1:04 P.M.) Peter Robinson wrote to Bryant Orijako: *"Bryant, I'm going back to Lagos tomorrow - I leave on a Virgin flight tonight. But I'd like to get together somehow to talk about Malabu. Peter".* Bryant Orijako replied: *"Dear Peter, greetings. If you are available tomorrow afternoon, we can meet to talk about Malabu. Many thanks for yesterday's meeting with John and Humphrey. Kind regards, Bryant";*
November 4, 2010 (6:23 P.M.)[422] Guy Colegate wrote to John Copleston and Peter Robinson to describe the strategy to convince Dan Etete to accept the offer. It was envisaged that Granier Deferre would cut the credit lines and that the AG would send him the message that the block would be revoked: *"Spoke with Ed - agreed way forward:*

1) *He is cutting credit line.*
2) *He will think this eve on how to message to Richard GD on block. He supports us speaking to Richard but wants to think thru how we might message.*
3) *He supports AG option monday- says earlier would be fine too- message being block revoked.*
4) *He supports bankruptcy says he will do same if he is not paid by end game which will be after final pressure from AG, R GD, cut credit line.*
5) *He will call me tomorrow with final game plan – says italians are emotional and pissed off and need to calm down- says we need to coordinate with them to test whether they still want deal";*

November 4, 2010 (10:36 P.M.)[423] Bryant Orjiako wrote to Peter Robinson: *"Hi Pete, I am on my way back to London. I spoke with the Gentleman we met re Malabu. He reassures that the Diane letter is not an issue since it may have been misconceived. He met Chief as he promised. He confirmed that Chief will accept the offer he got which we discussed at the meeting. He would be glad to met you and work out a way for resolution of all outstanding issues and misunderstandings. I'm meeting John in London tomorrow. I will be back in Nigeria next Wednesday [...]";*

November 5, 2010 (3:06 P.M.)[424] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"The dutch are extremely nervous. They want us to act. I said we are relaxing and I have no idea where u are. Let's both of them - orange and Papa - be desperate!! We are not on a hurry. Enjoy NY. I am in Milano, relaxing. Until Monday";* [Translation resumes]

---

[421] Trial dossier, page 3281, text message 987: *"We told him but he didn't want to listen to us. That stupid letter and the refusal to accept the agreed-upon procedure was the final straw. Now the focus is on two other blocks that I have submitted. Have already sent the message to Abuja yesterday so everyone knows who to blame. Shell guys have not improved the situation at all - we all agreed that we would acknowledge their difficulties in the agreement. It just didn't have to be so obvious to the Seller. But you could sense their presence, the more the seller sensed they needed him. They should have stayed in the background and let things proceed naturally. The Italians are really pissed off and will never close this deal. Let's meet and figure out what else we can review quickly, I need to get more deals going".*
[422] Public Prosecution Submissions of 11.23.2018, PM2, page 69.
[423] Public Prosecution Submissions of 6.15.2019, page 65.
[424] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".

November 5, 2010 (4:59 P.M.)[425] Ednan Agaev wrote to Emeka Obi: *"I have a good investor on my hands. I need a big, important block. Please let me know.*

November 6, 2010 (5:57 P.M.)[426] Bryant Orjiako informed Peter Robinson that the Attorney General would meet him (Robinson) two days later at his office: *"Dear Peter, I spoke with the AGF and he is willing to meet with you on Monday, 8th November, 2010 in his office in Abuja by 4pm. You can reach him and fix an alternative time and date if this does not work for you";*

November 7, 2010 (9:25 P.M.) Bryant Orijako wrote to Peter Robinson and John Copleston: *"I just arrived in Paris. I'm meeting with the Chief in 10 minutes. Please call ADG and confirm the time. Kind regards, Bryant";*

November 10, 2010 Emeka Obi noted: [English in source text:] *"AG starts formal interference with EVP mandate and EVP/ENI NDA".* [Translation resumes]

November 10, 2010 (2:23 P.M.)[427] Emeka Obi wrote to Ednan Agaev: *"do u have another buyer?";* Ednan Agaev replied: *"I have another buyer but it will take time"*[428]; Emeka Obi wrote: *"The Chinese have made an offer but it is too low"*[429]; Ednan Agaev wrote: *"my buyer is from the Gulf"*[430];
November 10, 2010 (6:04 P.M.)[431] Ednan Agaev wrote to Emeka Obi: *"Had a long meeting with Papa. He is very upset. He'll be back on Friday". I didn't tell them we have a potential new buyer. He is convinced that now he will have to deal with the Dutch who are extremely active in Abuja these days";*
November 10, 2010 (6:14 P.M.)[432] Emeka Obi wrote to Ednan Agaev: *"but he had everything in front of him. He wasted an opportunity. And now much weaker in negotiations and will end up with a bad deal because he refused to acknowledge the efforts made by those who finalized it and made this deal possible. It's a shame and I feel sorry for him but that's life";*

November 11, 2010 (2:14 P.M.)[433] Ednan Agaev wrote to Emeka Obi: [English in source text:] *"We have to talk. When can we meet? I am going to see Papa in 30 min. I shall announce him I stop financing. He will most probably go back to Abuja immediately. Is it ok? Or should I keep him? Pls advise";* [Translation continues] Emeka Obi replied, [English in source text:] *"Do u have another buyer?" "If I were you, I would stop paying. It does not help in either case";* [Translation resumes] Ednan Agaev replied: [English in source text:]*"Ok. I shall stop. I have another buyer but it will take time. We have to talk";* [Translation resumes]

November 12, 2010 (8:19 A.M.)[434] Ednan Agaev wrote to Emeka Obi: *"Papa flying today to Nigeria. He is under pressure from the government to accept the offer and close the deal";*

November 15, 2010 (10:58 A.M.)[435] Roberto Casula wrote to Claudio Descalzi: *"We've been convened, together with Shell, to a meeting with the Attorney General to be held here in Abuja in the*

[425] Trial dossier, page 3282, text message 991.
[426] Public Prosecution Submissions of 11.23.2018, PM2, page 71.
[427] Trial dossier, page 3281, text message 1016.
[428] Trial dossier, page 3281, text message 1018.
[429] Trial dossier, page 3281, text message 1019.
[430] Trial dossier, page 3281, text message 1020.
[431] Trial dossier, page 3282, text message 1024.
[432] Trial dossier, page 3282, text message 1025.
[433] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf".
[434] Trial dossier, page 3281, text message 1028.
[435] Public Prosecution Submissions of 11.23.2018, PM3, page 265.

afternoon. Prior to said meeting I'll be meeting Peter Robinson and then, together with Armanna, we'll be going to the Ministry of Justice."

November 15, 2010[436] a meeting was held at the offices of the Ministry of Justice between the Attorney General, Roberto Casula, Vincenzo Armanna and Peter Robinson;
On this meeting, Emeka Obi wrote[437]: [English in source text:] *"A meeting took place at the office of the Attorney General of Nigeria between representatives of Malabu, ENI/NAE, Shell and the Attorney General of Nigeria in Abuja (to which EVP was not invited and about which it was not informed in advance). The participants agreed a sale of the OPL assets and other conditions including a cash payment of US$ 1.3 billion";* [Translation resumes]
November 15, 2010 (7:33 P.M.)[438], Roberto Casula informed Claudio Descalzi of the outcome of the meeting: *Meeting with the Attorney General over (he summoned us yesterday evening for a meeting today with Shell at the Ministry). He had received a direct mandate from the President to verify the positions of all parties concerned. Together with Shell we described the key legal, fiscal and contractual aspects of the offer. A representative of the seller was also there and reiterated the fact that our offer ($ 1.26 billion) had been rejected, because a greater amount was expected. However, together with Shell we explained that our offer reflected detailed technical, economic and risk analyses and that there was only room for a slight increase, provided that the conditions set out in the letter of offer were met. After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion";*
November 15, 2010 (8:37 P.M.)[439] Claudio Descalzi forwarded Roberto Casula's email to Paolo Scaroni with the comment: *"Paolo, it seems the right conclusion. Let's discuss it";*
November 15, 2010 (8:53 P.M.)[440] Paolo Scaroni replied to Claudio Descalzi's email: *"Excellent";*
November 15, 2010 (9:49 P.M.)[441] Ednan Agaev wrote to Emeka Obi: *"Chief will sign the agreement with the spaghetti on Thursday in Abuja. They agreed 1.2. All this will be done in the presence of the Attorney General, Petroleum Minister";*
November 15, 2010 Emeka Obi noted the holding of a *"secret meeting"* at the Attorney General's office between Eni, Shell and Malabu [English in source text:] *"to negotiate and close deal based on EVP NAE offer and SPA"*[442]; [Translation resumes]

November 16, 2010[443] Emeka Obi met Claudio Descalzi at Coin in Piazza V Giornate: [English in source text:] *"ENI notifies EVP good news that Deal for $1.3bn agreed in AG office"*[444].

November 17, 2010 (1:45 P.M.)[445] Emeka Obi wrote to Ednan Agaev: *"Let's leave things to proceed of their own accord, although I'm not sure Papa will play ball. I believe he agreed because he was pressured into it, but he'll continue to try and wriggle out of it";*

[436]Public Prosecution Submissions of 11.23.2018, PM3, page 265.
[437] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_ EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[438]Public Prosecution Submissions of 11.23.2018, PM3, page 268.
[439]Public Prosecution Submissions of 11.23.2018, PM3, page 268.
[440]Public Prosecution Submissions of 11.23.2018, PM3, page 268.
[441] Trial dossier, page 3282, text message 1042.
[442] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "copie de chrono unprotected"
[443] Trial dossier, page 3282, text messages 1044-1048.
[444] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.
[445] Trial dossier, page 3283, text message 1057.

November 17, 2010[446] Emeka Obi met again with Claudio Descalzi at Coin in Piazza V Giornate: [English in source text:] *"EVP complains and accuses Descalzi of circumventing EVP and threatens to invoke NDA and kill the deal. Descalzi pleads ignorance and promises to investigate"*[447][Translation resumes];

November 17, 2010 (7:16 P.M.) Donatella Ranco forwarded a draft for the Board of Directors to Claudio Descalzi[448];

November 17, 2010 (7:16 P.M.) Claudio Descalzi replied to Donatella Ranco: *"I'll talk to Scaroni tomorrow morning but I don't think I'll take it to the Board of Directors for approval there are still too many uncertainties"*[449];

November 17, 2010 (8:11 P.M.) Michele De Rosa wrote to Marco Bollini commenting on the results of the due diligence on the ownership structure of Malabu and observed that if Dan Etete were found to be the owner of the company, a reputational problem could arise[450];

November 18, 2010[451]a meeting took place at the offices of the Ministry of Justice, described in the following terms by Enrico Caligaris: *"Thursday 11/13/10*
Meeting with the Attorney General at the FGN's offices.
Individuals present:
- *Shell (Peter Robinson, German Burmeister and Keibi Atemie)*
- *Eni (R. Casula, V. Armanna, E. Caligaris)*
- *Malabu (Rasky Gbinigie, Fami Akinmade,……..)*

Relatively short meeting. The wording of the Sale and Purchase Agreement and of the Resolution Agreement is not examined. The atmosphere is positive, and the meeting is adjourned to Friday, in the hope that the parties arrive with the aforementioned agreements ready to be signed. FGN declares that it is willing to gather the signatures of the Ministers indicated in the Resolution Agreement once the three companies have signed".
The same meeting was described in the following terms in the email (*"OPL - recent negotiating events"*) which Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[452]: *"Thursday 11/18/10 - Meeting with the Attorney General at the Ministry of Justice. The AG said again that he had been granted full power, by the President, to settle all disputes concerning the block, and he mentioned the visit by Eni's top management in mid-August, and the subsequent exchange of correspondence. Without going into*

[446] Trial dossier, page 3283, text messages 1058-1059.
[447] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
[448] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 196.
[449] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 196.
[450] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 195;
[451] Public Prosecution Submissions of 11.23.2018, PM3, pages 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations",* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappala. On the meeting of November 18, 2010, see also Enrico Caligaris' witness statement, hearing of 2.27.2019, page 19 et seq.:*"There was a first meeting on November 18, when I arrived in Abuja. The meetings were held at the premises of the Ministry of Justice, before the Attorney General, the Justice Minister was there, and Shell and Malabu representatives, as well as representatives of the Ministry. As I remember, the first meeting was rather short, meaning we did not discuss the transaction documents, but there was a heartfelt invitation [...] As far as I remember, the Attorney General, talking with a serious and very determined tone, invited the parties to iron out the agreements so that he could share these agreements with the other ministers involved in the deal, since one of the conditions set by us and Shell for completing the transaction was that the agreement should also be approved by the Minister of Justice and the other Ministries concerned, including the Finance Minister and the Petroleum Minister [...] When I arrived... that is, before I flew there the issue of price had been resolved. I was told there had been a meeting at the Attorney General's office to discuss the issue that had deadlocked the process. The price problem was solved when Eni accepted raising the price quoted in its conditional offer of October 2010, and I don't know whether Malabu on its part lowered its demand, but be what it may they agreed to a price of $ 1.3 [billion].*
[452]Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.

details of the agreements, he indicated the SPA stipulated by Eni and Malabu as a key document requiring finalization as soon as possible; he believed that the Resolution Agreement contained no particularly problematic features from the Federal Government's viewpoint. The meeting was adjourned to Friday 19, in the hope that the parties would turn up with the aforesaid contracts ready to be signed. The AG also declared that he would take responsibility for collecting the signatures of the Ministers (Petroleum and Finance), but only after the three companies had signed";
November 18, 2010 (4:22 P.M.)[453] Claudio Descalzi wrote to Emeka Obi: *"They want to sign tomorrow";*

November 18, 2010 (11:04 P.M.)[454] Emeka Obi wrote to Claudio Descalzi: *"See you tomorrow 7:30 am. Thank you";*

November 18, 2010 Eni Board of Directors meeting in which it was acknowledged that *"The seller has accepted, before the Nigerian authorities, a consideration of USD 1.3 billion of which approximately USD 210 million destined to the payment of the signature bonus for the original award of the license by the authorities [...] during these days, the last direct negotiations with the local authorities are underway to confirm the main assumptions underlying the agreed price, mainly relating to the applicable tax and contractual regime, as well as to close all pending disputes on the ownership of the license. This will be followed by the signing of the purchase agreement with the seller"*[455];

November 19, 2010 (7:35 A.M.)[456] Emeka Obi wrote to Ednan Agaev: *"Everything should be signed today";*

November 19, 2010 (11:00 A.M)[457] Enrico Caligaris wrote to Donatella Ranco, Marco Bollini, Guido Zappalà, Roberto Casula and Vincenzo Armanna: *Just for your info...* [in English] *the minutes of a resolution that I had to prepare on Chief Akinmade's request, which he is taking to Malabu to be completed."23: It would surely be improvable with time and a way but now the it's in the hands of the seller";*

November 19, 2010[458] a meeting was held at the offices of the Ministry of Justice, described as follows by Enrico Caligaris: *"Friday 11/19/10*
Meeting with the Attorney General at the FGN's offices.
Individuals present:
- *Shell (P. Robinson, G. Burmeister and K. Atemie)*
- *Eni (R. Casula, V. Armanna, G. Zappalà, E. Caligaris)*
- *Malabu (R. Gbinigie, F. Akinmade, ...)*

Relatively short meeting, in that M, having read the text of the SPA, points out to the Attorney General that payment of the Signature Bonus cannot take place at the same time as, and certainly not after, the issue of the License. The Attorney General took his cue from this objection, to confirm that the Signature Bonus is expected to be paid the same day as the day of the signing of the agreement (i.e. on the same day). Shell said it would not accept this, and the meeting was terminated and the parties were

[453] Trial dossier, page 3283, text message 1063.
[454] Trial dossier, page 3282, text message 1072.
[455] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 197
[456] Trial dossier, page 3282, text message 1073.
[457] Public Prosecution Submissions of 11.23.2018, PM2, page 271.
[458] Public Prosecution Submissions of 11.23.2018, PM3, pages 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations"* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappalà.

[3 illegible signatures]

asked to go out. Shortly after leaving the meeting, the parties were invited to go back again, without being told why. When back at the FGN offices, the parties did not meet the Attorney General, but they met to examine possible ways out of this deadlock. Having failed to come to an agreement on an alternative to the proposed solution, the parties asked the Attorney General to adjourn the meeting with him to November 22";

The same meeting was described in the following terms in the email (*"OPL - recent negotiating events"*) which Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[459]: *"Friday 11/19/10*

Following the reading of the Resolution agreement, the AG objected that payment of the Signature Bonus cannot be made at the same time as and/or after issue of the License. The AG asked that the Signature Bonus be paid on the day of signing itself. Shell declared that it did not accept this, and the meeting with the AG ended. Shell, Malabu and Eni met afterwards in order to try and find possible ways out of this deadlock. Having failed to come to an agreement on an alternative to the proposed solution, the parties asked the Attorney General to adjourn the meeting to Monday November 22.

November 19, 2010 (3:15 P.M.)[460] Emeka Obi wrote to Ednan Agaev: *"It is collapsing, Papa and the Spaghetti are unable to agree toge[ther]";*

November 19, 2010 (5:44 P.M.)[461] Emeka Obi wrote to Ednan Agaev: [English in source text:] *"Rumour has it that the Italians are not very happy and are blaming the team in Nigeria for the fiasco. Rumour has it Rome is planning to make some changes. The thinking is that the deal is good for the company and the dutch but the situation in Abuja should have been more professionally managed by their guys. I hear the plan may be to use a top Italian from Saipem to take over the coordination with Abuja to ensure the transaction proceeds smoothly in a way that is acceptable to Abuja, Rome, Papa and the Dutch";* [Translation resumes]

November 19, 2010 (9:41 P.M.)[462] Ednan Agaev wrote to Emeka Obi: *"Papa doesn't want to sign. He and the people in Abuja are very angry. He doesn't want to talk to the negotiator. The agreement is dying. We need to take action";*

November 19, 2010 (10:21 P.M.)[463] Emeka Obi replied to Ednan Agaev: *"it's better not to interfere too early so they can't blame us if it doesn't work out. We have already formulated the rescue plan and will implement it as soon as Abuja and Papa ask us to";*

November 21, 2010[464] a meeting took place between ENI and SHELL officials, described as follows by Enrico Caligaris: *"Sunday 11/21/10*

Meeting between Shell and Eni Robinson, G. Burmeister and K. Atemie/R. Casula, V. Armanna, G. Zappala, E. Caligaris):

- *a discussion was held of the need to get Malabu to provide further documents regarding the block and the company.*
- *Shell confirmed that it was not prepared to pay the Signature Bonus if it were not supplied with the license at the same time.*

Meeting between Shell, Eni and Malabu:

- *the parties agreed on postponing the meeting with the Attorney General, set for Monday at 10 a.m., until the afternoon or to Tuesday, pending the carrying out of checks and agreement between the*

459 Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.
460 Trial dossier, page 3282, text message 1081.
461 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
462 Trial dossier, page 3282, text message 1088.
463 Trial dossier, page 3282, text message 1089.
464 Public Prosecution Submissions of 11.23.2018, PM3, pages 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations",* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappalà.

parties on what was to be submitted to the Attorney General.
- it was hoped that a meeting could be held with the Petroleum Minister with the aim of getting confirmation:
i) of the Minister's agreement to the transaction;
ii) of Malabu's right to the block;
iii) of the timescale of issue of the license".
The same meeting was described in the following terms in the email *("OPL - recent negotiating events")* that Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[465]: *"Sunday 11/21/10 Meeting between Shell and Eni*
- a discussion was held of the need to get Malabu to provide further documents regarding the block and the company.
- Shell confirmed that it was not prepared to pay the Signature Bonus unless it received the license at the same time.

Meeting between Shell, Eni and Malabu:
- it was hoped that a meeting could be held with the Petroleum Minister with the aim of getting confirmation:
i) of the Minister's agreement to the transaction;
ii) of Malabu's right to the block;
iii) of the timescale of issue of the license".
November 22, 2010[466] members of the ENI negotiating team exchanged comments on the various draft agreements and Donatella Ranco commented: *"In Clause 1.3 why this addition? We are taking away the motivation for payment. Can't we be silent?"* [English in source text:] *"and (iii) confirms that as at the date of this Resolution Agreement there is no valid Oil Prospecting License subsisting over Block 245 and that no Oil Prospecting License shall be issued in respect of Block 245 other than to SNEPCO and NAE in accordance with the terms of this Resolution Agreement".* [Translation resumes] *I don't see any need to say that there is no license, it can be silent on that. That way we don't have to think about what the unspecified interests being sold to us are"*[467];

November 22, 2010[468] there was a meeting between ENI, SHELL and Malabu, described as follows by Enrico Caligaris: *"Monday 11/22/10*
Meeting between Shell, Eni and Malabu (P. Robinson, G. Burmeister and K. Atemie / R. Casula, V. Armanna, G. Zappalà, E. Caligaris /
Bart..... R.Gbinigie, F. Akinmade, Seibougha Munamuna):
- examination of the documents provided by Malabu.

- agreement on the need to make amendments to the SPA and the RA, in particular on an alternative approach to be proposed to the Attorney General on the basis of Shell's proposal, regarding payment of the Signature Bonus.
Meeting between Shell and Eni Robinson, G. Burmeister and K. Atemie/ G. Zappalà, E. Caligaris):
- Those present at the meeting worked on amending the Resolution Agreement, and creating two versions thereof to have ready, depending on the Attorney General's preferred solution. One version specifies the timing of the events that have to be fulfilled by the Closing Date in a clearer form, with the emphasis on the fact that the Signature Bonus would be paid prior to delivery of the License. The

[465] Public Prosecution Submissions of 11.23.2018, PM3, page 319 et seq.
[466] Public Prosecution Submissions of 11.23.2018, PM3, pages 279 et seq.
[467] Prosecution's Submissions of 7.4.2019, page 369.
[468] Public Prosecution Submissions of 11.23.2018, PM3, pages 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations",* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappalà.

second version provided that the FGN was to be given control of the release of funds at the Closing.
- the SPA and the RA were further amended to take into account information concerning Malabu's rights over the block and documents received by hand from Malabu. In the evening, Eni delivered the new version of the SPA by hand to Malabu".

The same meeting was described in the following terms in the email (*"OPL - recent negotiating events"*) which Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[469]: *"Monday 11/22/10*
Meeting between Shell, Eni and Malabu:
- examination of the documents provided by Malabu.
- agreement on the need to make amendments to the SPA and the RA, in particular on an alternative approach to be proposed to the Attorney General on the basis of Shell's proposal, regarding payment of the Signature Bonus.
Meeting between Shell and Eni:
- those present at the meeting worked towards amending the Resolution Agreement, and creating two versions thereof to have ready, depending on the Attorney General's preferred solutions. One version specifies the timing of the events that have to be fulfilled by the Closing Date in a clearer form, with the emphasis on the fact that the Signature Bonus would be paid prior to delivery of the License. The second version established that the FGN was to be given control of the release of funds at the Closing.
- the SPA and the RA were further amended to take into account information concerning Malabu's rights over the block and documents received by hand from Malabu. In the evening, Eni delivered the new version of the SPA by hand to Malabu";

November 23, 2010[470] there was a meeting between ENI and Malabu, described as follows by Enrico Caligaris: *"Tuesday 11/23/10*
Meeting between Eni and Malabu (G. Zappalà, E. Caligaris / Bart…… R. Gbinigie, F. Akinmade, S. Munamuna)
- - Malabu made a number of observations regarding the draft SPA from the previous evening.
Meeting between Shell, Eni and Malabu (P. Robinson, N. Burmeister e K. Atemie / R. Casula, E *Armanna, G. Zappalà, E. Caligaris / B R. Gbinigie, F. Akinmade, S. Munamuna):*
- Malabu reported that the Attorney General had reiterated his unwillingness to issue the license at the Closing and that said license would be issued 14-20 after the Closing (i.e.: payment of the Signature Bonus)
- Eni continued working towards aligning the SPA to the RA;
The same meeting was described in the following terms in the email (*"OPL - recent negotiating events"*) which Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[471]: *"Tuesday 11/23/10 Meeting between Eni and Malabu*
- Malabu made a number of observations regarding the draft SPA from the previous evening.
Meeting between Shell, Eni and Malabu:
- Malabu reported that the Attorney General had reiterated his unwillingness to issue the license at the Closing and that said license would be issued 14-20 after the Closing (i.e.: payment of the Signature Bonus)
- Eni continued working towards aligning the SPA to the RA";

[469] Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.
[470] Prosecution's Submissions of 11.23.2018, PM3, 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations",* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappalà.
[471] Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.

[3 illegible signatures]

In the afternoon of **November 23, 2010**[472] ENI and SHELL negotiators exchanged opinions on the changes to the RA requested by the AG;

November 23, 2010 *Writ of Summons* issued by Alhaji Mohammed Sani against 1) Malabu Oil and Gas, 2) Kweku Amafagha, 3) Hassn Hindu, 4) Munamuna Seidougha, 5) Amaran Joseph, 6) Rasky Gbnigie, 7) Corporate Affairs Commission, 8) Pecos Energy LTD, 9) Shell Petroleum Development Company of Nigeria Limited with the following content: *"The Claimant makes the following claims against the Respondents*:

a) A DECLARATION that the Claimant holds a fifty percent (50%) share in Malabu Oil and Gas Ltd. (1st Respondent) having subscribed for ten million (N 10,000,000) ordinary shares constituting the entire equity of the company.

b) A DECLARATION that Claimant has not disposed of his share in Malabu Oil and Gas Ltd. (the 1st Respondent) and therefore remains a shareholder and one of the first Directors of the 1st Respondent.

c) A DECLARATION that all resolutions passed by the alleged Directors of Malabu Oil and Gas Ltd. (1st Respondent) and all amendments made to the document by the first Respondents in the original file in the office of the seventh Respondents concerning, modifying and eliminating the Claimant's interest in and original ownership interest in the share capital of the 1st Respondent lack authorization, are "ultra vires", void, invalid and ineffective.

AN INJUNCTIVE ORDER ordering the 7th Respondent to restore the shares of Malabu Oil & Gas Limited (the 1st Respondent) to their original shareholding structure, which restores the Claimant as the holder of fifty percent (50%) of the entire equity of the company.

(e) A DEFINITIVE PROHIBITION ORDER preventing the Respondents, their agents, interested parties and/or assistants from interfering with the Claimant's share and interest in the 1st Respondent.

(f) A DEFINITIVE PROHIBITION ORDER preventing the 9th Respondent either on its own behalf or through agents, individuals, employees, and anyone acting on its behalf, from acting, dealing, signing any document, or negotiating in any way business involving OPL 214 and OPL 245 with the Respondents"[473]

19 November 24, 2010[474] there were meetings between ENI and Malabu and between ENI, Malabu and SHELL, described as follows by Enrico Caligaris in the email *"timeline of the negotiations". "Wednesday 11/24/10*

- Malabu summarized what it considers to be the "breaking points" (i.e.: the checking account may be included in an attachment to the SPA but not in the contract, and it doesn't have to be in Nigeria; payment of the Consideration must be made within seven days of the Closing; Malabu doesn't want to be responsible for payment of indirect taxes on the transaction, which are payable by the buyer as a rule).

Meeting between Shell, Eni and Malabu (P. Robinson, N. Burmeister and K, Atemie / G. Zappalà, E. Caligaris /B…… R. Gbinigie, F. Akinmade):

- Malabu pointed out that overnight the AG had partly gone back on his decision, and now declared that he was prepared to better assess the proposal and submit it to the President for approval.

---

[472] Public Prosecution Submissions of 11.23.2018, PM2, page 289. Email sent at 16:35 by Keibi Atemie to Enrico Caligaris, Guido Zappalà, Guus Klusener, Burmeister and Peter Robinson: [English in source text:] *"Dear Enrico, in anticipation of the fall back compromise position being proposed to the AG which essentially is to leave the trigger button for the payment of the SB with the Escrow agent upon receipt of the Licence from the FGN, I have made some consequential amendments to clauses 2 and 3 of the RA and also the termination letter. Attached shows the amendments including that agreed with you this morning on clause L3"* [Translation resumes] Email from Enrico Caligaris sent at 20:07 to Roberto Casula, Vincenzo Armanna, Donatella Ranco, Marco Bollini and Romina Giordani: *"The RA agreed between the companies, for now, does not suit the AG; there is a possible variant to the current one which, however, the AG is still resisting and therefore remains an unlikely alternative. Attached you will find the changes to the RA expressing this alternative. The text would be fine for us if the AG ever changes his mind and prefers the modus procedendi provided for by the attachment (i.e.: the money in the escrow account is released by the escrow agent once there is evidence that the FGN has issued the license)".*

[473] ENI Submissions of 29 January 2020, *"general submission memorandum"*, Exhibit 198;

[474] Public Prosecution Submissions of 11.23.2018, PM3, pages 310 et seq, email from Enrico Caligaris dated 11.24.2010, with the subject line *"timeline of the negotiations"* addressed to Roberto Casula, Vincenzo Armanna and Guido Zappalà.

[3 illegible signatures]

- Shell, Eni and Malabu prepared a page-long summary of the Closing process, to be given to the AG for his meeting with the President.

The same meeting was described in the following terms in the email *("OPL - recent negotiation events")* that Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30)[475]: *"Wednesday 11/24/10 Meeting between Eni and Malabu*
- Malabu summarized what it considers to be the "breaking points" (i.e.: the checking account may be included in an attachment to the SPA but not in the contract, and it doesn't have to be in Nigeria; payment of the Consideration must be made within seven days of the Closing; Malabu doesn't want to be responsible for payment of indirect taxes on the transaction, which are payable by the buyer as a rule).
Meeting between Shell, Eni and Malabu:
- Malabu pointed out that overnight the AG had partly gone back on his decision, and now declared that he was prepared to better assess the proposal and submit it to the President for approval.
- Shell, Eni and Malabu prepared a page-long summary of the Closing process, to be given to the AG for his meeting with the President.

November 24, 2010 (8:09 P.M.)[476] Ednan Agaev wrote to Emeka Obi: *"They (his nigerian friends) gave him 1 week extension to meet with the italian top and close the deal. He is coming to Geneva monday ready to sign and to close".*

November 24, 2010 (8:12 P.M.)[477] Emeka Obi wrote to Ednan Agaev: *"ok. I will try to check very discreetly with his friends in Nigeria so as to avoid any possible conflict and possible tricks. We also need to keep his friends on their toes";*

November 25, 2010[478] there were meetings between the AG and SHELL and between Malabu and ENI, described as follows in the email (*"OPL - recent negotiating events"*) that Roberto Casula sent to Donatella Ranco, Enrico Caligaris, Vincenzo Armanna and Marco Bollini on November 25, 2010 (19:30):
Thursday 11/25
Meeting between AG and Shell Shell declared that it was prepared to release the funds upon the signing of the RA by all concerned, but needed authorization from Head Office.

Meeting between Malabu and Eni Malabu confirms its acceptance of the wording of the SPA. However, it shall only sign when the parties have reached an agreement in regard to the RA as well";
November 25, 2010 (7:30 P.M.)[479] Roberto Casula sent an email to Donatella Ranco (and cc Enrico Caligaris, Marco Bollini and Vincenzo Armanna) with the subject line *"OPL - recent negotiating events",* already mentioned many times. In the introduction, he specified the list of individuals present at the meetings: *"Further to the email of November 15, in which I reported the results of the first meeting with the Attorney General and the companies Malabu and Shell, and the establishment of then price for the acquisition of Malabu's interest in the OPL 245 block. As of Thursday 18, intense negotiations have taken place (at the Ministry of Justice and/or at our own offices), aimed at coming to an agreement on the wording of the Sale and Purchase Agreement with Malabu, and of the Resolution Agreement between the Federal Government, Shell, Eni and Malabu" The following persons have taken part:*

[475] Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.
[476] Trial dossier, page 3283, text message 1126.
[477] Trial dossier, page 3283, text message 1127.
[478] Public Prosecution Submissions of 11.23.2018, PM3, pages 319 et seq.
[479] Public Prosecution Submissions of 11.23.2018, PM3, pages 319.

On behalf of Shell: Peter Robinson (Regional Vice-Chairman), German Burmeister (Commercial Manager) and Keibi Atemie (Attorney);
On behalf of Malabu: Chief Seidu Munamuna (Board Director), Mr. Rasky Gbinigie (Company Secretary) accompanied by advisers Mr. Alhaji Abubaker Aliyu, Femi Akinmade, A.B.C. Orjiako. On behalf of Eni: R. Casula, V. Armanna, G. Zappalà, E. Caligaris in constant contact with Head Office [...]".
November 26, 2010 (8:58 A.M.)[480] Enrico Caligaris informed Roberto Casula, Vincenzo Armanna, Guido Zappalà, Marco Bollini and Donatella Ranco that SHELL and Malabu had been served with a document from a party claiming to be a shareholder of Malabu and ordering them not to negotiate agreements regarding OPL 245;

November 26, 2010 (2:07 P.M.)[481] Emeka Obi wrote to Claudio Descalzi: *"good morning, it would be of great help to me if I could have the list of the still unagreed points of the SPA, the requests for the final due diligence of the seller, the status of the tax and licensing terms, so that I can try to comply with the seller's position whom I have to meet in the weekend. Thank you";*

November 26, 2010 (3:42 P.M.)[482] German Burmeister wrote to Enrico Caligaris enclosing the deed served to Shell on behalf of Sani Abacha. German Burmeister commented: [English in the source text:] "*Enrico - document attached. Just left AG office. He clearly stated to dismiss the issue";***November 26, 2010** Ogogo Apata wrote to Emeka Obi: "*no problem, as I said I can do it. The AG was our attorney for this deal*[483]*;*
November 26, 2010 (10:24 P.M.) Enrico Caligaris wrote to Roberto Casula: *"Roberto, tell me what time you want us to meet in the office, otherwise I will work from here. I'll be in touch with Ellis anyway about the steps to be taken next Monday at the Federal Court"*[484]*;*

November 27, 2010[485] Emeka Obi noted: [English in source text:] *"Obi meets with senior ENI executive in London to discuss next steps for the transaction. Meetings arranged to take place 2 days later in Milan";*

November 29, 2010 (12:19 P.M.)[486] Roland Ewubare AG wrote to Emeka Obi: *"Hello Emeka, I am back in Abuja. I met the AG and he confirmed again that he did not request the broker's agreement.*

---

480 Prosecution's submissions of 2.27.2019, page 70: *"Roberto, I was able to speak with Keibi to get more clarification on what Peter mentioned. Below is a brief summary of the situation.*
Shell informed us that:
- a couple of days ago Shell was served with an injunction ordering it not to negotiate/conclude agreements regarding Block 245
- our interlocutors in Shell only learned about it today and were very surprised
-in addition to receiving a similar injunction, Malabu is being investigated for falsification of corporate documents (e.g.: documents relating to its shareholding, governance bodies and legal representatives)
- the file from which these injunctions derive was opened in January 2010 in response to a complaint by one of Malabu's shareholders who allegedly holds 50% of the company and who claims not to have sold his/her share in the company, as would instead appear from the documents filed with the chamber of commerce
- the case seems to fall under the jurisdiction of the Central High Court of Abuja (Nigeria)
- one of their attorneys was sent to the "court registry" to gather more information/documents on the matter and to understand why a case opened in January 2010 did not come to their attention until November
of that same year
- Eni is not mentioned nor does it seem to be the subject of proceedings and/or injunctions on Block 245 but this seems to be justified by the fact that discussions with Eni on Block 245 happened after January 2010.
- they will keep us updated on developments.
Ps: the few corporate documents Malabu showed us reveal a change of shareholders and directors in mid-2010".
481 Trial dossier, page 3284, text message 1145.
482Prosecution's Submissions, hearing of 2.27.2019, page 71.
483Trial dossier, text message 1151.
484 Eni Submissions of 1.29.2020 (Obi briefcase), Exhibit 61.
[Translation resumes]485Trial dossier, page 3284, text messages 1147-1148.
486Trial dossier, page 3284, text message 1171.

This game is being played by Casula";
November 29, 2010 (4:55 P.M.)[487] Claudio Descalzi wrote to Emeka Obi: *"the situation has changed a bit... I can't meet him, we need to talk"*.
November 29, 2010 (4:57 P.M.)[488] Claudio Descalzi wrote to Emeka Obi: *"Same place. C will be with me.*
November 30, 2010[489] Emeka Obi noted: [English in source text:] *"Obi's first meeting is with Casula and Descalzi in the evening. They described what happened at the meeting at the Attorney General's office and stressed that they we're not trying to diminish the role EVP had played in the transaction - wanted to find a workable solution that would enable NAE to continue with the transaction in a professional manner. After the meeting, Casula and Obi went straight to the Four Seasons Hotel to meet with Etete and Agaev. Etete was adamant that he had never accepted $ 1.3 billion and wanted Obi to renegotiate. The Chief viewed Casula as the instigator of the current process, but Obi persuaded him that they should meet. Agreed that should continue with process";* [Translation resumes]

November 29/30, 2010[490] there was a meeting at the Four Seasons hotel in Milan between Roberto Casula, Dan Etete, Emeka Obi and Ednan Agaev;
November 30, 2010[491] Emeka Obi noted: [English in source text:] *"Meeting between Obi, Etete and Agaev. Etete repeats his request for Obi to negotiate a better price and higher cash payment for the OPL Assets. Obi asks Etete to reconfirm in writing Malabu's commitment to pay the previously agreed fee of US$ 200 million directly from the transaction proceeds. Etete refuses"*; [Translation resumes]

November 30, 2010 Emeka Obi took note of a meeting with Claudio Descalzi and Roberto Casula at COIN: [English in source text:] *"Discuss Etete meeting, EVP NDA. AG meeting of November, Next steps for negotiations, attempted arrest Pagano, FGN heavy-handedness/treatment of SAIPEM executives"*[492]*;* [Translation resumes]

4.4.2 December 2010

December 1, 2010 Emeka Obi wrote: [English in source text:] *"Obi meeting with Etete and Agaev at which they reiterated that they wanted Obi to recommence negotiations with ENI with a view to getting a better price. Obi wanted the Chiefs earlier commitment to pay EVP its minimum fee of $ 200 million out of escrow reconfirmed in writing before he continued negotiations. Etete now said that $ 200 million was too much especially given the fact that he was being "pressured" into accepting the $ 1.3bn. Etete said that he had expected more money, had a lot of stakeholders and debts to pay. Etete then made an appeal for the need to re-negotiate my fee. Obi was prepared to reduce the fee. They discussed, over the course of a couple of days, $ 150m and then $ 100m as a minimum on the $ 1.3 bn. Finally, I proposed a straight 7 2/3% on all proceeds guaranteeing me a minimum $ 100m if Etete accepted the $ 1.3bn as well as some guaranteed upside on top of the $ 100m if the negotiations were successful. Obi also proposed this alternative fee arrangement on the basis that $ 100 million was roughly 7 2/3% of $ 1.3 billion. Obi left the Chief to consider these proposals*[493]*;* [Translation resumes]

[487]Trial dossier, page 3284, text message 1174.
[488]Trial dossier, page 3284, text message 1176.
[489] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[490]Transcript of the hearing of 6.26.2019, page 59.
[491]Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChronology (1st round cut)24_8(2)evp comments.pdf."
[492] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
[493]Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf.".

December 1, 2010 is the date of a "**Legal Advisory Mandate**" between [494] Malabu (Dan Etete) and Bayo Ojo & co. (Bayo Ojo) which reported the agreements between FGN, Malabu NAE and SNEPCO to be formalized on April 29, 2011. The document stated: [English in source text:] *"NOW THEREFORE ADVISOR and MALABU HAVE AGREED as follows with respect to the activities of the Legal Advisor*:

1. *The legal advisory support started in December 2009 and it was requested by MALABU;*

2. *The scope of the legal advisory support is to identify potential buyers, define the business alternatives, and design a legal scheme to bring all the parties to an amicable settlement.*

The success scenario is the payment of the sum at least of 1,092,040,000.00 USD (one billion ninety-two million and forty thousand US dollars);

3. *The professional fee to be paid to the ADVISOR will be due only in case of success scenario and it is defined in the sum of 50,000,000.00 USD (fifty million US dollars) to be paid to the ADVISOR at the time the payment of the sum of 1,092,040,000.00 USD (one billion ninety two million and forty thousand US dollars) is received from NAE by MALABU and it is due also in case of any direct or indirect payments, for the same amount and related to block 245, coming from SHELL or any affiliates of NAE.*

4. *The compensation fee contained in the Resolution Agreement to be paid by NAE to MALABU will be paid into an escrow account with BSI Bank in Lugano, Switzerland under an irrevocable escrow agreement contained in schedule 1 below";* [Translation resumes]

The following were attached to the "Legal Advisory Mandate":

1. a document entitled "**schedule 1 - Escrow Agreement between Malabu Oil and Gas, Petrol Service Co Ltd (escrow agent) and Bayo Ojo (advisor)**"[495]. The deed specified that:
    - NAE shall deposit in the ESCROW AGENT's ESCROW ACCOUNT the aforementioned amount of $ 1,092,040,000;
    - once he receives the amount, the escrow agent:
        - will transfer $ 1,042,040,000 to Malabu at Banque Misr Liban sal;
        - may retain the sum of $ 5 million [English in source text:] *"as full and final compensation for its services rendered for the finalization of all payments under this agreement";* [Translation resumes]
        - must transfer $ 45 million in accordance with the instructions *"of the advisor pursuant to a final and irrevocable mandate agreement between the advisor and the escrow agent"* [Translation resumes] (see on this point the final and irrevocable payment mandate agreement of 4.19.2011);
2. a document entitled "**schedule 2 - particulars of escrow account**"[496] in which the account name (petrol Service Co LTD), the bank (BSI Lugano), the IBAN and the account number (no. A209798AA) are indicated. The document is signed by Dan Etete on behalf of Malabu, Gianfranco Falcioni on behalf of Petrol Services and by Bayo Ojo;

The deeds are backdated to December 1,[497] since they contain indications (such as the conditions of the Resolution Agreement, the reference to Petrol Service and the account opened at the BSI in Lugano) which cannot date back to December 1 because they concern circumstances which, at that date, had not yet occurred. On this point, the Prosecutor commented: *"the first two documents are dated December 1, 2010, or rather it is a document dated December 1, 2010 and an undated annex. The first document is an agreement between Dan Etete and Bayo Ojo, Christopher Adebayo Ojo, the Attorney*

494 Trial dossier, page 1417.

495 File for the trial proceeding, page 1384 .

496 Public Prosecution Submissions at the hearing of 2.6.2019, page 12.

497 Confirmation to this effect also comes from the testimony of Bayo Ojo, hearing of 2.6.2019, page 15: *"They were attached later even though they have the same date".*

[3 illegible signatures]

General who handled the agreement of November 30, 2006. This document is a kind of mandate, it is called "Legal Advisory Mandate to Bayo Ojo". According to this document, signed by Etete and Bayo Ojo, Bayo Ojo would be entitled to receive $ 50 million, which would be taken from the payment of the sum of $ 1,092,040,000, to the penny, received by Malabu from NAE. That's the first document we have. The annexed document is an escrow agreement, where the parties are Etete, again, Bayo Ojo and Gianfranco Falcioni, or rather Petrol Service. And this is where we understand that the money, the $ 1.92 billion, was all going to go to Petrol Service, all of it. And there are payment instructions from Bayo Ojo to Petrol Service, "Final Payment Mandate Agreement". This document states that Falcioni, as escrow agent, would retain the additional sum of $ 25 million, and would pay the remaining 20 according to Bayo Ojo's instructions. So in April, according to the signed documents, Petrol Service would retain $ 30 million for itself and distribute $ 20 million under Bayo Ojo's instruction. Here is the trilateral agreement Etete, Falcioni, now we will see why Falcioni, Eni, and Bayo Ojo. It is true that the account at BSI, which is mentioned in the escrow agreement of December, was opened in March, therefore 3 months later, but it is also true that the indications of that account are put in an attachment, and that in any case the date of December 1 tells us something, it is consistent with other events";

December 1, 2010 (15:07)[498] Claudio Descalzi wrote to Donatella Ranco, Roberto Casula, Marco Bollini: *"I refer to the negotiations in relation to the OPL 245 initiative. In light of the disputes that have recently come to light regarding ownership of the company Malabu, it is essential to have a complete picture of the situation that confirms that the conditions are in place such that the initiative is viable and expedient, bearing in mind, in addition, the circumstances that have affected certain service-provider companies in the country. In this regard, it is important to carry on with the necessary checks and to monitor the situation over the coming days, before resuming discussions with the interested counterparties, in order to come up with a final report/recommendation for the Board of Directors"*;

December 1, 2010 (3:08 P.M.) [499]Claudio Descalzi forwarded the same text to Paolo Scaroni, commenting: *"Paolo, in terms of what was discussed re 245, see below a note sent to the negotiating team"*;

December 1, 2010 (7:33 P.M.)[500] Emeka Obi wrote to Roland Ewubare: *"He is coming around, albeit slowly. We should have positive results by tomorrow morning";*

December 2, 2010 (3:14 A.M.)[501] Roland Ewubare wrote to Emeka Obi: *"this is great news!!! Everybody has told him to close or risk losing 235 to the next licensing round basket";*

December 2, 2010 (3:16 A.M.)[502] Emeka Obi wrote to Roland Ewubare: *"They must also tell him to pay us";*

December 2, 2010 (9:49)[503] Ednan Agaev wrote to Emeka Obi: "*Someone from Italians told the minister that Chief is insisting 1.6 and that's why the deal is blocked. Chief is worry about that. I am going to running now. Shall be back in about 40 min. Have a meeting with Chief at 12:30. Let's talk before";*

December 2, 2010 (5:30 P.M.)[504] Emeka Obi met with Roberto Casula in Milan;

---

[498]Public Prosecution Submissions at the hearing of 2.27.2019, page 90.
[499]Public Prosecution Submissions at the hearing of 2.27.2019, page 90.
[500] Trial dossier, page 3284, text message 1200.
[501]Trial dossier, page 3284, text message 1201.
[502]Trial dossier, page 3284, text message 1203.
[503]Trial dossier, page 3284, text message 1204.
[504] Trial dossier, page 3285, text messages 1207-1214.

December 2, 2010 (9:49 P.M.)[505]Emeka Obi wrote to Ednan Agaev: "*he must help us to help him, if not there is no chance. He can't expect to hold two major oil companies and the government hostage. It is time to close before a less favorable deal is reached or a deal is forced on him";*
December 2, 2010[506] Emeka Obi noted: [English in source text:] *"In order to seek to progress matters, Obi sought to explore an alternative fee structure. This was rejected by Etete.. Etete makes further proposal in writing: - a 7% agency fee on a sale price of US$2.1 billion, alternatively US$150 million on a sale price of US$1.6 billion. This was not accepted by Obi";* [Translation resumes]

December 3, 2010 (1:42 P.M.)[507] Emeka Obi wrote to Roland Ewubare AG: "*Just to update you. We started off with 13.3% we went down to 10% and now down further to 7,2/3%. We will not shift anymore, our investment bank and law firms will not agree.*
The seller has to accept and stop making promises. We have been very accommodating and will also insist on payment by escrow not at sellers pleasure"; Roland Ewubare replied **(13:42)**;
December 3, 2010 (5:16 P.M.)[508] Emeka Obi wrote to Emeka Obi [sic]: *"He said Oga told him not to sign the agreement, but I don't believe him. I had to leave but I left someone there with him. I'm sure he'll accept. He has no other choice";*

December 3, 2010 (5:17 P.M.)[509] Roland Ewubare AG wrote to Emeka Obi: *"When we were having lunch he called Oga to say he wants 5% to accept... that you and the Italians want to steal $ 100 million";* **December 3, 2010 (5:17 P.M.)** Emeka Obi replied to Roland Ewubare "*he's crazy"*[510]
December 5, 2010 (6:44 A.M.)[511] Emeka Obi wrote to Roland Ewubare AG: "*Bros. I know you are trying to help. I no get mandate to agree such "consensus fee". It's a bad trade 1.3bn for 0.055. More lucrative opps exist without controversy and operating risk. From 2 to 15 to 1 to 5 whilst ceteris parabus. Let's discuss tomorrow";*

December 6, 2010 (7:33 A.M.) Claudio Descalzi wrote to Malcolm Brinded: "*Dear Malcom, it has, indeed been a very difficult week. It has certainly not been one for our initiative alone e. 245. As already explained to your people, we do consider it mandatory to have complete and precise understanding of the Malabu's shareholding. In addition all documents pertaining to the dispute, the basis for the subsequent writ and the summons must be carefully checked and the issue closed (I understand the first hearing should be in the next days). Furthermore, in view of known recent events and the political situation, we are forced to move very prudently and to carefully assess the viability of our deal under said present circumstances. It goes without saying that only after the satisfactory completion of the above mentioned pending issues, 1 will be in the position to present to the board a final recommendation. I am fully available to further discuss it over the phone"*[512]*;*

December 7, 2010 (9:43 P.M.) Ciro Antonio Pagano forwarded to Roberto Casula and Vincenzo

[505]Trial dossier, page 3285, text message 1220.
[506] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[507]Trial dossier, page 3285, text message 1226.
[508]Trial dossier, page 3285, text message 1234.
[509] Trial dossier, page 3285, text message 1235.
[510] Trial dossier, page 3285, text message 1236.
[511] Trial dossier, page 3285, text message 1241.
[512] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 203.

Armanna the injunction that Alhaji Mohammed Sani had served that same day on NAOC with the warning not to finalize agreements with Malabu. The injunction served on NAOC concluded: *"We have been duly informed by our Client that the defendants in this suit, specifically Malabu Oil and Gas Ltd is entering into a contract with Nigeria AGIP Plc for which the company is required to pay approximately $ 1.1 billion. It is in light of this development that we write to urge you to refrain from doing business with Malabu Oil & Gas Ltd pending the resolution of the issues surrounding the company's shareholding at the Federal High Court, Abuja";*[513]

December 8, 2010[514]Emeka Obi noted: [English in source text:] *"Obi meets with Descalzi to discuss issues around the transaction and that deal was probably going to be on hold far a couple of months*"; [Translation resumes]

December 10, 2010 Emeka Obi took note of a meeting with Roberto Casula at La Scala: [English in source text:] "*Negotiations, Abacha injunction, Etete wants no price on SPA far Malabu but in separate document, Post closing adjustment";*[515] [Translation resumes]
December 10, 2010 (5:02 P.M.) Ebohon Ellis told Ciro Pagano: *"Attached is a copy of a lawsuit that was just served to NAOC. It is application filed by the plaintiff with the court for NAOC to be named as a defendant in the action brought. The document indicates that the petition will be discussed in court on December 14, 2010".*[516] Ciro Pagano immediately informed Roberto Casula;

December 11, 2010[517] Emeka Obi noted[518]: [English in source text:]*"Meeting between Obi, AG, Akpata and others at Landmark Hotel in Paddington, London. AG informs Obi that Malabu was prepared to pay EVP a reduced fee of US$55 million and advises Obi to accept that sum. Obi informs him that such a significant reduction from the agreed fee would not be acceptable";* [Translation resumes]

December 12, 2010[519] Guy Colegate wrote the following to Peter Robinson, John Copleston and German Burmeister: [Italian translation omitted] [Italian translation omitted] [Italian translation omitted]

December 13, 2010 (6:59 P.M.)[520] Oghogho Apata wrote to Emeka Obi: "*Spoke to Roland this evening says himself and AG will go see seller sometime soon and implore on him*";

December 15, 2010 (00:53 P.M.)[521] Ciro Antonio Pagano forwarded to Roberto Casula a report dated December 13 prepared by the law firm Aluko&Oyebode, upon NAOC's request, which reconstructs the litigation initiated by Mohammed Sani against Malabu;

---

[513] ENI Submissions of 1.29.2020, *"general submission memorandum",* Exhibit 204.
[514] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[515] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected".*
[516] ENI Submissions of 1.29.2020, *"general submission memorandum"*, Exhibit 205.
[517] Trial dossier, page 3285, text message 1272 of Emeka Obi to Ednan Agaev: *"I just met with AG".*
[518] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."
[519] Public Prosecution Submissions of 11.23.2018, PM2, page 75: "*Gents, Its all agreed-SPA Initialed and all on side in principal- hold up is over broker fee on other side- the boy is being difficult and tied Italians in a legal knot-that's the wrangle. Source says MB should call Claudio and ask "why no prog- we hear it is all agreed vendor/FGN side- do you still want it?" Source says no need to go into any more detail- lots of middle men-1 got the full download- source says a small shunt on Italians will see It closed...".*
[520] Trial dossier, page 3286, text message 1279.
[521] ENI Submissions of 1.29.2020, "*general submission memorandum*", Exhibit 206.

December 16, 2010 legal opinion of the law firm Paul Erokoro&Co. reporting the outcome of the research on the ownership of Malabu and related pending lawsuits[522];

December 16, 2010 (6:12 A.M.)[523] Nike Olafimihan (Managing Counsel, legislative development di Shell Petroleum Development Company of Nigeria) wrote to Guus Kluisener, Peter Robinson and German Burmeister: "*HAG has informed me of his intention to cancel the entire OPL from M, due to the disputes between the shareholders which is infringing on the good will being displayed by FGN. They therefore wish to reallocate the block 100 % to ENI, subject to ENI respecting the agreements between themselves and SHELL. I do not know how he intends to achieve this. He expects our response on this, tomorrow.*

December 16, 2010 (12:11 P.M.) Peter Robinson wrote to Roberto Casula: [English in source text:] *"Roberto, there are some developments on 245 (from AG). I am in Australia at the moment, but is it possible that I call you later today?"* **[524]***;* [Translation resumes]

December 16, 2010 (4:11 P.M.)[525] Roberto Casula wrote to Emeka Obi *"I have some news";*

December 16, 2010 (5:50 P.M.)[526] Vincenzo Armanna informed Roberto Casula of a meeting with the Attorney General: "*Roberto, Yesterday the AG called me for a meeting at 6pm. It was about a request for progress on OPL 245. He pointed out to me that if the transaction isn't completed within a short timeframe, FGN is firmly intent on putting the asset out to tender. I emphasized that basically it is impossible for us to continue in the transaction with Malabu until the proceeding underway at the FHC of Abuja has been completed. The AG revealed an alternative solution that he asked me to discuss with Top Management, in summary:*
- NAE would deal solely with the FGN and would receive a letter of award once the resolution agreement was signed by all the parties involved and Malabu's license was revoked;
- NAE would pay full consideration to FGN, which would then pay Malabu, which would waive any rights or claims to the asset;
- the FGN, through the Petroleum Minister, would immediately issue the license to be jointly awarded to NAE and to the company designated by Shell.
In summary, taken overall, the transaction is identical but simplifies the interaction between the parties. I asked for time to put the proposal to my top management and everything would be subject to Board Approval anyway. He agreed that if he didn't hear from us he would go ahead and revoke the license and go ahead with a call for tenders. Vincenzo"

December 18, 2010[527] Roberto Casula met with Emeka Obi in Milan in front of La Rinascente, Emeka Obi noted the meeting in his chronology: [English in source text:] *"Obi travels to Milan for lunch meeting with Casula on December 18, 2010. Casula explained that the shareholder dispute was still holding up the transaction. They talked about ideas on how to re-invigorate the sale process";*

December 20, 2010 (17:02)[528] Nike Olafimihan reported to Keibe Atemie (manager of SNEPCO) that, as a result of the litigation brought by Sani Abacha, the agreement could no longer be concluded according to the scheme that had been drafted. He then anticipated that the Attorney General wanted

[522] ENI Submissions of 1.29.2020, "*general submission memorandum*", Exhibit 207.
[523] Public Prosecution Submissions of 11.23.2018, PM2, page 78.
[524] Eni Submissions of January 29, 2020 (Obi briefcase), Exhibit 64.
[525] Trial dossier, page 3286, text message 1298.
[526] ENI Submissions of 4.9.2019, Exhibit 4, no. 33).
[527] Trial dossier, page 3286, text messages 1206-1315.
[528] Public Prosecution Submissions of 11.23.2018, PM2, page 79.

to propose a new negotiating scheme: *"background. The AG has requested that we submit a proposal in the first week to resolve the issue in the light of the impasse brought about by the following: Inability of M to satisfy the CP in the SPA regarding their corporate documents and authorization to enter into the SP.A. and the ligation by past shareholders of M against M and its current shareholders. An SPA (ENI-SNUD) in the context of the settlement is not possible anymore given the current court proceedings (imposes inability on M to transact the block). The proceedings contain an injunction against discussions by Malabu with FRN and other parties with regard to the Block.*
Although the allocation formally expired early October, M has a copy of the advice AG to MOP that allocation should be for longer period. Although, the advice has not been translated to an extension of M's allocation period it will be deployed as a means to secure some entitlement for them.
FGN wants to settle with S without upsetting conflicting settlement with M. whilst ENI and S bound by the terms of their HoA to involve each other in any transaction on the block.
The 4 key parties must remain for a sustainable settlement - FGN. M. Shell and ENI - ENI is necessary from the point of views of FGN to enable M secure the funds to pay for the block in order to arrive at a settlement proposal from the AG shat will resolve all issues by awarding OPL 245 on a 50/50 M/S basis and M agrees to waive its entitlement in lieu of financial compensation.
In view of the above, there is possibility of doing away with the SPA as an element of the transaction and replacing à with a settlement agreement between the 4 named parties under which:
All parties will settle the respective claims, demands etc between themselves and terminate all court cases
S releases SB to FGN from escrow
M waives allocation entitlement and or other (pretended) entitlements to OPL 245 in consideration for an amount of [x] to be paid by ENI
[x] is the amount ENI pays into an escrow account to be set up by FGN and M.
Release of escrow fids will be money triggered by named factors, including withdrawal of law suits issue of OPL document is to ENI/S etc.";

4.4.3 January 2011

January 11, 2011 (2:32 P.M.)[529] Roberto Casula wrote a memorandum for Claudio Descalzi and submitted it to Donatella Ranco, Vincenzo Armanna and Marco Bollini. He gave an update on the situation after the Abacha summons and outlined the final agreement: "[...] in November, on the initiative taken by the Attorney General, Mr. Bello, numerous meetings were held at the Ministry of Justice by Shell, Malabu and Eni. After those meetings, an agreement was reached on the price of the settlement, the draft SPA with Malabu and the Resolution Agreement between the parties and the Federal Government. However, the process was halted by the arrival of a summons to appear before the Federal Court in Abuja, in which a former shareholder of Malabu claimed rights to 50% of the company. The first hearing on December 13 ended with no action being taken because of several formal objections, with everything being continued until February 10. The judge opposed the claimant's request to issue an injunction, but the judge did point out that given the circumstances, he expected that no settlement take place. In the meantime, reviews of the corporate documents of Malabu continued with the law firms. In anticipation of the next ruling by the Federal Court, it is certainly risky to close the deal with Malabu. "The Attorney General himself proposed to Shell and Eni the possibility of restructuring the transaction through the Federal Government, which would then guarantee both the payment to Malabu and act as a shield against any further claims that may arise on the company's shareholdings". Shell has sent us a draft document that reflects this new arrangement, the essence of which is as follows:

529 ENI Submissions of September 18, 2018, Exhibit 299.

+ by signing the Resolution Agreement, the Federal Government awards the block to Eni and Shell, while Malabu recognizes that it no longer has any rights to it;
+ Shell releases the signature bonus and within seven days the Federal Government promises to issue the license to Shell and Malabu (sic);
+ Eni deposits the rest of the price in escrow ($ 1300 - $ 208 = $ 1092, inclusive of the additional contribution by Shell);
+ the Federal Government makes the payment to Malabu. All the lawsuits are terminated. Next steps:

1. review of the framework above with the Attorney General: this can be done early next week, because Mr. Bello presently occupied with the primaries;
2. Verification of Malabu's willingness to accept the scheme proposed by the Federal Government: the intervention of the advisor is important in this sense;
3. Completion of the due diligence on the corporate documents: under way;
4. Update of the purchase and sale and settlement agreements in accordance with the adopted framework;

January 13, 2011 Emeka Obi noted his meeting with Roberto Casula in Abuja: [English in source text:] "5 main issues - price acceptable to Seller without adjusting face value, shareholder claims, missing CAC file. Options under consideration - oil price adjustment, interest on delay in closing, contingent upside on future sale; reserves upside, bonus on first production"[530]. *[Translation resumes]*

January 16, 2011[531] *E*meka Obi noted: [English in source text:] "AG sent for Obi and met with him and Ewubare to discuss matters [relating to OPL 245][...] Obi meeting with the AG, Casula and others"" [...] ""Talked about EVP and Etete, told Casula no interest in broker, discussed reallocation framework - says not necessary, indemnity is available, has already spoken to MA, EVP should finalize position with Etete (will help), Complained a lot about Shell, Need to pay Etete a fair price, no objection to price increase, transaction can be done without shell, not happy with Shell treatment of Etete, Casula reminded him that EVP prepared all the work for the transaction and produced the documents they all discussed at the Nov 15 meeting- says he is happy to work with EVP and that lets try and resolve issue with Etete, Fiscal framework is with NNPC for consideration EVP, likes to see Nigerian companies treated well, tell G guy that I don't take money [...] "Obi apologised that Casula stuck in Lagos, we will come together later. Talked about fee issue and Etete issue. No wife/ no kids - can't die with all that money. "Last cheque he writes will bounce". Bring Casula in for meeting later. Only talking to me cause Roland is his very good friend. AG read my agreements with Malabu and NAE"[532]; [Translation resumes]

January 17, 2011 draft of letter on Malabu letterhead initialed on receipt by RC and which contains the claim that EVP is acting on behalf of Agip Nigeria;

January 17, 2011 (6:45 P.M.)[533] Donatella Ranco writes to Roberto Casula, Marco Bollini, Vincenzo Armanna and Guido Zappalà and expresses her own perplexity about the new terms of the agreement;

January 18, 2011 opinion by the law firm Ajunwa&Co. commissioned by Shell about Malabu, which concludes that "on the basis of the search carried out at the Corporate Affairs Commission in Abuja,

---

530 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file "*copie de chrono unprotected*".
531 Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."
532 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file "*copie de chrono unprotected*".
533 Public Prosecution Submissions hearing of 2.27.2019, page 92.

[3 illegible signatures]

the company in question is duly incorporated"[534];

18 January 2011[535] Emeka Obi *organized* a meeting between the Attorney General and Roberto Casula: [English in source text:] "AG met with Obi and Casula. They discussed the 15 November Meeting and general transaction matters including the monies payable to Malabu, Shell's conduct, the proposed settlement agreement, approval of the LICENCE and fiscal terms and the proposed reallocation strategy"; *[Translation resumes]*

January 21, 2011 (10:02 A.M.)[536] Ednan Agaev wrote to Emeka Obi: "P just called me. He will see AG today. He claims he is ready to sit with the Italians and with you and conclude the deal";

January 28, 2011 due diligence progress report sent to NAE by the law firm Paul Oronko&CO., following up on the report of December 16[537];

January 21, 2011 (9:45 A.M.)[538] Peter Robinson presented the terms of the new agreement to Malcom Brinded: [English in source text:] "Malcom, quick response. Assessment is that the risk balance has not changed materially. We release the escrow at settlement agreement execution and have 7 days prior to issuance of the license. No change from original position; ENI board approval required to exec Payment of monies 1.1 bln by ENI to escrow in name of FGN - who then pay to Malabu - is batter for ENI (we believe) and ultimately better for us (Abacha connection, subsequ whether AG and Malabu will ultimately accept this structure and detailed wording is of course still uncertain"', *[Translation resumes]*

January 31, 2011 Emeka Obi noted his meeting with Roberto Casula in Abuja: [English in source text:] "Paperwork - escrow, timelines, Fiscal terms"[539]; *[Translation resumes]*

January 31, 2011 (2:40 P.M.) Roberto Casula wrote to Claudio Descalzi, copied to Marco Bollini, Donatella Ranco and Vincenzo Armanna: "+ Lawsuit at the Federal High Court in Abuja. The hearing will be held on February 10. Even NAOC has received a summons. Right now, the judge has reserved his decision on any injunction concerning the asset. The case concerns a previous shareholder who claims that he never gave up his shareholding in Malabu. + Settlement. A strategy has been mapped out with Shell that aims to overcome the difficulties mentioned above. Essentially, our interface for acquisition of the license and related payments is supposedly the Federal Government with money deposited in escrow and released to the seller by the Federal Government itself. A Resolution Agreement has been prepared with the aid of all the headquarters offices and with Shell. All the tax and contractual conditions already requested during the discussions in November would remain unchanged. Last week, the Attorney General summoned Shell and Eni to inform them that the agreement was being studied by the DPR and NNPC and that they would give us their feedback this week. The AG will likely have to verify the seller's acceptance of this new structure for the deal, which no longer envisages a Sale and Purchase Agreement with Malabu. + Malabu corporate documents. This is one of the issues that are still open. The documents received today are being examined in view of completing the due diligence. [...]"[540];

4.4.4 February 2011

February 2, 2011 Emeka Obi notes the text message sent by EVP to NAE: [English in source text:]

---

534 ENI Submissions of January 29, 2020, "general submission memorandum", Exhibit 210;

535 File for the trial proceedings, page 3288, text message 1431, 1432.; Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active_EU_ 1237667_1_EVPChroology (1st round cut)24_8(2) evp comments.pdf."

536 File for the trial proceeding, page 3288, text message 1453.

537 ENI Submissions of January 29, 2020, "general submission memorandum", Exhibit 211;

538 Public Prosecution Submissions of March 22, 2019, page 574 (RDS 817).

539 Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the excel file "*copie de chrono unprotected*".

540 Eni Submissions of January 29, 2020 (Obi briefcase), Exhibit 77.

"Threatening to issue all participants for circumventing"[541]; *[Translation resumes]*

February 2, 2011 Emeka Obi notes his meeting with Claudio Descalzi in London: [English in source text:] "EVP complains again about breach of NDA etc"; *[Translation resumes]*[542]

February 3, 2011[543] Emeka Obi notes: [English in source text:] "Obi returns to London and arranges to meet with Descalzi. They exchange SMS but Descalzi busy all day so they arrange to meet the following day"; *[Translation resumes]*

February 3, 2011 (2:58 P.M.)[544] Emeka Obi writes to Ednan Agaev: "it's funny, part of me would like to blow up the agreement so that Papa and his friends would learn their lesson. The problem is that the other side of me doesn't want to continue dealing with these people for the rest of my life";

February 3, 2011 (3:02 P.M.)[545] Ednan Agaev wrote to Emeka Obi: "My friend, we are rational people. They will learn the lesson after we have signed the agreement and the money is on our bank accounts. In the contrary case, only we will lose money. Regardless, we have both reached the same conclusion: after we have made this agreement, we are never going to deal again with a jerk like P.!";

February 3, 2011[546] meeting at the offices of the Ministry of Justice and was attended by the Attorney General, Bern Angwe (AG office), Jedy Agbs (AG office), Nike Olafimihan (SNEPCO), Peter Robinson (SNEPCO), Roberto Casula (NAE), Ellis Ebohon (NAE).

During the meeting, they discussed some issues raised by NNPC concerning the agreement for OPL 245. In particular: [English in source text:] "the Minister pointed out that NNPC had raised a number of issues with regard of the OPL 245 draft resolution agreement, and that these issues would have to be satisfactorily resolved before the resolution agreement can be finalized. Below the summary of issues raised by NNPC as contained in their letter, which SNEPCO and NAE were not allowed to photocopy/take away:

- Clauses 7, 8 and 9 seek to introduce fiscal terms into an agreement that should be restricted to issues relating to title the OPL. Each clause is an attempt to get written admission to very critical matters in arbitration, and will amount to an admission on the part of NNPC, PSC contractors can be engaged on Petroleum Operations;
- Clause 14 is a waiver of the back in regulations and in inconsistent with existing legislation and defeats the public purpose, therefore it is not in NNPC's interest;
- Clause 12 deals with exemptions from taxes levies and duties and requires clarification from the Ministry of Finance;
- Clause 14 seeks to bind the FIRS to the agreement and should be disallowed in lines with international best practices. Firs cannot be party to a commercial agreement and the clause should therefore be expunged. It is a deliberate attempt to compromise the FIRS in the arbitration.

The action point from the meeting is that SNEPCO and NAE should provide the Minister with harmonized responses to the issues raised by NNPC, after which there will be a further meeting with the Minister to discuss the issues"; *[Translation resumes]*

February 3, 2011 (4:48 P.M.)[547] Roberto Casula forwarded an email update to Claudio Descalzi, in which he reports that he had been summoned by the Attorney General, who told him about the negative opinion issued by the NNPC. The Attorney General pointed out that without the approval of the NNPC, it would not be possible to close the agreement (We were called to a meeting with SHELL by the

---

[541] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file *"copie de chrono unprotected"*.

[542] Public Prosecution Submissions of October 2, 2019, briefcase seized from OBI in Switzerland, chronology in the Excel file "*copie de chrono unprotected*".

[543] Public Prosecution Submissions of 12.11.2019, briefcase seized from OBI in Switzerland, chronology in file "Active EU 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

[544] File for the trial proceeding, page 3289, text message 1486.

[545] File for the trial proceeding, page 3289, text message 1487.

[546] ENI Submissions of September 18, 2018, Exhibit 200.

[547] ENI Submissions of September 18, 2018, Exhibit 2014.

Attorney General. Our attorney Ellis Ebohon came with me. SHELL had their attorney and the Managing Director of SPDC there (Peter Robinson is still in Lagos). The purpose of the meeting was to tell us about the NNPC's comments on the draft Resolution Agreement. In a letter to the AG, the NNPC was highly contrary to the whole set-up of the agreement and expressed an unfavorable opinion; in particular:
+ taxation of oil and gas: they think that what is being asked for seriously weakens the position of the Federal Government in the current arbitration proceeding with the IOC (Bnga, Ehra, Abo);
+ no to the stabilization clause in the event of a change in oil and gas law;
+ no to the tax exemption for the transaction (although in reality this should be a matter for the Ministry of Finance to comment on);
+ no to the waiver of the back-in rights. On this point they are resolute: it is their right and they will exercise it. Alternatively, a PSC arrangement would result;
+ the Resolution Agreement is seen as prejudicial for the country in that it contemplates zero royalties, no taxation as a result of the impact of the investments on the taxable amount, the NNPC not being on the license.
The AG said that without NNPCs endorsement, or at least an agreement with them on the terms of the Resolution Agreement, he is ready to pull out of the negotiations and the block will be put out to tender again. It is clear that the concerns expressed by NNPC completely change the basis of the agreement discussed so far but also those for development of the asset and the shareholdings. The plan now is to study these comments in detail and at the beginning of new week, meet the new AG, but also NNPC, for the necessary clarifications and verification of the possibility of going back to the initial scenarios. The document, with numerous comments by NNPC, will be passed around shortly. All of this is added to the as yet unresolved problems with the seller (corporate documents and lawsuit before the Federal High Court of Abuja");
February 4, 2011 (12:46)[548] Claudio Descalzi forwarded Roberto Casula's e-mail to Paolo Scaroni ("Paolo, here is Roberto's update on 245, after the meeting that we and Shell had with the AG. It seems that NNPC has rejected all the terms of the agreement. We'll talk about it when we see each other");
February 9, 2011 (3:15 P.M.) [549]Emeka Obi wrote to Ednan Agaev: "my people are meeting Oga right now";
February 9, 2011[550] the Attorney General formally asked the Director of the DPR that the Department he headed *analyze* the draft of the Resolution Agreement and report his *observations* in that regard;
February 9, 2011 (19:29) [551] Roberto Casula wrote to Claudio Descalzi again about the discussions with NNPC: "I have spoken with the SHELL attorney. They met with NNPC at the Legal Department level and had a discussion about the comments on the Resolution Agreement. The impression of SHELL is that NNPC was concerned especially about the possible impact on the current arbitration proceedings (which is why they have already clarified that the signature bonus cannot be recovered, even fiscally). He told me that the discussion was especially harsh"; He should have another meeting tomorrow and, regardless, the hearing at the Federal High Court of Abuja is expected to be held tomorrow in the lawsuit of the shareholding in Malabu";
February 9, 2011 (8:13 P.M.)[552] Claudio Descalzi forwarded Roberto Casula's e-mail to Paolo Scaroni;
February 10, 2011 exchange of e-mails between Eni and Shell in connection with the comments of NNPC on the Resolution Agreement[553];

[548] ENI Submissions of September 18, 2018, Exhibit 204.
[549] File for the trial proceeding, page 3289, text message 1499.
[550] ENI Submissions of September 18, 2018, Exhibit 205.
[551] ENI Submissions of April 16, 2019, supporting documents, no. 9.
[552] ENI Submissions of September 18, 2018, Exhibit 205.
[553] ENI Submissions of January 29, 2020, "*general submission memorandum*", Exhibit 216.

February 11, 2011[554] a meeting was held at the Ministry of Justice that was attended by the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Nike Olafimihan (SNEPCO), German Burmeister (SNEPCO), Vincenzo Armanna (NAE), Ellis Ebohon (NAE), Rasky Gbinigie (Malabu). The responses by NAE and SNEPCO to the objections raised by NNPC were discussed. Specifically:

- [English in source text:] "back in right: Ag's position is that FGN cannot not waive back in rights in the RA because it would amount to giving away sovereign rights. The reallocation letter to Malabu did not contain such waiver and FGN ought to have envisaged it. However, FGN recognize the structure of the RA and would be reasonable about it. They therefore asked for proposal that would accommodate this;
- Arbitrations: AG rejects all clauses that reflect on the ongoing arbitrations as FGN will not accept anything on paper that implies any agreement with the position of the IOC's in arbitrations;
- Stabilization: AG accepted SNEPCO/NAE position;
- Expensing of incurred costs against tax: AG accepted SNEPCO/NAE position, subject to validation of the costs. AG However insisted that SNEPCO/NAE maintain the figure contained in the previous settlement agreement with Malabu which differs from the figure on the RA;
- Exemption from taxes and levies: AG accepted SNEPCO/NAE position, *[Translation resumes]*

February 11, 2011 (12:43 P.M.)[555] Nike Olafimihan updates Enrico Caligaris, Keibe Atemie, Guus Klusener, German Burmeister and Peter Robinson and the other top executives of ENI on the results of a meeting with TAG: [English in source text:] ''Dear all, Vincente, Ellis, German and 1 held the meeting with the HAG. Highlights of the outcome are as follows: FGN cannot not waive Back-in rights in the RA because It would amount to giving away sovereign rights.. […]"; *[Translation resumes]*

***February* 11, 2011 (7:14 P.M.)**[556] Roberto Casula updates Claudio Descalzi on the discussions with NNPC: "Another meeting was held this morning at the Attorney General's office, attended by SHELL (Nike Olafimihan, legal counsel; German Burmeister, commercial) and ENI (Armanna - Elli Ebohon). In summary:

+ back in rights, a formal issue was raised over the sustainability of the waiver in the Resolution Agreement (it would be interpreted as a waiver of "sovereign rights"). We will now define the position of NNPC, although it will have to be clarified before any payment of any consideration (and if the back-in rights are exercised, it would be proportionately reduced);

+ revision of the Resolution Agreement to avoid any negative impact on the position of NNPC in the current arbitration proceedings: SHELL accepts the non recoverability of the signature bonus; the contractual scheme has to be confirmed in light of the tax terms;

+ the structure of the deal and the stabilization clause are accepted;

SHELL will have to talk with Napims again about the prior costs. The AG requests that we stick to the previous settlement agreement ($ 200 vs $ 300m);

The AG will be away from February 21 to February 28 and hopes that we will reach a mutually acceptable agreement next week;

February 12, 2011 (9:39 A.M.)[557] Claudio Descalzi forwards Roberto Casula's e-mail to Paolo Scaroni with the comment "it seems that the discussions with NNPC are going a little better, the only critical point for us is the back-in right. Shell is leading the negotiations. I'll keep you posted";

February 14, 2011 (2:59 A.M.)[558] Peter Robinson writes to Ian Craig: "know you have a brief on 245 following engagements in Abuja last week. Separately, we have been told for some time that there is

[554] ENI Submissions of September 18, 2018, Exhibit 200.
[555] Public Prosecution Submissions of March, 22 2019, 591 (RDS 833).
[556] ENI Submissions of September 18, 2018, Exhibit 206.
[557] ENI Submissions of 18 September 2018, Exhibit 206.
[558] Public Prosecution Submissions of March 22, 2019, 663 (RDS 906).

[3 illegible signatures]

an additional issue for ENI which relates to a company EVP (energy venture partners). I have asked Roberto about this. However, from others l am told that EVP is not agent for Chief and that ENI must pay EVP $55min which they don't want to do and Etete does not want to pay the $55min either. I cannot determine exactly what the real situation. Is but there is enough information that suggests this issue is a complication - even if we can sort NNPC and get an agreed settle";

February 21, 2011 (3:55 P.M.)[559] Emeka Obi writes to Martin Shwedler RIAG: "they are still arguing over the fiscal conditions!! I have to meet the buyers on Wednesday";

February 22, 2011[560] the Attorney General wrote a letter to NNPC, with which: 1) he informed it that the parties had commenced negotiations on the Resolution Agreement to settle the contested issues; 2) asked NNPC to designate a technical expert and to the Legal Department and the corporate secretary to participate in the negotiations; 3) he noted that a team had been set up to evaluate all the contested issues and draft an acceptable agreement;

February 22, 2011[561] the company Petrol Service co. Ltd was incorporated with no. 201190204 on the Ontario companies register. The company has its registered office at EMMGI Finanziaria S.A. in Lugano;

February 23, 2011 (8:55 A.M.)[562] Claudio Descalzi wrote to Emeka Obi: "my boss is too busy on Friday too, due to the Libyan crisis. He apologises but he is certain that you can understand...he has asked me to schedule an appointment for March 7 in Milan. Do you prefer at 11 or at 4:30 p.m.?";

February 23, 2011 (3:47 P.M.) Vincenzo Armanna wrote to Roberto Casula with some updates on the meeting that was held the previous day at FGN and with notification of the establishment of a working team composed of NNPC, AG, Malabu, Shell and NAOC: Yesterday, at 1 p.m., MALABU (Dele Adesina San, Rasky and Seid), Shell (Robinson), NAOC (Armanna) and AG office staff, attended a meeting at the Attorney General's offices. I had the opportunity to show to the AG all of the concerns arising from what NAOC's attorney submitted. The remarks made by the AG are the following:

• The rights on OPL 245 will be transferred to NAOC and Shell by the FGN and, in any case, NAOC will not pay MALABU directly but the FGN;

• The presence of MALABU in the resolution agreement reduces the possible object of the dispute between the shareholders or alleged shareholders only to the consideration that may be received by MALABU;

• The official documents are the only ones that exist and which identify the representatives and shareholders. If they are incomplete, that could be reported to the CAC;

• Any other missing documents must be requested from MALABU;

The outcomes of the meeting were:

• setting up a working team comprising NNPC, MALABU, SHELL, NAOC, and the AG's office for the purpose of drafting a document agreed by the parties and concerning OPL 254 by Monday 2/28/2011;

• the base document is the attached resolution agreement, which has been distributed to the attending parties;

• the meeting of all the parties is scheduled for Thursday 2/24/2011

It's necessary to identify which of our representatives will be present at the meeting on Thursday the 24th"[563];

February 24, 2011[564] a meeting was held at the offices of the Ministry of Justice and was attended by

[559] File for the trial proceeding, page 3289, text message 1515.
[560] ENI Submissions of April 16, 2019, supporting documents, no. 10.
[561] File for the trial proceeding, page 1494.
[562] File for the trial proceeding, page 3289, text message 1521.
[567] ENI Submissions of January 29, 2020, "*general submission memorandum*", Exhibit 220;
[568] ENI Submissions of 18 September 2018, Exhibit 200.

[3 illegible signatures]

the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Y. Omorogbe (NNPC), T. Adesanya (NNPC), D. Usman (NNPC), V. Omoluabi (NNPC), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Nike Olafimihan (SNEPCO), Vincenzo Armanna (NAE), Ellis Ebohon (NAE), Giorgio Vicini (NAE). The responses of NNPC to the comments of NAE SNEPCO were discussed during the meeting.

February 24, 2011 Claudio Descalzi forwarded to Paolo Scaroni the draft courtesy letter to President Jonathan after the meeting on February 22; [565]

February 28, 2011[566] a meeting was held at the offices of the Ministry of Justice and was attended by the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Y. Omorogbe (NNPC), T. Adesanya (NNPC), D. Usman (NNPC), V. Omoluabi (NNPC), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Nike Olafimihan (SNEPCO), Ellis Ebohon (NAE), Giorgio Vicini (NAE). The draft Resolution Agreement was discussed during the meeting.

February 28, 2011 agenda ahead of the Eni Management Committee meeting to be held on March 2 and containing the memorandum updating the Chief Executive Officer, and where we read: "during the last several months, discussions have continued with all the parties involved and, in particular, the Government has set up a working group for discussions and negotiations with the Attorney General (representing the FGN), the state-owned company NNPC, Malabu, Shell and Eni. The settlement, which was originally set up as a sale by Malabu to Eni, would now provide for an agreement among all the parties involved, whose effect would be assignment of the OPL to Eni and Shell at 50% each, with Eni as operator, and the settlement of all existing litigation over ownership of the block. The previously determined price (illustrated to the Board of Directors in the previous report of November 2010) would be confirmed and paid to the Government for the assignment of ownership free of litigation, and then used by the Government to end the lawsuits themselves. The same agreement should confirm the fiscal and contractual assumptions underlying the agreed price. The entry for the first time into the negotiations of the state-owned company NNPC, previously not involved, added major uncertainties with regard to the tax treatment of the license and certain ambiguities about the "back-in" right enjoyed by NNPC/Government, not previously envisaged in the negotiations. Moreover, as of today, it still has not been possible to complete the due diligence on Malabu for the purpose of confirming its ownership structure and the directors of that company, which is necessary inter alia to verify the powers of representation of the individuals involved in the discussions and authorized to sign the agreements. Moreover, a claim has been recently notified by an alleged shareholder excluded from the ownership structure of Malabu. An "injunction not to reach settlements on OPL 245 might be imposed in the legal proceeding. For the reasons stated above, and above all taking into account that the political elections in Nigeria are just around the corner, we believe the conditions for finalising the transaction are not met at present. We will request the Board's authorisation only if and when the uncertainties described above are resolved" [567];

4.4.5 March 2011

March 2, 2011 the Management Commitee of ENI met and, with regard to the matter of OPL 245, we read the following in the minutes of that meeting: "Descalzi explained the memo sent, which is attached. He pointed out that the situation had stalled due to tax and contractual issues. The CEO added that there were delicate issues about Malabu's signing powers. He felt the project should be considered shelved".

We read the following in the memorandum drafted by Claudio Descalzi for the CEO: "I am following up on the previous reports and, in particular, to the most recent one given at the Board of Directors meeting on 18 November 2010 concerning the opportunity to acquire a share in the exploration block

[569] ENI Submissions of January 29, 2020, "*general submission memorandum*", Exhibit 221;
[570] ENI Submissions of 18 September 2018, Exhibit 200.
[567] ENI Submissions of January 29, 2020, "general submission memorandum", Exhibit 224;

named OPL 245, in Nigerian offshore territory. During the last several months, discussions have continued with all the parties involved and, in particular, the Government has set up a working group for discussions and negotiations with the Attorney General (representing the Federal Government), the state-owned company NNPC, Malabu, Shell and Eni. The settlement, which was originally set up as a sale by Malabu to Eni, would now provide for an agreement among all the parties involved, whose effect would be assignment of the OPL to Eni and Shell at 50% each, with Eni as operator, and the settlement of all existing litigation over ownership of the block. The previously determined price (illustrated to the Board of Directors in the previous report of November 2010) would be confirmed and paid to the Government for the assignment of ownership free of litigation, and then used by the Government to end the lawsuits themselves. The same agreement should confirm the fiscal and contractual assumptions underlying the agreed price. The entry for the first time into the negotiations of the Nigerian State company NNPC, added major uncertainties with regard to the tax treatment of the license and certain ambiguities about the "back-in" right (acquisition of a shareholding free of charge) enjoyed by NNPC/Government, not previously envisaged in the negotiation. Moreover, as of today, it still has not been possible to complete the due diligence on Malabu for the purpose of confirming its ownership structure and the director of that company, which is necessary inter alia to verify the powers of representation of the individuals involved in the discussions and authorized to sign the agreements. Moreover, a claim has been recently notified by an alleged shareholder excluded from the ownership structure of Malabu. An injunction not to execute settlements on OPL 245 might be imposed in the legal proceeding.
Conclusions
For the reasons stated above, and above all taking into account that the political elections in Nigeria are just around the corner, we believe the conditions for finalizing the transaction are not met at present";

March 2, 2011 (11:55 P.M.)[568] Malcom Brinded wrote to Claudio Descalzi: "I understand that our teams have discussed these differences of perspective on the outcome of negotiations and will discuss again today. I went over it again and though as ever not 100% perfect it actually seems to me that the principles we want are clearly intact – ie. deepwater fiscal terms apply, a good stability clause remains and no back in rights for NNPC. Our teams just need to align on acceptable wording and then convince FGN to accept this. From what I've seen - wording is close, if not already there. As we both mentioned in our emails, the issue of Malabu corporate records remains, but the release of the file by AG is positive and I hope that the core essential documents will be available. But clearly our teams need to do the due diligence on this. I remain convinced that if we can move quickly";
March 2, 2011 (12:49 P.M.)[569] Claudio Descalzi replied to Malcom Brinded, explaining that there were still four points to be agreed: three of an economic nature (fiscal conditions, *stabilization* condition, back-in rights) and one concerning Malabu (lack of corporate documentation");
March 12, 2011 (7:14 A.M.)[570] German Burmeister wrote to Nike Olafimihan, Kebi Atemie, Guus Klusener, Peter Robinson: "Yesterday Pete/myself met with Roberto for almost 2 hours, the majority focused on 245. Since the beginning Roberto made clear that Eni was still committed to the transaction but the risk perception in ENI have changed slightly since November when we were so close to sign

[568] Public Prosecution Submissions of March 22, 2019, page 614 (RDS 857).
[569] Public Prosecution Submissions of March 22, 2019, page 619 (RDS 862). *"Dear Malcolm, My apologies for not being able to respond earlier. Once I was back Astana, I checked the situation with my people. There seem to be some discrepancies in terms of feedback: There are four major outstanding points, three from the economic perspective and a particular one still remains regarding Malabu: 1) The fiscal terms which represent the basis for our economics, thus justifying our considerations, are still disputed by NNPC; 2) The stabilization clause was rejected by NNPC therefore putting at risk future cash flows;*
3) Back-in rights still carrying too many ambiguities for comfort 4) Uncertainties and lack of basic documentation regarding Malabu shareholding structure, their legal representatives and the company history; We, therefore, must properly address the above points In order to reach a logical conclusion for this deal. I do appreciate the valuable contribution of your team and their excellent interaction with our people. Let's keep in touch".
[570] Public Prosecution Submissions of March 22, 2019, 647 (RDS 890).

the deal. This has been driven by both Internal and External factors (NNPC, PIB, elections, etc.). Internally, two main key issues. New board to be appointed by end of March, beginning of April and nobody willing to rock the boat with a risky proposal. In this political sensitive moments Legal vs. the business; Malabu's corporate records and Eni's lack of faith that they will ever be sorted have had a compounded negative effect in their risk perception of the whole transaction Note: Eni was of the view that Shell was more relaxed with M corporate records. For the time we clarified this was not the case. [...] After the meeting Pete/Nike/myself went to see the AG. He was in a good mood and asked to please not leave him in the dark. He needs to understand what is going on. We explained we were still committed and working hard to find a solution. [...]

March 14, 2011 (11:04 A.M.)[571] Emeka Obi wrote to Bryant Orjiako: "talked with a local guy on Friday when he returned to Abuja. Officially, he was still awaiting confirmation on the tax treatment/concession/identity of suitable signatories - I trust that this issue has now been settled";

March 16, 2011[572] Nike Olafimihan wrote an email to Mayaki Tunji with the subject line "corporate external lawyers contact" of the following tenor: "Tunji, this is the list that I have. It is shorter than yours, so it's probably a cleaned-up version. I found it useful because it indicates the position of Shell, which uses them. Other names on the list: 1. Chief Bayo Ojo and co., Zennon House, 6 floor [...]";

March 17, 2011 (9:34 A.M.)[573] German Burmeister informs Guus Klusener and Peter Robinson that he has spoken with Roberto Casula, who allegedly expressed his concern with him over the progress of the negotiations and the impact that the end of the term of the House of Representatives might have. On that occasion, Roberto Casula allegedly reiterated that "M needs to be out of the transaction";

March 22, 2011[574] an account registered in the name of Petrol Service CO. Ltd, with registered address in Ontario and address at EMMGI Finanziari SL of Lugano, was opened at BSI. The individuals *authorized* to transact on the account are Primo Bianchi, Gianfranco Falcioni, Stefano Piotti;

March 31, 2011[575] Peter Robinson wrote to Malcom Brinded that "the change in ENI over the last 24 hours has been profound. Roberto assuring me that we will have agreements settled between ourselves by tomorrow morning".

March 31, 2011 (7:48 P.M.)[576] Enrico Caligaris sent to the executives of ENI and SHELL the version of the "Reallocation Agreement" between FGN, SNUD, SNEPCO and NAE revised after the latest discussions;

4.4.6 April 2011

April 1, 2011[577] The Department of Petroleum Resources wrote to the Minister of Justice and highlighted several critical points in the "Resolution Agreement", concluding that the agreement would be "highly prejudicial to the interest of the Federal Government"; Specifically:

(i) "Malabu has not yet paid the Signature Bonus for the reassignment of OPL 245, which is the subject of the settlement approval ruling issued in the proceedings between the latter and the Federal Government. In addition, FGN's payment to Malabu to waive its right to the Block, which, due to the failure to pay the Signature Bonus, has yet to arise, would constitute a payment to Malabu for an asset it does not yet own. In addition, it is completely contrary to the law and the Petroleum Act in particular, that a party consent to the assignment or reassignment of an OPL or OML by the Minister.

(ii) SNUD claims no rights in OPL 245, except for the rights provided for in the PSC 2003

---

[571] File for the trial proceeding, page 3289, text message 1531.

[572] Public Prosecution Submissions of June 15, 2019, page 82.

[573] Public Prosecution Submissions of March 22, 2019, page 665 (RDS 908). *"Roberto concerned about PIB and the significant value erosion the House terms have on the project. We agreed to share assumptions to make sure we are looking at the same thing".*

[574] File for the trial proceeding, page 2305.

[575] Public Prosecution Submissions of March 22, 2019, page 669 (RDS 912).

[576] Public Prosecution Submissions of March 22, 2019, page 678 (RDS 921): *"Dear all, attached hereto please find a mark-up and clean version of the agreement, renamed "Reallocation Agreement" among FGN, SNUD, SNEPCO and NAE. The document has been redrafted in order to make it consistent with eni's view on the new structure proposed by Shell (see attached email of guido)".*

[577] File for the trial proceeding, page 1123.

[3 illegible signatures]

between it and NNPC as the Block's sole concessionaire. Even in this perspective, the rights under the PSC 2003 have ceased by virtue of the reallocation of the Block to Malabu. Therefore, there is no legal or factual basis for stating that SNUD currently has any right to Block 245. In fact, the principal claim of SNUD in the ISCID arbitration proceeding is as follows: An award with which the Court issues order that it deems appropriate, including, for example, a ruling in confirmation that NNPC is the legitimate holder of license for OPL 245 and an order instructing FRN to take action so that NNPC acts in such a way as to permit SNUD to implement the terms of the PSC, with full restitution of its rights or, subordinately, economic compensation for the damage caused to Plaintiff by the cited violations. Therefore, it is absurd that the Resolution Agreement affirms that SNUD owns a shareholding in OPL 245, for which FGN would obtain the consent of SNUD to reassignment by paying money.

(iii) The concession of OPL 245 to NAE and SNEPCO according to the methods proposed by the Resolution Agreement would be in breach of the current practice in Nigeria whereby oil prospecting licenses are granted on the basis of transparent, open and competitive concession procedures. In agreeing to reassign the License to NAE and SNEPCO in this way, FGN would expose itself to scandal and even to future litigation, even more so considering that until the present Resolution Agreement, [NAE] was not a party to any of the transactions between the parties with regard to OPL 245.

(iv) (iv) Moreover, the Resolution Agreement proposes to assign OPL 245 to NAE and SNEPCO on a sole risk basis without providing the right for FGN or any of its agencies to purchase a shareholding [English in source text:] (a right of "back-in") [translation resumes:] in any future OML deriving from the Block (this is unsustainable because the parties cannot waive current law in their Agreement). By accepting to this proposal, the FGN would throw away an enormous amount of financial resources, all the more so considering that according to the [PSC] 2003, NNPC was the concessionaire of the block. In fact, there is no economic justification for removing NNPC as concessionaire and excluding FGN's right through NNPC to take over the Block or to have a share of any production of the Block. Such an agreement would leave FGN with very little of the enormous potential economic value of the Block and create uncertainty regarding the interpretation and application of relevant Nigerian laws in the sector.

(v) A propos, FGN should not forget to keep the as-yet undecided lawsuits concerning the interpretation and application of the Deep Offshore Act and the Regulation concerning the Right of Purchase and Participation in relation to the cases involving SAPETRO and FGN one the one hand, and Fanfa and NNPC on the other. By approving an Agreement like the one proposed in the case in question, FGN would weaken its own arguments concerning both lawsuits and would generate greater confusion in application of the law;

(vi) The Resolution Agreement proposes to award OPL 245 to NAE and SNEPCO on a Sole Risk basis without the FGN or any of its agencies having a right of "back in" in any future OML derived from the block (this is untenable because parties cannot by their agreement exclude the operation of a legislation in force. FGN by agreeing to this proposal would be throwing away an enormous amount of financial resources more so when under the 2003 the PSC was the concessionaire on the block. Indeed, there is no economic justification for removing NNPC as concessionaire and excluding the right of the FGN through NNPC to back in or have a share of any production from the block. Such an arrangement would leave for the FGN very little of the enormous potential economic value from the block and create uncertainty in the interpretation and application of the relevant Nigerian Laws in the area. In this regard, the FGN should not be unmindful of the still unresolved judicial cases

[3 illegible signatures]

involving the interpretation and application of the Deep Offshore Act and the Back-in Right Regulations in the cases involving SAPETRO and the FGN on the one hand and FAMFA and the NNPC on the other. By endorsing an Agreement such as is being proposed in this case. The FGN would be weakening its arguments in both cases and further throwing confusion in the practice of the law;

(xix) Furthermore, it is not a virtuous policy for FGN to agree with individuals to impact the purpose and aims of any future legislation or regulation that FGN may adopt with respect to the tax treatment applicable to oil production operations. This would be the direct effect of the condition contained in the proposed Resolution Agreement that the parties to the agreement meet and agree on those amendments to the Resolution Agreement or any other agreement between them, with the aim of compensating for the adverse effects of any future amendment of the law.

(xx) Additionally, the proposal contained in the Resolution Agreement intended to grant NAE and SNEPCO the right to relief from the Petroleum Profits Tax pursuant to the PSA to be signed by the two once OPL 245 was awarded to both parties, at the time the Resolution Agreement is signed, would be contrary to customary practice, according to which the NNPC relieves the Petroleum Profits Tax on behalf of FGN pursuant to the PSC. It has to be pointed out that the Petroleum Profits Tax and the relief from it confer various other benefits in addition to the tax revenue for the government. [...]

(xxi) Two of those benefits consist in the immense financial value deriving from the arbitrage contracted with regard to the Petroleum Profits Tax, which would now go to NAE and SNEPCO, and the enormous financial leverage exercised by the FGN due to the relief by NNPC of the Petroleum Profits Tax, which would cease to exist if NAE and SNEPCO were to use the relief from the Petroleum Profits Tax.

(xxii) Moreover, the proposed Resolution Agreement treats the Signature Bonus received by FGN pursuant to the Agreement and the amount of $ 335,600,000 presumably paid by SNUD to carry out a work program in accordance with the terms of the PSC 2003 as a cost recoverable by NAE and SNEPCO. In fact, this means that FGN would not have received any Signature Bonus for the Block and that FGN would have indirectly borne the cost declared by SNUD under the PSC 2003. [...]

(xxiii) Moreover, the OPL 245 issue is already under arbitration upon petition by SNUD. The arbitration proceeding is at an advanced stage and the award is expected shortly. After having agreed to participate in an arbitration proceeding and having invested a lot of time and resources to manage it, it would be counterproductive in this final phase to block any possible outcome for it.

(xxiv) The concept of a six-party settlement in this phase is something that would not be feasible in our opinion. This is because Malabu is not a party to the arbitration proceeding. Therefore, there would be no reason for the Company to reach a settlement at this time, since no decision unfavorable to its participation in the block has yet been issued.

(xxv) In fact, it is not in the best interest of FGN at this stage to encourage any sort of settlement regarding the issue outside of the expected arbitration decision/award, for the following reasons:

I. the position of FGN has not proven to be unfounded or weak; therefore, there it runs no real risk related to the facts that the arbitration award go against the interest of the Government and

II. SNUD is interested both in reassignment of the Block to NNPC as Licensee and Shell as Contractor pursuant to the PSC between NNPC and SNUD; or, alternatively to award of the Economic Value of the Block plus interest. In our opinion, neither of these two

[3 illegible signatures]

results can leave FGN without a feasible option, if any of them come to pass. Therefore, FGN is presently in an excellent position, from the economic and the legal point of view, to play for time, while it awaits the result of the arbitration proceeding and, subsequently, choose the best option to satisfy its interests once the result of the arbitration is known";

April 4, 2011[578] meeting at the offices of the Ministry of Justice, which was attended by the Attorney General, Bern Angwe (Ag office), Jedy Agba (AG office), Nike Olafimihan (SNEPCO), Peter Robinson (SNEPCO), German Burmeister (SNEPCO), Ellis Ebohon (NAE), Roberto Casula (NAE). The draft "OPL 245 Agreement" was discussed at the meeting. In particular, "during the previous weeks SNEPCO e NAE have discussed a new agreements structure with the aim to (I) avoid signature and payments directly with the seller (due to unresolved criticities not yet resolved and relating to property), (2) insert some sort of guarantee on the asset value/consideration for the cases of NNPC exercising back in rights, (3) insert a stability provision regarding fiscal terms applicable to the block. SNEPCO/NAE therefore have shared the following drafts with AG:

- Reallocation Agreement (between FGN, NAE and SNEPCO);
- SNUD resolution Agreement (between FGN and SNEPCO);
- Malabu resolution Agreement (between FFN and Malabu);

AG acknowledged the receipt of the proposal without objections on the new structure, however it did not accept the insertion of an indemnity from the Government in case of changes in fiscal conditions; besides, AG accepted the wording leaving the door open for discussion to be held in such cases. AG will transmit all the new documentation to NN PC for their examination and called for an additional meeting to be held on April 5";

April 4, 2011[579] The Attorney General presents the terms of the agreements to the President and asks for his approval;

April 5, 2011[580] meeting at the offices of the Ministry of Justice, which was attended by the Attorney General, Jedy Agba (AG office), Burmeister (SNEPCO), Ellis Ebohon (NAE), Stefano Pujatti (NAE). The meeting had been scheduled to discuss the new structure of the agreement, but the point was postponed to the following day because the summit between NNPC and Malabu had not been held. At any rate, "AG observed that NNPC does not have objections with respect to the newly proposed contractual structure")

April 5, 2011[581] the President's assistant informs the Attorney General and Petroleum Minister of the President's approval of the memorandum sent the day before by the Attorney General;

April 6, 2011 (11:02 P.M.)[582] Roberto Casula informs Claudio Descalzi about the new structure, *emphasizing* that "based on this new structure NAE will no longer have a direct relationship with Malabu either in terms of contractual agreements or in terms of payment";

April 7, 2011 (7:08 P.M)[583] Claudio Descalzi forwarded Roberto Casula's e-mail to Paolo Scaroni;

April 14, 2011 (8:12 P.M.)[584] Emeka Obi wrote to Roberto Casula: "let me know when you can talk, this evening Raiffeisen and Shearman are forwarding a letter to E via email)

April 14, 2011[585] a meeting was held at the Ministry of Justice that was attended by the Attorney

---

578 ENI Submissions of 18 September 2018, Exhibit 200.

579 ENI Submissions of 16 April 2019, supporting documents, no. 11: "*approve that the Reallocation Agreement in respect of Block 245 be executed and implemented by all the Parties so as to release the FGN from all pending claims and liabilities on account of the block'.*

580 ENI Submissions of September 18, 2018, Exhibit 200.

581 ENI Submissions of 16 April 2019, supporting documents, no. 12 "*I am directed to forward Reference A to you and to convey to you Mr President 's approval of pag. 6 and on page 3 ",*

582 ENI Submissions of 18 September 2018, Exhibit 202.

583 ENI Submissions of 18 September 2018, Exhibit 202.

584 Public Prosecutor's File for the trial proceeding, page 2390, text message 1558.

585 ENI Submissions of September 18, 2018, Exhibit 200.

[3 illegible signatures]

General, Bern Angwe (AG office), Beatrice (AG office), Nike Olafimihan (SNEPCO), Peter Robinson (SNEPCO), Vincenzo Armanna (NAE), Giorgio Vicini (NAE), Roberto Casula (NAE), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Yusuf Obaje (DPR Director), Chikwendu (DPR Legal Adviser). The new structure of the agreement and the comments of the DPR were discussed at that meeting. In particular: "the parties discussed the new structure of agreements, in particular with respect to the comments from DPR. Parties agreed to have 3 separate agreements and discussed the body of the text. Finally parties agreed on the final wording as per attached documents. The 3 agreements have been initialed by respective parties";

April 14, 2011 (11:51 P.M.) Giorgio Vicini forwards to Roberto Casula, Donatella Ranco, Guido Zappalà, Enrico Caligaris, Ellis Ebohon and Ciro Antonio Pagano the "final agreements for OPL 245 signed by all the counterparties[586]";

April 15, 2011[587] Raiffeisen wrote to NAE "After the discussion between you and our client Energy Venture Partners Limited ("EVP"), EVP continues to fear that several parties to the proposal for sale/transfer of the stake of Malabu in OPL 245 to NAE/ SNEPCO might try to deny EVP and its advisers (Raiffeisen Investment AG and Sherman & Sterling LLC) payment of their commissions as Agents for Malabu, proposers of the entry of ENI/ NAE in the transaction, negotiators and recipients of your initial financial offer for transfer of the OPL 245 assets to NAE/SNEPCO. Those commissions were supposed to be paid by Malabu and were supposed to be deducted from the proceeds of the sale/transfer of the OPL 245 assets, independently of the structure of the deal to be adopted in the end. In particular, EVP believes that there might have been several violations and several potential violations of certain provisions contained in the binding legal agreements reached bilaterally between EVP and certain of the parties to the proposed transaction. While negotiations are underway between the interested parties to remedy the situation, EVP and its consultants remain wholly committed and extremely favorable to the success of the transfer of the OPL 245 assets to NAE and SNEPCO, on condition that the transfer be subject to the full payment of all commissions owed to EVP and its consultants, independently of the structure of the deal adopted in the end for the transfer. To obtain transfer of the OPL 245 assets to NAE/SNEPCO without additional legal impediments, we ask you to guarantee that a condition for the transfer will be confirmation by EVP that the interested parties have reached satisfactory arrangements for payment of the commissions to EVP and its consultants. We are happy to have had the opportunity to work with the parties on this transaction and we are confident that all the pending issues related to the payment of EVP and its advisers will be settled before formalization of the proposal to transfer the assets of OPL 245. Nevertheless, in the contrary case, EVP will resort to all necessary means of protecting its own rights. We thank you for your understanding in this regard and we await the positive conclusion of the proposed deal with interest";

April 19, 2011[588] a new "final and irrevocable payment mandate agreement" (the previous one was dated 1 December 2010) was made between Bayo Ojo and Petrol Service. The agreement stated that "pursuant to clause 2 of the Escrow Agreement made on the 1st day of December 2010 between Malabu Oil and Gas and Petrol Service Co Ltd, the balance of the sum of 45.000.000 USD in the Escrow Account is to be disbursed by the escrow Agent on the instruction of the advisor. Now therefore, the parties hereto hereby agree as follows :

1. the escrow Agent shall transfer the sum of 20.000.000 USD to account details to be specified by the advisor;
2. [...]
3. The advisor hereby irrevocably confirms that the sum of 25.000.000 USD will be retained in the escrow account by the escrow agent as full and final additional compensation for the consultancy and commercial expenses borne by the escrow agent for finalization of block 245

586 ENI Submissions of January 29, 2020, "*general submission memorandum*", Exhibit 231;

587 File for the trial proceeding, page 1578; ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 232.

588 Public Prosecution Submissions at hearing on February 6,2019, page 13.

[3 illegible signatures]

sale agreement"

The document was signed by Gianfranco Falcioni and Bayo Ojo, who affirmed at the 6 February 2019 hearing that the wrong *figures* were given for the new amounts[589];

April 20, 2011 (6:19 P.M.)[590] Vincenzo Armanna wrote an email to Enrico Caligaris that summarises all the meetings held with the Attorney General to conclude the resolution agreements (February 3, February 11, February 24, February 28, April 4, April 5, April 14) and the representatives of Eni, Shell, Malabu, DPR and NNPC who participated in them are listed. Vincenzo Armanna also wrote: "I reconfirm that, in addition to the law firms (Ajuko & Oyebode and Paul Erokor & co.), no intermediaries, agents or consultants were involved in the negotiations";

April 26, 2011 (3:11 P.M.) Marco Bollini sent to Michele De Rosa the documentation requested by the ENI anti-bribery office (text of the Resolution Agreement reached on April 14; Heads of Agreements between NAE, SNEPCO and SNUD; draft of escrow agreement prepared by Eni in anticipation of being discussed with the counterparties)[591]

April 27, 2011 Board of Directors of di ENI approved the proposal for purchase of 50% of the stake in OPL 245 in light of the fact that the reasons obstructing conclusion of the deal, which had been presented by the Chief Executive Officer at the meetings held on December 15, 2010 and March 10, 2011 no longer exist because: with adoption of the new framework, ENI would have no contractual relationship with Malabu, the AG and DPR had confirmed the fiscal and contractual conditions and their stability; the back-in rights were granted at certain conditions; FGN would indemnify ENI and Shell in connection with any pre-existing rights on the block[592];

April 28, 2011 (2:12 P.M.) Donatella Ranco wrote to Ciro Antonio Pagano, Marco Bollini, Roberto Casula, Guido Zappalà and Vincenzo Armanna: "I have talked with Claudio and he says not to sign if there's no escrow agreement[593]".

April 28, 2011 (5:02 P.M.) Roberto Casula wrote to Ciro Antonio Pagano "so, you're going to sign?"; Ciro Antonio Pagano replied with "I don't know, I don't think so. How the discussion on escrow goes with the AG depends on me" [594];

April 29, 2011 (00:09 A.M.) Giorgio Vicini wrote to the other members of the negotiating team: "we spent nearly seven hours in the meeting with the AG, who was visibly irritated with us for the delay in signing the agreements. We think we have achieved an excellent result both in connection with the AG's acceptance of the Escrow Account FGN solution that we proposed to him and compliance with clause 3 of the RA that the AG accepted. We were able to move the meeting for signing the RA to tomorrow morning at 9 o'clock, which at this point, we no longer see as being allowed to procrastinate."[595];

April 29, 2011 the Resolution Agreements were signed on that day.

- Resolution Agreement FGN - Malabu[596];
- Resolution Agreement FGN - NAE/SNUD[597] ;
- Resolution Agreement FGN SNUD/SNEPCO[598];

In particular, the '**Resolution Agreement FGN - Malabu"** prescribes that:

1. "All the existing, incurred, affirmed or contested rights and privileges of MALABU, contracts

[589] Hearing minutes of February 6,2019, page 17.
[590] ENI Submissions of September 18, 2018, Exhibit 200.
[591] ENISubmissions of January 29, 2020, *"general submissionmemorandum",* Exhibit 244.
[592] ENI Submissions of January 29, 2020, *"general submissionmemorandum",* Exhibit 235.
[593] ENISubmissions of January 29, 2020, *"general submissionmemorandum",* Exhibit 241.
[594] ENISubmissions of January 29, 2020, *"general submissionmemorandum",* Exhibit 240.
[595] ENISubmissions of January 29, 2020, *"general submissionmemorandum",* Exhibit 242.
[596] File for the trial proceeding, page 3230.
[597] File for the trial proceeding, page 3238.
[598] File for the trial proceeding, page 3251.

[3 illegible signatures]

and agreements derived from or in reference to Block 245, if those rights and privileges existed, were incurred, afirmed or challenged amongst themselves, or against the whole world (including SNUD or any other party through SNUD) will be substituted by the following agreement on the Execution Date:

1.1 FGN agrees to pay MALABU, on the basis of Clauses 2 and 3, the amount of one billion ninety-two million forty thousand dollars ($ 1,092,040,000) in toto and in final settlement of any claim, interest or right related to or connected with Block 245;

1.2 As stipulated in Clause 4, MALABU affirms and waives any claim, interest or right related to or connected with Block 245 and permits reassignment of the interests in Block 245 by FGN as guaranteed in Clause 1.3;

1.3 In exercising its powers under the Petroleum Act, Cap P 10, Laws of the Federation of Nigeria, 2004, FGN will reassign the stakes in Block 245 both to SNEPCO and to NAE; and (ii) it will issue an OPL for Block 245 jointly in the name of both SNEPCO and NAE;

2. […]";

The '**Resolution Agreement FGN - NAE/SNUD"** prescribes that:

1.

1.1 "SNEPCO will reimburse SNUD for: (i) the expenses incurred by SNUD pursuant to Clause 2(i); and (ii) spese di three hundred thirty-five million six hundred thousand dollars ($ 335,600,000) in expenses incurred by SNUD in connection with execution of the work programme pursuant to the 2003 PSC. In consideration of this payment, SNUD consents to reallocation by FGN of the interests in Block 245 as agreed in Clause 1.2;

1.2 FGN decides to assign Block 245 to SNEPCO and NAE, and will decide the concession of the related OPL by the Minister of Petroleum Resources also to SNEPCO and NAE, as the joint licenseholders, in accordance with the Petroleum Act Cap P 10, Laws of the Federation of Nigeria, 2004, in the terms of this FGN Resolution Agreement;

1.3 After the implementation of this FGN Resolution Agreement, (i) SNUD will have to pay the Signature Bonus to FGN, in accordance with what is stated in Clause 2, on behalf of SNEPCO and NAE, and FGN declares that it will issue the OPL for Block 245 to SNEPCO and NAE no more than seven (7) days after that payment, and (ii) NAE will have to designate an escrow agent, on behalf of NAE and SNEPCO and the FGN, for payment to the FGN of an amount equal to one billion ninety-two million forty thousand dollars ($ 1,092,040,000), so that the FGN will settle all present claims and issues related to Block 245 in accordance with Clause 3;

1.4 [...]

1.5 [...]

2. Upon implementation of this FGN Resolution Agreement by the two parties:

I. FGN and SNUD, as parties to an escrow agreement with others dated 20 December 2003 ("the escrow agreement"), will send a notice (in the form appended to this FGN Resolution Agreement as Form 1) to the escrow agent JP Morgan Chase Bank, as required pursuant to Clause 10.1 of the escrow agreement, closing the escrow agreement with the instruction to pay the amount of two hundred seven million nine hundred sixty thousand dollars ($ 207,960,000) for the Signature Bonus, on the account of the FGN. The net amount of the Escrow Fund will be deposited, free of any taxes, on the account of Shell. The Parties admit and agree on the fact that the payment of the Signature Bonus, executed in accordance with this Clause 2(1),

[3 illegible signatures]

represents full payment of the Signature Bonus for the acquisition by SNEPCO and NAE of all rights to Block 245, and that no other payment is or will be requested by SNUD, SNEPCO and NAE from FGN with regard to the provisions of clause 3);

II. [...]

3. Within five (5) business days after the assignment and delivery of the OPL for Block 245, duly assigned to SNEPCO and NAE, jointly and pursuant to Clause 1.2, to SNEPCO and NAE by the FGN, NAE will have to transfer onto the account opened in accordance with Escrow Agreement no. 2 the amounts of one billion ninety-two million forty-thousand dollars ($ 1,092,040,000) on behalf of both SNEPCO and NAE itself, in favor of FGN, pursuant to Clause 1.3 [...];

4. The rights and obligations of NAE and SNEPCO towards each other, related to the operations on Block 245, will be governed by a Production Sharing Agreement (PSA), which will be implemented between the companies themselves and/or their designees.

5. The PSA will be negotiated and will be considered as a "Production Sharing Contract" (PSC), as defined in Section 17 of the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap. D3, Laws of the Federation of Nigeria 2004.

6. FGN gives confirmation to NAE and SNEPCO that the tax treatment envisaged in the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria, 2004, will be applicable to the PSA between NAE and SNEPCO with reference to Block 245.

If, after the Execution Date, laws or regulations are promulgated or changed in Nigeria, any regulation, procedure, guideline, instruction, directive or policy applicable to this Resolution Agreement and FGN and/or the OPL for Block 245 and/or the successive Oil Mining Lease (OML) deriving from it, including the tax terms mentioned hereinabove, introduced by any Government department or parastatal departments of the Government or agencies are promulgated or changed in such a way as to materially and negatively impact the rights and obligations or economic benefits of NAE and SNEPCO, the relevant Parties specifically approve of amendments to this FGN Resolution Agreement and/or any agreement in support of it by the relevant Parties, such as to promote and implement remedies for the negative effects of the aforementioned changes, with retroactive effect from the date of the aforementioned adverse changes;

7. The Tax Oil pursuant to the PSA will be assigned to NAE and SNEPCO in their capacity as Holder pursuant to the Deep Offshore and Inland Basin Production Sharing Contracts Act, in proportion to their interests in Block 245. Both NAE and SNEPCO will be entitled to remove their share of the assigned Tax Oil and remit the processes derived from this decision to the appropriate agencies of the FGN for deduction of the proportionate share of the PPT obligations ascribable to the Contract Area;

8. [...]

9. The FGN accepts that all the amounts reimbursed to SNUD by SNEPCO, as envisaged in Clause 1.1 (ii), as costs related to mining activities, as they are for the purpose of acquiring petroleum deposits or rights in or on such deposits and information about the dimensions of the deposits themselves and paid entirely, esclusively, necessarily and reasonably for the purposes of the petroleum operations in Block 245. They will consequently be treated pursuant to the

[3 illegible signatures]

laws listed in Annex 1 of the "Federai Inland Revenue (Establishment) Act 2007", and as such, both NAE and SNEPCO may treat the amounts referred to in Clause 1.1 (ii) in accordance with their equity interests in Block 245, having calculated the PPT and pursuant to the PSC Agreement.

10. FGN grants a full and unconditional exemption from all obligations and all responsibilities related to the capitai gains tax, taxes on income, withholding taxes and Value Added Tax, with regard to the transactions and payments mentioned in Clause 1 deriving from this FGN Resolution Agreement or related to it. Notwithstanding the foregoing and without prejudice to the position of the FGN and NNPC, NAE and SNEPCO, they are not exempted from having to submit a request for any indemnities applicable under the law on the amount of the Signature Bonus to the FIRS (Federal Inland Revenue Service) in the normal course of the procedure.

11. The Parties execute this Contract notwithstanding the fact that NAE and SNEPCO and/or their own authorized transferees will be the only and exclusive owners of Block 245 for the duration of the Oil Prospecting License and of any OML derived from it, including any renewals allowed by law. Notwithstanding the foregoing, if the FGN and/or its competent agencies and institutions decide at any time by law to participate in the interests in the Oil Prospecting License or in any OML for Block 245 and issued pursuant to this FGN Resolution Agreement, or to acquire them, the FGN guarantees NAE and SNEPCO that:

I. The participation of the FGN and/or its relevant agencies and institutions will be exercised by acquiring no more than fifty per cent (50%) of the interest in the OPL or related OML. That acquisition will be subject to payment by the FGN to NAE and SNEPCO of the cost for the latter to purchase Block 245, which will consist in an amount equal to the proportionate share connected with the stake acquired by FGN and/or its relevant agencies and institutions of the amount paid by NAE and SNEPCO pursuant to Clauses 2 and 3 of this FGN Resolution Agreement, net of taxes, rates or any other duty and with the addition of accrued interest, as agreed by the relevant parties;

II. The FGN and/or its relevant agencies and institutions will implement a PSC with NAE and SNEPCO as Contractors, for the exclusive management of the Oil and Gas Operations pertaining to the interest in Block 245 acquired from the FGN ("FGN PSC"): the terms of the FGN PSC shall not be less favorable than the terms previously approved by NNPC and SNUD in the agreement referred to in Recital E;

III. The proportionate share related to the interests acquired from the FGN and/or from its relevant agencies and institutions, of all the costs incurred by NAE and SNEPCO for Block 245 from the date of issuance of the Oil Prospecting License, pursuant to Clause 1.3, until the date of acquisition of the interest by the FGN and/or its relevant agencies and institutions, pursuant to this Clause 11, may be recoverable by NAE and SNEPCO under the FGN PSC;

17. FGN will identify, preserve and hold SNUD, SNEPCO and NAE harmless and defend them against any lawsuit, proceeding, complaint, claim, loss an liability of any kind and sort, including but not limited to all the court costs, legal expenses, settlement payments, damage and all related costs and related expenses based on, deriving from, related to or connected with: (i) this FGN Resolution Agreement, (ii) the Resolution Agreements and/or (iii) issuance of the Oil Prospecting License jointly in the name of SNEPCO and NAE and related to Block 245, and the costs and expenses deriving from any previous sustained right on Block 245";

[3 illegible signatures]

The **"Resolution Agreement SNUD/SNEPCO"** prescribes that:

1. "All the existing, incurred, affirmed or contested rights and privileges of SNUD, contracts and agreements derived from or in reference to Block 245, if those rights and privileges existed, were incurred, afirmed or challenged amongst themselves, or against the whole world (including any claimant through the FGN) will be substituted by the following agreement on the Execution Date:
    1.1 FGN has implemented the MALABU agreement, according to which MALABU (i) waived all of its claims to OPL 245: and (ii) agreed to release SNUD from all remaining obligations and liablities deriving from judgements/awards in accordance with the various lawsuits brought and/or judgements against SNUD for MALABU, that are still existing or that existed in time, deriving from the disputes and claims referred to in the Resolution Agreement, including the reassignment made by the House of Representatives in favor of MALABU, which is the object of Case No. CA/A/25M;
    1.2 In accordance with Clause LI and in exercising its powers under the Petroleum Act, Cap P 10, Laws of the Federation of Nigeria, 2004, FGN will reassign the stakes in Block 245 both to SNEPCO and to NAE; and it will issue an OPL for Block 245 jointly in the name of both SNEPCO and NAE. The terms for reallocation of Block 245 to SNEPCO and NAE will be the object of the Reallocation Agreement and will include the following points:
        I. So that the Oil Prospecting Licenses to be issued in the name of SNEPCO and NAE be valid for a period of ten (10) years beginning from the date of its issuance in their names;
        II. Any OML deriving from it will have duration of twenty (20) years with additional renewals, as allowed by law".

4.5 Period May 2011 - August 2011

4.5.1 May 2011

May 1, 2011[599] Emeka Obi noted: "Fax from EVP to Malabu attaching draft letter from Malabu to EVP regarding confirmation of fees payable to EVP by Malabu";

May 2, 2011[600] Emeka Obi noted: "Agaev informed Obi that an agreement and/or agreements had been entered into with and between Malabu and the FGN and/or NAE and/or Eni and/or Shell to transfer the OPL Assets from Malabu to NAE and/or ENI and/or Shell for cash consideration of US$1.3 billion";

May 3 2011[601] the Minister of Justice informed NAE and SNEPCO that "We are writing in reference to the Resolution Agreement for Block 245 ("FGN Resolution Agreement") dated April 29, 2011, between the Federal Government of Nigeria, Shell Nigeria Ultra Deep Limited, Nigerian National Petroleum Corporation, Nigerian Agip Exploration Limited and Shell Nigeria Exploration and Production Company Limited. Pursuant to clause 3 of the FGN Resolution Agreement, the Federal Government of Nigeria confirms that it has completely and definitively settled all claims and disputes over Block 245 Deep Offshore Nigeria and has obtained from all the interested parties exemption from all claims on said Block 245.";

May 3, 2011 (10:49 P.M.) Ciro Antonio Pagano forwarded to Martin Schwedler and Stefan Wanjek the reply of NAE, signed by Roberto Casula, to the Raiffeisen letter of April 15: "first of all, we note that NAE never executed any contract or had any agreement with Raiffeisen Investment in relation to the OPL 245 activity in Nigeria. We also note that in your letter, you claim that your client is Energy

599 Public Prosecution Submissions of 11 December 2019, briefcase seized from OBI in Switzerland, chronology in file "Active EU 1237667_1_EVPChroology (1st round cut)24_8(2)evp comments.pdf."

600 Public Prosecution Submissions of 11 December 2019, briefcase seized from OBI in Switzerland, chronology in file "Active EU 1237667_lEVPChroology (1st round cut)24_8(2)evp comments.pdf."

601 Public Prosecution Submissions of 23 November 2018, PM1, page 426.

Venture Partners Limited (EVP), which was operating in turn as an agent for Malabu. With reference to what you have claimed in relation to a commission that Malabu should pay to you and/or to EVP, we emphasise our complete lack of any involvement in that matter. We firmly reject your insinuation, whereby it would be we who must take all actions or initiatives related to the payment in your favor and/or in favor of your cilent for the commission mentioned in your letter referred to hereinabove. You may be certain that NAE will not hesitate to take any legal action to protect its own position"[602];

May 4, 2011[603] FGN, NAE, SNEPCO and JP Morgan Chase signed escrow agreement no. 2;

May 5, 2011 (11:27 A.M.)[604] Peter Robinson exchanged comments with Malcom Brinded, Ian Craig and other SHELL on the good outcome of the deal. Among other things, he wrote: "Malcolm, Ian, after the message last week, we have now fully executed the executed agreements. Shell did not sign the signature bonus release until we were sure that escrow number 2 (the escrow in which ENI paid the compensation that will ultimately go to Malabu) was fully operational. Now it is possible to confirm that all of this was done yesterday. Since the signature bonus was released today - all the parties are now in the simple phase of fulfilling requirements imposed by the agreements. I doubted that I would ever say this, but we have resolved the 245 situation. The next important goal is delivery of the license by FGN within seven days after receiving the signature bonus";

May 5, 2011 (3:51 P.M.)[605] Emeka Obi writes to Ednan Agaev: "Ednan, you've known me a long time. You know I have always been straight and honest with you. You and Papa should have listened to me and we could have worked together to ensure that everybody got what they wanted. Now you'll understand what these guys have in mind for everyone. My friend and I will be fine, but I suggest you think about the people you have put your trust in. Now they're going to fuck you over. And then even you will have to admit that until now I was almost always right";

May 8, 2011 (2:28 pm)[606] Emeka Obi writes to Ednan Agaev: "You and I have known each other long enough and well enough for you to know that when I say something it's usually right. Watch what happens now";

May 8, 2011 (2:39 pm)[607] Ednan Agaev wrote to Emeka Obi: "a long time ago, I advised you to settle with the AG. It's all in his hands. Chief has not decided anything for a very long time";

May 8, 2011 (3:02 pm)[608] Emeka Obi writes to Ednan Agaev: "I'm not worried, the situation is perfect. You know me - I have anticipated the worst scenarios from day 1. Like I said, just watch what happens next. And EVP will still get its money. I just did not believe you would have allowed yourself to fall into the trap of those people";

May 8, 2011 (15:09)[609] Ednan Agaev wrote to Emeka Obi: "I didn't have any other choice than to remain tied to the Chief. I don't like this situation, and that's why I tried to get an agreement with another consortium, but the Dutch insisted so that the agreement would be made with the spaghetti. Now I will only receive if the Chief receives, and I am not sure how much and if anything will be received. Everything is in the hands of the FGN, and more specifically the Attorney General and the Finance Minister, and naturally the Big Boss";

May 11, 2011[610] the Petroleum Minister issued the license to NAE and SNEPCO on the basis of the agreements reached in the Resolution Agreement;

May 11, 2011 letter from the Petroleum Minister to SNEPCO, reminding it that the Resolution Agreement required payment of the signature bonus within five days after its allocation[611];

---

602 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 251.
603 Public Prosecution Submissions of 23 November 2018, PM1, page 148.
604 Public Prosecutor Submission of March 22, 2019, page 768 (RDS 1011).
605 File for the trial proceeding, page 3290, text message 1570.
606 File for the trial proceeding, page 3290, text message 1571.
607 File for the trial proceeding, page 3290, text message 1572.
608 File for the trial proceeding, page 3290, text message 1573.
609 File for the trial proceeding, page 3290, text message 1574.
610 Public Prosecution Submissions of 23 November 2018, PM1, page 170.
615 ENI Submissions of January 29,2020, *"general submission memorandum"*, Exhibit 253.

May 11, 2011 abandonment of the appeal by SNUD and SNEPCO against the House of Representatives and Malabu[612];
May 12, 2011 letter from the Attorney General to the Petroleum Minister, confirming payment of the signature bonus[613];
May 12, 2011[614] EVP wrote the following letter to NAE: "Thank you for your letter, dated April 27, 2011, received by us on May 3, 2011, in response to our letter on the above subject matter dated April 15, 2011. We have reviewed the contents of your letter and herby respond to this specific points you have raised as follows:
1. Neither Raiffeisen Investment AG (RIAG) nor EVP has, at any time, indicated or taken the position that NAE entered into any arrangement or had any arrangement with R1AG other than the designation of RIAG, as proposed by EVP and as accepted by NAE upon execution of the Clear Vision Process Letter on April 7, 2010, as one of the primary channels of communications for submitting and discussing offers for OPL 245 and clarifying issues between EVP and NAE;
2. Neither RIAG nor EVP has, at any time, obliged NAE to take any "action or initiative" on 'four side " in respect of the payment of Malabu's fees due to either EVP or RIAG. We felt, as an interested party to the successful transfer of the OPL 245 license, it would have been in your interest for us to "encourage you to ensure", by confirming for your own information, that "satisfactory arrangements have been made by the relevant parties" for the payment of EVP's fees to avoid any legal encumbrances that may have a negative effect on the smooth transfer of the license; and
3. For the avoidance of any doubt, we hereby state categorically that neither EVP nor RIAG have stated that either: (i) ENI Spa/ NAE Ltd or any of their affiliates are, or were at any point in time, obliged to pay Malabu's fees, either to EVP or to any of EVP's advisors in connection with EVP's service to Malabu in connection with the transfer of the OPL 245 license from Malabu to NAE/ SNEPCO; or stated that (ii) ENI Spa/ NAE or anv of their affiliates, agents or employees' have, or had at any time, a legal obligation to EVP and its advisors, to compel any of the other parties to the transfer of the OP I 245 license to pay Malabu's fees, either to EVP or to any of EVP's advisors in connection with EVP's service to Malabu.
Whilst we have discussed the matter with you, we are yet to receive any documentary confirmation that the various settlement agreements initiating the transfer of Malabu's interest in OPL245, from Malabu to NAE and SNEPCO, may have been executed by the various parties including NAE";
May 17, 2011 (12:45 A.M.)[615] Nike Olafimihan wrote to Bayo Osolake at JP Morgan: "Bayo, with this letter, I would like to introduce Giorgio Vicini, GM (commercial) of Nigerian Agip Exploration Limited, so that you can give him details on the escrow account opened by you for FGN. This is being done in accordance with the instructions given by AG today with regard to certain payments that have to be made on the aforementioned escrow account. Mr. Vicini's telephone number is 08039610110";
May 19, 2011[616] Raiffeisen Investment wrote to the Attorney General (and copied dto the Minister of Petroleum Resources, the Minister of Finance, Claudio Descalzi, Roberto Casula, Emeka Obi, and to two SHELL executives) with a letter that, while not specifying for whom it had worked, asked that EVP be paid for the work done ("[...] we remain surprised that, though indications are that various settlement agreements initiating the transfer of Malabu's interest in OPL 245, from Malabu to NAE and SNEPCO, may have been executed by various parties including the Federal Government of Nigeria, these agreements may have been executed without recourse to EVP and ourselves with regard to the payment of EVP's fees. Despite EVP being a major facilitator, contributor and critical component to the successful development, execution and conclusion of this all important transaction, its justified

616 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 254.
613 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 255;
614 Public Prosecution Submissions of 23 November 2018, PM1, page 428.
615 Public Prosecution Submissions of July 4, 2019, page 170.
616 Public Prosecution Submissions of March 22, 2019, page 778 (RDS 1021).

claims for payment of its fees have not yet been addressed and we are yet to receive any acceptable documentary evidence that its claims or fees will be paid in due course. As the main contracting party to one of the parties and as the introducer of some of the beneficiaries into the process culminating in the transfer of the license, EVP may have no alternative but, in order to provide further justification for its fees, by initiating a comprehensive legal review of the circumstances and documents leading to the alleged transfer and valuation of the OPL 245 license […]");

May 20, 2011[617] Giuseppe Cerrito ordered the payment of what was owed by NAE, $ 1,092,040,000, from an internal account of Banque ENI, with head office in Brussels, to the Escrow Account held at JP Morgan, with a value date of May 24, 2011. In the meantime, the portion owed by Shell, about $ 110,000,000, had been deposited on the account. Once the deposit was made, it was necessary to wait for the "Escrow Release Notice" of the settlement of all pending disputes by FGN before ordering the transfer of capital onto an FGN account at JP Morgan, which was done by Stefano Pujatti, given that his signature was on record as the signature specimen for Escrow Account no. 2;

May 23, 2011 Stefano Pujatti forwarded the escrow completion notice to JP Morgan, asking it to "release the amount held in Escrow and irrevocably transfer the amount in Escrow to the Escrow Account of FGN"[618];

May 24, 2011[619] the amount of $ 1,092,040,000 originating from Banque ENI S.A. in Brussels was credited with the reason "payment in the name and on behalf of NAE and SNEPCO pursuant to Art. 3 of the Resolution Agreement dated April 29, 2011 for Block 245 in Nigeria" on account no. 0041429879 held at JP Morgan Chase Bank, registered in the name of Nigerian Agip Exploration Ltd;

May 24, 2011[620] the same amount was transferred onto account no. 0041451493 registered in the name of the Federai Republic of Nigeria held at JP Morgan Chase Bank;

May 25, 2011[621] the Minister of Finance told JP Morgan Chase that the entire amount of 1,092,040,000 be transferred to account no. A209798AA registered in the name of Petrol Service Co. Ltd at BSI in Lugano;

May 31, 2011 JP Morgan Chase of London notified the Nigerian Ministry of Justice and he Ministry of Finance, and NAE and SNEPCO, of the transfer from account no. 0041429879 registered in the name of NAE to account no. 0041451493 registerd in the name of FGN;

May 31, 2011[622] FGN transferred the entire amount to account no. A209798 at the Banca Svizzera Italiana (BSI) in Lugano registered in the name of Petrol Service Co. Ltd. With regard to that transfer, Claudio Descalzi declared: "I was absolutely unaware of the final destination of the money. Armanna did not tell me about this instruction to transfer 1.092 billion to Switzerland. I don't know Falcioni or at least the name means nothing to me. The company Alcon actually does work for Eni but I didn't know that it was traceable to Falcioni" [623];

4.5.2 June 2011

June 1, 2011 Board of Directors meeting of ENI which acknowledged completion of the OPL 245 deal[624];

June3, 2011[625] BSI returned the money to JP Morgan Chase in London. The returned funds were accompanied by an email in which we readlegge: "please note the funds have been returned by beneficiary bank due to compliance reasons"[626];

---

617 Hearing minutes of December 12, 2018;
618 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 259.
619 Public Prosecution Submissions, *"Nigeria flow chart",* chart 1.
620 Public Prosecution Submissions, *"Nigeria flow chart",* chart 2.
621 Public Prosecution Submissions of February 6,2019, page 47.
622 Public Prosecution Submissions, *"Nigeria flow chart",* chart 3.
623 Public Prosecution Submissions of 3 July 2019, minutes of questioning of Claudio Descalzi on 26 July 2016, page 13.
624 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 263.
625 Public Prosecution Submissions, *"Nigeria flow chart",* chart 4.
626 Public Prosecution Submissions, *"Nigeria flow chart",* chart 13.

June 6, 2011[627] Germain Burmeister wrote to Ian Craig, Peter Robinson and others: "we have been informally advised by JP Morgan that the payment by FGN to Malabu was rejected by the Swiss recipient bank due to compliance issues. The funds have been returned to the account of FGN. We are not a party to this and thus we are unable to get more information from JP Morgan due to privacy issues. FGN has been informed about the situation that they will have to resolve as soon as new ministers are appointed";
June 7, 2011 (12:27 P.M.)[628] Gianfranco Falcioni forwarded to Vincenzo Armanna an email of Stefano Piotti ("I am sending you the attached documents for the deal. After having checked everything, it seems that everything is perfectly legal, aside from a few modifications if we change the account for our escrow accounts on the basis of internal agreements. Primo is available to go to Geneva on Tuesday") for his observations;

June 8, 2011 (2:55 P.M.)[629] Oduwole Olatunde wrote to German Burmeister, Guus Klusener, Nike Olafimiah and Keibi Atemie: ''No new news about the returned funds of Escrow 3. They contacted the old AG&MoF, while still awaiting new instructions from FGN';
June 8, 2011[630] the director of BSI wrote to Gianfranco Falcioni "based on the available documentation and information, we have determined that the beneficial owner of a portion of the expected funds is Mr. Dan Etete, who has been involved in criminal activities and convicted by the EGC of money laundering. BSI cannot have dealings and relationships with persons convicted of such offences.
June 8, 2011 JP Morgan notified the English Serious Organised Crime Agency (SOCA) of the fact that the funds transfer to Petrol Service was rejected and gave notice that requests for special authorisations would be made to that agency before executing new transfer instructions, so that SOCA could have sufficient time to examine the situation and carefully assess the subsequent authorisation request. In particular, JP Morgan did the following in its Suspicious Activity Report (SAR): (i) it explained the context for the payment of $ 1,092,040,000, including "the long commercial dispute over an oil concession (OPL 245")", (ii) highlighted the fact that OPL 245 had originally been assigned to Malabu, which according to sources in the public domain, had been wholly or largely owned by Etete, who had previously been convicted for money laundering in France, (iii) informed SOCA that BSI had rejected the funds; (iv) highlighted a "lack of transparency of the beneficial owners" of Petrol Service (the owner of the account held at BSI), and stated that it had not been able to obtain sufficient information about the beneficial owner[631];
June 9, 2011 (3:09 P.M.)[632] Gianfranco Falcioni forwarded the letter received from BSI to Vincenzo Armanna, saying: I'm sending you the attached letter written by BSI, which is very clear without hiding behind anything, going immediately to the point, and writing it. This means that there are documents that prove it. If we have different evidence, it has to be presented. The alternatives that we are looking at include doing the transaction with CS, which has informed us that last year they had already rejected the same transaction with the same characters. Another bank that we're talking with and which is open to us is HSBC, which has promised to give us an answer by today. If none of this works out, the agreements between us and the Nigerians have to be redone, where we authorize the remittance of the entire amount to that bank in Lebanon. At the same time, our fees will be transferred to a new account in Lebanon, where we'll then do what has to be done... as you see, the problems that no one told us about were numerous [...]".
We read the following in the BSI letter: "Dear Mr. Falcioni, following up on your letter of June 7,

627 Public Prosecution Submissions of June 15, 2019, page 103.
628 Public Prosecution Submissions of February 6,2019, page 323.
629 Public Prosecution Submissions of July 4, 2019, page 180.
630 Public Prosecution Submissions of February 6,2019, page 326.
631 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 264.
632 Public Prosecution Submissions of February 6,2019, page 325.

2011, we would like to reiterate the reason why, after careful and thoughtful assessment, the bank has decided to refuse the deposit to the account of Petrol Service Co. Ltd. Formal and substantive gaps were found in the transaction's contractual documentation. Based on the available documentation and information, we have determined that the beneficial owner of a portion of the expected funds is Mr. Dan Etete, who has been involved in criminal activities and convicted by a European court for money laundering. BSI cannot have dealings and relationships with persons convicted of such offences";

June 16, 2011 (3:51 P.M)[633] Christi Fashgbon (executive director di FBN Bank) wrote to Bajo Oyo and Gianfranco Falcioni: "Good afternoon, Sirs! I trust that you arrived safe and sound in Nigeria and that by now you have returned to your respective offices! With regard to our meeting in London concerning the creation of the account as mentioned hereinabove, I inform you that my executive group (some of whom were mentioned during our meeting) has requested the following documents/information concerning:

- --- The Owners / the shareholders of Malabu Oil & Gas Limited
- KYC / KYB on the chairman of Malabu Oil & Gas so that we can verify the Power of Attorney given to Chief D. L. Etete
- Verification by Malabu Oil & Gas that the Power of Attorney granted in December 2006 is still valid
- the copy of the settlement document of Malabu stipulated with the Federal Government of Nigeria (FGN), in which Malabu transferred all of the claims on Block 245 and accepts and agrees with FGN on reassignment of Block 245 to NAE / SNEPCO
- the copy of the agreement made between FGN and Nigerian Agip Exploration (NAE) for the payment of $ 1,092,040,000 to Malabu in full and final settlement of claims/receivables, interest or rights pertaining to Block 245.

In addition to these documents that we request, the following issues have also been raised:

1. The Escrow Agreement of May 4, 2011 made by and between FGN, NAE, SNEPCO and JP Morgan is signed by Christopher Fasouletos, an A VP at JP Morgan. A check run on Christopher Fasouletos has revealed that he is a very young officer working at the New York offices of JP Morgan and that he does not work at the London branch. Moreover, his signature on the deposit contract of May 20, 2011 is different from his signature on the escrow agreement. Our bank would require verification of this person through their London office.

2. The Escrow Agreement of May 4, 2011 also indicates that NAE / SNEPCO will open an escrow account and will pay with the escrow account funds of $ 1,092,040,000 to permit FGN to settle all of the claims on Block 245. The aforementioned funds must be transferred by JP Morgan to the escrow account of FGN held at its own bank, after submission of a notice of completion of escrow that releases the ownership of Block 245 to NAE / SNEPCO. We need to know if this notice of completion was issued and delivered to JP Morgan. If it was, we ask you to show us a copy of it.

3. The Escrow Agreement of May 4, 2011 gives absolutely no indication that the funds on the FGN escrow account with JP Morgan have to be transferred / paid to Petrol Service Co Limited. Nevertheless, the Deposit Agreement of May 20, 2011 allows the Depositary (FGN) to issue instructions signed by Authorised Officials - Minister of Finance (in the person of Olusegun Aganga), Minister of State for Finance (in the person of Hajia Yabawa Lawan Wabi) and Funds Director (in the person of Mr. Babayo Shehu). The bank would also need to see, check and authenticate the transfer instructions of FGN given to JP Morgan to fulfil the KYC/KYB requirements.

Moreover, we expect that the other two signatories of the Petrol Service account bring in their identification documents and address to our PH office so that they can make copies of them and consequently verify them. As soon as we get your answers to these questions, together with the documents yet to be received, we will be ablle to continue with the creation and opening of the account.

[633] Public Prosecution Submissions of July 4, 2019, page 417.

In the meantime, we would also ask you to reconsider the likelihood that JP Morgan make the payment directly on the Petrol Service account in Lugano, Switzerland, for subsequent transfer of the relevant amounts to your accounts that would be opened with FBNUK. I think that this approach would be a more feasible option for us. I await your news in this regard and extend my early greetings for you to have a good weekend!";

June 16, 2011 (7:03 P.M.)[634] Gianfranco Falcioni writes to Bayo Ojo: "Bayo thinks that this lady has changed most of the things that she told us during the meeting in London, try to verify/understand the reasons for this, partly because this question about JP Morgan is out of place. Please try to find out what is happening";

June 16, 2011 (7:30 P.M.)[635] Bayo Ojo replies to Gianfranco Falcioni: "I'm in a meeting now with the Chief. I'll call you back";

June 17, 2011 (1:59 P.M.) Gianfranco Falcioni forwards the email chain to Vincenzo Armanna with the comment: "they've asked me to sign this in order to do things fast. What do you think and what should I do". The attached document is the following:
"Malabu Oil and Petrol Service Ltd letter of 17 June 2011
35 Kingsway
Ikoyì, Lagos
Dear Sirs
Re: ESCROW AGREEMENT BETWEEN MALABU OIL & GAS LTD AND PETROL SERVICE CO LTD
You probably remember that, in accordance with the Escrow Agreement between Malabu Oil & Gas Ltd and our Company, we as Escrow Agent/Depositary Agent have to transfer the amount of $ 1,092,040,000 paid by Nigerian Agip Exploration (NAE) through the Federal Government of Nigeria (FGN) in full payment for Block OPL 245, which was your property, to the account opened by your company at Banque Misr Liban sal in Lebanon and having the following bank details:
Banque Misr Liban sal
Head office address: Riad El Solh
Beirut, Lebanon
SWIFT: BMISLBBE
CORRESPONDENT: Bank of New York
SWIFT: IRVTUS3N
BENEFICIARY: Malabu Oil & Gas Limited
ACCOUNT NUMBER: 00200200004380
IBAN: LB69000300000000200200004380
With this letter, we ask that the aforementioned amount of $ 1,092,040,000 be transferred onto the account of your company opened in Lebanon directly by JP Morgan instead of on our current account opened at BSI Bank in Lugano, Switzerland, as previously agreed. Best regards, Gianfranco Falcioni".
June 17, 2011 Simon Lloyd of JP Morgan informed his colleagues that he has received a call from the SOCA to get information on FGN/Etete[636];
June 18, 2011 (4:46 P.M.)[637] Gianfranco Falcioni wrote to Bayo Ojo: "Bayo, have you set up the new agreement?";

634 Public Prosecution Submissions of July 4, 2019, page 417.
635 Public Prosecution Submissions of July 4, 2019, page 416.
636 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 265.
637 Public Prosecution Submissions of July 4, 2019, page 429.

June 18, 2011 (6: 10 P.M.)[638] Bayo Ojo wrote to Gianfranco Falcioni: “l will do it tomorrow and will send it to you via email” ;
June 19, 2011 (6:57 P.M)[639] Gianfranco Falcioni wrote to Bayo Ojo: “good evening, no news from you. Is there some problem?”;
June 19, 2011 (7:01 P.M.)[640] Bayo Ojo replied to Gianfranco Falcioni: “No problem. I have been travelling (out of town) since Friday. I just got back. I will do the agerement late tonight and will send it to your email box”;
June 19, 2011 (8:06 P.M.)[641] Bayo Ojo wrote to Gianfranco Falcioni: “Dear Franco, Please find the draft agreement attached. We’ll talk about it in the morning”;
June 20, 2011 (7:31 P.M.)[642] Gianfranco Falcioni forwarded to Vincenzo Armanna the series of emails exchanged with Bayo Ojo, with the comment “This is how the new agreement should be, I will provide the number of the account and get one of our lawyers to have the bank in Lebanon confirm it. Franco.”
At the end of the attached emails was a new “irrevocable payment mandate agreemente between Malabu Oil and Gas and Petrol Service Co Ltd”.
Specifically:
“Irrevocable payment mandate agreement between Malabu Oil and Gas and Petrol Service Co LTD”.
This Agreement is made on this day, June 20, 2011, between
MALABU OIL AND GAS LTD, a company incorporated in accordance with the laws of the Federal Republic of Nigeria, with registered office at 35 Kingsway Road, Ikoyi, Lagos, Nigeria (hereinafter, “MALABU”), whose mention, when allowed by the context, will include its successors and assignees),
AND
PETROL SERVICE Co LTD, a company incorporated in accordance with the laws of Canada, with registered office at 67 Yonge St no. 701, Toronto, Ontario, Canada M5E 1J8 (hereinafter, “PETROL SERVICE”), whose mention, when allowed by the context, will include its successors and assignees),
MALABU and PETROL SERVICE may also be referred to here as a “Party" or, together, as “Parties"
WITNESSES:
Pursuant to an Agreement made between MALABU and PETROL SERVICE, on 1 December 2010, PETROL SERVICE was required to keep an account (hereinafter, “DEPOSITORY ACCOUNT”) at BSI Bank in Lugano, in Switzerland or at any other Bank designated as described in more detail in Annex 2 in order to receive the compensation/reimbursement commission of $ 1,092,040,000.00 (one billion ninety-two million and forty thousand United States dollars) agreed on the basis of the Resolution and Reassignment Agreements between the Federal Government of Nigeria (FGN), Shell Nigeria Ultra-Deep Limited (SNUD), Nigerian National Petroleum Corporation (NNPC), Nigeria Agip Exploration Limited (NAE) and Shell Nigeria Exploration and Production Company Nigeria Limited (SNEPCO), whose funds are kept at JP Morgan Chase Bank NA, London branch (hereinafter, JP Morgan) as depositary.
The Parties have now decided that the aforementioned amount of $ 1,092,040,000.00 (one billion ninety-two million and forty thousand United States dollars) will be transferred by J.P. Morgan to MALABU onto the account whose details are provided hereunder or at any other bank that MALABU might designate. THEREFORE, in light of the recitals and clauses contained herein, the contracting parties, who wish to be legitimately obligated, agree as follows:
Upon receipt of instructions from FGN, J.P. Morgan must:

638 Public Prosecution Submissions of July 4, 2019, page 429.
639 Public Prosecution Submissions of July 4, 2019, page 429.
640 Public Prosecution Submissions of July 4, 2019, page 429.
641 Public Prosecution Submissions of July 4, 2019, page 428.
642 Public Prosecution Submissions at hearing on February 6,2019, page 21.

[3 illegible signatures]

Unconditionally transfer the amount of $ 1,092,040,000.00 (one billion ninety-two million forty thousand United States dollars) to the account whose details are provided as follows:
Banque Misr Liban sal, Head office address: Riad El Solh, Beirut, Lebanon
SWIFT: BMISLBBE
CORRESPONDENT: Bank of New York
SWIFT: IRVTUS3N
BENEFICIARY: Malabu Oil & Gas Limited
ACCOUNT NUMBER: 00200200004380
IBAN: LB69000300000000200200004380
J.P. Morgan will provide MALABU with the details of the funds transfer envisaged in the preceding Clause 2 (a) within forty-eight hours after that transfer has been executed.

As prescribed by the regulations of the international banks applying to the transfer of large sums, MALABU will provide J.P. Morgan with all information on request that is necessary to comply with the mandatory due diligence procedure, on condition that J.P. Morgan may not keep the funds to be transferred in any circumstance. In order to reduce the time necessary to a minimum, the parties must commence their due diligence immediately after execution of this agreement. All the obtained information has to be kept strictly confidential by JP Morgan.

Consequently, MALABU promises to transfer immediately the sum of $ 50,000,000.00 (fifty million U.S. dollars) to PETROL SERVICE on its account with FBN Bank (UK) Ltd whose details are contained in Table 2 below as full and final compensation for its services rendered for the finalisation of all payments under this agreement.
Before signing this agreement, Malabu will provide PETROL SERVICE with the original copy of a received, irrevocable transfer instruction that is valid and accepted by Banque Misr Liban srl, in order to guarantee that the transfer of $ 50,000,000 will be immediately executedupon receipt of the funds from JP Morgan.
Additionally, the bank will confirm that the instructions of Malabu have been executed by an authorized lawyer.
In the event of any negligence, willfully improper conduct or breach of faith, MALABU undertakes to compensate PETROL SERVICE for any loss deriving from it.
Each party must bear its own bank transfer costs.
ANNEX 2 - SPECIFIC DETAILS OF THE PETROL SERVICE ACCOUNT
ACCOUNT REGISTRATION: PETROL SERVICE Co LTD
BANK: FBN Bank (UK) Ltd
ADDRESS: 28 Finsbury Circus, London EC2M 7DT
ACCOUNT NUMBER:
IN WITNESS WHEREOF the parties to this agreement have agreed and executed this agreement on the day and year
as indicated hereinabove
Signed in the name and on behalf of Malabu Oil & Gas Limited
Chief Dauzia Loya Etete
Signed in the name and on behalf of Petrol Service Co Limited
Gianfranco Falcioni”
The new agreement prescribed that JP Morgan would transfer the entire amount of $ 1,092,040,000 to the Malabu account opened at Banque Misr Libanon sal and that, once the sum was received, Malabu would transfer $ 50,000,000 to a new account of Petrol Service opened at FBN Bank (UK). It does not appear that the document was signed;

[3 illegible signatures]

June 22, 2011[643] German Burmeister wrote to other Shell executives: "[...] Eni confirmed that the money is still in FGN's escrow. The position of ENI is that officially, they know nothing and any relations between Malabu and FGN are none of their business. ENI, together with SHELL, posseses the license and expects to proceed with development for the production of FOD as early as possible [...] We need to get assurances that ENI will not speak on our behalf. NNPC, represented by the Ministry of Petroleum Resources, has signed the documents so that it is not involved in this.

4.5.3 July 2011

July 2011 EVP brought a civil lawsuit in the United Kingdom against Malabu and won an order from the Hon. Mr. Justice Williams freezing the amount of $ 1.1 billion deposited on the escrow account of FGN at JP Morgan Chase;

July 11, 2011[644] SAR report no. 246282 with which JP Morgan notified the SOCA that it had received instructions for the transfer of $ 877,000,000 from the depository account of the Federal Government of Nigeria to the account of Malabu Oil and Gas Ltd opened at Banque Misr Lebanon Sal and not processed by JP Morgan because they did not comply with the prerequisites of the payment instructions prescribed in the Depository Agreement;

July 21, 2011 SAR report no. 248046 with which JP Morgan notified the SOCA that it had received new payment instructions and, on the basis of them, requested authorisation to execute the transfers of $ 801,540,000 to the account of Malabu Oil and Gas Ltd opened at Banque Misr Lebanon Sal and $ 215,000,000 to the account of the Accountant General of the Senior Courts of the United Kingdom (an account designated by the English judicial authorities after seizure of the funds requested by EVP), respectively. The SAR confirmed that the net amount of about $ 75,000,000 would remain on the depository account of FGN[645];

July 28, 2011 SOCA authorisation (SAR no. 248046) for the transaction proposed in the authorising SAR of July 21, 2011[646];

4.5.4 August 2011

August 1, 2011 authorising SAR no. 249631 with which JP Morgan requested authorisation to execute the transfer of $ 801,540,000 to Malabu[647];

July 2, 2011 SOCA authorisation (SAR no. 249631) for the transaction proposed in the authorising SAR of 1 August 2011[648];

August 4, 2011[649] the Hon. Justice Steel released the funds in favor of the Nigerian Government, on condition that a portion of them ($ 215 million) be transferred to an account of the same Court and restricted in the lawsuit brought by EVP against Malabu;

August 4, 2011[650]**,** following the instructions of the Nigerian Ministry of Finance, JP Morgan Chase transferred the remaining amount of $ 801,540,000 from the escrow account registered in the name of FGN to the account registered in the name of Malabu Oil and Gas opened at Banque Misr Lebanon sal in Beirut;

August 16, 2011 letter of the Federal Ministry of Finance of Nigeria to the JP Morgan escrow account administrator, with which JP Morgan received the order to cancel a previous instruction of July 25, 2011 concerning the transfer of funds on the account of Malabu opened at Banque Misr Lebanon, and to transfer $ 401,540,000 to the Malabu account opened at the First Bank of Nigeria and $ 400,000,000 to the Malabu account opened at Keystone Bank Nigeria Limited[651];

---

643 Prosecution's Submissions of 23 November 2018, PM2, page 108.
644 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 266.
645 ENI submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 267.
646 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 268.
647 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 269.
648 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 270.
649 Public Prosecution Submissions, *"Nigeria flow chart",* chart 5.
650 Public Prosecution Submissions, *"Nigeria flow chart",* chart 6.
651 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 271.

August 18, 2011[652] Banque Misr Lebanon sal in Beirut returns the received money to JP Morgan Chase;

August 19, 2011 SOCA confirms the authorisation of August 2 to the transfers of $ 401,540,000 and $ 400,000,000 to the Malabu accounts opened at First Bank of Nigeria and Keystone Bank Nigeria, respectively[653];

August 24, 2011 JP Morgan Chase transferred:

- the amount of $ 401,540,000 to account no. 2018288005 at First Bank of Nigeria of Abuja registered in the name of Malabu[654];
- the amount of $ 400,000,000 to account no. 361004224728 at Keystone Bank in Abuja registered in the name of Malabu[655];

4.6 Period September 2011 - May 2014

December 3, 2011 (7:45 P.M.) the law firm Mcguirewoods sent the Malabu Defense in the lawsuit brought by EVP to Marco Bollini, Claudio Descalzi and Roberto Casula. At points 23.5.7 and 23.5.8 we read: "The Honourable Armanna then told Chief Etete that Obi was actually working for ENI. Mr. Armanna also affirmed that ENI wanted Obi to represent them in the discussions, but that they wanted Mr. Obi to be appointed by Malabu, so that Mr. Obi seemed to be acting on behalf of Malabu. The Honourable Armanna affirmed that that was due to the fact that ENI needed an intermediary between ENI and Malabu, to avoid being seen by Shell as a direct interlocutor with Malabu, something that ENI feared might cause problems with Shell";
The first meeting between Dan Etete, Vincenzo Armanna and Emeka Obi was cancelled at point 23.5.9, as we read: "Mr. Armanna has also revealed that there was also a plan accordng to which Mr. Obi would be paid $ 200 million plus the purchase price agreed by and between Malabu and NAE/ENI, and that $ 200 million would have been divided between Mr. Obi and other executives of ENI/NAE, including Mr. Descalzi, who was the Chief Operating Officer (Exploration and Production) of ENI/NAE, and apparently supposing that Chief Etete would not have opposed that transaction"[656];

December 4, 2011 (9:38 A.M.) Vincenzo Armanna wrote to Roberto Casula, commenting on the Malabu Defense: "It's crazy, I never said anything that is written there. Here is what was said at the meeting:

- We are interested,
- We could work with Shell but we will make no progress without their approval
- In any case we need evidence of Malabu's ownership of the block
- And confirmation of EVP's mandate to take part in the tender

I never said that he represented us, and I never talked about fees!
I think that it is a way to get a statement with this content, it's incredibly improper"[657];

December 28, 2011[658] Bayo Ojo received $ 10,026,280 from Rocky Top Resources;

February 21, 2012[659] the PSA between NAE and SNEPCO was signed;

---

652 Public Prosecution Submissions, *"Nigeria flow chart",* chart 7.
653 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 272.
654 Public Prosecution Submissions, *"Nigeria flow chart",* chart 11.
655 Public Prosecution Submissions, *"Nigeria flow chart",* chart 8.
656 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 276.
657 ENI Submissions of January 29, 2020, *"general submission memorandum"*, Exhibit 276.
658 Public Prosecution Submissions, *"Nigeria flow chart",* chart 113.
659 ENI Submissions of 4 September 2019, Exhibit 1, no. 4).

April 21, 2012 (12:40 P.M.)[660] Vincenzo Armanna wrote to Bayo Ojo: "Attorney General, I first want thank you for having handled my father's activities. As agreed during our last meeting, I would like, if possible, to ask kindly that the net amount be transferred to my account in Italy. I will be in Nigeria next month, and I would like to be able to thank you in person for your transparency and friendship towards me.
Best regards,
Vincenzo Armanna
Bank's name: Popolare di Bergamo
Registered office: Corso Italia 22, Milano
IBAN: IT85D0542801601000000091390
Account number: 91390
Registered owner: Armanna Vincenzo, free, attending
Reason: inheritance of Giuseppe Armanna I am grabbing eredita':
May 8, 2012, Vincenzo Armanna received the sum of $ 1,200,000 on his current account no. 91390 at the Banca Popolare di Bergamo, transferred to him by Oceanic Bank International Nigeria Limited on order by Christopher Bayo Ojo, the stated reason for the transfer being "Giuseppe Armanna Inheritance".
September 27, 2012 (11:10 A.M.)[661] Vincenzo Armanna wrote to Bayo Ojo: "Good morning, I am here, I would be truly gratefull if it were possible for us to meet. Kind regards".
September 27, 2012 (4:08 P.M.)[662] Bayo Ojo replies: "Welcome back. I sent you a message to I will not return before 9 October. I still happen around here. Shall I call you late this evening";
July 17, 2013 decision by Hon. Justice Gloster that recognized the work performed by Emeka Obi and Malabu was ordered to pay $ 110.5 million, equal to 8.5% of $ 1.3 billion[663];
August 30, 2013[664] JP Morgan Chase transferred the amount of $ 74,200,000.03 to account no. 361004224728 at Keystone Bank in Abuja registered in the name of Malabu;
January 10, 2014 Umar Bature and Gabriel Oziegbe were arrested in London.

[660] Public Prosecution Submissions of February 6,2019, PM3, page 39.
[661] Prosecution's Submissions of July 4, 2019, page 481.
[662] Prosecution's Submissions of July 4, 2019, page 481.
[663] ENI Submissions of January 29, 2020, "general submission memorandum", Exhibit 280.
[664] Public Prosecution Submissions, *"Nigeria flow chart",* chart 9.

CHAPTER 5
THE STANDARD OF PROOF

5.1 The reasoning based on evidence

In its concluding requests, the prosecution purposely pointed out that it could offer only circumstantial evidence, especially with regard to the public officials who were the recipients of the money, given the difficulties of seeking evidence in foreign countries[665]. The prosecution also added that, with reference to the evidence of the corrupt arrangement, since it involved "large-scale corruption" involving public officials at the highest levels, it is not possible to reason in terms of an agreement in "civil code terms" with regard to the amounts to be divided up, but it is necessary to know how to interpret political language[666].

Ultimately, because this involves corruption at the highest levels and since it is difficult to obtain evidence in foreign countries, the Court is asked to lower its standards in evaluating the circumstantial evidence in terms of its precision, unequivocalness and mutually corroborating seriousness, resisting logical objections and all reasonable doubts, while proposing a sort of special criminal law that lightens the burden of proof due to the difficulties in conducting investigations due to the peculiarity of the crime to be prosecuted. This claim is unacceptable, not only and not merely because it has no basis in statutory law or even only in case law, but because it opens the way to possible errors and thus erroneous decisions that are certainly wrong in terms of the principle of equality. While citing laws against corruption, the crime of international corruption does not allow us to waive the rules of evidence set by the procedural rules governing cases of domestic corruption and, in particular, the decision-making rule that can be inferred from the provision contained in Article 533, paragraph 1, Italian Code of Criminal Procedure.

Furthermore, the Court of Cassation has never allowed any waiver of the strict principle that, in criminal law, places the burden of proof on the prosecution. On the contrary, the principle is constitutionally reinforced by the exculpatory principle in the event of reasonable doubts, which are

---

665 (Public Prosecutor's discussion at the July 21,2020 hearing): *There is so much considering that we are talking about the money that Public Officials in another continent put into their pockets, that Public Officials pocket in another continent allegedly put into their pockets, with documentary evidence showing that 50 percent of the money movements were in cash. About half a billion was handled in cash. The Latins spoke of probatio diabolica, do not ask us for a probatio diabolica. Ask us for proof that is congruent with respect to what international conventions say, namely, that we must also use the indicia, we must use everything we know, we must not search trivially, as though it were a television series, the smoking gun, or even not recognize the single parts of the gun when you have them right in front of you. We ask you to pay particular attention to these aspects because much material has been collected, a great deal of material has been collected against the remoteness of the scenario, because even getting all these Nigerian bank documents has not been easy at all.*

666 *(Public Prosecutor's replies at hearing on February 3, 2021) When we talk about bribery at these levels, we should not be naive schoolchildren and picture an unreal situation.... that is, we should not forget that Nigeria is the most populous country in Africa, it is the country with the highest gross domestic product in Africa, therefore it is the giant of Africa. The President of Nigeria, these are countries with US-style constitutions, has executive powers, in short he is an incredibly strong entity in the... so imagine all these people sitting, as we see in Netflix TV series, around a table, and discussing, "So, this money will go to this Minister, this money will go to the other...", allow me to say - we are all advanced in years so I trust no one will take umbrage - that this way of viewing the matter is rather childish. That is, bribery at this level is not like that, and indeed we speak of grand corruption, which is quite different from when two people, as we have seen even recently in investigations in Milan, two people meet in a bar as recorded on camera. But that's rather different, enough on this. So, being a politician, Jonathan certainly did not say, "I want the money, I want you to give Etete the money as soon as possible because I have expectations". Being a politician, he said what politicians have always said: "Ah, I want the work done", "Ah, this is very important for the development of Southern Italy", "Ah, this is a fundamental infrastructure for our country". This is what politicians say, then sometimes this is what they actually mean, but in other cases unfortunately their words are just rhetorical embellishments and what they really mean is that they want everything done quickly because they want political contributions. I will now close this point because what I'm saying is in any case an inference, a textual inference. We can infer from this document that the conversation with the President reinforced the view that bribes had to be paid.*

obviously based on specific facts obtained during the trial [667] and not on merely alternative hypothetical reconstructions. Case law is constantly rooted in these severe rules even with regard to domestic corruption[668]. Therefore, we cannot agree that the statutory rules which have been explicitly enshrined in constitutional terms can be waived only because we are faced with the possibility of large-scale international corruption.

Therefore, even in the case of evaluating the indicia of this crime, the reasoning according to indicia must remain based on the consolidated principles that require the prosecution to offer a line of reasoning that, while of an indirect nature, is based on parameters of absolutely rational certainty.

Article 192, paragraph 3, Italian Code of Criminal Procedure does not define what a clue is. Nevertheless, in the scope of a systematic view of the law, we must hold that the legislative notion of clue is found in Article 2727 Italian Civil Code, which explains how presumptions are the consequences that (the law or) the judge draws from a known fact in order to work back to an unknown fact. The fact that this is a definition valid for any branch of law, including criminal law, is inferred from the following Article 2729 Italian Civil Code, where it is affirmed, in perfect harmony with what is affirmed in Article 192, paragraph 2, Italian Code of Criminal Procedure, that the judge must not admit other than serious, precise and consistent presumptions.

Therefore, it is important to emphasise first and foremost that the certainty of the starting point is the first requirement of reasoning based on indicia, given that the clue originates from a known fact. Seriousness, precision and consistency are instead the additional rules of reasoning based on indicia that link the known fact with the unknown fact that is to be proven. Therefore, it is also necessary that there be a plurality of indicia, given that the conclusion of the indicia-based reasoning must rely on several indicia so that their consistency can be verified.

The requirement that the certainty of the known fact be used as the basis of the reasoning implies, as a corollary, that recourse to a logical chain of indicia to reach the evidence-based conclusion is illegitimate. In fact, in this case, the "mediated clue", from which one should restart in setting up the subsequent indicia-based reasoning process is not a known fact and thus cannot be the basis for a proper reasoning process. A propos, considering the type of offence, considering that it always involves a reconstruction of human acts that, as such, cannot be repeated, it still has to be clarified that the known fact must be construed in the legal sense and not only in the natural sense, according to the principles of the rational certainty of maxims based on experience. Obviously, the prerequisites of seriousness and precision can be assessed only with specific reference to the theme of evidence in question in the individual proceeding.

In general, it can be affirmed with regard to seriousness that this prerequisite tends to connote the intensity of the relationship by which the occurrence of a certain act is judged in relation to normal situations. When applied to the concept of "clue" or "evidence", the adjective "serious" can only signify an intense connection between a known fact and and unknown fact or, regardless, the maximum degree of representative capacity in relation to the unknown fact that one is attempting to prove. The principle of seriousness involves the maxims of experience. A clue is serious in relation to assessment of the unknown fact that one is attempting to discover, whenever, according to logical rules, the known fact

---

[667] Division 2 - Judgement no. 3817 of 10/09/2019 *In the court of procedural review, in order to find the manifestly illogical nature of the reasons pursuant to Art. 606, paragraph l, sub-paragraph e), of the Italian Code of Criminal Procedure, it is necessary that the reconstruction of facts offered by the defendant who wishes to assert that there is a reasonable doubt as to his guilt, conflicting with the judge's line of reasoning, be irrefutable and representative not only of an hypothesis alternative to the one held in the appealed judgement, since the doubt over the proper reconstruction of the criminal act in its objective and subject elements has to refer to arguable elements, i.e. from the facts acquired during the trial, and not merely hypothetical or conjectural, even if they are plausible.*

[668] Division 6 - Judgement no. 10093 of 12/05/2018 *The procedural rule that requires a finding that the crime was committed "beyond all reasonable doubts" implies that, if an alternative reconstruction of the facts is proposed, the elements confirming the prosecution's allegations are identified and the plausibility of the defense thesis is ruled out on the basis of reasons. (A case where the Court annulled the guilty sentence, which on the one hand validated a wiretap where the interlocutors referred to the payment of a "bribe", and on the other hand, recognized that in the usual terminology of the aforementioned interlocutors, the word "bribe" was used to refer to small gifts customarily exchanged among members of their family, thereby not offering a certain solution to the alternative thesis that the conversation in question did not refer to the consideration in a corrupt arrangement).*

[3 illegible signatures]

is, in real experience, connected with the unknown fact, and of which it constitutes the necessary antecedent.
The prerequisite of precision is complementary to the prerequisite of seriousness, as it too concerns the capacity of the known fact to position itself perfectly as the logical antecedent of the unknown fact that one wishes to demonstrate. Precision indicates the reliability of a trajectory, i.e. of the relationship between two bodies, one that is the container and the other that is the content, and in the case of human action, the relationship between conduct and the result obtained from the conduct. In case law, it is often defined in negative terms as an indicator of non-ambiguity.[669] While these involve complementary prerequisites and, often, even partially overlapping, they still contain their own intrinsic diversity and thus autonomy. In, there can be serious but imprecise indicia, just as there can be precise indicia that can also not be serious. The motive is a precise clue that leads to identification of a person, but it is not in itself a serious clue with regard to identification of that person as the guilty party.
Remaining on the topic examined thus far, in bribery trials, if the payment of money to a public official is proven and thus known, it is a serious sign of the unknown corrupt arrangement, but it is not automatically also a precise clue, as the payment can be attributed to different alternative causes. Moreover, considering the different legal classifications in our legal system that guard against the unlawful relationships characterised by illegal remuneration for official acts, the imprecision of the clue has to be related to the gifts made in compensation for the mandatory acts, to unlawful gifts or those resulting from extortionate pressure.[670]
Above all, the prerequisite of consistency reveals the need to have a number of indicia, as has now been consistently recognised by case law.
So, consistency imposes the unique direction of the indicia, with the consequence that the existence of just one contrary clue, which is obviously serious and precise, renders it impossible to achieve proof based on proper indicia-based reasoning. If the contradictory clue does not satisfy the necessary prerequisites of seriousness and precision that must be ignored for the purposes of assessing consistency. Evidence-based reasoning entails a unified and comprehensive evaluation of the evidence in the proceeding, in the context of the cited plurality and consistency of all the elements. As previously mentioned, it cannot be based on the concatenation of indicia in terms of a mere sum and, on the other hand, the reasoning must not even suffer from excessive fragmentation of the evidence, with consequent dispersal of the attractive force deriving from the logical connections between facts and actions.[671]

---

[669] Among others, Division 5, Judgement no. 4663 of 12/10/2013: *The indicia must correspond to certain facts - and, therefore, not consisting of mere assumptions, conjectures or opinions on plausibility - and must be, pursuant to Art. 192, paragraph 2, Italian Code of Criminal Procedure, serious - i.e. they must be capable of expressing a high probability of deriving the unknown fact from the known fact - precise - i.e. not equivocal - and consistent, i.e. converging towards the same, identical result. All of these prerequisites must support each other, in the sense that if even just one of them is missing, the indicia cannot be used as adequate evidence on which to base criminal liability. Moreover, their evaluation process unfolds in two distinct moments: the first one is aimed at ascertaining the greater or lesser degree of seriousness and precision of each one of them, considered in isolation, while the second one consists of a comprehensive and unified examination aimed at dissolving that ambiguity. The court of procedural review must verify that exact application of the legal principles imposed by Art. 192, paragraph 2, Italian Code of Criminal Procedure, and the proper application of the rules of logic in interpretation of the evidentiary results. Finally, Division 5 - in Judgement no. 1987 of 12/11/2020: With regard to indicia used as evidence, pursuant to Art. 192, paragraph 2, Italian Code of Criminal Procedure, the indicia must be serious, i.e. strong, resistant to objections and capable of proving the "thema probandum", precise, i.e. specific, unequivocal and incapable of being interpreted in a different but just as plausible or more plausible manner, and consistent, i.e. converging towards and not conflicting with each other and with the other data and certain elements. (Case involving burglary in an apartment, in which the court found the trial court judge's line of reasoning to be defective, insofar as the latter had, without appreciating the analysis of a fingerprint, had accepted the identity of the fingerprint in terms of its form, orientation and position although it did not qualitatively correspond to the defendant's).*
[670] Division 6, Judgement no. 39008 of 05/06/2016: *In order to ascertain the crime of corruption, where the payment of money or other benefit to the public official has been proven, it is necessary to demonstrate that the performance of the act contrary to the duties of office was the cause of the provision of the benefit and of its acceptance by the public official. The mere circumstance of the payment is not sufficient to demonstrate the crime. (In its reasons, the Court clarified that the proof of unlawful payments assumes less conclusive validity as evidence when the benefit is paid to a third party).*
[671] Division 1, Judgement no. 1790 of 11/30/2017: *The clue is examined in two phases, with the first consisting in examination of the individual indicia to measure their certainty and intrinsic validity as indicia, and the second phase, consisting in the comprehensive*

So, the indicia-based reasoning does not escape the resistance test rule, as determined by the absolute certainty, in rationally logical terms, that leads to acquittal in the event of reasonable doubts that obviously pertain to the trial findings.
In conclusion, we must distinguish between an indicia-based reasoning resistant to reasonable doubts, which pertain to the scope of evidence of the crime, and conjectural logics that belong to other branches of law or other social sciences, which accept the assessment of "weak indicia" or only probable indicia.

5.2. The probabilistic results of weak indicia-based reasoning

The probabilistic method does not pertain to the assessment of criminal liability, which is characterised by the principle of the burden of proof borne exclusively by the prosecution. As commonly known, this involves a principle based on the presumption of innocence, which can be overcome only by the rational certainty of guilt beyond all reasonable doubt.
This chapter is not dedicated to the detailed analysis of the prosecution's hypothesis, which will be covered in the following chapters (illegal agreement, an act contrary to official duties, bribe). Instead, we will confront the method used to evaluate the evidence. Therefore, we shall simply proceed to comparison of the different indicia-based lines of reasoning deriving from the use of a probabilistic evaluation method that does not lead to the exclusion of mutually incompatible conclusions.
Then we will illustrate the indicia-based reasoning proposed by the prosecution, against which may be opposed other evidence-based reasonings, albeit connotated by a higher degree of probability inasmuch as they adhere more closely to the trial findings.

5.3. The indicia-based reasoning of the prosecution

The prosecution alleges that the settlement agreement made on April 29, 2011 by the oil companies Eni and Shell, and Dan Etete's company Malabu and the Government were the epilogue of a corrupt arrangement that came into life beginning in 1998, between Etete and various representatives of successive Governments. That agreement, which is legally illegitimate, allegedly represents the "cover" for illegal arrangements aimed at dividing up the amount of $ 1,092,040,000 among the known and also unknown shareholders of Malabu and the public officials involved, excluding intermediaries, but not the top executives of Eni, to whom a portion of the bribe was allegedly kicked back.
We present the summary that the representatives of the prosecution have proposed in their final pleadings, where, moreover, the original kick-back of the bribe to the top executives of the Italian company is reduced to the receipt of a wire transfer received by just one defendant, Armanna, who was fired by Eni.
Public Prosecutor: The events at issue in this trial concern the corrupt agreements established between oil companies Eni and Shell and Dauzia Loya Etete, alias Dan Etete...to enable the two companies to obtain a license for the prospecting and subsequent exploitation of block 245, one of the richest oil fields in Nigeria and the whole of Africa, in exchange for a substantial payment of money to Dan Etete. Etete acted on his own behalf, as the owner of the Malabu company (formal owner of the license), and at the same time represented the interests of his political sponsors with whom he would share the bribe, namely the President of the Federal Republic of Nigeria, Goodluck Jonathan, the Attorney General, Muhamed Adoke Bello and the Oil Minister, Diezani Alison-Madueke.
According to the arrangements made between Eni and Shell, Etete and the public officials mentioned above, the transfer of the OPL 245 license - which Dan Etete had awarded to himself on April 29, 1998, when he was Oil Minister under the government of kleptocrat General Abacha - would be accompanied by a number of tax and financial conditions particularly favorable for the two oil companies.
In exchange, Etete would receive, as consideration, the sum of $ 1,092,400,000, which was indeed paid by Eni (with a cash contribution of $ 110 million from Shell) into an escrow account held by the

examination of those elements deemed certain to verify whether the relevant ambiguity of certain of them, considered in isolation, can be resolved in a unified view, such as to permit attribution of the unlawful act to its perpetrator.

Nigerian government with JP Morgan Chase in London, on 5.24.2011.
According to the agreements, the federal government's share of the transaction would only be the signature bonus of $ 207.9 million which had been deposited by Shell in another escrow account with JP Morgan Chase in 2003. The signature bonus, which Shell had deposited when it had been awarded the license following a tender, had been blocked ever since due to disagreements that arose between Shell and the Nigerian government and thus had never been paid to the government. Indeed, the signature bonus was paid into the FGN's accounts shortly after the $1,092,400,000 consideration was paid.
The above agreement was finalized over the course of more than a year, from early 2010 to April 2011. Beginning in the spring of 2010, Eni and Shell, through their respective heads of Upstream, Claudio Descalzi and Malcolm Brinded, began to discuss the terms of the transaction and to establish the amount they would have to pay Etete to satisfy his demands, as well as those of the public officials behind him.
In the late spring of 2010, Descalzi had a confidential meeting ("as a friend") with Nigeria's President, Goodluck Jonathan, whom he had known for some time. In July 2010, he re-awarded to Etete 100% ownership of the license for OPL 245, giving him full freedom to dispose of the license as he pleased. Between August and September, there were meetings in Abuja between top Eni executives and President Jonathan and between Eni and Shell managers, in the presence of Nigerian broker Obi and the head of the secret service (National Security Advisor), General Aliyu Gusau.
A purchase offer presented on October 30 by Eni, through its intermediary Obi, for the amount of $1,053,000,000 was rejected by Etete.
Over the following days, Shell made efforts to ensure that management of the negotiation would be taken over directly by the Government, represented by Attorney General Adoke.
On November 15, Adoke summoned Casula and Armanna from Eni, Peter Robinson from Shell, and a representative from Malabu. After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion. This figure included the consideration for Etete - equal to the final amount of $ 1,092 million, and the signature bonus. In the weeks that followed, Attorney General Adoke also worked to get Etete to pay Obi a commission of at least $ 55 million. Indeed, after the Attorney General entered the negotiation, Obi's role had been downsized. Obi, however, demanded payment of his commissions.
In December, the transaction was simplified in order to tackle the reputational and compliance problems linked to Etete, which had been worsened by the lawsuit filed against him by Abacha's son, who was claiming a share of the OPL 245 license. The decision was made to no longer proceed with a Sale and Purchase Agreement (SPA) between the oil companies and Malabu but, instead, to build the transaction as a series of conciliation agreements under which Etete gave his consent to the "reallocation" of the OPL 245 license to Eni and Shell. In return, Etete would take the money. From documents on the record of this trial, it appears that the new structure of the transaction was prepared by Shell. This was communicated by Attorney General Adoke to Vincenzo Armanna, Project Leader of Eni, summoned by the AG for this purpose, on December 15, 2010:
I The following months' work consisted in drafting the conciliation agreements and, above all, defining the legal and tax terms of the new concession. It was also necessary to overcome specific objections from two sectors of the Nigerian administration, namely the NNPC and, later, the Department of Petroleum Resources, which highlighted numerous anomalies in the transaction. The process was also delayed by the Nigerian presidential elections and the opening of a judicial case in Italy (an investigation by the Naples Public Prosecutor's Office), which involved some of the participants in the negotiations, first and foremost wheeler-dealer Luigi Bisignani.
II Eventually, On April 29, 2011, a Resolution Agreement was finalized between the Nigerian government and the two oil companies. On the same date, two related agreements were signed - one between the Government and Malabu (whereby Malabu relinquished the license to allow its reallocation in exchange for the Government's commitment to pay Malabu $ 1,092,040,000) and the

[3 illegible signatures]

other between the Government and Shell (who had an ongoing dispute between them).
The sum of $ 1,092,400,000 was transferred, by order of the Nigerian Minister of Finance on May 31, 2011, from the JP Morgan Chase bank account in London to an account at the BSI in Lugano under the name of Petrol Service, a company incorporated in the Marshall Islands. Petrol Service was traceable to the Italian Honorary Consul in Port Harcourt, and Eni supplier, Gianfranco Falcioni. The Swiss bank returned the money to JPMC after a few days for "compliance" reasons. In the internal documentation, the compliance officer of BSI pointed out that the bank should not "Enter into a relationship with Dan Etete (being the recipient of almost the entire sum of the transaction mentioned) because of the great reputational risks". These risks were "accentuated" by the use of the bank account held with BSI as a "platform account". The consideration of $ 1,092,040,000 remained in the JPMC escrow account for the whole of June 2011. This was followed by further attempts to transfer the remaining amount, approximately $ 800 million, to the MISR Bank in Lebanon, which were refused again by JPMC, due to the request of the correspondent bank (Bank of New York) for further information regarding the "purpose of transfer".
Following a letter sent on August 10, 2011 from the Attorney General, Muhammed Adoke Bello, confirming the legality of the transaction, the funds were finally sent on August 24, 2011 to two Malabu Oil and Gas accounts in Nigeria, one at the First Bank of Nigeria and the other at Keystone Bank. In both, the authorized signatory was Dan Etete, with signing powers given to his associate, Rasky Gbinigie.
At the end of August 2011, the money deposited in the Malabu account at the First Bank of Nigeria was transferred in full to four front companies under the control of Alhaji Abubakar Aliyu: A Group Construction, Megatech Engineering, Imperial Union and Novel Properties & Development.
At this point, half of the money was legally and materially at the disposal of Dan Etete, and half was legally and materially at the disposal of Alhaji Abubakar Aliyu.
In a nutshell, the money in the Rocky Top account - legally and materially at the disposal of Dan Etete - was used to pay Etete's personal expenses. Approximately $ 54 million was sent to the Bureau de Change, "As-Sunnah", to obtain cash. The transaction took place on August 26, 2011, that is, as soon as the consideration was received.
With the money from the Rocky Top account, Etete also made several payments to his associates and brokers.
These include the payments to Bayo Ojo ($ 10,026,280), the payment to Arcadia Petroleum and its CEO Peter Bosworth, a person close to General Gusau (totaling about $ 16 million), the payment to Ednan Agaev's former co-defendant and "right-hand man", the trader Richard Granier Deferre (payment to his front company Roundhaye Company of $ 6,116,044), and the payment to the broker ABC Orjiako ($ 2,208,201 to his company Helko Nigeria Ltd).
Bajo Ojo was the person who, in his capacity as Attorney General of the FGN, settled the lawsuit between the Federal Government and Etete at the end of 2006, reallocating the OPL 245 license to Malabu.
Some of the money was withdrawn in cash by Etete himself (about $ 9 million) and a substantial amount was moved in cash through transactions referred to as Forex Trade (about $ 65 million).
The accounts of Alhaji Abubakar Aliyu's four companies (fictitious companies in all respects, some with non-existent addresses) were used primarily to transfer large amounts of money to multiple Bureaux de Change in Abuja. The Bureaux de Change then handed over cash sums on various occasions to a large number of people linked to Alhaji Abubakar Aliyu.
Abubakar's company accounts also had cash withdrawn by Abubakar himself, mostly between December 2011 and January 2012, of "round" amounts, $ 2 million or $ 5 million. On March 8, a huge cash withdrawal of the "round" figure of $ 30 million was taken from the account. A total of $ 60 million in cash.
Among those who received money from Abubakar's accounts were, in addition to various unknown

beneficiaries (mostly non-existent companies), Mr. Adesina ($ 5 million), the lawyer who represented Malabu in several meetings at the Attorney General's Offices in the spring of 2011; Mr. Ikechkwu Obiorah, senator for the majority party PDP (to which Jonathan also belonged) during the 2007-2011 legislature (about $ 11.8 million); and the associate of Etete and "Director" of Malabu, Seidhouga Munamuna.

From Imperial Union, a transfer of $ 4,501,608 was made on 9.14.2011 to Nigerian company City Hoppers Prpt. This company had sold a large plot of land (approximately 5,500 square meters with three buildings under construction), located in the center of Abuja, called PLOT 3271, to Abubakar's company A Group. The land was then sold a short time later by the company Carlin, also traceable to Abubakar, to Attorney General Adoke (by deed of October 5, 2011) who, however, did not make the payment out of his own pocket but with money loaned to him by the Unity bank. The bank paid approximately $ 1,900,000 to Carlin and then debited Adoke's account with the reference "payment purchase of bank PLOT 3271 Cadastral" [English in source text]. The same bank was then repaid - it was an unsecured loan with very high interest - with money deposited in cash into Adoke's account by a very large number of people, including two Bureaux de Change. A total of 80 cash deposits, mostly in small amounts (around $ 6,000 each).

On May 8, 2012, Vincenzo Armanna received the sum of $ 1,200,000 in his account at the Banca Popolare di Bergamo, transferred to him by Oceanic Bank International (Nigeria) Limited on the order of Christopher Bayo Ojo, the stated reason for the transfer being "Giuseppe Armanna Inheritance".

Of the $ 200 million of commission that he was demanding, Obi was able to obtain two amounts of $ 112,616,741 and $ 6,272,955 in March 2014, following the judgment of Lady Justice Gloster of the Commercial Court in London. This money is currently under seizure.

Shortly after receiving this money, on 4.25.2014, Obi transferred the amount of 21,185,156 Swiss Francs to a Swiss account in the name of Gianluca Di Nardo, the trait d'union [link] between Obi and Bisignani. This money is currently under seizure.

5.4. Alternative indicia-based reasoning

The Court holds that the matter cannot be summarised, as suggested by the prosecution, on the basis of a progressive, linear and consistent arrangement among the oil companies Eni and Shell, Etete, the intermediaries Obi and Agaev, and the Nigerian politicians involved, i.e. President Goodluck Jonathan, the Attorney General Muhamed Adoke Bello and the Minister of Petroleum Resources, Diezani Alison-Madueke. On the contrary, by contextualising the relationships in the scope of the various events that unfolded in different ways over time, not only during the period covered by the indictment but also during the preceding period, it clearly appears that the progressive agreement as outlined is not the most probable reconstruction of the events.

On the following pages, we will propose, at the same summary level that characterised the initial part of the Public Prosecutor's pleading, an alternative reconstruction based on a different interpretation of the same evidentiary material available to us.

The affair began on April 29, 1998, during the military government headed by General Abacha, with a letter in which Petroleum Minister Dan Etete assigns the prospecting rights of OPL 245 to Malabu Oil and Gas Ltd. After the democratic transition commenced in 1999, as previously anticipated in a letter dated March 9 2000 and signed by Mr. Aboki Tawa, permanent secretary of the Nigerian Petroleum Minister, in 2001 Malabu obtained from the new government, headed by President Obasanjo, the principal opponent of the military regime, the final assignment of OPL 245 with the promise to pay a consideration of $ 20 million to the Government. In 2002, acting without giving any reason and without promising to pay any compensation, the Government itself revoked the OPL 245 license that had been awarded to Malabu. The license was then awarded to Shell at the conclusion of a tender procedure in exchange for the promise to pay $ 210 million. Dan Etete's company took different actions in opposition to the revocation and, after Malabu lost its case for formal reasons at the trial

court level at the Federal High Court of Abuja, without discussion of the merits of the matter, on 30 November 2006 the same Government headed by President Obasanjo, acting through Justice Minister Bayo Ojo and Petroleum Minister Petrolio Luckman, reassigned the OPL 245 license to Dan Etete's company, while granting it the right to sell it to foreign oil companies. At this point, Shell initiated an international arbitration proceeding against the Government, claiming that the license it had held since 2002 had been expropriated, requesting damages and compensation for the hundreds of millions of dollars it had invested in exploratory wells.

In 2007 Etete and Shell undertook negotiations in search of an agreement that President Presidente Obasanjo himself had promoted with a formal letter. Even Eni manifested its own interest in the launch of negotiations to acquire a share in the license from Malabu. That interest was immediately chilled upon receipt of a letter from Shell, warning it against continuing negotiations due to its allegedly exclusive property rights.

At the end of 2009, Eni resumed negotiations through Obi, an intermediary of Malabu. Negotiations continued in 2010 and got as far as even involving Shell.

In February 2010 Goodluck Jonathan replaced the President of Nigeria, Umaru Yar'Adua, who was unable to continue in office due to health problems. Jonathan formed a new Government, appointing Muhamed Adoke Bello as Justice Minister and Diezani Alison-Madueke as Minister of Petroleum Resources.

During this period, the Government remained outside the negotiations between the oil companies and Malabu, but it did maintain relations with the latter. In July 2010, Etete's ownership of 100% of the OPL 245 prospecting rights was confirmed, with the possibility of selling the entire license. Shell clearly had an opposing interest and suffered harm from the Government's act of confirmation. Defendants Colegate and Copleston, who were investigators for Shell, learned from their otherwise unidentified sources that the Government would like to facilitate sale of the rights assigned to Malabu so that their owner Etete could "remunerate" the public officials involved in reassignment of the license, and especially Goodluck Jonathan in view of the Nigerian presidential elections.

During this period, Eni made an offer to Malabu to acquire 40% of the OPL 245 license. However, its offer was rejected, and this circumstance excluded Eni from any possible underlying corrupt arrangement.

An institutional meeting was held in Abuja in August between the top executives of Eni and President Jonathan. That was obviously preceded and followed by various meetings between Eni and Shell managers and the intermediaries Obi and Agaev. After those meetings, on 30 October 2010 Eni made another offer to purchase, in this case for the entire license, at the price of $ 1,053,000,000, through the intermediary Obi. The offer prescribed agreements between the two companies Eni and Shell, aimed at the subsequent 50-50 division of the license that Eni would acquire from Malabu.

Once again, the thesis allegeding possible corrupt arrangements developed during that period is incompatible with Etete's curt rejection of the offer, where he was the alleged proponent of the corrupt arrangement.

The rejection of the 30 October offer marks the end of negotiations between the oil companies and Etete through the intermediaries Obi and Agaev, who were excluded from the subsequent accords that would continue between the Government and the oil companies, with the passive participation of Malabu.

At this point, Shell, which was exposed for its $ 350 million in investments, undertook to have the negotiations, which had failed in direct relations between the oil companies and Malabu, be taken over directly by the Government, in the person of Attorney General Adoke Bello. On 15 November, the latter summoned Casula and Armanna for Eni, Peter Robinson for Shell, and a representative of Malabu, forcing Etete to accept the offer of $ 1.3 million. Nevertheless, the agreement that the prosecution charges against all the representatives of the parties, merely because they attended the meeting, cannot be based on the framework of the previous corruption arrangement but on the contrary,

[3 illegible signatures]

if ever, on the arrangement for the gift unlawfully demanded by the public officials through their abuse of power, consisting in the threat repeatedly made by Adoke Bello against Etete to revoke the license held by Malabu [672]. The pressure exerted by the Attorney General meets the test for an unjustified threat because the threatened revocation would not have been accompanied by the necessary compensation that the Nigerian Supreme Court had established as the indispensable quid pro quo in similar cases (see the Zebra Energy case).

The transaction was modified in December 2010, not due to the reputational problems tied to Etete personally (problems that remained unchanged) but rather to overcome the uncertainties surrounding the ownership of the shares of Malabu. In fact, during that same period, the son of the former dictator Sani Abacha had undertaken court proceedings to claim ownership of part of the shares. The Government then decided to promote directly the settlement agreements pursuant to which Malabu would sell the OPL 245 license to Eni and Shell in exchange for cash compensation. In this case, the agreement promoted by Shell and the Government was accepted by Eni but imposed on Etete.

The following months were filled up by negotiations between the oil companies and the Government to define the settlement agreements and, above all, define the legal and tax terms of the new concession, given the complaints raised by the competent agencies of the Nigerian administration, NNPC and, subsequently, DPR. Those negotiations were not compatible with a previous illegal arrangement with the representatives of the Government which, in the corrupt view, should have guaranteed *favorable* treatment for the oil companies. The negotiating behaviour of Eni was emblematic in this sense, as it was free of previous agreements at this point, including any corrupt arrangements, free to abandon the negotiations due to the resistance put up by the cited agencies and the uncertainties surrounding the property rights of the seller company, uncertainties that were resolved only at the end of March with the decision by the Government to make several different agreements, in order to assume the risk of possible lawsuits by the hidden shareholders of Malabu.

Eventually, on April 29, 2011, a Resolution Agreement was finalized between the Nigerian government and the two oil companies, which finally acquired a new license, by paying $1.3 billion directly to the Government as consideration. On the same date, two related agreements were signed: one between the Government and Malabu, whereby the latter relinquished the license to allow its reallocation in exchange for the Government's commitment to pay Malabu $ 1,092,040,000, and the other between

---

[672] 4 November 2010 (18:23): Guy Colegate writes to John Copleston and Peter Robinson to describe the strategy to convince Dan Etete to accept the offer. It is envisaged that Granier Deferre cut the credit lines and that PAG send him the message that the block will be revoked: *"I talked to Ed - we agreed on the next steps:*

1) He is cutting the lines of credit

2)He will think this afternoon about how to communicate with Richard GD in regard to the block. He supports our talking with Richard but wants to find a way on how to communicate.

3)he agrees on the AG's option for Monday - he said that if it were done beforehand it could go well all the same - the message consists of the revocation of the block.

4)he agrees with the failure and says that he will do the same if he is not paid at the end of the game, which will happen after the final pressure applied by AG, R, GD and the cut credit lines.

5)He will call me tomorrow with the final game plan - he says that the Italians are emotional and pissed off and need to calm down - he says that we have to coordinate ourselves with them to check to see whether they have still want to negotiate

On this point, Ednan Agaev affirmed: "I exerted a bit of pressure on Etete, exactly as it is written here, Shell asked me to stop paying, and to ask Granier-Deferre too to stop paying Etete, so Etete would be placed in a difficult financial position and therefore he would meet halfway. I was covering his travel costs, hotels..."

PUBLIC PROSECUTOR – In point 3, it states *[English in source text:] He supports AG option's Monday, says early would be fine too, message being block revoked" [Translation resumes], so it would appear that you were in agreement on the AG's option for Monday, you said that if it were done beforehand it could go well all the same, the message consists of the revocation of the block.*

INTERPRETER - *"No, Etete told me this, he told me that the Attorney General was putting pressure on, saying that if the offer were not accepted then there would be the risk of the block being revoked".*

PUBLIC PROSECUTOR – *Therefore the pressure from the Attorney General was fundamentally this? Threatening to revoke the block?*

INTERPRETER - "*Yes, he was applying pressure on Etete because he wanted to close the deal".*

PUBLIC PROSECUTOR – *Yes, but I was asking whether the threat, the pressure was the revocation of the block.*

INTERPRETER - "*Yes, there was that risk that the block would be revoked and then the whole procedure would have to start from scratch".*

[3 illegible signatures]

the Government and Shell, which abandoned its arbitration proceeding against the Government.
The payments were executed during the following months and, even if one wished to hold that the 466 million in cash was actually received by the public officials, as charged, it appears evident that this did not involve spontaneous acceptance of a corrupt arrangement but rather an illegal payment, the rersult of unjust threats made by the public official Adoke against the principal shareholder of Malabu, Dan Etete, who thus had to accept an agreement that he had rejected solely on account of his fear that he would lose everything without any compensation [673].
Nevertheless, the probabilistic method also allows other, different conclusions, albeit through the use of indicia consistent with the trial record, even if they have less force in probabilistic terms.
We are referring to a different interpretation of the facts resulting from the evidence represented by the fact that Dan Etete is not the sole owner of Malabu, but rather a silent shareholder who co-owned the company with a 50% share, together with the other shareholder, Mohamed Sani Abacha, the son of the Nigerian President when the first award was made in 1998. We have already had the opportunity to highlight that it was the following Government, led by President Obasanjo, a famous opponent of the military dictatorship, who reassigned the entire license to Malabu in 2006, in spite of the notorious presence of its silent shareholder, Dan Etete.
I Dualism in the ownership of Malabu even resists in the prosecution's view of the fraudulent entries made in the companies register, which led to elimination from the ownership structure of the original third shareholder, mentioned by the Eni investigators as a representative of an ambassador. The existence of dualism in the ownership of the company is proven first and foremost by the division into equal parts, on two different accounts at different banks, of the compensation paid by the government to the company for relinquishing the license. In fact, on 24 August 2011, the Finance Minister ordered two credit transfers to two accounts of Malabu Oil and Gas: one for $ 401 million at the First Bank of Nigeria and the other for $ 400 million at the Keystone Bank.
The funds deposited on the first account at First Bank of Nigeria were destined to four companies traceable to Alaji Abubaker Aliu, who has been referred to as the public officials' intermediary, but who in reality might also have been the representative of the other silent shareholder, General Abacha's son, the one who at the time of the agreements had brought a civil lawsuit precisely in order to confirm his corporate investment.
The existence of this silent shareholder and his participation in the division into equal parts of the compensation from sale of the OPL 245 license would also be confirmed by the handwritten notes prepared during the first days of January by the intermediary Granier Deferre. In those notes, it was claimed that the compensation that Eni would have paid to purchase a share of the license would have had to be deposited on two different accounts of Malabu: MI and M2.
During the investigations, the function of the accounts had been traced back to the kickbacks to the executives of the two companies Eni and Shell. However, this involved an explanation that was clearly incompatible with the diachronic development of the facts because during that phase, Shell had absolutely nothing to do with the agreements that Eni had started to discuss with Malabu and, therefore, it cannot be claimed that the notes represented an agreement which at that time could not even be assumed.
During the trial proceeding, Granier Deferre instead explained that the two accounts allegedly served to divide up the amount in such a way as to facilitate the transit of a very large sum of money to a company that featured a silent shareholder who had previously been convicted of money laundering, Etete.
However, not even this reconstruction appears especially persuasive and, in any event, the weak

[673] Final pleadings of the Public Prosecutor: *"An email from Colegate dated November 4, 2010 confirms this approach. It says: "He supports the AG's option from Monday", he says that first it would be fine, [English in source text]" "message being block revoked", [Italian translation omitted] [*Translation resumes:] *the government and Adoke are pushing, they are pressuring Etete, threatening him with revocation".*

[3 illegible signatures]

indicia-based reconstruction is no longer convincing, where it rests on the 50-50 division of the company shares. In fact, this second possibility also appears consistent with the subsequent dispersal in cash of the share ascribable to the heirs of General Abacha, which were the object of investigations aimed at recovering money which the General had stolen from Nigeria in the final period of his dictatorship. The reference to the "Abacha's looting" was made by the prosecution itself on several occasions, both during the discovery phase and during final discussion in the trial.

The epilogue of this reconstruction might also lead to the logical conclusion that the destination of the money for the public officials might even lead to possible corrupt arrangements with this silent shareholder of Malabu and not with Dan Etete, regarding whom there are, as we shall see better hereunder, even other and different political reasons that would justify the favor shown by the various Governments, and not only Jonathan's.

[3 illegible signatures]

CHAPTER 6
THE AGREEMENT

6.1 The illegal arrangement.

In Chapter 2, we were able to highlight the critical aspects of the indictment and, in particular, the ambiguity of the charge with regard to the overlapping boundaries between unlawful and lawful arrangements, with the consequent anomalies in the description of the acts ascribable not only to the private bribers but also to identification of the corrupt public officials.

In Chapter 5, we addressed the indicia-based evidence process of reasoning, which was the method used by the prosecution to evaluate the evidence and claim that a crime had been committed and that the defendants were liable for it.

In this chapter, the critical aspects of the prosecution's case have to be examined in greater detail, and first and foremost with reference to the corrupt arrangement, the core of the charged offence. This analysis will have to be performed in light of the legal principles affirmed in Chapter 5, and first of all, the principle of convergence of the indicia and, especially, the absence of contrary indicia.

The Court does not intend to reprise the analysis of the various accords reached prior to 2009, because the prosecution itself considers them to fall outside the temporal scope of the indictment, which was limited even more to the period falling between spring 2010 and April 29, 2011.

These are topics that have already been addressed in the preceding chapters and which we will revisit only to cite them as indicia contradicting the unlawful nature of the arrangement alleged in the indictment and clarified during the closing arguments, given the subjective differences and, in particular, the diversity of the corrupted officials. Another item of prima facie evidence that contradicts the thesis of the corrupt arrangement is represented by the Government's intervention in the negotiations, which settled the contractual differences between the parties by threatening the private "briber" with revocation of his license without compensation to force him, or at least induce him, to pay what is referred to as a "bribe".

In this chapter, we will look more closely at the problems with the prosecution's reasoning in relaton to the indicia mentioned by the prosecution during the discussion and in the first chapters of the final pleadings, in which the where, how and when of corrupt arrangement are illustrated.

In particular, we will analyse the indirect indicia, since the the representative evidence consisting of the statements by Armanna and Agaev was not considered in the first chapters of those pleadings. Those two defendants were the only ones who, during the hearings, made some sort of specific reference to the payment of money to the public officials.

The Court agrees with the pointlessness of the statements made by Armanna as evidence to be used in reconstructing the illegal arrangements, given the clear unreliability of the source of testimony, who, specifically in reference to payment of the bribe, affirmed that this was a topic that Etete himself allegedly preferred to manage personally, claiming priviliged relations with the President of Nigeria and, therefore, excluding any sort of interference by others. Vincenzo Armanna then declared that he had gotten confirmation that the bribe had been paid by a person close to the President of Nigeria, but the source of information that was so important to the prosecution, who was never examined during the investigations, turned out to be a negative confirmation, since both of the relevant witnesses denied ever having discusssed the matter with the defendant.

In any case, the point will be addressed in a specific chapter, dedicated to verifying Vincenzo Armanna's reliability, which was deemed problematic by the prosecution itself.

Even the other source of representative evidence, consisting of Ednan Agaev's statements, will be analysed in the following chapters because they were validated by the prosecution with reference to

payment of the bribe and not as a useful source for reconstruction of the illegal agreement. For that matter, this involves a source of direct evidence concerning arrangements other than the charged ones, since, in its most specific sense concerning the payments made to the public official Adoke Bello, defendant Agaev reports having found out that in June 2011, Etete had settled professional debts that he had incurred in the past for the professional work performed by Adoke Bello himself on his behalf as lawyer. With regard to the other statements concerning the payments made to the other public officials and, in particular, the President of Nigeria, Agaev simply floated hypothetical logical arguments that may fall within the scope of the court's assessment of the facts, and completely different from representative testimonial evidence, which on the contrary is based on directly or indirectly acquired knowledge.

6.1.1 The agreements among private individuals, which were originally deemed illegal

The final pleadings of the prosecution places the beginning of the corrupt arrangements in spring 2010. According to this thesis, Shell, having been informed of the interest of Eni in purchasing the license from Malabu[674], allegedly agreed on a shared strategy by delegating relations with public officials to Descalzi, facilitated by the ties of friendship that had existed between him and President Jonathan Goodluck for some time[675]. In the same period, Etete allegedly agreed to obtain confirmation of the license awarded to him [676] from Jonathan Goodluck, Diezani Madueke and Adoke Bello, the corrupt public officials who assumed their respective public offices right at that time, beginning in February 2010.

So, it was the Public Prosecutor himself who abandoned the original charge that had the illegal arrangement date back to autumn 2009, in concomittance with the statement of interest submitted by Eni concerning purchase of the OPL 245 license through the intermediary Obi. In the original version of the prosecution's case, Obi was considered the vehicle for the corrupt arrangements, because he was "referred" by Bisignani, not on the basis of his competence but only because of his personal contacts in Nigerian government circles.

The Court believes that the original dating of the corrupt arrangements to autumn 2009 proposed by the Public Prosecutor has to be connected with the fact that the investigations, which were based on Armanna's own accusations, had led the investigators to assume that the company EVP was the tool used to guarantee "kickback" of the bribe to the participating Eni executives. Nevertheless, the trial hearings have revealed the flimsiness of the prosecution's case on this point, and then led the Public Prosecutor to modify his own version, since he could not prove the original charges that the private bribe was kicked back (those charges survived in the final pleadings only against Armanna). It also has to be added that the critical observations made by the *defense* attorneys evidently convinced the Public Prosecutor of the fragility of his original line of reasoning, which was based on extremely weak indicia, either because they concerned arrangements between private individuals or because they concerned allegedly negligent or imprudent acts by the Eni executives, consisting in their acceptance of Dan Etete as a contractual counterparty and the lack of complete due diligence on EVP. Those acts were

---

[674] Public Prosecutor's Pleading: *In the spring of 2010, Shell learned from Agaev that Etete's possible buyer was Eni. Copleston received confirmation of this news from Umar Bature (email of 16 April 2010).*

[675] Public Prosecutor: *Beginning in the spring of 2010, Eni and Shell, through their respective heads of Upstream, Claudio Descalzi and Malcolm Brinded, began to discuss the terms of the transaction and to establish the amount they would have to pay Etete to satisfy his demands, as well as those of the public officials behind him. In the late spring of 2010, Descalzi had a confidential meeting ("as a friend") with Nigeria's President, Goodluck Jonathan, whom he had known for some time.*

[676] Public Prosecutor: *On May 11, 2010, Rasky Gbinigie wrote to the Attorney General (and cc'd in the President) on behalf of Malabu, stating that "Malabu should be granted unlimited rights... in accordance with the Resolution Agreement of November 30, 2006." On May 25, 2010, Attorney General Adoke Bello requested that President Jonathan confirm and implement, with specific instructions to the Oil Minister, the Resolution Agreement of November 30, 2006 between Malabu and the Government. On May 28, an aide to President Jonathan very concisely informed Adoke of the President's approval. On July 2, 2010, the Oil Minister, Diezani Alison-Madueke, reallocated 100% of OPL 245 to Etete.*

the President's approval. On July 2, 2010, the Oil Minister, Diezani Alison-Madueke, reallocated 100% of OPL 245 to Etete.

[3 illegible signatures]

accompanied by malicious conduct connected, yet again, with charges of negligence based on the culpability deriving from the presence of a character previously convicted of crimes, Luigi Bisignani.[677]

Notwithstanding the declared choice of placing the commencement of the illegal agreement in the spring of 2010, in the following paragraph, the prosecution ascribed the status of prima facie evidence to preceding events.

An initial argument used to support the existence of illegal agreements as early as 2009 lies in the fact that the possiblity of moving the negotiations forward through the intermediation of Emeka Obi had been suggested to Paolo Scaroni by an ex-convict like Luigi Bisignani. However, that fact assumes the status of flimsy evidence not only because it issued from a reductive view of what happened but also, and above all, because the theme of the social danger posed by the person who originated that report, which was already extremely weak in itself, cannot be extended to the point of proving the objective riskiness of the deal. In fact, the court record shows that Eni had began to be interested in acquiring a portion of the OPL 245 license in 2007 and had shelved negotiations only after it received a warning from Shell.

A second argument based on indicia by the Public Prosecutor is the procedure used for payment of the price of the license according to the excess price schme that had been proposed by Obi to Etete. Nevertheless, as admitted by the prosecution itself[678], those procedures would at the most have facilitated payment of the fees to private intermediaries, but they certainly would not have been the vehicle for getting the money to the public officials. Moreover, the payment scheme in the form of an excess price mechanism had been imagined in January 2010, and thus at a time when the allegedly corrupt public officials had not even assumed their public offices.

Another anomaly allegedly consists in Eni having signed an exclusive agreement with EVP for the negotiations. That agreement is allegedly suspicious (i) because EVP had not undergone any prior due diligence, (ii) due to the objective limitation on its own negotiating freedom that Eni deemed acceptable, and (iii) because the authorisation of EVP to represent Malabu had been proven only on the basis of presentation of a mandate signed by a previously convicted individual, such as Etete.

However, all of those cited problems are only apparent ones.

A first aspect to be considered is that the company procedures at the time required that due diligence be carried out on a contractual counterparty only when the agreement called for the establishment of a joint venture. Instead, the relationship with EVP involved simple intermediation and, consequently, the absence of due diligence was consistent with the guidelines then in force: Eni did not assume any independently actionable financial obligation towards EVP, but limited itself to agreeing to restrict its own negotiating activity.

Moreover, the imposition of an exclusive in favor of the intermediator is a clause that arouses absolutely no suspicion since it involves an institute that is frequently used by those operating in the brokerage field to avoid being ousted after direct contact is made between the parties or to guarantee that he or she will control the flow of information during contractual negotiations, where the availability of such information can significantly impact the balance between the contracting parties. Moreover, all the agreements made with EVP were expressly conditioned on the effective existence of a mandate from Malabu in favor of Obi's company, since the negotiating limits imposed on the oil

---

677 Public Prosecutor: *The problem is: if it had been true, how could Eni have discovered it? Public officials in the Nigerian Government could have been behind EVP and we would have never known". He wrote that and repeated it at the hearing, with very nearly the same words, so I am not going to repeat them. And even in the Pepper Hamilton report, let's call it that for short, it's written that the employees of Eni reported that only certain contracts needed to have full due diligence done, and the agreement with Obi did not fall into that category. So, no due diligence was done voluntarily.* ***This is a negligent basis on which, I repeat, is introduced the malicious premise, in fact, of his getting brought in through Bisignani and Scaroni, let's always remember where we began.***

678 Public Prosecutor: *Obi's intermediation should have been remunerated through the diversion of a portion of the price (the excess price) from the amount paid by Eni and Shell. The excess price was a figure close to two hundred million dollars and was intended, as well as for Obi himself, for the Italian contacts, first of all Bisignani and Di Nardo, and for the Eni management team.*

[3 illegible signatures]

company would have lapsed if EVP had not actually been *authorized* to negotiate on behalf of Malabu. That last clause would have already been sufficient to overcome the problems surrounding the fact that Eni allegedly bound itself to EVP, even if it did not have any evidence of a mandate from Etete to the latter company. At any rate, evidence of the existence of the mandate given to Obi was found not only in the documents shown to the Eni executives on February 19, 2010. In fact, as we have seen, on December 29, 2009 Emeka Obi had organised a meeting at Dan Etete's home, which Vincenzo Armanna attended as a representative of Eni. A dinner was held on February 4, 2010 at the Hotel Principe di Savoia with the participation of Claudio Descalzi, Dan Etete, Ednand Agaev and Richard Granier Deferre.

Finally, the fact that Obi was acting on behalf of a convicted criminal like Dan Etete could not automatically imply the illegality of any negotiation involving OPL 245, since the former minister's company was the entity which the Nigerian Government had recognised as the licensee and, therefore, he was the only interlocutor to whom an aspiring buyer could turn. Then, once again, we have to recall that the logical and legal impossibility of postulating the existence of unlawful agreements in this context derives from the circumstances that Shell had not yet entered into the negotiations and that the future corrupt individuals did not hold public offices.

On closer examination, the only significant known fact is represented by the undeniable negotiating power that the broker Obi had in his relations with Eni executives. However, this aspect seems to be connected, as recognised by Claudio Descalzi himself during his questioning, with the Italian executives' desire to ingratiate themselves with the Chief Executive Officer, Paolo Scaroni, who had specifically recommended Emeka Obi as a possible good channel for reopening negotiations to acquire the license. In any case, the subsequent ouster of Obi from the final phase of the agreements both by the "private briber" Etete and by the public officials reveals the weakness of the indicia-based reasoning based on the acqaintances of the intermediary Obi and the expectations of all his supporters.

That Obi had to turn to the English judicial authority to see the commission agreed upon with Etete recognized, represents a circumstantial element which is contrary not only to his participation, but also to his mere knowledge of possible unlawful agreements.

6.1.2 The illegal agreements of spring 2010 and the lack of jurisdiction

According to the prosecution's reconstruction, the agreement with the public officials Jonathan Goodluck, Diezani Mandueke and Adoke Bello allegedly occurred in May-June 2010, a period when several episodes occurred that significantly impacted the progress of negotiations:

- Goodluck Jonathan became the new President of Nigeria on May 6;
- Malabu wrote to the new Attorney General on May 11, requesting presidential confirmation of the Resolution Agreement of November 30, 2006;
- on July 2, the public officials took an important official act *favorable* to Etete, i.e. confirmation of assignment of 100% of the license to Malabu.

Nevertheless, the prosecution's case rests on weak indicia-based reasoning because it depends on personal opinions expressed by Shell employees, a party that suffered harm from the decisions taken during that period, according to news obtained from sources that have remained anonymous.

The starting point of the theses that date the unlawful arrangement to this period is found in the previously cited email of July 16, in which Guy Colegate wrote to Peter Robinson and John Copleston, commenting that "this letter is clearly an attempt to deliver a lot of money to GLJ as part of any settlement".

Regardless of what has already been affirmed with regard to the value as evidence of a personal opinion, even if it is contained in a company email, we refer to the chapter concerning the defendants Colegate and Copleston for a more detailed analysis of the cited document. Here it is sufficient to point out that immediately after the letter confirming the award to Malabu was discovered, the Shell investigators proposed as series of hypotheses as to the reasons that had led to confirmation of the

[3 illegible signatures]

license award. So, the evidentiary value of the document is hardly unequivocal, in as much as the comprehensive analysis of the Nigerian political context at the time reveals other and more plausible political reasons that can justify the administrative act in favor of Malabu. Among others, it is sufficient to recall that Dan Etete was a leader from the Niger Delta area and that the support of the population in this part of the country was key to President Goodluck Jonathan's career and that of his Ministers.
In any case, even if one were to hold that the confirmation of July 2 was the result of an illegal agreement between Dan Etete and the public officials, it is still clear that the oil companies would not have had anything to do with it. In fact, Shell and Eni were damaged by the Government's act since, after confirmation that 100% of the license had been awarded to him, Dan Etete acquired significantly more negotiating power than what he had had previously.
For that matter, the indicia accepted by the Public Prosecutor with regard to the involvement of Eni in the arrangements that led to confirmation of the license are not based on certain facts but rather on unacceptable opinions about the information presented in this proceeding.
One element validated in this sense consists of Armanna's statements about an informal meeting that was allegedly held in the spring of 2010 between Descalzi and the Nigerian President. Even disregarding the declarant's absolute unreliability, we have to emphasise à propos that the existence of that meeting is contradicted by the documents mentioned by Descalzi's *defense* attorney, to whose arguments we refer. In any case, the reference to the co-defendant's statements would still have no specific significance as evidence because he never affirmed that the meeting between Descalzi and Jonathan was about confirmation of the license awarded to Malabu, but he did claim that on that occasion, the two supposedly generally discussed the OPL 245 deal and the President's desire to do without Obi's intermediation. Nevertheless, Obi's subsequent expulsion from the negotiations due to the convergent desire of Dan Etete and the public officials leads us to rule out that the meeting reported by Armanna, if it ever did take place, might have any appreciable validity as evidence. On the other hand, the weakness of the prosecution's reasoning is admitted by the Public Prosecutor himself, who admits that the resulting evidence could not be pushed so far as to prove that a meeting was actually held to discuss specific topics, while managing only to mention the issue of Obi's intermediation because it was also admitted by defendant Descalzi[679].
In addition to Vincenzo Armanna's statements, the elements useful to determining any unlawful involvement of Eni in this phase of the matter are also found in several comments by Malcom Brinded in relation to the friendly/confidential relations between Descalzi and Jonathan Goodluck. In particular, in an email of 22 April, the Shell executive wrote to Peter Robinson: Note that Claudio is very close, on a personal level, to Goodluck Jonathan - since Jonathan and Claudio had met at Bayelsa in 1995/6, when they were both much younger, and remained close as they developed their careers over the years. Theirs is clearly a close relationship and Claudio is therefore able to give direct messages to the Acting President in a way that I doubt we can match. Claudio will see the AP in the third week of May and will have dinner with him "as a friend".
Once again, a proper interpretation of the facts entered into the court record leads us to rule out the validity of the reported communication as evidence. According to the Public Prosecutor himself, Descalzi allegedly intended not to damage Shell and alleged brought his position to the attention of the President as a necessary condition for concluding the deal. So, it appears evident that such an intention would have been incompatible with any hypothetical participation of Descalzi in an act - like the confirmation issued on July 2 - that openly conflicted with Shell's expectations.

---

679 Public Prosecutor: *According to Brinded's account in the document mentioned earlier, the two met in the third week in May. Although we have no documents proving that they actually met on those dates, we have evidence that several meetings did take place between Descalzi and Jonathan. It is not seriously conceivable that when Descalzi and Goodluck met they did not talk about OPL 245 and anyway not talk about specific things. Indeed, Descalzi himself, during the interrogation and later in the confrontation, admitted that Goodluck spoke to him about specific things, telling him that it would be better for Eni to do without middlemen: I seem to remember that he mentioned the fact that it was better to have a direct relationship with Malabu, without middlemen* (interrogation)

Moreover, in the subsequent email of July 16, it was Guy Colegate himself, and thus another employee of the Dutch company, who ruled out Claudio Descalzi's involvement with regard to what had happended: "it is of interest that the purported GLJ signed letter has not been shared with ENI and that the FGN has made no public comment".
The extraneousness of Eni in the license confirmation process is affirmed not only by the Shell investigators and logic, but also receives important confirmation in all other documents.
In particular, Femi Akinmade informed Claudio Descalzi on 30 June that Dan Etete had managed to obtain confirmation that 100% of the license had been awarded to him: "Chief Dan Etete has confirmed that OPL 245 has now been given 100% to Malabu and Shell is out".
In Emeka Obi's chronology, it then turns out that it was he himself who had informed Claudio Descalzi about the governmental act. Descalzi supposedly reacted by expressing his intention to speak with the Nigerian President for the purpose of not excluding Shell, which Eni considered to be an essential party in the negotiations due to the pendency of the arbitration proceeding.
At any rate, even if we wished to ignore the documental references, the absence of any involvement by the Italian company is inferred logically from the fact that Dan Etete rejected the two purchase offers submitted by Eni during the following months.
In light of the foregoing, the thesis that Eni was involved in confirmation of the award to Malabu due to the privileged relations between Descalzi and Jonathan is revealed in contrast with with the facts contained in the court record, which is not only logically flimsy, since it infers from procedurally certain elements (close relationship between Descalzi and the President) and procedurally uncertain elements (informal meeting in spring 2010), a fact having no reference in the trial record (the purpose of the meeting was the illegal agreement underlying confirmation of the license granted to Malabu).
In conclusion, no element, not even circumstantial evidence, supports the participation of the defendants other than Etete in any arrangements with the Nigerian President before July 2010. In any event, it is clear that an unlawful arrangement between Dan Etete and the public officials would constitute "domestic" bribery committed in Nigeria, and thus falling outside Italian jurisdiction. Specifically in order to overcome this problem, the Public Prosecutor extends the unlawful agreements even to the subsequent phase, from 15 November to 29 April, i.e. the period when there were direct discussions between the executives of the oil companies and the Nigerian public officials to reach the Resolution Agreement.
In any case, even if we adopted the prosecution's perspective of the corrupt arrangement in the spring of 2010, the subsequent events cannot assume the status of crimes given that, as we shall see, it would involve events carrying out the illegal agreement that had already been reached. Moreover, the Public Prosecutor himself had explained that: "confirmation of this reallocation gave Etete enormous strength in negotiations with the oil companies, in particular with Shell, **as he no longer had any legal constraints** on selling the entire asset to third parties".
An email by Peter Robinson was also sent during that period, one that has been repeatedly cited by the Public Prosecutor because it was deemed symptomatic of the existence of illegal contacts between the oil companies and the Government. In particular, on July 18 Peter Robinson wrote to Malcom Brinded and, commenting on the confirmation of the award of 100% of the license to Malabu, he stated the need of making contact with the Government by pointing out that "I believe that back channel to president will work better than formal channels".
The expression "back channel", which was immediately translated by the prosecution as an illegal channel, distorting the literal meaning reserved to another term (black channel), has to be contextualised in the alternative juxtaposition with formal channel, which has been instead been explained very well by the witnesses Ian Craig and Keith Ruddock. In particular, Ian Craig has affirmed that "in diplomacy the term **back channels** is very often used, which indicates an informal communication that permits exploration of issues in a more constructure way so as to avoid conflict situations and avoid someone absolutely having to take a step back. So, it is term used both in diplomacy and in business". In an analogous sense, Keith Ruddock identified the "back channel" as an

[3 illegible signatures]

"absolutely normal and legitimate approach that is taken in many countries where I have worked. It generally allows getting a far better result than that of falling into conflict".

6.1.3 The "illegal" agreements of August-October 2010

The prosecution ascribes the status of circumstantial evidence to the institutional meeting held on August 13, 2010 between the top managers of Eni, Scaroni and Descalzi, and the Nigerian President, Goodluck Jonathan, on the basis of previous and subsequent meetings, which have been considered suspicious[680], and on the basis of incriminating information, communicated by Robinson to his superiors on 23 August[681] and 23 September[682].

As for the validity of the preliminary agreements between the Eni executives and the intermediary Obi as circumstantial evidence, where Obi in turn met with General Gusau and Petroleum Minister Diezani Madueke, it is represented that in the prosecution's view, the alleged illegality of the negotiations renders any connotation of the aforementioned preliminary or subsequent meetings as equivocal, as no criminal intent can be inferred from the relevant documental sources. Moreover, the subsequent ouster of Obi from the negotiations represents circumstantial evidence conflicting with Obi's participation in any illegal preliminary or subsequent agreement.

As for the ambiguity of the incriminating information that was freely circulating in the corporate emails of Shell, we have already had occasion to highlight the different alternative meaning, represented by the necessary political support that the Nigerian President and his Ministers sought to assure themselves by "favouring" Malabu.

In particular, on 23 August, Peter Robinson wrote to Malcom Brinded to inform him about the status of the negotiations in view of an imminent telephone call by him to Claudio Descalzi. Among other things, Peter Robinson wrote that *[English in source text:]*"In country view is that the President is motivated to see 245 closed quickly – driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence – reinforces need for a solution quickly" . *[Translation resumes]*

As we have already seen, the content of that message could not be used in itself, due to its limiting itself to reporting current public gossip.

However, the interpretation of the expression "political contribution" became topical again on 29 August, when Peter Robinson wrote a new email to other Shell executives, repeating the same words that he had already used and adding that that hypothesis - i.e. that the President was driven to close the deal by the possible political contributions that would derive from it - is [English in source text] "reinforced by Eni comments above" [*T*ranslation resumes, although leaving the source text translation into Italian of the English phrase intact] i.e. "rafforzata dai commenti di Eni riportati sopra". The comments made by Eni were supposedly the result of the meeting between the top executives of the Italian company and the Nigerian President on 13 August and, therefore, the Public Prosecutor exploited that email to argue that during that meeting, he would talk specifically about possible politcal contributions. According to that approach, there would be no doubts as to the fact that the political contributions would be simple bribes to be given to the public officials.

However, this thesis cannot be accepted since it reconstructs in imaginary terms the tenor of the Eni

---

"[680] Public Prosecutor's Pleading: *On August 13, 2010, Eni's top management met with Jonathan. Scaroni and Descalzi were certainly present at that meeting. According to Descalzi, Casula, Armanna and Pagano were also in Abuja at that time. Prior to the meeting with the President of Nigeria, Descalzi and Casula met with Emeka Obi. Around the same time, Emeka Obi met with General Gusau and had contacts with Diezani "Auntie" Alison Madueke.*

[681] Public Prosecutor's Pleading: *On August 23, 2010, Robinson wrote a set of instructions regarding an upcoming phone call between Malcolm Brinded and Claudio Descalzi. He recalled the "meeting between Eni (led by Scaroni) and the President (August 13) in which we are told (through the broker) that 245 has been discussed at length. The President is keen to close the 245 deal quickly - driven by expectations about the proceeds that Malabu will receive and the political contributions that will flow as a consequence".*

[682] Public Prosecutor's Pleading: *On September 23, Robinson wrote to his boss, Ian Craig, that a preliminary agreement had been reached with Eni, in regards both to the 50/50 and to the price to be paid, which would have to take into account the requirements of the players in Abuja, that is, the Nigerian government:*

comments referred to by Peter Robinson. Indeed, to comprehend what those comments by the Italian executives were, no interpretation is needed since Peter Robinson himself explains that the aforementioned comments are cited "sopra" ("above"). In fact, just a few lines before, Peter Robinson reports what Claudio Desclazi had said after his meeting with Goodluck Jonathan: [English in source text] "CD stated that the P said he wants to see this resolved ASAP. Wants the production; (has been stalled since 1998-2000) and said that this was a ''normal commercial Issue between you (ENI), Malibu and Shell" (Indicating he doesn't want to be involved directly)". *[Translation resumes]*

The information that Claudio Descalzi had obtained from the meeting on 13 August consisted of two facts:

- the President wanted production to start up, resolving the stall that had existed since 1998-2000;
- for the President, the matter involved a normal commercial issue among Eni, Malabu and Shell (and he did not want to be directly involved).

In light of this clarification, it is even superfluous to point out that the meeting on 13 August, while far from having any value as circumstantial evidence of the consummation of the crime of bribery, does demonstrate the absence of any criminal intent. Instead, it is interesting to observe how the Eni comments help us settle even any uncertainties over the expression "political contributions" used by Peter Robinson. In fact:

- the Eni comments concern the fact that the Chairman wanted the block to become opreation and that production be guaranteed;
- those comments had reinforced the idea that the President expected "political contributions" from the successful outcome of the affair;
- then, according to a process of normal logical inference, the nature of the political contributions expected by the President was intimately tied up with the production and beneficial effects that would have ensued in employment and economic terms.

Such a reconstruction has also been confirmed by Ian Craig, one of the top managers of Shell who were the recipients of the emails and who were examined during the trial as witnesses: "Peter reports rumors floating around Abuja regarding this topic. And with this we return to the comments that I was making previously with regard to the fact that Jonathan was from the south, and thus if he had managed to further a settlement, that would have bolstered his re-election prospects because he would have improved his future consensus among the population in the south. Because at that time, he had to face election, and it was the first time that he had to do so, just six months ahead".

An analogous explanation was also given by witness Keith Ruddock: "In the southern states of Nigeria, which are among other things the oil-producing states, there had been a long history of violence and disorder that caused interruptions and violence in the oil production of Shell as well as the other oil companies. Vice President Jonathan, who came from the southern states, had proposed an amnesty as one of the key points of his policy and had followed through, I believe in 2009. Etete also came from the southern states, from the state of Bayelsa, and was considered a senior figure and very influential, so from the point of view of the Nigerian government it was important that Etete supported the amnesty".

The second element validated by the Public Prosecutor is the email of 25 September 2010, "OPL245 Brief", which has been referred to as "the note that most directly deals with what we can call the bribe formula"[683].

In the document, we read:

[English in the source text:]"in discussions with ENI, they have approached the Issues on finding a settlement as:

$$X + SB + Y = Z$$

Where:

[683] Hearing of July 21, 2020, page 37.

• X is value that ENI prepared to pay to secure 50% of the Block;
• SB is Signature Bonus to be payable to FGN (by Shell);
• Y Is any amount that Shell is prepared to pay to supplement the amount paid by ENI to Etete and thus "ensure" success;
• Z is payment to Etete that will be acceptable to all players in Abuja"

[*T*ranslation resumes:] The indicated formula ("X + SB + Y = Z") summarises the terms of the status of the negotiations.
Eni, which had declared that it was [English in the source text:] "prepared to pay USD 800 million (X) to acquire 50% interest in 245 ", [*T*ranslation resumes:] had indicated a potential increase in the costs charged to it alone [English in the source text:] "if change of operatorship would be agreed". [*T*ranslation resumes:] So, the equation envisages the possibility that Shell might have to offer, in order to make a settlement offer, a supplemental amount ("Y") in addition to the SB (equal to $ 209 million that was originally paid and still on deposit on the escrow account) and interest as applicable.
The key point concerns the interpretation of variable "Z", which according to the Public Prosecutor was supposedly "the bribe that will be deemed acceptable for all the players in Abuja"[684].
An initial point from which we may begin to grasp the meaning of the expresson is the deposition given by Ian Craig, top manager of Shell who, to repeat, was one of the recipients of the email and who has not been charged with any crime: "My interpretation is that Etete is actually the way to say Malabu, so in reality, Malabu should be written there. Abuja is our normal way of referring to the government, so when we talk about all the players, all the players in Abuja, we mean all the important representatives of the government". According to Ian Craig, it was politically important for the payment (which would enter the public domain) to be considered fair, and not overly *favorable* to the IOC or to Malabu. In fact, "all of this would enter the public domain, so the Government had to show that the agreement was fair, just. This obviously involved "trilateral" negotiations, so to speak, so with Shell and Eni on one side,the Federal Government on another side, and Malabu in the last corner. For many months, many years, Malabu had had exaggerated expectations of the value of the block. And the Federal Government realised that these exaggerated expectations were unrealistic. But it did not want exert pressure on Malabu so that it would accept an offer that was unfair, iniquitous. (...) It was a question of fairness more than anything else, because if the proposed price was too low as compared with the other benchmarks, it could have been said that Malabu had suffered the pressure of big international companies to accept a price that in fact was unjust, that was unfair".
A key test to examine the reliability of the interpretation offered by the witness is given by the analysis of what transpired during the months after the negotiations were held. In fact, on closer examination, the thesis that the expression "players in Abuja" identifies the various political and institutional figures who were legitimately involved in the negotiations is confirmed by the circumstance that even the DPR, NNPC and the Attorney General got involved in the negotiations. These were all governmental bodies that expressed their own point of view and whose endorsement was necessary to execute the agreement. Moreover, the confirmation that the Government was demanding that the offer to Malabu be "fair" derives from a summary report prepared by Peter Robinson and sent by Malcom Brinded to the CFO of Shell, where it is affirmed that [English in the source text:]"FGN think the offer fair"[685].
[Translation resumes]
The precision of the indicia deriving from the Public Prosecutor's interpretation thus found its first significant attenuation after Ian Craig's testimony. He proposed a plausible alternative explanation tied to the results of the investigation.
To this it must be added that an "authentic" interpretation of the meaning of the formula is obtained from an email of 1 October 2010 sent by Peter Robinson to Ian Craig. In this email, the defendant still

[684] Hearing of July 21, 2021, page 39.
[685] Public Prosecutor Submission of March 22, 2019, RDS 674.

refers to the challenged equation (‘‘X + SB + Y = Z”) and points out that “Z” has to be construed as the [English in the source text:]"acceptable price to Malabu/FGN to sell rights to the block and enter into a full and final settlement Agreement, whereby clear title to the block is obtained shared 50:50 between ENI and Shell”. *[Translation resumes]*

Yet again, as we have seen, the Shell executives take recourse to the familiar equation to assign a legitimate meaning to factor “Z” and which is perfectly understandable in commercial negotiations like those examined here.

Another gravely circumstantial piece of evidence highlighted by the prosecution allegedly concerns the terms of payment agreed with EVP, such as to guarantee the intermediaries that they would receive their commissions irrespective of the intentions of the seller Malabu and to overcome the problems tied to Etete’s boasted reputation as being a “terrible payer” (a reputation that was actually confirmed by subsequent events).

We have already mentioned the equivocal nature of the circumstantial evidence, because the excess price mechanism was justified by the interest of Etete’s intermediaries in severing the payment of their commissions from Etete’s power to block them. We have then seen that, at the time, the allegedly corrupt public officials had not even assumed their public offices and thus it did not concern a mechanism prescribed for the payment of bribes.

The issue resurfaced, albeit in different terms, in mid-October 2010 on occasion of the preliminary agreements for the offer dated 30 October 2010. A propos, the Public Prosecutor[686], while acknowledging that the issue was being dealth with by the competent technical offices of Eni and not by the defendants, assigns the status of circumstantial evidence to Obi’s annotations. In response to the refusal raised by Eni to pay the entire price of the license to EVP as originally imagined, Obi made the alternative proposal of payment on two different accounts of Malabu, one intended to receive the price of the license and the other intended to be controlled by Eni and reserved for the intermediaries’ commissions, including those of EVP itself. What has just be pointed out may be considered gravely circumstantial evidence of participation in illegal arrangements in terms of infringement of the duty of fidelity towards corporate directives, but says nothing with regard to the alleged involvement of Eni in the intermediaries’ compensation. Precisely for this reason, the circumstantial evidence assumes a decidedly equivocal nature with reference to the existence of criminally significant illegal agreements. On the contrary, its validity even militates in the opposite direction if one considers Obi’s ouster from the subsequent accords directly by Dan Etete and the public officials. Furthermore, the Public Prosecutor himself does not believe in the validity of the cited document as circumstantial evidence, considering that he never even investigated Donatella Ranco, who turns out to be the author of these agreements, annotated by Obi right after a meeting with Ranco herself[687].

Just as inconsistent, for the same reasons, is the additional element cultivated by the prosecution in the final pleadings, again in Chapter 04 dedicated to Eni. It refers to the stated expressed willingness of certain Eni executives, first of all Armanna, to take on the problem of paying Obi’s compensation to the point of imagining a formal “assumption” of his compensation by Eni. In this regard, aside from citing what has been observed by the Descalzi and Casula *defense* attorneys with regard to the extraneousness of the intermediary Obi’s commission when the 30 October offer was prepared, here we must highlight the forced interpretation of the expressed willingness of Eni to pay a simple bank

---

[686] Public Prosecutor’s pleading, page 21: *In the chrono-unprotected file seized from Obi, there is yet more proof that a portion of the money transferred to Malabu would go back to Eni. The note is in regard to a meeting that took place on 10.15.2010 at Eni's headquarters in San Donato, during which the outstanding issues regarding the settlement agreement and the matter of the escrow agent, that is, the first recipient of the money paid by Eni, were discussed together with Donatella Ranco and Eni's legal team, and in the presence of Sandra Rath and Stefan Wanjek of Raiffeisen. The point, Obi notes, is that the escrow agent could not pay EVP directly, probably because of the same difficulties expressed by Eni. The solution, then, could be for the escrow agent to pay Malabu directly but - and here lies the surprise - not to one account but to two accounts: one for Malabu, one for Eni.*

[687] [English in source text:] OBI chrono-unprotected: *Friday, Oct-15-10 Meeting Ranco ENI legal team, Stefan Sandra, ZCO ENI HQ, Milan: Outstanding issues on settlement agreement, walk through and mark up SPA, issue of Escrow agent (can't pay directly to EVP account but perhaps two accounts in name of Malabu - one for Malabu/ one for ENI).* [Translation resumes:]

[3 illegible signatures]

fee where he had the funds to pay the commissions to the intermediary Obi[688]. If we properly contextualise the cited message, we understand how it was referring specifically to the proposal to open two accounts to facilitate direct payment of the commissions to the intermediaries of Malabu and, therefore, to Obi. That said, the willingness of Eni referred to the assumption of responsibility for the bank fees for the transaction, and which would actually be paid by Eni even in the final transaction, and that they had contractual validity especially in the view of Raiffeisen Bank.
This clue was overblown in the final pleadings, but was not even mentioned during the investigative phase to any witness. In particular, during examination of the witness Ranco, the Public Prosecutor did not ask any questions in this regard.
In any case, even if we wanted to get to the meaning, ascribed by the prosecution, to the willingness of the Eni employees to "assume" the company's cost or, regardless, resolution of the problems connected with the compensation for Obi's intermediation, Obi's own rejection of the cited alternative solutions[689] appears to be contrary to or contradictory with the aims of establishing evidence in the indicia-based line of reasoning.
Finally, it must be pointed out that the rigidity of companies with regard to the price offered for the license since spring 2010 represents circumstantial evidence contrary to the existence of criminally unlawful agreements that involved the companies. That perspective also covers the repeated rejections of the Eni offers, the last one being the offer of 30 October 2010, by Etete.

6.1.4 The concluding phases of the illegal agreement during the period November 2010 to March 2011

While explaining the terms of the illegal agreement[690] in his final pleadings, the Public Prosecutor does nothing other than restate the phases of the lawful negotiations, by affirming that:

- the "substantial" agreement on the price was reached on 15 November 2010;
- the legal agreement was closed on 15 December 2010, with the government having held out the possibility of issuing a new license:
- the legal terms to exclude direct contractual relations between Malabu and Eni were agreed on March 26, 2011;
- the parties signed the the Resolution Agreements on April 29, 2011.

Nevertheless, the analysis of the events that occurred on the mentioned dates does not allow us to grasp any serious and precise circumstantial evidence revealing any final agreement on the charged illegal relationships, except to hold that the excluded automatic nature of the overlapping between illegal and legal arrangements was convincing. In contrast, while examining the various steps of the lawful negotiatoins, we find indicia contrary to the participation of the oil companies in any illegal agreements that, specifically during this period and due to Etete's rejection of the offer made on 30 October,

---

[688] Public Prosecutor: An interesting example of Eni's willingness to pay is the text message sent by Obi to Martin Schwedler of Raiffeisen on October 19, 2010, clearly stating that Eni and Shell had agreed to pay the commissions: text message no. 829 of October 19, 2010 at 17:22
We really need to find a bank or escrow agent for the payment asap. The Purchaser, as you know, has agreed to pay the fee. Pls use your contacts It is critical. Anywhere but UK, France or Italy. Thank you. The same concept can be found in the chrono-unprotected file in relation to the meeting between Obi and Etete at the Hotel Bristol in Paris, on October 28, 2010, preparatory to the presentation of Eni's offer.

[689] Public Prosecutor: *The most audacious - and perhaps the most honest - was to consider formalizing a direct relationship between Eni and Obi, to make him officially too an agent of the Italian company...Eni's message was to negotiate only with EVP ("ENI message - Dealing only with EVP". Above all, in discussing whether and how EVP would be paid, Eni offered to "flip" Obi's mandate from the seller's side to the buyer's side and incorporate the commission into the valuation of the price to be offered to Etete ("Offered to flip advisors' mandate from Sell-side to buy-side and advisors fees/spread can be incorporated into valuation before finalized'): in short, to formalize the relationship between Eni and Obi. Unfortunately for him, Obi noted "no thanks". Evidently, he believed that the agreement he had signed with Etete was sufficiently secure.*

[690] Public Prosecutor: *The first is the actual corrupt agreement. The second is the "legal" arrangement to regulate the payment of the unlawful interests. The third is an essentially "cosmetic" agreement - and yet it is also the basis of the oldest and most **insistent** defense argument **made by** Eni on all occasions (including in Parliament) in which it was asked to clarify the OPL 245 deal.*

different forms that betray
The imbalance between contractual powers in connection with the extortionate pressure exerted by the public officials. Moreover, on closer examination, the "agreements" reached on the aforementioned occasions - as rightly emphasised by Scaroni's *defense* attorney in the rejoinder and replication - are not mutually and substantially overlapping and differ from each other solely in formal terms.
On 15 November 2010, the imagined agreement to be negotiated still concerned neither more nor less than that of acquisition of the concession by NAE/Snepco with the predecessor in title, Malabu, which was referred to by the NAE offer of 30 October 2010, i.e. a deal between private entities in which the Nigerian Government had no role. The summons issued to the negotiator by the AG and his persuasive efforts only led to the acceptance by Etete of a price very close to what he had previous rejected out of hand.
"A representative of the seller was also there and reiterated the fact that our offer ($ 1.26 billion) had been rejected, because a greater amount was expected. However, together with Shell we explained that our offer reflected detailed technical, economic and risk analyses and that there was only room for a slight increase, provided that the conditions set out in the letter of offer were met. After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion[691].
If the corrupt arrangement necessarily had to envisage a promise by the public official to perform an act contrary to the duties of his own office, on 15 November 2010 it did not appear that the Government, acting through the Attorney General, had promised to do anything. On 15 November 2010[692] Ednan Agaev wrote to Emeka Obi: "Chief will sign the agreement with the spaghetti on Thursday in Abuja. They agreed 1.2. All this will be done in the presence of the Attorney General, Minister of Oil", underscoring the fact that the latter had nothing to do with that clause.
However, that possibility of a purchase and sale agreement between NAE and Malabu definitively faded away at the end of November 2010 with notification of the Writ of Summons in which Alhaji Mohammed Sani claimed his own share in Malabu, significantly exacerbating the uncertainty confronting Eni with regard to the still open question over who held the authority to enter the Nigerian company into binding agreements.
Solely for the purpose of overcoming that latest impasse in negotiations, the Attorney General advanced a possibility on 15 December 2010 that the Government would intervene directly as part of a settlement in which it would assume the obligation of issuing a new prospecting license to NAE/Snepco. So, it can be said that the economic balances of the deal did not change, but the legal balances did change indeed, even in substantial terms.

6.2 The unlawful pressure by the public official Adoke Bello

An agreement was not reached by the parties on 15 November 2010, but Etete did accept the price offered by Eni and Shell in consequence of the menancing pressure brought to bear by Adoke Bello, who had conjured up his intention, if negotiations stalled any further, to revoke the license without any compensation. Specifically:

- on 26 October Roberto Casula wrote to Claudio Descalzi: "Yesterday evening Shell met informally with the Attorney General, who said that the seller is under general watch to close, because if it does not sell, the block will revert to government control and will be reassigned at that point";
- on 3 November Ednan Agaev wrote to Emeka Obi that "[Etete] will lose his block - we have learned that GU has ordered that it be revoked by the end of the week. Even if that were to occur, it would still be positive for us";

691 Public Prosecutor submissions of 23 November 2018, PM3, page 268.
692 File for the trial proceeding, page 3282, text message 1042.

- on 4 November, Guy Colegate wrote: “he agrees on the AG’s option for Monday - he said that if it were done beforehand it could go well all the same - the message consists of the revocation of the block”;
- on 12 November, Ednan Agaev wrote to Emeka Obi: “Papa is going to Nigeria today. The government is putting pressure on him so that he will accept the offer and close the deal”;
- on 8 May Ednan Agaev wrote to Emeka Obi: “a long time ago, I advised you to settle with the AG. It’s all in his hands, Chief has not decided anything for a very long time”.

The reported communications have been validated by the civil party to argue that the Government could very well have revoked the license granted to Malabu and that, therefore, the sole purpose of recognising the company as a contractual counterparty was to conceal the payment of bribes to public officials.

However, we cannot agree with such an interpretation.

First of all, as we have seen, the legitimacy of Malabu as the license holder derived from the deeds of assignment preceding the establishment of the Jonathan Government, whose confirmation on 2 July was a simple restatement of what had already been decided by the Obasanjo Government.

Moreover, we can certainly agree with the premise that, abstractly, the Government could have revoked the license by following legal procedures (and thus paying an indemnity, and on condition that Malabu had not fulfilled its contractual obligations. Nevertheless, the cited messages prove that none of this occurred in the case being examined here, since the Attorney General intended to exploit the economic difficulties of Dan Etete to force him to accept an offer that the latter did not consider satisfactory.

The prosecution itself introduced the theme of the existence of an environment conditioned by extortionate requests by money-hungry public officials, through the testimony, albeit generic, of the Italian Ambassador in Nigeria at the time of the events[693].

6.3 The problem of payment of Obi’s commissions

The Public Prosecutor assigns seriously circumstantial importance to the fact that the Eni executives and Attorney General Adoke Bello became interested in the issue of payment of commissions to the broker Obi even after he was cut out of the negotiations. This topic takes up a large part of chapter 4 in the final pleadings, which is dedicated to the involvement of Eni in the corrupt arrangement, but also a part of chapter 5.

We have already had the possibility to appreciate the ambiguity of the circumstantial evidence concerning proof of the unlawful agreement and, therefore, the same arguments will not be repeated, holding that, during the period examined here, the involvement of the Government falls within the logical settlement of problems deriving from the beginning of direct negotiations between the oil companies and the government.

Perhaps it is worth the trouble here only to underscore how Eni was not entirely indifferent to satisfaction of the economic claims made by EVP against its own “principal”, where this was due to the aspects of contracting responsibility that EVP could have otherwise claimed with regard to Eni on the basis of the signed Confidential Agreement.

Indeed, the chronology of the previously stated facts reveals how not only EVP, but also Raffeisen, once it learned of the negotiations for sale of OPL 245 even after 30 October 2010, it had immediately shown that they had absolutely no intention of rejecting their respective commissions and somehow holding Eni involved in that claim. For their part, the witnesses Guido Zappalà and Donatella Ranco,

693 Hearing on 12/12/18 PUBLIC PROSECUTOR - *Relations between business and politics in Nigeria.* WITNESS GIANDOMENICO - *As I have said to your colleague Mr Fabio De Pasquale, in Nigeria, just like all over Africa, you do not work unless...* PUBLIC PROSECUTOR – *Wait. “That in Africa in general, in Nigeria in particular, it is not possible to do business, especially with federal government organizations, or with the agencies of the various States, without having important connections. For me, it was almost common knowledge that the public officials of the contract-issuing entities always received cash compensation from these big deals with foreign companies. Do you confirm these statements?* WITNESS GIANDOMENICO - I confirm that....WITNESS GIANDOMENICO - *But I don't remember from whom, I can’t say. I am perfectly aware that in Nigeria, just like all over Africa, you do not work unless you grease the wheels. It is my perception, and this is...*

[3 illegible signatures]

in their capacity as members of the negotiating team, as confirmed in their respective depositions, when it had to be decided whether or not to accept the invitation given by the Attorney General to resume the negotiations under his supervision, they had posed the problem of the possible risks deriving from infringement of the obligations assumed with EVP after the Confidentiality Agreement was signed. Therefore, they had asked for advice in this regard from the legal team - and especially from Marco Bollini and Caligaris - in order to evaluate the possible claims that they were about to present. The mutually agreed decision in this regard, during a meeting attended not only by the four aforementioned individuals (Caligaris, Bollini, Rano and Zappalà), Roberto Casula as head of the geographical area and Vincenzo Armanna, as the person in charge of the transaction, had been not to reject the urging of the AG and, for the moment, to expose oneself to possible risks of complaints by EVP.
Nonetheless, the perception of the risk of contractual liability was evidently supposed to continue in Eni management and fulfilment of the obligations assumed by Malabu towards its own advisers had à propos an intuitive impact: payment of the commissions by Malabu would trigger the lapse of any possible form of liability on the part of Eni.

6.4 The contrary circumstantial evidence

The principal events of this period represent indicia conflicting with the corrupt arrangement made between the defendants in this trial.
The exclusion of the intermediaries, as indicated in chapters 4 and 5 of the final pleadings as the weavers of the corruption plot is an absolutely contrary fact.
Adoke Bello's threats to compel Etete to accept an agreement that the latter deemed prejudicial represent circumstantial evidence contrary to the existence of a corrupt arrangement in favor of other forms of crime, which were not included at the time in international bribery.
The lawsuit brought on 23 November 2010 by General Abacha's son and the appearance of a new representative of Malabu at the negotiations (Alaji Abubaker Alyu) introduce a variable to offers a different circumstantial interpretation of the existence of corrupt arrangements. This is true especially in light of the methods used to divide up the compensation into two equal parts of $ 400 million each, in separate accounts, with the first being managed by the silent partner Dan Etete and the second by the silent partner Alaji Abubaker Alyu.
The reaction by the top executives of Eni, to halt the negotiations in the face of this new variable that generated uncertainty over the ownership structure of the seller company represents a piece of circumstantial evidence that is certainly contrary to the existence of corrupt arrangements involving the Italian executives, to the point that the prosecution seeks to dminish the importance of the interruption in the negotiations by attributing it to other reasons, such as the fear deriving from the breakthrough in the investigations on international bribery involving Saipem. The subsequent events, and especially the resumption of negotiations in light of the new negotiating framework that excluded acquisition of the license directly from Malabu, will clarify that it was specifically the disputes over ownership that hindered the negotiations and certainly not the investigations of Saipem, which were not resolved on 15 December 2010, but on the contrary moved forward without creating any more problems for continuation of the negotiations.
The pendency of the investigations for other inquiries, in this case, Italian inquiries like the one conducted by the Public Prosecutor's Office of Naples, which would implicate Bisignani in the month of March as a suspect and Scaroni and Descalzi as individuals informed about the facts, is deemed to be circumstantial evidence because, according to the prosecution, it allegedly held up the negotiations in March. The Court holds that the Public Prosecutor links two facts, the interruption in negotiations and the summons issued in the investigation conducted by the Public Prosecutor's Office of Naples, by giving a forced reading of the case facts that instead ascribe the interruption in negotiations in March to the difficulties that placed the NNPC and DPR departments of the Ministry of Petroleum Resources in the position of accepting the contractual conditions that the companies were imposing to acquire the license at the price offered on 15 November 2010. The prosecution's linkage is unacceptable because

it conflicts with the case facts and is contradicted by subsequent events. In fact, the negotiations resumed in the second half of March, when the investigations by the Public Prosecutor's Office of Naples, which had begun long before March, certainly had not been completed. So, the recovery has to be linked to the legal solution to the problems over the ownership structure of Malabu and its exclusion from any contractual relationship with Eni. The new negotiating framework certainly was not only a cosmetic operation, but also represented a legal solution to contractual problems that were serious considered by the Eni executives.
Descalzi's decision to abandon the negotiations in March is also connected with the difficulties that the negotiations were encountering due to the resistance put by by government offices, which were opposed to sale of the license without the imposition of back-in rights.
This latter decision was taken by the Executive Committee of ENI - with the participation of Scaroni and Descalzi - on the basis of an explanatory memorandum written by the latter: in the relevant minutes, we read that "Descalzi explained the memo sent, which is attached. He pointed out that the situation had stalled due to tax and contractual issues. The CEO added that there were delicate issues about Malabu's signing powers. He felt the project should be considered shelved". The resolution would constitute the object of an exchange of emails between Malcom Brinded, who was pushing for closing on the agreement, and Descalzi, who reiterated the decisiveness of the points of discussion that were still unsettled.
We cannot avoid agreeing with Scaroni's *defense* attorney, when in her own rejoinder and replication, pointed out the incompatibility of such a decision with the preliminary execution of corrupt arrangement.

6.5 The objections by the government offices

According to the Public Prosecutor, the resistance put up by the NNPC and DPR offices to acceptance of the contractual conditions set by the oil companies represent and indication of the conflict of the Resolution Agreement with the official duties borne by the public officials, which allegedly thus oriented their own actions by supporting the wishes of the companies and against the interests of Nigeria. These problems will be examined in greater detail in the next chapter, which is specifically dedicated to the alleged illegitimacy of the administrative acts. Here we must point out that the ways in which the negotiations were conducted cannot represent a serious and precise indicator of the existence of underlying corrupt arrangements for the following contrary reasons.
In the first place, we have to rememer that the intervention by the ministerial technical offices occurred specifically after this was solicited by Adoke Bello. However, it is true that, in the prosecution's perspective, the latter was supposedly totally interested in not disseminating the allegedly unlawful agreement and not involving parties who could have constituted an obstacle to closing the agreement. Furthermore, the Attorney General himself had addressed the companies by clarifying that no agreement would be made without the approval of the government agencies summoned to the negotiating table. This circumstance is clearly revealed by a message dated February 2011 by Roberto Casula, who informed Claudio Descalzi that "The AG said that without NNPC's endorsement, or at least an agreement with them on the terms of the Resolution Agreement, he is ready to pull out of the negotiations and the block will be put out to tender again".
A second objective element to be considered concerns the fact that the discussions between the oil companies and the ministerial agencies went on for over three months and addressed nearly all the points of interest. The undeniable seriousness of the negotiations with NNPC and DPR represents an important indicator contrary to the existence of a corrupt arrangement. In fact, it does not appear realistically conceivable that some corrupt public officials - who were supposedly ready to seize hundreds of millions of Euro - accepted the risk of missing out on such a prospect for gain because of anonymous ministerial officials raising objections over technical aspects of the agreement.
This last consideration then leads us to emphasise that, as will be examined in greater detail elsewhere in this document, the Resolution Agreement signed at the end of the discussions had accepted the

objection raised by the DPR and NNPC over the failure to include back-in rights for the State.
In conclusion, the elements that the prosecution deems to be serious indicia of the defendants' participation in a corrupt arrangement have not turned out to be sufficiently serious or precise, not onlyl in the perspective of the overall reconstruction but also in the specific analysis and contextualisation of the individual indicia.

6.6 The crimes committed by the public officials.

We shall now proceed to the specific analysis of the allegations made by the Public Prosecutor with reference to participation in the crime by public officials in order to highlight that the arguments made have not been adequately measured with the previously cited legal coordinates[694].

6.6.1 The President of Nigeria, Goodluck Jonathan

The prosecution itself indulges in conflicting arguments on the classification of the personality of the Nigerian President, without admitting that his relations of subordination/gratitude towards Etete, who ha always supported his political career, represent an alternative interpretation of the administrative choices "*favorable*" to Etete:
Public Prosecutor: Goodluck Jonathan was the President of Nigeria who facilitated the agreements formalized in the Resolution Agreements of April 29, 2011.
He began his political career in 1999 as Vice Governor of the state of Bayelsa under Diepreye Alamieyeseigha. When, in 2005, the latter was subjected to impeachment following accusations of money laundering made by the authorities of the United Kingdom, Jonathan became the State Governor. In May 2007, following the victory of Umaru Yar'Adua, he was appointed Vice President of Nigeria. On February 10, 2010, due to the President's seriously failing health, Goodluck Jonathan took over as Acting President. The death of President Yar'Adua, on May 5, 2010, determined Jonathan's appointment to President of the Nigerian Republic, pending new elections. After winning the primaries of his own party, PDP, beating Atiku Abubakar, on April 16, 2011 he won the presidential election. Goodluck Jonathan remained in office until May 29, 2015, when he was defeated in the election by the current President, Muhammadu Buhari.
President Goodluck Jonathan's role in the OPL 245 affair was characterized by total acceptance of Etete's demands, manifested first and foremost through express confirmation of the allocation of the entire license to Malabu. **Confirmation of this reallocation gave Etete enormous strength in negotiations with the oil companies, in particular with Shell, as he no longer had any legal constraints on selling the entire asset to third parties.**
The backing that Jonathan gave to Etete through this reallocation produced a number of issues: it was driven by the President's personal interests, contrary to Nigeria's national interests, since it excluded any title or rights for NNPC or any other public entity; it was based on the lawfulness of the original allocation of OPL 245 issued in 1998; it also contradicted the information given to the parties by the previous administration.
The reasons for Goodluck Jonathan's conduct are his closeness to Dan Etete and his expectation to receive money, also to fund his current electoral campaign.
Throughout the trial, evidence has emerged that President Goodluck Jonathan, despite the role he held, was in substance a subordinate of Dan Etete, due to past personal experiences and the support that Etete had given to his political career already as Vice Governor of Bayelsa. Etete and Jonathan had a long-standing relationship, which was based on the support that Etete, as Oil Minister and very powerful Chief of Bayelsa, had given over time to the former private tutor

[694] The private prosecutor has reprised the arguments of the public prosecutor, embellished with profound and irremediable intrinsic contradictions, and first and foremost of these is the evaluation of the price paid by the companies, deemed, on the one hand, to be too low with reference to the indicia of participation in the illegal agreement and the claims for compensation, and on the other hand, too high with reference to the costs that the government would have had to assume in order to exercise its back-in right, in order to devalue this element and thereby diminish its validity as circumstantial evidence contrary to participation in a corrupt arrangement.

[3 illegible signatures]

of his children. Their relationship was certainly not between equals and has been repeatedly defined as one between employer and employee.
Therefore, from at least March 2010, Eni had access to very precise information on the relations between its negotiating counterparty, Dan Etete, and the new President of Nigeria.
It seems clear that this information, assumed to have been obtained in March, was confirmed by the facts in the following months, when 100% of the license was reallocated to Malabu through the decisive intervention of President Goodluck, Attorney General Adoke and Oil Minister Diezani Alison Madueke.
What was a (loud) alarm bell on the closeness between Etete and Jonathan became proof of the new President's unconditional support of Etete.
Jonathan's entry into the negotiations was seen by Shell from the beginning as a sure help for Etete, originating from a long-standing dependent relationship.
In an email dated 2.19.2010 [Exhibit 22], Copleston reports on Jonathan's history as a private tutor to Etete's children and on Jonathan's pressure on the Minister of State of Petroleum Resources (Odein Ajumogobia) to review the OPL 245 file: Ann Pickard, too, reporting to Brinded, among others, about a meeting with Ajumogobia (then Minister of State for Petroleum Resources), explained that: Furthermore, Acting President is from Bayelsa, as is Etete and Etete is lobbying Acting President very hard. Further confirmation of Etete's relationship with Jonathan was given to Copleston by Muhammadu Dikko Yusufu (MD Yusuf), former Chairman of NLNG[695], as shown in an email dated 7.13.2010 Separately met elder statesman MD Yusuf last night who was sacked by Etete when was Chairman of NLNG for not doing a backside deal on trains 1 and 2. MD reminded me that Jonathan used to be employed by Etete to tutor his children back in the days when Etete was Minister and Jonathan a humble lecturer. **MD says Jonathan still sees Etete as his Osa.** Not ideal ... [our emphasis."Oga" is a Nigerian term for "chief"]
It is clear from the email that Jonathan, despite his role at the top of the Nigerian government, continued to regard Etete as his boss.
Just as acceptable is the following description of the President's activity in favor of Etete:

Goodluck Jonathan became Acting President on February 10, 2010; his appointment immediately had a decisive impact on the OPL 245 negotiations. When he took office as President of Nigeria on May 6, 2010, one of his first acts was to formally confirm that Etete (or, more precisely, Malabu) held full ownership of the OPL 245 license.
The process followed to achieve this result started with a request from Malabu to the Attorney General, who then made a request to the President, who in turn approved it, resulting in a letter from the Oil Minister that confirmed the allocation to Malabu (documents produced at the January 23, 2019 hearing).
On May 11, 2010, R. Gbinigie wrote to the Attorney General (copying in the President), on behalf of Malabu, complaining that Shell had acted inappropriately thereby making any agreement impossible, and claiming that "Malabu should be granted unlimited rights to fulfill its obligations in accordance with the November 30, 2006 Resolution Agreement and related laws". On May 25, 2010, "Adoke Bello petitioned President Jonathan so that he would confirm and implement, by giving specific instructions to the Minister of Petroleum, the Resolution Agreement of November 30, 2006 between Malabu and the Government. On May 28, 2010 an assistant to the President notified the Minister of Petroleum and the Attorney General that Jonathan had approved reallocation of OPL 245 to Malabu, under the terms proposed by Adoke Bello. Significantly, Jonathan did not sign anything and his assistant communicated the President's approval with the following cryptic expression: I have been asked to send you Reference A and to relay to you the President's approval of Paragraph 18 x (e) - (f).

[695] Nigeria LNG Limited is the Nigerian company that manages the production and distribution of liquefied natural gas, owned by NNPC (49%), Shell (25.6%), Total (15%), and Eni (10.4%).

Consequently, on July 2, 2010, Oil Minister Diezani Alison Madueke sent a letter to Malabu confirming the reallocation of OPL 245 on the condition that the sum of $ 210 million be paid as a signature bonus.

From this moment on, Dan Etete was free to dispose of OPL 245 as if it were his own property, with no limits arising from any rights of NNPC, the Government, Shell or anyone else, without any obligation to refund the costs already incurred by Shell, thereby overcoming at once all the flaws stemming from the original self-allocation of the license and the failure to pay the signature bonus.

In this regard, we also have to consider the "personal and friendship" reasons for the July 2010 award, given that President Goodluck Jonathan confirms what his predecessors, Obasanjo and Yar'Adua, had already decided before him, at the conclusion of assessments that had a precise political basis (help Etete in exchange for his political support) and legal basis (having to neutralise the risks posed by the lawsuit filed by Malabu against the government for revocation of the license).

That said, the comments made by the prosecution with regard to the certainty of the corrupt arrangements underlying confirmation of the license award to Malabu are not supported by certain indicia, but only by opinions that are equivocal at the very least, considering that they are based on comments by Shell informers. However, the Dutch company was surely the party damaged by this confirmation and thus interested in undermining its validity, by promoting current rumours or information received from unidentified individuals who claimed that the decision was unlawful.

In any case, the prosecution's arguments assume validity as circumstantial evidence of the conclusion of an illegal agreement between Etete and the President of Nigeria prior to 2 July 2010, without the oil companies having participated in that agreement. In fact, as we have seen, Shell was even a participant/damaged party, while Eni does not appear to have participated in these agreements, and for that matter, it is logically weak to link it to the President's privileged friendly relationship with Dan Etete.

6.6.2 The Minister of Petroleum, Diezani Alison Madueke

Analogous comments may be made with reference to the corrupt arrangements that allegedly involved the Minister of Petroleum, Diezani Madueke. In this case, the contradictory nature of the comments on the circumstantial evidence involving the oil companies is even more strident due to the fact that Diezani Madueke, former employee of Shell, allegedly got Etete to bribe her, with the aid of Shell, in order to commit an act conflicting with her official duties (confirmation of the license of 2 July 2010), but which was absolutely prejudicial for Shell.

The fact that an unsigned copy of the aforementioned measure was found at Shell confirms the existence of informal relationships deriving from the preceding contractual connection, but it does not challenge the illogical nature of the indicia-based reasoning of the prosecution, which with absolute certainty ascribes the activity of the Petroleum Minister to the existence of underlying and preceding corrupt arrangements, but which certainly did not involve the oil companies, but instead Etete alone.

No element, not even circumstantial evidence, involved Eni employees in relations with the Petroleum Minister.

In conclusion, in this case too, no element, not even indicia, supports participation by the defendants other than Etete in any illegal agreements with the Petroleum Minister, agreements which for the prosecution itself were made before July 2010, the date on which confirmation of the award to Malabu was formalised. It is perfectly clear that this would still be a crime committed in Nigeria and thus falling outside Italian jurisdiction, the reason why the Public Prosecutor moves the illegal agreements to the following phase (from 15 November to29 April), which was the phase of negotiations involving direct discussions between the public officials and company representatives. However, we have already been able to see that the Public Prosecutor himself considers the negotiations after 2 July fully legitimated

[3 illegible signatures]

by the order confirming the license[696].
We reiterate that the participation by third parties in the performance phase of the agreement (resolution agreements and payment of the price), even if this was carried out with the awareness of the existence of illegal agreements already exchanged between the necessary parties, it is insufficient to qualify as bribery, which is based on the necessary participation in the phase of the illegal agreement.

6.6.3 The Minister of Justice, Adoke Bello

Analogous arguments can be made even in regard to Adoke Bello's involvement, since he was the mover and promoter of the reconfirmation of the license awarded to Malabu. However, it is necessary to make several clarifications on this point that distinguish his position from that of the other two public officials, since the Public Prosecutor hmself affirms Adoke Bello was Etete's creditor for having provided his services as his lawyer in the lawsuits brought in opposition to the award of the license to Shell in 2002. Therefore, the prosecution itself points out that a possible agreement between Dan Etete and Adoke Bello might have arisen from the Attorney General's desire to realise the benefit deriving from the satisfaction of outstanding professional bills, a fact that is certainly different and unrelated to the scope of the indictment.
Adoke Bello is the only one of the three public officials named in the indictment as necessary parties of the corrupt arrangement to have received a benefit deriving directly from the funds coming from the OPL 245 transaction. In fact, it has been revealed that Adoke Bello received a proprety at a below-market price through a company managed by the straw man Abubaker, who had previously purchase the land with a loan paid for with cash coming from the bureaux de change where the funds for the compensation received by Malabu and entrusted to Abubaker for management had been monetised.
In this regard, the Court agrees on the reconstruction of the facts made by the prosecution, because it pertains to the acquired information.

Public Prosecutor: There is evidence in the trial record that Adoke Bello received benefits from OPL 245. On June 27, 2011, when the OPL 245 money, paid into the Nigerian Government's account with JPMC in London, was still to be transferred to Malabu, the representative of City Hopper Properties & Investment Co. Ltd, Patrick Okoye, offered A Group Properties Ltd the real estate property located at no. 11 Vettern Street, Majtama Abuja, for the price of 720 million Naira. At the exchange rate of that time, this sum corresponded to about $ 4.5 million. The property covers a 5400 sq m area in the center of Abuja, Nigeria's capital city. A Group Properties Ltd is controlled by Alhaji Abubakar Aliyu, as are all the other "A" group companies (such as A Group Construction Company Ltd, which received money from the OPL245 payment). On the same date, the manager of A Group, Bashir Adewuni, signed the acceptance of the purchase proposal, contained in a letter countersigned by Okoye, specifying that 700 million naira would be paid as price and 20 million as agency fees. It should be noted that rock-solid evidence has emerged in the trial that Bashir Adewuni was merely a frontman for Alhaji Aliyu Abubakar, and that the companies - A Group, Megatech, Imperial Union and Novel Properties - which received over $ 400 million from Malabu's account at First Bank of Nigeria can be traced back to him. On September 14, 2011, after the money paid by Eni and Shell for OPL 245 was paid to Malabu (and, a few days later, transferred to the companies of Alhaji Aliyu Abubakar), the real estate property passed from City Hopper to A Group. We have in the trial record (Exhibit 56) the letter dated 9.14.2011 from City Hopper Properties and Investment Ltd to The Director (Lands) Dept Of Land Administration, whereby City Hopper requested the Ministry's authorization for the change of title holder in favor of A Group (we humbly request the Minister's consent to the transfer of the above described property to A Group Properties Ltd. No. 32 Mediterranean Street, Abuja), as well as a "memorandum of sale" (undated) between City Hopper, as seller, and A Group, as buyer, for the

[696] Public Prosecutor: *Confirmation of this reallocation gave Etete enormous strength in negotiations with the oil companies, in particular with Shell, as he no longer had any legal constraints on selling the entire asset to third parties.*

[3 illegible signatures]

property at Plot 3271, Cadastral Zone A06, Maitama, Abuja. The price was 700 million naira. On the same date, September 14, 2011, City Hopper received from Imperial Union $ 4,501,608. Although the payment was not made by A Group, this transfer certainly concerns the purchase of the real estate property, because: Imperial Union is one of the companies managed by Alhaji Aliyu Abubakar that received money from the OPL 245 payment from Malabu; the figure of $ 4,501,608 corresponds to the 700 million naira agreed upon by the parties as the purchase price; the date of the transfer is the same as the date of the purchase. At this point there is a gap in the document chain, since the next document shows that the property in question is not held by A Group or Imperial, but by Carlin International Ltd. In a document in the trial record, dated October 5, 2011, Carlin International Ltd offered to sell to Adoke Bello the real estate property (Plot 3271, Cadastral Zone A06, Maitama, Abuja) for the price of 500 million naira. Carlin International Ltd was also a company owned by Alhaji Aliyu Abubakar, as clearly shown by the contents of the offer letter: this is a follow-up to the meeting between yourself, Mr. Bello Adoke and myself, Alh. Aliyu Abubaker today October 5, 2011. After a long negotiation both parties agree that we will sell the property for the sum of 500 million Naira. Bashir Adewuni himself, when questioned in the hearing of January 9, 2019, while denying that the signature on the document was his, clearly confirmed that Carlin International Ltd was owned by Aliyu Abubakar. Thus, we have documentary evidence that on October 5, 2011, "after a long negotiation", Adoke Bello and Aliyu Abubakar agreed the purchase for 500 million naira of the same real estate property that had been purchased by another company of Aliyu Abubakar 21 days earlier at 700 million naira. Obviously, there was no economic logic in this further action of Aliyu Abubakar who gifted a value of 200 million naira to Adoke Bello: this confirms that that transfer was clearly for bribery purposes as remuneration for Adoke Bello's activities in the OPL 245 affair. On this point, we also have documentary evidence in the trial record that Aliyu Abubakar, "advisor for Malabu", had personally attended the meetings at the Attorney General's office in November 2010 during the negotiations on OPL 245 together with representatives of Eni and Shell, and - according to Armanna - followed the development of the discussion and influenced the Attorney General (hearing of 7.17.2019, page 102). The anomalies of this real estate sale do not end here. Adoke Bello agreed to pay only 500 million naira, but of this amount only 300 million naira were actually paid: the offer of October 5 bears a handwritten note showing the payment of 300 million naira to Carlin from the Adoke Bello's account, on 2.15.2012. Analysis of the statements of Adoke Bello's account at Unity Bank, sent by the Nigerian authorities in response to letters rogatory, shows on February 15, 2012 an outgoing payment of 300 million naira (equivalent to $ 1,893,786.71) to Carlin, which resulted in an immediate negative balance in the same amount. Indeed, the payment was not drawn on money in the account, but on an account overdraft (TOD - Temporary Overdraft Facility) granted by the bank to Adoke. An Internal Memo of the Unity Bank [Exhibit 59] shows that a few months earlier (precisely on December 29, 2011) Adoke had applied for a loan of 300 million naira but had failed to submit the documentation that the bank required: "while the Branch was working to ensure that all the required documentation was complete, [English in source text:] the client was not able to meet up with the same. [Translation resumes] This delay, coupled with time constraints, required the granting of a Temporary Overdraft (TOD) pending the full documentation that had been requested, and was subsequently approved by Management...all efforts to retrieve the formalized documents from the client have not yet been successful due to his unavailability. We will continue to urge the client to collect the documents". This overdraft had, naturally, exorbitant interest rates, paid on a monthly basis. In 32 months, it generated interest of about 150 million naira, or about $ 900,000. These outflows from Adoke's account were covered, in part, by a large number of small cash payments from individuals, likely employees of Bureaux de Change, as well as two larger payments from Bureaux de Change Gagarimi and Crawnford. All cash payments were of less than 5 million naira, a figure that, as witness Ibrahim Ahmed explained, represented at the time the maximum amount of money an individual was allowed by law to pay in cash. Thus, we have undisputable documentary evidence that Adoke was able to use cash not earned from his position but, instead, transferred so as to circumvent the anti-money laundering rules in force in Nigeria.

Reasonably, Adoke knew he could count on such transfers when he incurred such a large debt with the bank and let very large interest accrue (almost $ 1 million) without repaying the debt in any way with his own income. The logical explanation of these anomalous money transfers is that the money paid into his account to repay the overdraft did not belong to Adoke and, in any case, did not come from lawful sources; this is the only explanation for the large number of cash payments and the intermediation of bureaux de changes. Moreover, the fact that Aliyu Abubakar, Adoke's formal counterpart in the deal received, as repeatedly pointed out, more than half a billion dollars from the OPL 245 fund, suggests a strong connection between the two situations. In summary, the documents demonstrate

1. that the property that Adoke obtained from Alhaji Aliyu Abubakar for 300 million naira (about $ 1.9 million) had just been purchased from a third party by Alhaji Aliyu Abubakar - using OPL245 money - for 700 million naira (about $ 4.5 million). It was, therefore, to all intents and purposes a benefit deriving from money transfers on the OPL245 funds.

2. that the repayment of the overdraft of 300 million naira to UNITY BANK was made with funds of non-transparent origin (a large number of small "fractional" payments) and payments from Bureau de Change which, given the period considered (subsequent to the payment for OPL 245), can be linked, circumstantially, to Alhaji Aliyu Abubakar's activity as generator of large amounts of cash.

The amount of the benefit, calculated in the amount of several million dollars, appears proportionate to the reason for the outstanding amount due claimed by the public official for his previous legal work on behalf of Etete, and would suffice to introduce a reasonable degree of doubt over the existence of the charged unlawful agreement. In any case, even disregarding such considerations, the previous observations may be restated with regard to the absence of any evidence or circumstantial evidence of any participation by the current defendants, except for Etete, in any illegal agreements underlying the more important activity performed by Adoke Bello on behalf of Malabu, which would lead us to date any hypothetical illegal agreements in May 2010.

Public Prosecutor: On May 25, 2010, Adoke Bello petitioned President Jonathan to confirm and execute, giving specific instructions to the Minister of Petroleum, the November 30, 2006 agreement between Malabu and the Government. The contents of this petition reveal detailed knowledge of all the aspects of the dispute between Shell and Malabu over OPL 245, which were not mentioned in Gbinigie's letter. Clearly, such detailed knowledge was not gained in a few days but had been accumulated through Adoke's previous activity as "Etete's lawyer" and legal representative for Nigeria in the ICSID case. On becoming Minister, Adoke used his power to authoritatively assert a right of Etete which, besides still being the subject of a pending dispute, had also been severely downsized by President Obasanjo in his aforementioned letter of May 3, 2007.

Indeed, Adoke's letter reads more like a summation on Etete's behalf than a survey of the objective basis for his claims "in fact and in law". Indeed, the Attorney General presented Malabu as an indigenous company that had correctly applied for the license on the basis of Indigenous policies; there is not the slightest mention of the well-known fact that Malabu was controlled by the former Minister of Petroleum who had illegally awarded the license to himself, that Malabu had incorporated a few days before the allocation without any operational structure or capital and that it was immediately the subject of ownership claims made by the front men of more or less powerful figures. Adoke did not hesitate to blame the government of having infringed national laws (thereby providing Etete with excellent arguments for use if necessary): Despite Malabu's protests, **the Government, in breach of the Petroleum Act and its related protocols, surreptitiously invited Exxon-Mobil and Shell** to bid for Block 245 in April 2002, despite the existing contractual agreements between Malabu and SNUD with respect to OPL 245 [our emphasis]. He even supported Etete's suspicions of a fraudulent agreement between the Government and Shell to the detriment of Malabu at the time the license was revoked in 2001. Malabu also argues that the federal government consequently reallocated OPL 245

to SNUD under unclear circumstances, thereby confirming his fears of the pressure and complicity of SNUD, its technical partner, in the revocation. Adoke's aims at the time were quite clear and led, through the President's approval on May 28, 2010, to Diezani's letter of July 2, 2010 which reallocated OPL 245 to Malabu subject to payment of the $ 210 million signature bonus. [English in source text:] Your company is hereby allocated OPL 245 subject to the payment of the sum of US$210 million as Signature Bonus [*T*ranslation resumes:]From that point on, Dan Etete could freely dispose of OPL 245 as if it were his own property, without any restrictions arising from the rights of NNPC, the Government, Shell or anyone else, without any constraints on the payment of costs already incurred by Shell, and without any obstacles arising from the original self-allocation of the license and his failure to pay the original signature bonus.

We also recall the comments on the conscious participation in the performance phase of the agreement, with the clarification that the function of managing the agreements even in conflict with the interests of the intermediaries and Etete himself (obliged to accept a price that he did not consider adequate) lead us to believe that even the hypothetical original awareness of the companies of a corrupt arrangement would have actually evolved in the awareness of the predominance of the public officials over the private briber in terms of extortionate demands or at least in terms of agreements for illegal payments. A propos we cite several argumentative excerpts from what the Public Prosecutor himself proposed, in reference to menacing pressure brought to bear by Adoke Bello to compel Etete to accept the agreements in execution of the original unlawful arrangement, with the current defendants thus being completely uninvolved in the offence of any participation in the crime, considering the fact that, at the time, in addition to extortion, the offence of illegal payments was not included in international bribery.

Public Prosecutor: Adoke took steps with all the players in the negotiations: with Etete, with Shell, with Eni and with Obi, demonstrating a firm determination to bring the negotiations to a successful conclusion, even when Etete firmly rejected the offer relayed by EVP on October 30, 2010. On October 26, 2010 Adoke met with Shell, expressing the Government's intention to push Etete to close: the information can be found in an email from Casula to Descalzi dated October 27, 2010 [Exhibit 47]: Yesterday evening Shell met informally with the Attorney General, who said that:

+ the seller is under pressure to close the deal;

+ if he doesn't close the deal, the block will return to the FG [Federal Government];

+ at that point it will be re-allocated (Shell says with priority given to them, while other sources say by means of a call for tender);

Since the Government formally started to support the Eni/Shell/Malabu solution, the possibility of revoking the license for the block was repeatedly mentioned in response to Etete's obstructive behavior, i.e. to his continuing demands for a higher amount than that offered. An email from Colegate dated November 4, 2010 [Exhibit 48] confirms the Attorney General's approach: Spoke with Ed[nan] - agreed way forward. He [Ednan] supports AG option Monday - says earlier would be fine too - message being "block revoked". Analogously, Roland Ewubare wrote to Obi on December 2, 2011: text message 1201 from Ewubare to Obi

Fantastic news!!! Everybody has told him to close or risk losing 245 to the next licensing round basket.

Even Adoke Bello's decision to exclude participation by the intermediaries and get Obi's fee reduced lead to the same conclusions mentioned hereinabove.

We cannot instead accept the comments on the fact that Adoke Bello allegedly exerted unlawful pressure on NNPC and DPR. In fact, as we have seen, it had been the Minister himself who had engaged these departments and demanded that an agreement be made reflecting their suggestions, so that the companies were forced to give ground on recognition of the back-in rights, which were not included in the previous contractual framework, which called for direct purchase from Malabu, considering that that company had been granted a license free of these restrictions.

[3 illegible signatures]

6.7 The participation in the illegal agreement by the intermediating public officials

The intermediating public officials (Bajo Oyo, Gusau, Bature, Obiorah), are mentioned as third parties who contributed to the performance phase of the illegal agreements, allowing the negotiations to be concluded in April 2011.

... with it having been agreed, during the negotiations to purchase the block, that those funds, net of the amounts kept by Etete (approximately $ 300 million used by Dan Etete to profit himself and numerous other beneficiaries to purchase real estate, airplanes, armored cars and more) would in large part be used, as in effect happened, to compensate the bribed public officials for the purpose of causing the public officials Goodluck Jonathan, President of the Nigerian Republic and, each to the extent of his/her authority, the Minister of Justice and Attorney General Mohammed Adoke Bello and Petroleum Minister Diezani Alison-Madueke, **as well as, with the functions of brokers in the negotiations, the other aforementioned public officials (Bajo Oyo, Gusau, Bature, and Obiorah) to adopt, on April 29, 2011, the agreement entitled FGN Resolution Agreement**, ostensibly an agreement settling the disputes that had the effect of granting to Eni and Shell, 50% each, the exploration rights to deep-water block 245 of the Nigerian Republic:"

6.7.1 Obiorah, public official

Senator Obiorah does not appear in the negotiations in any manner and thus no causal contribution of his has been identified in the corrupt arrangements. His alleged involvement in the arrangements appears to stem solely from the circumstance that he received a credit transfer of $ 11 million from Etete with money originating from the OPL 245 deal.

6.7.2 Bature, public official

The public official Bature, who was elected to the House of Representatives from 2011 to 2015, was involved, on commission by Gusau, only at one meeting on 15 October 2009. Therefore, although he had participated in England in the trafficking of cash coming from the OPL 245 funds between the end of 2013 and the beginning of 2014, his intermediation has no causal connection with the unlawful agreements made in 2011. At the most, his involvement in the events that occurred in 2013 can provide circumstantial evidence of other and different crimes over which the Italian authorities certainly have no jurisdiction.

6.7.3 Gusau, public official

The Court does not agree with the prosecution's characterisation of Gusau. In fact, he held the public position of chief of security services only from April to September 2010, when he left his post to participate in the Nigerian presidential election campaign as an opponent of Jonathan Goodluck. Consequently, not only was Gusau a private citizen when he participated in the negotiations with Shell in 2009, but, above all, in 2010 his interest was in opposition to the stipulation of illegal agreements that would have contributed to financing the election campaign of his political rival, Jonathan Goodluck.

Public Prosecutor: The public office held by Gusau at the time was that of National Security Advisor (NSA), i.e. direct advisor to the President of the Republic on all security matters and supervisor, on behalf of the President, of domestic and foreign intelligence services. Gusau's authority also stemmed from a political career that had led him to the highest positions in the intelligence sector already under the military regime of Ibrahim Babangida (1985) and which continued up to the time of the Jonathan administration. After the interlude of the Abacha regime, during which he was removed from active politics, he returned to play a very prominent role under the so-called fourth Nigerian republic, holding the position of NSA under the Obasanjo and Jonathan administrations. In September 2010 he resigned from office to run in the primaries for nomination as presidential candidate. In 2014, he was appointed by Goodluck Jonathan as Minister of Defense. According to the evidence gathered in the trial, Gusau

entered into the negotiations for OPL 245 by putting Dan Etete in contact with Ednan Agaev and subsequently putting Agaev in contact with Shell. We know this from Agaev himself (hearing of June 26, 2019, page 14). But beyond making these introductions and acting as mediator, Gusau played an active role of great importance for the whole negotiation process which led to the signing of the resolution agreements, managing personally or through his aides the negotiations between Etete, Shell, Eni and the Government.

In October 2009, thus before Goodluck's appointment as acting president, an important meeting took place between Etete and some Shell managers. Etete attended this meeting together with A.B.C. Orjiako (the same man who arranged the meeting between the Attorney General and Robinson the following November 8, 2010 and was present at the meetings in November 2010 with the Attorney General as Etete's advisor) and with Umar Bature, an aide of Gusau. Copleston wrote to Burmeister, Klusener, Bos and other Shell executives: Peter and I met Chief Etete on October 15. Etete was accompanied by Bryant Orjiako (Green) and Umar Bature (who would report to Gusau). According to Copleston, Peter Robinson and John Copleston proposed to turn the clock back to 1999, when Malabu had the block and Shell agreed to farm in for 40% and carry Malabu´s interest for the remaining 60%. Etete, on the contrary, insisted on cashing in on his "rights" to OPL 245 without embarking on any business initiative. Thus, from the very start Gusau "accompanied" Etete in his negotiations with the oil companies, even though in October 2009 Gusau was not formally the National Security Advisor.

In spite of the prosecution's opinions about Gusau's enormous causal impact on the negotiations, which were the result of generic comments on the role of the secret services in big commercial transactions, the trial record does not offer any support to the thesis, as we have to emphasise that the meeting in 2009 did not lead to any progress in the negotiations. Gusau disappeared from the negotiations from October 2009 to March 2010, returning with the generic possibility offered to Shell to access his offices. Nevertheless, that accessibility only led to information about confirmation of the license award to Malabu, a measure that was absolutely in conflict with the interests of Shell.

Public Prosectuor: Gusau behaved similarly after taking up his office, i.e., from March 2010. On April 16, 2010 there was another meeting between Gusau, again appointed NSA, and Copleston, concerning a series of open issues between Shell and the Government, including OPL 245: in light of Etete's new political/contractual strength (due to his closeness to the new Acting President Jonathan), Copleston asked Gusau to press Etete to convince him to sit down again at the negotiation table. But what's most important is that from that moment on, Gusau and Shell agreed to see each other every month to regularly review the situation. He explicitly supported this, he said that the door to his home or office is open at all times, and we decided to try to meet on a monthly basis (comment: given his schedule it's unlikely to be as easy as it sounds, but basically he remains well-disposed, friendly, and on our side...) We can easily imagine how important it was to Shell that the National Security Advisor was "determined, friendly, and aligned" with them, so important that they suggested an introductory meeting with Shell's senior management. I told him I would be happy to introduce him to Shell's senior managers.

The only contribution that Gusau made to the negotiations occurred in August 2010, but it only concerned secondary aspects of the negotiations, such as allowances and tax issues, as the documental evidence cited by the prosecution in its final pleadings indicate:

Public Prosecutor: Several text messages in the trial record testify to contacts between Obi and Gusau in August 2010, shortly before the meeting between President Goodluck and Paolo Scaroni: <u>August 9, 2010</u> Obi text message to Gusau:

Good evening Sir, our Ambassador friend asked me to see you. I am in Abuja and available at your convenience. Regards Obi. August 11, 2010, text message from Obi to Gusau: Good evening sir. Have just received the documents. Available to see at your convenience. Regards Obi. The next day Obi asked Agaev to call Gusau again, and added that he also needed to see Diezani (the lady)

August 12, 2010, text message from Obi to Agaev. Please call your friend . We need to conclude before they arrive tomorrow. I also need to see the lady. Regards. The meetings between Obi and Gusau

[3 illegible signatures]

focused on OPL 245 and were preparatory to the meeting with the President.
Given the mention of “our friend the Ambassador”, when questioned in the trial, Agaev was asked about the reason for those meetings, but his answer was highly unsatisfactory for the purpose of establishing the truth. Briefly (hearing of June 26, 2019 page 37), Agaev narrowed Gusau's activity to his position as NSA and claimed that his role was limited to security issues. But the truth was different: Gusau was actively and constantly involved in the OPL 245 affair and in the relations with the oil companies for reasons that had nothing to do with security. Lastly, the notes written directly by Obi contradict Agaev's version and show that the meetings with Gusau were about OPL 245 and Etete and not about security issues: (Chrono-unprotected.xls, sub August 11, 2010: Meeting at NSA’s office) General meeting, Etete, help with MoP [Petroleum Minister], allowance/letter confirming fiscal terms and again, after the top-level meeting, Obi took a note about a meeting with Gusau at the NSA’s office. (Chrono-unprotected.xls, sub August 14, 2010: Meeting at NSA’s office) Ex post evaluation of meeting between Goodluck Ebele Jonathan [GEJ] and Eni, he asked about Ednan [Agaev], he will talk to Etete who can be difficult at times. Gusau would talk to Etete, would help with the Petroleum Minister, would address the issue of allowances and fiscal terms. In short, Gusau reassured Obi of his support, but made no mention of security issues.
At the beginning of September 2010, Gusau provided mere information to Shell, which has to be ascribed to his generic availability provided the previous spring, which ended when he resigned from his public position, proving that these were not illegal arrangements but rather lawful ones.
The tenor of the e-mail that is cited does not provide any indication of the key strategist role in the negotiations attributed to him by the Public Prosecutor, inter alia because Gusau shared a measure of August 27 that was in no way secret.
P.[apa] had a good session with NSA. He says new letter from Minister extends Malabu signature bonus deadline to 9 months. But Pres keen for resolution. He says 50/50 deal was as put to him by Mutiu [Shell's Nigerian country manager] They still see solution as Eni buying out Malabu "100 percent" and then Eni doing 50/50 with Shell - so not sure anything has changed other than deadline for Malabu to come up with sig bonus money.
We also cannot accept the prosecution’s comments on Gusau’s role during the period after September 2010, since they are based on a single message dated 4 October 2010, where Agaev, worried that the deal would be blocked, asked Obi whether he thought it would be useful to contact Gusau, who was considered to be his only possible channel for getting his opinion shared with the Nigerian President on how to keep the negotiations going in order to reach a conclusion that would have involved the realisation of earnings prospects for the consulting activity performed in favor of Etete.
During the trial, Agaev introduced the legitimate expectations of compensation for the private advisory activity that Gusau was expecting from Etete upon conclusion of the deal, an alternative explanation that introduces a reasonable doubt as to the reason ascribed by the prosecution to the availability of money coming from the OPL 245 deal, which Jeffrey Tesler attributed to General Gusau.
In conclusion, not only is there no evidence of the causal contribution by Gusau to the negotiations for the illegal agreement as charged, but we also have reasonable doubts over his participation as private adviser and his consequently legitimate expectations for lawful compensation.

6.7.4 Bayo Ojo, public official

Similar considerations can be made with regard to Cristopher Adebayo Ojo, referred to as Bayo Ojo, given his prior participation as public official in historical periods excluded from the scope of the indictment (or otherwise concerning exclusively Nigerian illegal arrangements) and, afterwards, the performance phase of distribution of the money received from Malabu.
We agree on the fact that Bayo Ojo was:

- the Attorney General who on November 30, 2006 signed the Resolution Agreement on the basis of which the OPL 245 license was reallocated to Malabu;

- the author of the Legal Advisory Mandate with Etete under which he would receive $ 50 million and would allocate part of that sum to Petrol Service;
- the beneficiary of the sum of over $ 10 million, transferred by Rocky Top Resources and coming from the price paid by Eni for OPL 245;
- the payer of the transfer of $ 1.2 million made on May 8, 2012 to Vincenzo Armanna with the invented payment reference "Armanna inheritance".

During his examination, Bayo Ojo attributed the compensation he received from Etete with a reason indicating private professional services, connected with the final phase of the agreements for sale of the OPL 245 license. In fact, the obtained documents refer to the agreement with Falcioni, which was made to create a filter for the government payment to Malabu, so that his own commisions could be handled directly without depending on Etete, who was known for not wanting to fulfil the contractual obligations he assumed with his own advisors.

The Public Prosecutor gave the payment received by Bajo Ojo the illegal reason of remuneration for corrupt arrangements dating back to 2006 and so they were certainly unrelated to the present indictment.

Regardless of the contradiction with the causal nexus assigned by the prosecution itself, no element of evidence is even proposed concerning the Bayo Ojo's contribution to the illegal negotiations that led to the April agreements, with the exception of his advice on the price payment execution phase. However, as we shall see better hereinafter, participation in this phase leads us to exclude any decisive evidentiary significance in terms of participation in the corrupt arrangement, even more so given that reference to that individual position would have indicated the awareness of having participated in another and preceding corrupt arrangement.

6.8 Participation in the lawful negotiations with the awareness that previous illegal arrangements might exist

Aware that the matter will necessarily have to be examined in greater detail in the chapters dedicated to the individual positions of the current defendants, it nonetheless appears opportune for us to anticipate the legal implications of the different key to interpretation provided by the prosecution with regard to the defendants' participation with the awareness that illegal arrangements underlay the procedure for confirmation of the license awarded to Malabu during the May-July 2010 period (everyone knew).

As we shall see in our examination of the acts of the individual defendants, we cannot speak of a full, effective and informed representation of the criminal arrangement targeted by the indictment. Nevertheless, we must immediately point out that the participation by third parties in the performance phase (resolution agreements and payment of the bribe for any previous criminal arrangement), even if this was carried out with the awareness of the existence of illegal agreements already exchanged between the necessary parties, is insufficient to qualify as bribery, which is based on the necessary participation in the phase of the illegal agreement. A propos, we cite the previously stated observations of the Shell *defense*, while are entirely acceptable because they are based on the constant line of decisions by the courts of procedural review.

Division 6, Judgement no. 18125 of October *22*, 2019 Hearing (filed June12, 2020) Rv. 279555

The prerequisites for the offence of an association of persons in committing the crime of bribery of a third party are not fulfilled when that third party, after a corrupt arrangement was made and in which that third party did not participate, and without a new pact having been made with novative effects, acts to realise that agreement during the performance phase, as no participation after commission of the crime itself can be alleged, inasmuch as that crime is consummated in the same moment that the public official accepted the illegal benefit promised to him or offered to him by the private briber. Having reconstructed the facts as indicated, the trial court judges have properly applied the principles

repeatedly affirmed by the Court of Cassation, according to which the crime of bribery, which necessarily involves an association of persons and has a bilateral structure, it is very possible that third parties participate, both in the case where the contribution is made in the form of the decision or suggestion given to one or the other of the necessary participants, both in the case where it results in acting as a functional connection between the parties to the corrupt arrangement, linking the perpetrators to each other. The crime of bribery, in its various possible forms, constitutes a free-form offence involving several individuals, based on a *"criminal conspiracy"* between a private individual and a public official (or the delegate of a public service). This involves a crime that takes form through converging acts, which mutually consolidate and complete each other, and capable of constituting a single crime in their physiological interaction. What results from this is that the offence is committed and manifests itself, in terms of responsibility, only between the parties to the unlawful arrangement and if both of the acts - of the bribed person and of the briber - in an indissoluble connection, are documented by evidence. The offence is committed alternatively at the time of acceptance of the promise or upon effective receipt of the benefit. So, what has to be ascertained in court is whether the public official accepted a benefit, whether that benefit is connected with the performance of his/her function, with what performed act that benefit is linked, whether that act is or is not in compliance with his/her official duties. **In the specific case, the Court of Appeal has not properly applied the indicated principles of law, given that it insists on ascribing to Nacamulli the role of party after the fact to a previous corrupt arrangement, i.e. after it was already made and executed by others. The thesis is that a third party who has not participated in any way in making the illegal agreement, can assume the position of party to a pre-existing corrupt arrangement only in consequence of the fact that, after subsequently becoming aware of resistance by others to the illegal pact, makes efforts to carry out the corrupt arrangement.** The proof that the appellant participated in the corruption scheme that can be associated with a phase subsequent to conclusion of the corrupt arrangement ("he undertook to carry out the corruption scheme": this is the verbatim challenge to the judgement on page 237). In the context of its rigorous reasoning, the Court of Appeal, and aside from its reference to the conversation held on 19 November 2013, validated the fact, which was separately challenged, that Pedetti allegedly intervened so that the order extending the housing assistance service would be implemented. However, it has to be considered that, notwithstanding what will be said with regard to the irregularity of assignments of the services, the Court of Appeal did not given any specific reasons for Pedetti's effective participation in the corruption scheme, by not explaining, on the one hand, whether the contribution that the defendant would make in the performance phase had already been promised by the latter at the time that the corrupt arrangement was made - given that, if matters stood in that way, the defendant's criminal participation could be charged - or it was performed freely, without any connection with the time when the arrangement was made and, on the other hand, to which extent proof of the associative contribution can be inferred from the wiretapped conversations on 19 November 2013.

Division 6, Judgement no. 46404 of October 29, 2019 Hearing (filed 14 November 2019) Rv.
With regard to corruption, the individual who, after not having participated in making the corrupt arrangement, acts only in the performance phase by workign to carry it out is not liable for criminal association. (In its reasons, the Court explained that participation only in realisation of what was agreed in the arrangement does not alter the structure of the arrangement previously made by other parties and does not permit the addition of a new contracting party to the only pre-existing arrangement, but at the most it may assume relevance as an offence in connection with other crimes). The crime of bribery, in its various possible forms, constitutes a free-form offence necessarily involving several individuals, based on a "criminal conspiracy" between a private individual and a public official (or the delegate of a public service). This involves a crime that takes form through converging acts, which mutually consolidate and complete each other, and capable of constituting a single crime in their physiological interaction. What results from this is that the offence is committed and manifests itself, in terms of

responsibility, only between the parties to the unlawful arrangement and if both of the acts - of the bribed person and of the briber - in an indissoluble connection, are documented by evidence. The offence is committed alternatively at the time of acceptance of the promise or upon effective receipt of the benefit. What does have to be ascertained in court, even during interim proceedings, is whether the public official did accept a benefit, whether that benefit is connected to the performance of his function, to the execution of a certain act to which that benefit is connected, whether that act is or is not in compliance with his official duties. A repeatedly confirmed principle in the case law of the courts of procedural review is the one where, in order to ascertain the crime of corruption, even where the the payment of money or another benefit to the public official has been proven, it is necessary to demonstrate that the performance of the act contrary to the duties of office was the cause of the provision of the benefit of and its acceptance by the public official. The mere circumstance of the payment is not sufficient to demonstrate the crime. Consistently with the provisions of Art. 319 Italian Criminal Code, it is necessary to prove not only the illegal payment made by the private citizen to the public official (or the delegate of a public service), but also the purpose of that payment to obtain a commitment to perform a future act in conflict with official duties or compensation for a previously performed act in conflict with official duties by the individual holding a public position. In the specific case, the Public Prosecutor's appeal has not properly applied the indicated principles of law, with regard to the appointment to ANFE, it insists on ascribing to Magro the role of party after the fact to a previous corrupt arrangement, which had already been made and performed executed by Lo Sciuto and Genco. The thesis is that a third party can assume the position of party to a pre-existing corrupt arrangement only in consequence of the fact that the latter, aware of the existence of the corrupt arrangement, subsequently endeavours to carry out the corrupt arrangement. This conclusion is technically unacceptable. The the conduct by the third party, after the corrupt agreement between other parties was entered into and while the agreement is being implemented, does not change the structure of the arrangement that different parties have already come to, and does not mean that a new belated contracting party can be added to the only previous arrangement (for example, effective abetting).

[3 illegible signatures]

CHAPTER 7
THE ACT IN BREACH OF OFFICIAL DUTIES

7.1 Introduction: the breach of official duties by the agreements of April 29, 2011

We have already had an opportunity to explain that participation in the negotiations, as the Public Prosecutor himself has admitted, does not in itself constitute proof of participation in the illegal agreement because, as clarified very effectively by the cited case law[697], the administrative act is only one fact that can be used circumstantial evidence of participation in the accord and, in our specific case, since this involves an agreement settling outstanding disputes between private parties, the negotiations between the parties cannot constitute evidence of participation in the agreement. If anything, the participants' conduct during the procedure that allowed them to reach the settlement agreements may constitute the basis for indicia-based reasoning on their participation in the agreement.

With reference to these legal findings, the prosecution, without explicitly confronting the problem, claims that the illegitimacy of the act in itself and how the public officials behaved, especially Adoke Bello, during the various phases of the process that led to the settlement agreements, constitute serious circumstantial evidence of participation (editor's note: of only certain individuals) in the illegal arrangement.

Fully accepting the claims made by Nigerian Government employees, who are not legal experts but interested in defending the greatest possible profit regardless of the *peculiarities* of the license covered by the ongoing negotiations, the Prosecution claims that the agreements were illegitimate.

Public Prosecutor: the FGN Resolution Agreement contains a significant series of violations of law or distortions of practices in force in the sector, so numerous and striking that it raised at the time the protests of the state oil company NNPC and, subsequently (1 April 2011) of the Director-General of the Department of Petroleum Resources, W.A. Obaje, who in a letter addressed to the Attorney General, but also transmitted in copy to the President of Nigeria, denounced in detail the violations of law.

Taking a cue from the comments by Minister Adoke Bello, as reported by a Shell employee, on the status of negotiations with NNPC, the singularity of these agreements is transformed, but again without *recognizing* its real peculiarity, into a serious and precise indicator of an underlying corrupt arrangement that would also involve the oil companies: Nike Olafimihan[698] in reporting on a meeting he had with Adoke - referred to as HAG (Honorable Attorney General) - Olafimhihan affirmed that he knew that NNPC might "bend" on some issues but they would want a "strong reservation": the Resolution Agreement "must be a one-off measure that cannot be used as a precedent for any other transaction''.

The opinions of the Public Prosecutor's expert are absolutely contradictory and legally erroneous. Although she admitted that licenses in Nigeria may be issued by the government on a discretionary basis, it underscores the anomaly represented by the issuance of a license in the context of an out-of-court settlement agreement that involved a party, Eni, that was considered to have nothing to do with the legal disputes over ownership of the license. On the basis of these erroneous premises of its own expert, the prosecution transforms a fact from common experience (out-of-court settlements of disputes may come about through the intervention of a third-party investor or financier) into circumstantial

[697] *Division 6, Judgement no*. 18125 of October, 22 2019 Hearing (filed June 12, 2020) Rv. 279555

[698] It is incomprehensible why Nike Olafimian was never even investigated.

evidence of underlying corrupt arrangements.
Contrary to what was revealed during the trial proceeding, the prosecution argues that there were no other cases of assignments of oil *license* after out-of-court settlements, although the *defense* experts pointed out that the use of a Resolution Agreement as the basis for a direct award is not an unprecedented event. Examples are found in the Annual Report 2016 of the Nigerian Oil and Gas Industry published by the DPR, which reports that certain assets were assigned/reassigned on the basis of out-of-court settlement agreements [699]. The circumstance generates no wonder, since the settlement is a typical arrangement, which is common practice in circumstances involving a dispute.
In this regard, we should mention in passing that, from the legal point of view, the license was not awarded with the Resolution Agreement, but the latter was used as the negotiating tool whereby the Government assured itself approval by Snud and Malabu to reassignment in *favor* of Snepco and NAE. Indeed, the deed of assignment is comprised of a discretionary measure issued by the Minister and of which the Resolution Agreement constituted a simple factual premise.

7.2 Conflict of interest

Another aspect of the alleged illegitimacy of the agreement, on which the Public Prosecutor insisted during his discussion[700], concerns the conflict of interest that allegedly cast a negative over all the vicissitudes of the license, including the resolution agreements. However, that approach fails to consider the precise and documented objections raised by the *defense* experts and, in particular, by attorney Segun. Those objections were overcome by the prosecution contained in the following lines, which *characterize* the confirmations of the license that followed the original issuance as unlawful acts resulting from crimes:

Segun admitted: “If you have read this law and you are aware of everything that has happened with respect to Malabu, and know Dan Etete’s position... all this could raise questions, questions about whether he acted in breach of that law” (17.4.2019, page 26). It defines an [English in source text:] "issue” [translation resumes:] as a problem, except formally to point out that the issue should have been raised at the time (1998) before a special Nigerian court, The Code of Conduct Tribunal, and this had not happened; therefore, it had been remedied, so to speak. Moreover, according to Segun, "the 1998 assignment was subsequently confirmed several times by the government”. For the sake of thoroughness, the assignment was also withdrawn in 2001. And that the “confirmations”, far from entering into the evaluation of the original legitimacy of the assignment, demonstrate only a favorable attitude towards Etete by subsequent governments, waiting - later proved not to be in vain - for “significant revenues” for members of the government related to the sale of the license by Etete.

The fallaciousness of the prosecution’s reasoning was such that the Public Prosecutor was forced to contradict himself when he explicitly affirmed that confirmation of the license awarded to Malabu had legitimated it to sell the license: “Confirmation of this reallocation gave Etete enormous strength in negotiations with the oil companies, in particular with Shell, **as he no longer had any legal constraints** on selling the entire asset to third parties”.
So, the Court agrees with the *defense* attorneys, and even with the Public Prosecutor, that the confirmation of the license by the Nigerian Government in July 2010, during the pendency of the arbitration proceeding, definitively legitimated the negotiations for acquisition of the license itself.
These considerations overcome the additional objections raised by the prosecution against the claims

[699] OPL 2001 awarded to Jahcon International Limited; OPL 2002 awarded to Hi Rev Exploration and Production Limited; OPL 2003 awarded to Oil and Industrial Services Limited; OPL 2004 awarded to Sterling Exploration Limited; and OPL 326 awarded to Northsouth Petroleum Limited.

[700] Final pleadings of the Public Prosecutor: *This is the often referred to as "elephant in the room”, an English idiomatic expression that designates a topic of great importance or a controversial issue that is obvious or known to everyone, but that no one mentions or wants to discuss because it creates discomfort or is embarrassing from a personal, social or political point of view, or ignites souls or is dangerous (see Wikipedia, definition taken from Longman Dictionary of Contemporary English).*

made by the Oditah *defense* expert, accused by the Public Prosecutor of having "concealed" the problem with the thesis of supervening legitimation through conclusive acts by the Nigerian Government[701].

7.3 Legitimacy of the agreements of April 29, 2011

All of these claims were resolved by the full legitmacy of the settlement agreements signed on April 29, 2011. That legitimacy was affirmed by the *defense* experts, whose findings are not only credible because they adhere more closely to the statutory and trial facts, but above all, because they were definitively confirmed in the 13 April 2018 judgement issued by the Hon. Judge Binta Njako,[702] who confirmed that the settlement agreements complied with Nigerian law, ruling on the petition for judicial review submitted by Adoke Bello, the indicted Minister.

As for the presence in a settlement of a party uninvolved in the disputes, we have already observed that that sort of occurrence is widely familiar in practice, as the settlement agreement cited by the prosecution as the logical legal consequence of the other settlement *agreements* made by the Government with Shell and Malabu, the parties who were claiming ownership of the license.

The prosecution insists on inferring the illegitimacy of the agreement from the reservations expressed by the governmental agencies NNPC and DPR over awarding the license to the oil companies, which was deemed to be based on formally illegitimate grounds and, on the merits, issued at conditions overly *favorable* to the private companies, with *consequent* harm to the Government's interests.

It is then alleged that the Minister Adoke Bello, who was acting in coordination with the Petroleum Minister on the basis of a presidential delegation of authority, accepted all the claims made by the oil companies in connection with the negotiations only because he was party to an illegal arrangement that was allegedly established even with the representatives of the oil companies themselves, without considering that the Minister's conduct could likewise depend on a pre-existing illegal agreement, considering that the July 2010 confirmation of the license awarded to Malabu already granted the company rights similar to the claims made by the oil companies during the negotiations. In particular, the exclusion of the Government from the future benefits deriving from the exploitation rights was already envisaged in the settlement agreement of 2006 and the reconfirmation in 2010, acts that were far more *favorable* to the private licensee Malabu that the Resolution Agreement because, in addition to excluding the Government from sharing in the profits, it did not grant it the right to take back the oil license. Consequently, yet again, the possibly illegitimate use of the discretionary power held by the Ministers and the Nigerian President has to be placed in 2006 and 2010, but not in 2011, when, on the contrary, the companies caved in on the back-in rights, rights that had been denied in the license granted to Malabu.

It is true that as part of the negotiations aimed at obtaining the license, the oil companies did attempt to obtain the same advantageous conditions that the Government had already granted Malabu in 2006, and confirming them in July 2010 - although those were occasions when the government agencies NNPC and DPR had not raised any objections - but this fact represents a comprehensible aspiration of the buyers of an asset, which can be perfectly *contextualized* in a commercial logic to seek the most *favorable* bargaining conditions. So, this did not involve anomalous concessions to the demands of the oil companies, as alleged by the prosecution, but rather a confirmation, incidentally at harsher conditions, by the Government of its willingness to issue a license at the same conditions that had already been granted to the private company Malabu. On the other hand, the companies' requests were

[701] Final pleadings of Public Prosecutor: *Again, the failure of successive governments, in a context of often intertwined interests, condones, according to the consultant, instances of blatant illegality. But this is comment is little more than caustic. The conflict of interest remains, and should have been a formidable warning to oil companies, an indelible sign of the criminal origin of Malabu's OPL245 license.*

[702] That judge is deemed especially reliable by the prosecution itself, although in another case, the one concerning the lawsuit filed by Malabu against the Government.

[3 illegible signatures]

not - as would have been logical to expect considering the underlying illegal agreement - fully satisfied by a Minister who had offered them his own discretionary power, but they had to reach a compromise with the opposing interests of the governmental offices through recognition of the Government's back-in right, a right that in the license granted to Malabu by the Government itself - as we have already observed - had not been envisaged and against which none of the delegated agencies had raised any criticism in the past.
The arguments used by the prosecution to prove that the agreements of 2011 were unlawful because the oil companies had influenced the Ministers' discretionary decisions with illegal promises have to be *contextualized* first and foremost with reference to what Etete had already obtained alone in 2006 and got confirmed in 2010. In 2011, we have to focus on an attitude, especially Adoke Bello's, that was far less amenable to the companies' requests, as compared with what had previously been requested and obtained by Etete. It was Minister Adoke Bello who, in 2011, engaged[703] both NNPC and DPR in the license issuance process, in contrast with what Bayo Ojo had done in 2006 with Malabu and even Adoke himself in spring 2010. Moreover, while negotiating with the companies, the Minister explained that the departments involved, NNPC and DPR, had to be heard out and *humored*, otherwise, no agreement would be made[704], to the point that the companies accepted the back-in rights, thereby coming to an agreement with NNPC, which, in fact, would raise no more objections to the remaining points of the agreements.
If we *contextualize* the facts in an historic view, we can note how Minister Adoke Bello's *behavior* was marked by absolute acceptance of Etete's demands, but not those of the oil companies, given that he opposed the request made by the companies to acquire the license at the same conditions offered to the company Malabu, thereby *favoring* the government and using, in 2011, his own discretionary power differently from what he had done with Malabu.

7.4 DPR letter of 1 April 2011

The claims made by the DPR in its letter of 1 April 2011 appear just as dubious, where it raised objections to issuance of the license, and which had already been partially resolved with the negotiations over the same issues raised by NNPC, but also other and different legal objections that had not been properly raised, partly perhaps because they had been raised by an agency that did not have the specific legal prerogative to do so.

7.4.1 The assignment without a tender procedure

The first objection of a legal nature, tied to Malabu's lack of any right to dispose of the license, does not take into account the settlement of 2006 and its reconfirmation in 2010, and of the order extending the due date for payment of the signature bonus until August 27, 2010.
Instead, the criticism that no tender procedure was executed does not take into account the financial costs that the Government would have to bear to revoke the license, as it would have to indemnify its holder, Malabu, without counting the risks represented by putting up for tender an asset subject to the arbitration proceeding brought by Shell, which claimed that it had been awarded to it in 2003.
As for the exclusion of the Government from future profits, we have already observed that this involved a clause in the license already issued to Malabu, while the criticism over the absence of any back-in rights, a problem that had been resolved, highlight how this involved criticism made without considering the negotiations carried out with NNPC, which had also concerned the tax aspects, with regard to which the governmental entity had watered down its initial demands in exchange for the back-in rights.

---

[703] Enrico Caligaris, hearing on 27 February 2019, page 36, declared that it was the Attorney General himself who requested the opinion of the other state entities that had to sign the document.
[704] See email dated 3 February 2011, sent by Casula to Descalzi. "The Attorney General", Casula writes, *"has said that without the endorsement by NNPC or, regardless, an agreement with them on the terms of the resolution agreement, he is ready to break off negotiations".*

In accepting the prosecution's conclusions, the civil party, perhaps acknowledging the reasonable doubt illustrated hereinabove, which undermines the circumstantial evidence based line of reasoning, concentrated especially on these aspects, arguing that the clause is only apparently *favorable* to the Government, because the conditions to exercise the right are actually only theoretical, due to the excessive burden represented by the need to indemnify the companies for the investments they made, inter alia the price paid, which, in other aspects of the conclusions reached by the civil party itself, is considered too low, on the contrary, considered to be circumstantial evidence of *favoritism* dictated by the underlying corrupt arrangements. The contradictory nature of the reasoning that the civil party proposes on the same topic, the price paid for the license, highlights their inconsistency, exposing their specious use, being aimed at achieving the trial goal pursued by the party itself.

In conclusion, the prosecution's claims do not duly take into account the results of the trial proceeding that are cited and as recalled by witness Vicini:

a) On February 3, 2011 (4:48 P.M.), Roberto Casula forwarded an email update to Claudio Descalzi, in which he reports that he had been summoned by the Attorney General, who told him about the negative opinion issued by the NNPC. The Attorney General pointed out that without the approval of the NNPC, it would not be possible to close the agreement ("The AG said that without NNPC's endorsement, or at least an agreement with them on the terms of the Resolution Agreement, he is ready to pull out of the negotiations.");

b) on February 9, 2011, the Attorney General formally asked the Director of the DPR that the Department he headed *analyze* the draft of the Resolution Agreement and report his *observations* in that regard;

c) on February 9, 2011 (7:29 P.M.), Roberto Casula wrote to Claudio Descalzi again about the discussions with NNPC: "I have spoken with the SHELL attorney. They met with NNPC at the Legal Department level and had a discussion about the comments on the Resolution Agreement. The impression of SHELL is that NNPC was concerned especially about the possible impact on the current arbitration proceedings (which is why they have already clarified that the signature bonus cannot be recovered, even fiscally). He told me that the discussion was especially harsh";

d) On February 11, 2011, a meeting was held at the Ministry of Justice that was attended by the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Nike Olafimihan (SNEPCO), German Burmeister (SNEPCO), Vincenzo Armanna (NAE), Ellis Ebohon (NAE), Rasky Gbinigie (Malabu). The responses by NAE and SNEPCO to the objections raised by NNPC were discussed;

e) On February 22, 2011, the Attorney General wrote a letter to NNPC, with which: 1) he informed it that the parties had commenced *negotiations* on the Resolution Agreement to settle the contested issues; 2) asked NNPC to designate a technical expert and to the legal department and the corporate secretary to participate in the negotiations; 3) he noted that a team had been set up to evaluate all the contested issues and draft an acceptable agreement;

f) A meeting was held on February 24, 2011 at the offices of the Ministry of Justice

and was attended by the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Y. Omorogbe (NNPC), T. Adesanya (NNPC), D. Usman (NNPC), V. Omoluabi (NNPC), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Nike Olafimihan (SNEPCO), Vincenzo Armanna (NAE), Ellis Ebohon (NAE), Giorgio Vicini (NAE). The responses of NNPC to the comments of NAE SNEPCO were discussed during the meeting.

Giorgio Vicini has recalled the following in that regard:

WITNESS VICINI - On February 24, I repeat that the topics were the comments made by NNPC on the agreement that, I realized, the Attorney General had provided to NNPC for comments.

DEFENSE ATTORNEY DIODA - In essence, what comments were they?

WITNESS VICINI - No, the comments were very detailed, very specific, I learned about these comments, observations, before the meeting, because I had attended several meetings that had been held over the preceding days and which let us know in advance.

DEFENSE ATTORNEY DIODA - I see.

WITNESS VICINI - But what were the comments? They were details about the agreement, and in particular, they concerned, one, the possibility of recovering the past costs from SNUD, and thus from Shell, in the ambit of the previous agreement of the PSC of 2003, and thus the possibility of recovering those costs to calculate the taxable amount, and so to calculate the taxes; the possibility of recovering, again for tax purposes, the signature bonus, 207 million, and so the first... the past costs were 335 million and 207 million. The application of the Deep Offshore Act, and thus the law, although it was clear even to NNPC that this was the rule, and so for its application, the details of that application then had to be defined. There was the topic of application of the law, the topic of tax stability in the contract, while keeping in mind that we were in a period when the oil and gas sector were under reform, and thus it was an important subject. There was the application of any duties and tax related to the settlement, and thus to the acquisition. And finally, there was the right that NNPC wanted to keep with regard to exercise of the back-in or the participation of NNPC in the block. This is the summary.

DEFENSE ATTORNEY DIODA - Were these topics discussed one by one? Did they clear up their positions? WITNESS VICINI - Yes.

DEFENSE ATTORNEY DIODA - Let’s say that this meeting ended in the evening of the 24th?

WITNESS VICINI - In the evening of the 24th, progress had essentially been made on these subjects.

DEFENSE ATTORNEY DIODA - What issues still remain unsettled?

WITNESS VICINI - The principal topic was the issue of the back-in right. The back-in right issue and the equity investment issue. Then this meeting continued on February 28, when a second session was held, which essentially addressed all these issue and...

DEFENSE ATTORNEY DIODA - Excuse me, by the 24th, separately... the other issues were settled? Aside from the back-in.

WITNESS VICINI - They were essentially settled.

DEFENSE ATTORNEY DIODA - And so NNPC agreed to a mutually agreed solution?

WITNESS VICINI - Absolutely, in other words, we were speaking with Inca Ogmorobe, who among other things, I had been able to get to know on other occasions.

DEFENSE ATTORNEY DIODÀ - And so you found ...

WITNESS VICINI - Yes, everyone expressed his view, however we found common ground.

g) A meeting was held on February 28, 2011 at the offices of the Ministry of Justice and was attended by the Attorney General, Bern Angwe (AG office), Jedy Agba (AG office), Y. Omorogbe (NNPC), T. Adesanya (NNPC), D. Usman (NNPC), V. Omoluabi (NNPC), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Nike

Olafimihan (SNEPCO), Ellis Ebohon (NAE), Giorgio Vicini (NAE). The draft Resolution Agreement was discussed during the meeting.

The meeting was recalled by Giorgio Vicini:

DEFENSE ATTORNEY DIODA - Fine. On the 28th, the remaining issue as the was the back-in right issue. How did the subsequent phase of negotiations unfold?

WITNESS VICINI - We had two extremely different views. Our vision, which he had proposed in the agreement, was that we would acquire the equity investment... we and Shell would have acquired a shareholding in this block, and that NNPC and that in fact, NNPC renounced the back-in right resulting from the 2003 regulation. So, it was a waiver, but why were we requesting that waiver? I mean, it wasn't a waiver...that we considered entirely legitimate. It was a waiver based on the consideration that, pursuant to the regulation of 2003 on the back-in right, it was envisaged that NNPC cannot exercise this right. Additionally, by the fact that the previous awards of this block had not envisaged this right. So, even the offers that we had sent in 2010 all had this characteristic of not containing the back-in right, which was obviously an element to be taken into account.

DEFENSE ATTORNEY DIODA - Excuse me, we're at February 28, we are addressing this issue, does February 28 still end with the issue open?

WITNESS VICINI - Yes, meaning...

DEFENSE ATTORNY DIODA - What were the issues? The issue of the back-in right, was the issue of the escrow agreement still up in the air?

WITNESS VICINI - Yes, we ended the meeting on the 28th with the parties stating their respective positions on the back-in issue, with NAE having the task, and thus for us, to return, and thus give a response to this clause. So, essentially, we would go back home, and we would have eventually reconsidered the issue, and so the meeting ended for us with NAE and Shell, obviously, having the assignment to return and reassess this thing, and eventually discuss it at the next meeting. The same thing goes for the escrow. So, the assignment was... and in the meantime, work on the escrow agreement and get a first draft to us for our evaluation.

DEFENSE ATTORNEY DIODA - Were you still and always talking about a final agreement at these meetings?

WITNESS VICINI - Yes, we were still working on a contract in February.

DEFENSE ATTORNEY DIODA - You were still working on that.

WITNESS VICINI - Yes.

[…]

DEFENSE ATTORNEY DIODA - But what did the Attorney General think about this issue?

WITNESS VICINI - The Attorney General's comment on this issue was very simple, he was saying "If NNPC doesn't agree, NNPC and then possibly also DPR, do not agree, I'm sorry, but there's no chance". Why clearly NNPC? NNPC was the State company, but it also played the role of oil and gas expert. The same thing for the DPR, so his position on the back-in right was: if you don't reach an agreement, and at that point we were still in the phase where, if I am not mistaken, we had to revisit this issue, in fact, he was saying, "if NNPC doesn't agree, I'm sorry, but there's no solution". In the meantime, we and Shell had prepared an internal analysis. So, when I was saying, "let's go home and do our homework together", we did it. Let's analyze this issue from a point of view... essentially, the question was: do we really have grounds to request this waiver, the term isn't coming to me...

DEFENSE ATTORNEY DIODA - "Rinuncia" [Translator's note: "rinuncia" means "waiver"].

WITNESS VICINI - This "rinuncia" [Translator's note: "waiver"]., excuse me. Do we have grounds to request this waiver, or are there really some risks that subsequently, if it is not written into the agreement, then NNPC really may exercise this right? So, there really was an evaluation done on the merits, for which we even exchanged some paperwork. And the conclusion that we

and Shell reached was... so, we probably do have grounds on the merits to request the waiver, but considering the on/off position, black and white, of NNPC on this issue, perhaps it is worth the trouble to consider it. And so a clause was drafted, a clause concerning the back-in right, that might be used at the subsequent meetings, as a bottom-line solution, and so, if things went badly, in the worst scenario, we and Shell had agreed on a text, and it says, "we are landing here";

h) on 1 April 2011 the Department of Petroleum Resources wrote to the Minister of Justice and highlighted several critical points in the "Resolution Agreement", concluding that the agreement would be "highly prejudicial to the interest of the Federal Government";

i) on 14 April 2011, a meeting was held at the Ministry of Justice that was attended by the Attorney General, Bern Angwe (AG office), Beatrice (AG office), Nike Olafimihan (SNEPCO), Peter Robinson (SNEPCO), Vincenzo Armanna (NAE), Giorgio Vicini (NAE), Roberto Casula (NAE), Nele Adesina (Malabu), Rasky Gbinigie (Malabu), Yusuf Obaje (DPR Director), Chikwendu (DPR *Legal* Adviser). The new structure of the agreement and the comments of the DPR were discussed at that meeting.

Giorgio Vicini remembers the meeting in this terms:

WITNESS VICINI - Yes, that's it. At the beginning of April, right at the beginning of April, when we were informed by the Attorney General that he did not have big problems with the new structure, we were nonetheless informed that even the DPR, like the NNPC already, the DPR is the Department of Petroleum Resources, so it is part of the Ministry of Petroleum Resources, the DPR too had made its comments on the original agreement however, so what had been transmitted to it at the beginning of February by the Attorney General, and which we realized at the same time had been sent both to NNPC and to DPR. The NNPC had sent us comments, we had discussed them on February 24 and 28, but the DPR comments arrived at the beginning of April.

DEFENSE ATTORNEY DIODA - At the meeting held on 14 April, did you address the problems raised by the DPR?

WITNESS VICINI - Yes.

DEFENSE ATTORNEY DIODA - How were they resolved?

WITNESS VICINI - Just as it went with the NNPC, in the sense that first we met with NNPC, and we went to look at the agreement, line by line. That took place with the DPR on 14 April. The DPR noticed, at the meeting in which I participated, on 14 April, I and Armanna, there was Nike, initially there was Casula, then I, Armanna and Casula for NAE, Nike and Peter Robinson for Shell, if I am not mistaken, then there was the DPR, so Obage (phonetic), who was the director of the DPR, with one of his assistants, Malabu was there too. No, Malabu, excuse me, it was not there on the 14th.

DEFENSE ATTORNEY DIODA - Excuse me, the issues raised by the DPR were practically already resolved, or not?

WITNESS VICINI- Well, exactly. What I was saying, that the DPR had made some comments on the version of the agreement at the beginning of February, in fact, I had not seen the discussion with NNPC that took place afterwards. So, on 14 April I essentially saw all the areas of agreement that we had reached with NNPC. We also discussed them there, and in fact the topic, even the principal topic was the back-in right.

DEFENSE ATTORNEY DIODÀ - And how did those discussions on the back-in right wind up?

WITNESS VICINI - At that point, with the arrival of the situation that was obviously a contractual issue, and so, in other words, on the one hand, we had gotten something on the whole

list that I was talking about earlier, on the other hand, we had sold some others, because for example, we had given ground on recovery of the signature bonus, the back-in right was an important issue for... and we understood that in that place, there was no kind of...
DEFENSE ATTORNEY DIODÀ - And so?
WITNESS VICINI - And then we pulled out our text, which we had agreed with Shell.
DEFENSE ATTORNEY DIODÀ DEFENSE - What did it prescribe?
WITNESS VICINI - That it required the parties to recognize... the parties to the agreement accepted that NAE and SNEPCO were the license holders. Two, that notwithstanding this, that the Government, either through the NNPC or its agency, had the possibility of exercising the back-in right if it deemed necessary, with this being in application of the 2003 rules, we decided with Shell that at that point, if it meant addressing the merits of the back-in right, it was probably worth the trouble to define the exact terms. The reason was that there was a first proposed draft that said, "If the back-in right is exercised, the parties shall meet and discuss". Then we actually agreed, we and Shell, and we proposed that it was better to say, "If the back-in occurred, A, B, C and D
DEFENSE ATTORNEY DIODA - So, at this point, there was, how can I say, an acceptance, you gave in to the request.
WITNESS VICINI - Yes, it was... obviously, there too, when we had drafted the text with Shell, we performed an economic analysis, we said, "OK, when this thing occurs, what is the effect?", it was done with planning control unit, with all the various units, the analysis was done, and we essentially caved in because it was an element of no return. However, we did define exactly the terms under which the NNPC could acquire the license right.

Contrary to what the Public Prosecutor's expert has claimed, these findings show that even the Ministry of Petroleum Resources actively participated in the negotiations through its technical units, the DPR and NNPC. So, it is normal that Minister in person intervened only for the implementation of political acts and a commitment by the administration towards the external world, i.e. by signing the Resolution Agreement and letter of award, while instead leaving management of the technical aspects of the agreement to the specialized bodies.

In light of the conflicting findings of the trial hearings, the award without a tender procedure, included in the indictment as an example of the illegitimacy of the award on the basis of allegations by the DPR, is diminished in importance in the final pleadings as the distorted use of administrative discretionary power. Furthermore, the Public Prosecutor's own expert had argued in this regard that the Government's discretionary award was legitimate, while limiting himself to commenting that that procedural method had fallen into disuse because the Government's more recent practice was to use competitive tender procedures.
On the contrary, we have to note that the Government used its discretionary power for awarding the license both in 2006 and in 2010, when it confirmed the discretionary award made by other Ministers in 2006, upon *authorization* by the previous President Obasanjo, who was never suspected by anyone of participating in illegal pacts. Therefore, yet again, use of the same power in 2011 is not in itself indicative of the existence of a corrupt arrangement with the oil companies.
Regardless, the prosecution's reasoning is unfounded in fact because it proceeds on the basis of abstract and theoretical considerations that do not take into account the real situation in 2011, which led people to believe that discretionary awards were the most efficient system, and surely less onerous for the Government, to settle the disputes encumbering title of the license.
The expert witness Segun also documented that the discretionary award of OPL 245 was not a unique event in the history of oil licenses, citing different cases that specifically involved unattractive licenses that would not have generated any interest in a competitive bidding procedure, or renewals of old licenses granted during the years of the military regime. It was precisely this analogy with the case of

OPL 245, a license that had been awarded under the military regime, which then got caught up in lawsuits stretching out over ten years.
Expert witness Segun's harshest objection, "OPL 245 was not a constraint-free asset that could be part of the FGN asset pool", was supplanted by the Public Prosecutor as an "assumption...contradicted by trial documents, which show how the option of revoking the license, making it part of the [omitted Italian translation] [English in source text:]"basket" [translation resumes:] of assets that the government would have put up for tender, had been clearly proposed by the Attorney General".
However, the prosecution's reasoning is unacceptable for two sets of reasons.
First of all, in terms of making a logical argument, it equates the subjective representation of a fact with the fact itself. If we *contextualize* Adoke Bello's claims, we easily arrive at the conclusion that they involved threats aimed at forcing Etete to accept compensation that was deemed *inadequate*. Nevertheless, it was the proposition of an uneconomic possibility for the Government, both in terms of time and in financial terms, since it should have indemnified Malabu, for which it had just reconfirmed ownership of the license, and in legal terms, because it should have borne the risk of the arbitration proceeding undertaken by Shell, whose loss would have led to it being ordered to pay a large compensation to the oil company. The civil party has broadened the arguments on this point by claiming that choosing a tender procedure would not have involved costs for the Government if only it had waited for the end of the deadline imposed for payment of the signature bonus, a deadline that Malabu certainly could not have met because it lacked liquidity. Nevertheless, that argument is far from conclusive, considering that it fails to consider the pendency of the arbitration proceeding and the associated risk borne by the Government if Shell won its case. Therefore, to put the license up for competitive bidding, the Government should have also awaited an arbitration award *favorable* to it, an outcome that not even the interested civil party considered likely. The Court agrees with the documented [705] opinion of the *defense* expert, which affirmed that the Government would not have been able in any case to dispose of the asset due to the "lis pendens'' doctrine, which bars transfer of a property involved in a dispute.

7.4.2 Infringement of the preferential right of Nigerian companies

Even the reference to the illegitimacy of infringement of the rules prescribed by the NOGICDA concerning compliance with the preferential right granted to local companies does not take into due account the novelties posed by the trial proceeding and as represented by the precise comments of the *defense* experts.
In fact, everyone agrees that the 2006 Resolution Agreement, as also confirmed by the 2006 letter of reinstatement, would have "immediately removed from OPL 245 the limitations on foreign capital participation provided for by the ICP. Malabu, from that moment on, was free to assign up to 100% (one hundred percent) of its rights and interests in OPL 245 to a third party."
However, the Public Prosecutor argues that that right was limited by the law that came into force on April 22, 2010, and more precisely, by the [Italian translation omitted] [English in source text:] the Nigerian Oil and Gas Industry Content Development Act - NOGICDA - 2010). [translation resumes:] PUBLIC PROSECUTOR: "Article 3(1) of the NOGICDA states: In the allocation of oil blocks, concessions on oil fields and concessions for oil extraction and in all projects for which the award of a contract falls within the Nigerian oil and gas sector, priority will be given to Nigerian independent operators on the basis of any conditions indicated by the Minister. Article 3(3) of the NOGICDA states: Compliance with the provisions of this Law will be a fundamental criterion for the allocation of concessions, permits and any other interest to participate in tenders for oil exploration, production,

[705] In the case of Akinkugbe against E.H. (Nig) Ltd. (2008) 12 NWLR (Pt. 1098) 375 from 397E to F, the Hon. Justice Aderemi of the Supreme Court confirmed that: *"There is an abundance of court opinions according to which it has always been a common doctrine in all courts, and the doctrine is based on the idea that it would be simply impossible that an action, a lawsuit, or even a motion or request arrive at a positive result if the sale at the center of a pending dispute [sic] were allowed to go ahead. In short, this is an explanation of the doctrine of lis pendens, which prevents the effective transfer of rights to a property, as in our specific case, that is the object of an action pending in court during the pendency of the action or claim."*

transport and development or any other operation in the Nigerian oil and gas sector. Moreover, in the NOGICDA Definitions, in contrast with many clarifications by the defense expert witnesses who (absurdly) would like to attribute the status of "Nigerian companies" to NAE, UNUD and SNEPCO solely because they are companies registered in Nigeria, it is clearly explained that: "Nigerian Company" means a company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act [Companies and Allied Matters Act] with not less than 51% of the capital shares belonging to Nigerians".

The Public Prosecutor also cites the opinion expressed by the House of Representatives at its session on February 18, 2014: "a situation in which the 'Resolution Agreement' has transferred 100% of ownership in favor of two companies based abroad is contrary to our national aspirations. Indeed, the 'Resolution Agreement' should recognize the Nigerian national interest in the huge fields found in the block" (recommendation (i))

However, the prosecution does not take into account the considerations made on this point by the *defense* experts, who have argued that NOGICDA applies to service companies and not to the companies that hold the licenses, an issue that was clarified by the guidelines issued on August 3, 2011, which stipulated that service companies do have to comply with the definition of a Nigerian company given in the NOGICDA for the purpose of qualifying for the award of contracts in the sector. In any case, Article 4 of the NOGICDA established the Nigerian Content and Development Monitoring Board. It is a body assigned the task by law to monitor compliance with the provisions contained in this law. In fact, Article 5 says that the Board will implement the provisions of law to guarantee the measurable and constant growth of Nigerian content. As revealed by the documents appended to the joint brief submitted by the defending attorneys, this governmental body that reports to the Minister of Petroleum Resources has always approved the development plans submitted by NAE for OPL 245, holding that this company has complied with the local content requirement in planning development of the block. It is evident that the board established with NOGICDA would not have granted these *authorizations* to NAE if it had not believed that OPL 245 had been awarded in violation of the law that the body was supposed to monitor.

The ENI expert witness affirmed that the "award does not conflict with the NOGICDA requirements for four reasons:

a) OPL 245 was not an unencumbered asset that the Government could dispose of. So, the prerequisites were not met to give priority to independent Nigerian operators as prescribed pursuant to Articles 3(1), 3(3) and 6 of the NOGICDA. Moreover, on the basis of the doctrine of lis pendens, the Government was forbidden to transfer any right in OPL 245 to a third party and prejudice the rights of Malabu and SNUD. A propos, we have to note that it is not significant that Article 3(1) of the NOGICDA does not specifically exclude the encumbered assets from its scope of application. In fact, it is implicit that its application does not have to produce actions in violation of other laws or that favor the occurrence of disputes;

b) the term "Nigerian company" is not used in any of the provisions of the NOGICDA that are of relevance in this proceeding. Article 3(1), requires taking "into primary consideration" the "independent Nigerian operators" (and not a "Nigerian company" in its strict definition): "Independent Nigerian operators will be taken into primary consideration for the award of oil blocks, oilfield licenses, oil drilling licenses, and for all projects in which a contract in the oil and gas sector has to be awarded on condition of compliance with the conditions that may be specified by the Minister". "In turn, 'operator' is defined as 'the Nigerian National Petroleum Company (NNPC), its subsidiaries and joint-venture partners, and any Nigerian, foreign or international oil and gas company that operates in the Nigerian oil and gas sector on the basis of any oil and gas agreement";

c) Article 3(1) del NOGICDA affirms that the obligation to give primary consideration to independent Nigerian operators is not absolute, but is still subject to compliance with the other conditions that may be specified by the Minister. So, this is not a mandatory obligation that cannot be

[3 illegible signatures]

modified;

d) the aim of the NOGICDA is to develop Nigerian content, i.e. the use of Nigerian resources and services in connection with the execution of projects in the sector. The expression "Nigerian Content" is defined in Article 106 as "the quantity of composite value added to or created in the Nigerian economy by systematic development of skills and abilities through the voluntary use of Nigerian human resources and services and materials in the Nigerian oil and gas sector". Moreover, Article 5 prescribes that "the Commission [i.e. the NCDMB] will implement the provisions of law to guarantee the measurable and constant growth of Nigerian content in all oil agreements and concerning the gas, projects, work, activities or operations in the Nigerian oil and gas sector". This is confirmed by Article 11 and the Annex of the NOGICDA, which prescribe a minimum "Nigerian content" to be developed and the parameters for measuring compliance with the objective of incentivizing Nigerian content. Well, pursuant to the Annex, neither the obligation to be a "Nigerian company", nor participation in its capital are indicated as evaluation parameters for determining compliance with the NOGICDA.

In any case, it has to be pointed out that the law does not require that the licenses always and regardless be awarded to a Nigerian company, but it limits itself to prescribing that this entity be granted [English in source text:]"first consideration" *[Translation resumes]* but "on the basis of the conditions that might be indicated by the Minister". In other words, the expression "first consideration" indicates a preference to be granted to owners that represent the local community, but it does not require that only those companies may be the holders of oil and gas licenses. Therefore, once again, the Minister's choice to award the license to one party instead of another must be considered in accordance with the typical principles that govern the proper exercise of administrative powers.

On the basis of these conditions, the decision to award OPL 245 to NAE and SNEPCO in accordance with the agreement reached by the parties might be censured on the basis of the NOGICDA if it were proved:

- that at the time of the events, there was an independent Nigerian operator possessing the technical and financial capacity to exploit a complex oilfield like OPL 245;
- that that independent Nigerian operator had reached an agreement with SNUD and Malabu to participate in the deal;
- that the Government had failed to give priority to that independent Nigerian operator by giving preference to NAE without any valid reason.

Instead, at the conclusion of the discovery proceeding, no evidence came out - and in fact, there was not even any simple allegation - of any of those conditions. On the contrary, it turned out that no independent Nigerian operator never became interested in the deal, and that even the international companies that had acquired information subsequently preferred not to pursue negotiations after becoming aware of the pile of court claims pending over the license and the extreme complexity of research and exploration activities at the oilfield. So, once *again*, the solution adopted by the Government not only complies with the law, it appears to be the only practicable solution given the peculiarity of the matter.

7.4.3 Favorable tax treatment

According to the prosecution, the fact that the OPL 245 license was awarded to Eni as a "sole risk award" supposedly represents another indicator of distorted use of discretionary power intended to *favor* private parties, explainable only through the lens of illegal arrangement but, once again, this line of reasoning fails to account for the underlying reality, which saw the discretionary choices of the government being limited by the fact that the companies wanted to acquire a license at the same *favorable* conditions by which it had been awarded to Malabu.

The subject matter of *favorable* tax treatment is extremely technical and thus must be *analyzed* on the

basis of a comparison of the various expert witness reports, highlighting their different positions, beginning from the tenor of the charge, which was formulated on the basis of the findings stated in the DPR letter of 1 April 2011.

7.4.3.1 Resolution Agreement adopted "with a full and unconditional exemption from all national taxes (particularly: capital gain tax, taxes on income, withholding taxes, value added tax)"

Expert witness of the Public Prosecutor

Clause 10 of the Resolution Agreement prescribes as follows:

"The FGN grants a full and unconditional exemption from any obligation and liability for capital gain tax, taxes on income, withholding taxes and value added tax on the transactions and payments prescribed in clause 1, consequent to or associated with this Resolution Agreement of the FGN of 2011. Independently of the foregoing and without prejudice to the position of the FGN and NNPC, NAE and SNEPCO are not excluded from the possibility of ordinarily asking the FIRS for the allowances prescribed by law on the amount of the signature bonus".

The payments in question are:

(a) $ 207,960,000, which represent the signature bonus;

(b) $ 335,600,000 incurred by SNUD in connection with the PSC work in 2003;

(c) $ 1,092,040,000 as settlement for any existing claim on OPL 245.

The four tax exemptions envisaged in the Resolution Agreement are governed by the Capital Gains Tax Act (CGTA); the Companies Income Tax Act; by withholding tax provisions; by the Value Added Tax Act (VATA).

The capital gain tax applies to all the capital gains of a taxpayer originating from the sale of an asset or fixed asset fulfilling certain requirements and prescribes a rate of 10% on the profits or gains deriving from their sale after deductions (Art. 2(1) CGTA).

No one-off commercial transactions are mentioned (neither a one-off nor resolution agreement).

The CGTA provides exemptions and allowances for non-profit associations, public institutions, cooperatives, labor unions, profits resulting from a takeover, etc. (Articles 26-42 CGTA).

The companies income tax refers to the profits of companies that accrue in Nigeria. However, it does not apply to the companies that operate oil activities. Article 23(1) of the CITA exempts from tax the profits of non-profit associations, cooperatives, dividends from investments in sectors dedicated entirely to exportation, etc. The CITA specifically ascribes to the President of the Federal Republic of Nigeria powers to grant tax exemptions through a formal order).

Withholding tax is an income tax prepayment that may be used to reduce or offset tax liabilities. The withholding tax is not a distinct tax and does not have a specific legislative basis that is not the Withholding Tax Regulations. Since tax withholding is governed by different laws and regulations, any exemption will have to be governed by those same laws and regulations and not by a Resolution Agreement.

The Value Added Tax (VAT) applies to the provision of goods and services, except for those that are specifically exempted (Articles2-3 of the VATA). The VAT exemptions apply to specific goods and services and not to individuals or legal entities. This means that the alleged exemption for the OPL 245 deal is manifestly illegal. Furthermore, Article 38 of the VATA grants the Minister of Finance the power to modify the goods and services exempt from VAT. Again, the nature of the power assigned to the Minister is tied to a formal measure and that power does not extend to comprehending the possibility of waiving a tax in a one-off agreement not published in the Nigerian Federal Gazette.

Clause 10 of the Resolution Agreement cannot even be considered legitimate on the basis of the President's general powers to grant tax exemptions to businesses. The Industrial Development (Income Tax Relief) Act (IDITRA) allows tax allowances for any sector or industry that have not developed to a scale suited to the economic progress of Nigeria or if it is in the public interest to encourage the

development or progress of the sector or industry. The Nigerian President is authorized to publish a list of the sectors or industries who fulfill the prerequisite of being a pioneering sector or industry (Art. 1 IDITRA). Instead, the tax exemptions granted by the Resolution Agreement do not comply with Nigerian tax legislation and practice. When the exemptions are granted lawfully, a statutory reference is then found in a law. In other cases, an Executive Order or publication in the Official Gazette or a tax exemption certificate or a combination of these methods are necessary. None of these is present in the settlement. IN addition, the Nigerian courts have adopted a severe approach to the interpretation of tax laws[706].

Expert witness of Eni

The amounts declared exempt from tax are referred to hereinafter as "payments" and are divided into:

i. "reimbursements and costs" (reimbursement by SNEPCO to SNUD of the total amount of $ 543,560,000), which are comprised in turn by:

- $ 335,600,000, which represent the costs incurred by SNUD for the execution of its work program prescribed by the PSC 2003 agreement;
- $ 207,960,000 as the signature bonus for 2011 paid to the Government.

ii. "amount of settlement", i.e. the payment of $ 1,092,040,000 by NAE (on its own behalf and on behalf of SNEPCO) in favor of the Government which the latter would use to settle the outstanding claims and/or issues on OPL 245.

In general terms, Government agencies have the power to prescribe specific sorts of exemption for individual taxes. There are numerous other transactions, other legislative tools, other judicial and arbitral authorities that confirm the Government's right to take macroeconomic decisions[707].

At any rate, we have to ask ourselves whether the taxes for which the exemption was granted were

---

[710] In proceedings like Saipem Contracting Nigeria Ltd & 2 Altri v. Federal Inland Revenue Service & 2 Others (2014) 15 TLRN 76 and Federal Board of Inland Revenue v. Halliburton (W.A.) Ltd (2014) CA/L/320/2009, the judicial authorities have ruled that the deciding factor in determining tax liability is the tax law itself, and not some circular or opinion issued by a tax agency. In the first case, the perpetrators joined a consortium for construction, installation and fabrication activities to be performed in Portugal and Nigeria. In 2009, they had gotten an advance tax ruling from the FIRS, on the basis of which the profits on the services provided in Portugal would not be liable for tax. In 2011 FIRS withdrew the tax exemption letter and imposed VAT, withholding tax and CITA. The argument made by Saipem, according to which the FIRS exemption letter was binding and could not be withdrawn because the company, relying on that letter, had modified its own economic position to its own detriment, was not accepted by the Court. In Federal Board of Inland Revenue v. Halliburton (WA) Ltd, a tax surcharge had been applied, deriving from the transactions between the defendant, a non-resident foreign company located in the Cayman Islands, and its Nigerian subsidiary (Halliburton Energy Services Nigeria Limited). The company argued that the principles of legitimate reliance, fidelity and the predictability of the conduct of a public entity in the performance of its own functions would have prevented the entity from reformulating the previous fiscal assurances given to the company. This opinion was rejected and the Court of Appeal based its ruling on the authoritative English case Birkdale District Electric Supply Co. Ltd (1926) AC 355 at 364, followed in Ex. P. Liverpool Taxi Fleet Operators' Association (1972)2 Q.B., 299, it which it was ruled "that an individual or a public authority mandated by law to perform public functions may not compromise those functions by stipulating agreements or taking initiatives incompatible with the performance of functions mandated by law" (pages 38-39.)

[707] For example, we can cite the fact that the Companies Income Tax Act preserves the power of the FGN to adjust the tax obligations for the companies income tax (and the withholding tax at the source is an important component of the companies income tax). The companies income tax act specifically prescribes that the President has the power to exempt all the profits of a company, or part of them, from the companies income tax. Specifically, Article 23(2) of the companies income tax act (Power of Exemption) prescribes that:

"(2) By decree, the President may exempt:

(a)a company or a category of companies from all or some provisions of this act;

or

(b)from tax all the profits of a company or a class of companies or part of them, coming from any source, for any reason deemed sufficient.

(3) By decree, the President may modify, add or revoke a given exemption by giving notice or issuing a decree pursuant to the provisions of points (2) or (4) of Article 9 of the personal income tax act to the extent that it involves a company.... "

With regard to the value added tax, even Annex 1 of the VAT act contains a detailed list of the goods exempt from VAT. All of the goods that are not listed there are subject to a value added tax at the rate of 5% (five per cent). Nevertheless, Article 38 of the VAT Act grants the Minister in charge of financial affairs ("Minister of Finance") the power to change or modify the list of goods exempted from VAT or having a zero rate, and also to modify the rate of VAT owed pursuant to the VAT Act. The law does not limit the terms and conditions that apply to the grant of this exemption. Therefore, it could be given with a contract.

[3 illegible signatures]

actually owed. Giving a preview of the conclusions, it may be affirmed that the tax exemptions prescribed in paragraph 10 of the Resolution Agreement were superfluous and did not have legal effects because there never was any tax obligation for which we could say that the Government granted exemptions or waivers. In particular:

- Capital Gains Tax (Capital Gains Tax Act - "CGTA") applies to the profits deriving from an increase in the market value of an asset when it is sold to an individual or an entity. The question to be asked to determine the applicability of the capital gains tax is whether there is the sale of an asset in exchange for which a payment was made and whether any capital gains were generated by the sale. So:
    I. the reimbursement of costs envisaged at paragraph 1.1 of the Resolution Agreement represents the reimbursement/restitution by SNEPCO to SNUD of the amount of $ 335,600,000, equal to the costs borne by SNUD for execution of the work program prescribed by the PSC 2003 contract and the signature bonus paid to the Government. The reimbursement was not made as consideration or as payment for the sale of an asset by SNUD to SNEPCO, and it did not generate any capital gain from which application of the tax could derive;
    II. in relation to the amount of the settlement, paragraph 1.3 of the Resolution Agreement prescribes that NAE pay the Government $ 1,092,040,000 "so that the FGN settles all existing claims and/or related to block 245..." in compliance with the Resolution Agreement. The amount of the settlement was not prepaid as the consideration for sale of an asset. On the contrary, it involved an expense paid by NAE as the cost agreed for settlement of all disputes concerning OPL 245. Therefore, the payment made to the Government for settlement of the disputes did not originate any capital gain.
- income taxes are the taxes applied to the profits generated by commercial activity, by the business or by the profession of an individual or legal entity. In particular:
    I. the income accrued on the earnings of an individual are subject to personal income tax ("PIT"). Since the payments were not made by or to an individual, they are not subject to personal income tax;
    II. the taxes on income of a company depend on the sector of activity in which it operates. The companies that operate oil and gas activities are subject to the petroleum profits tax ("PPT") pursuant to the Petroleum Profits Tax Act ("PPTA"), or the Deep Offshore and Inland Basin Production Sharing Contracts Act ("DIBPSA"), if their parcel is located in deep offshore waters or in inland basins. Since the payments do not derive from "petroleum activities" of the paying companies, no PPT is owed pursuant to the PPTA or DIBPSA.
    III. all other income of companies (excluding the upstream companies) is liable for the companies income tax ("CIT"). The income subject to the tax is specified in the law and, in this case, neither the reimbursement of costs nor the amount of the settlement represent taxable income.
- withholding taxes are not a separate or independent tax; they consist of a prepayment on the companies income tax. The regulation on companies income taxes prescribes the income of business activities that are subject to tax withholding at the source. The amounts that constitute the payments do not fall into any of the income categories specific identified in the Regulation of Tax Withholding at the Source of the Companies Income Tax.
- the value added tax is a 'national consumption tax that applies to all goods and services, except for those specifically exempt from VAT[135] and is owed by anyone who operates an economic activity in the trading of goods[136]. One criterion for determining the applicability of the tax is

that the transaction has to be a sale or supply of a good subject to VAT, must be made by a VAT taxable person that must file a VAT purchases and VAT sales return to determine the tax to be paid. The payments in question:

a) were not payments for goods subject to VAT, since the reimbursement of costs incurred, the payment of the signature bonus 2001 and the settlement of the claims are not goods subject to VAT;

b) they do not constitute the sale or supply of goods or services subject to VAT pursuant to the VAT law;

c) there is no base to determine VAT on purchases and VAT on sales from which to calculate the tax to be paid.

Expert witness of Shell

Clause 10 of the Resolution Agreement contains no illegal provisions.

Article 5 of the Nigerian Constitution establishes the powers of the Government and assigns the right to exercise them to the President, who may do so directly or through the Vice President or the Ministers. Clauses 10 and 12 of the Resolution Agreement prove that governmental power was exercised legally, given that the Attorney General, the Petroleum Minister and the Finance Minister participated in the agreement. Nevertheless, it behooves us to recall that the exemption is expressly limited to "all obligations and responsibilities related to capital gains tax, income tax, withholding tax and Value Added Tax in connection arising from the transactions and payments envisaged in Clause 1 and deriving or connected with this FGN Resolution Agreement". Therefore, the block remained liable for all applicable taxes, including the Petroleum Profits Tax, the tax of the Niger Delta Development Commission, and the education tax on operations related to the block. On closer examination, aside from the capital gains tax, none of the taxes mentioned in Clause 10 of the Resolution Agreement is applicable to the payments made pursuant to the Resolution Agreement. In particular:

- the capital gains tax applies when a capital gain results from a sale, a lease, a transfer or assignment, a mandatory acquisition or other disposal of assets. To the extent that the rights claimed pursuant to the PSC of 2003 by SNUD to SNEPCO can be subject to the capital gains tax, Clause 12 affirms that: "The FGN confirms that the terms for this FGN Resolution Agreement have been approved by all the competent agencies of the FGN, including the Ministry of Finance and the *Federal Inland Revenue Service".* Essentially, the Government promised to waive this tax, which it could do because it is a sovereign entity;
- the income tax is a tax owed on the "profits of the company realized, deriving from, imported from or received in Nigeria". As previously mentioned, in consequence of the Petroleum Profits Tax Act and the PSC Act, neither PSC nor SNUD nor NAE, are liable for the Companies Income Tax. In any case, the payments envisaged in the Resolution Agreement do not result in the generation of profits. Since it is a reimbursement for expenses incurred by SNUD, the payment made to it would not have been liable for the Companies Income Tax, inter alia because no exemption from it is contained in the Resolution Agreement;
- VAT is a tax applicable to the provision of goods and services that businesses are obliged to charge on their sales invoices for payment to the tax authorities. The debate over the applicability of VAT to the amounts paid for acquisition of shares in OPL seems to have been settled in the 2011 case TRLN 185 of CNOOC against the Federal Attorney General in 2011 TLRN 185. The Federal High Court of Nigeria held that dematerialized shares, like an equity unit pursuant to a PSC, do not constitute goods or services and are not liable for VAT. Given the fact that the decision had been issued just before the Resolution Agreement was signed, it is possible that the parties wished to clarify that the transaction was not liable for VAT;
- the withholding tax is an "income tax that can be used to offset a tax assessment for a given period. Since no taxes were owed on the payments, by extension they could not be liable for

[3 illegible signatures]

withholding taxes.

Conclusions of the Court

The first point to be clarified concerns the exact identification of the possible controversial aspects related to clause 10 of the Resolution Agreement. As stated in the count of indictment, the prosecution's allegation that the agreement granted the oil companies "a full and unconditional exemption from all domestic taxes" is certainly mistaken. Instead, the agreement is extremely clear in stating that the future production of oil would be liable for ordinary taxation pursuant to the rules specified in clause 6, i.e. in compliance with the rules of the Deep Offshore and Inland Basin Production Sharing Contract Act CAP3, Laws of Federation of Nigeria 2004. Then, the block remained liable for the Petroleum Profits Tax, the tax of the Niger Delta Development Commission, and the education tax.

The scope of the exemptions was thus limited to the cash movements envisaged in the Resolution Agreement and exclusively concerned the four types of taxes specified in Clause 10. So, it is necessary to check whether those exemptions are translated into a missed collection of taxes or whether, on the other hand, the taxes still were not owed and clause 10 thus had no practical consequences. It will then be necessary to comprehend whether the President of the Republic and the signatory Ministers had the power to grant the exemptions as envisaged in the Resolution Agreement.

That said, the legal arguments made in the Eni and Shell experts' reports on the fact that the income taxes, value added tax and withholding tax were not applicable to the payments based on the Resolution Agreement appear fully acceptable. The Ayoade expert witness report contains no counterarguments on this point, but limits itself to abstractly describing which *possibilities* for exemption are legally allowed, while failing to take a position on the application of those taxes to the case examined here. Analogously, the Public Prosecutor did not ask any questions concerning the *defense* expert witness reports during cross-examination. Therefore, in the absence of any opposing *arguments*, we believe it suffices to refer to the positions stated in the expert witness reports *summarized* hereinabove, which are to be considered accepted and fully cited here.

Instead, the issue appears to be the object of opposing opinions on the capital gain tax. Yet again, the Ayoade report does assess whether the oil companies were parties liable for tax, and nothing was objected during cross-examination of the *defense's* expert witnesses. So, even in this regard, it is *possible* to refer what is stated in the Segun expert witness report, since those arguments are fully acceptable.

Nevertheless, during cross-examination of the expert witness Oditah, the Public Prosecutor suggested that the person liable for the capital gain tax would have been Malabu, which would have benefited from the exemption clause added to the Resolution Agreement[708].

PUBLIC PROSECUTOR -[...] but Etete should have paid the capital gain tax?

PRESIDING JUDGE - Etete construed as Malabu. Or Etete construed as a natural person?

PUBLIC PROSECUTOR – Etete and not Malabu had taken the money.

PRESIDING JUDGE - So, the question is: is it the natural person?

PUBLIC PROSECUTOR – Yes. Etete or Malabu... Malabu, yes, more correctly, it is Malabu in contractual terms. Yes, Malabu and Etete. Malabu, would have... excuse me, Your Honor, it is actually more correct as Malabu.

[…]

INTERPRETER - "Pursuant to the ... I am saying that it is unclear because pursuant to English and Nigerian tax law, the sale of a right... yes, so the waiver of an interest must not be considered a sale of a... it is not a sale", essentially.

PUBLIC PROSECUTOR – But here, the waiver was...

INTERPRETER - "There are essential and technical aspects. First of all, in a sale, it is presumed that something gets moved".

[708] Hearing on May 15, 2019, D. 44.

PUBLIC PROSECUTOR – It's already hard with real estate.
INTERPRETER - "While for relinquishment, something is gotten back in practice, so nothing is sold but something is recovered. And the precedent for this aspect is a case of Paradise Motors Limited, and in this case, the English Court asked itself whether the waiver, and thus the relinquishment of an interest represented a source of... if it were taxable income. Because both in England and in Nigeria, the capital gains tax is prescribed only when a disposal takes place, and so it is not taxable. So, in the end, the Court ruled that the relinquishment is not a disposal, it is a sale".
PUBLIC PROSECUTOR – In the case that you mentioned, there was also the collection of consideration amounting to about 1 billion?
INTERPRETER - "Yes, it's true, but sometimes it's the legal essence compared with economic effects. And the law governs and covers what concerns the legal essence. So, it is not fundamental whether the economic effect...whatever the economic essence is, but what is fundamental...", I would like a moment to repeat, "If, instead, the legal essence is sufficiently different, such as to entail a different consequence. If the law states that the sale of a bottle entails a tax, I want to earn from this bottle, I know that I sell it, I will be liable for a tax. However, I can also borrow the money and offer my bottle as security, and in this case, that loan would not require the application of a tax. And the economic effect is exactly the same, whether I sell it or that I transfer it with a loan. Nevertheless, the legal essence is very different, because in one case, it involves a sale transaction, while in the second case, it involves a loan".
An analogous reconstruction has also been suggested by the civil party during its cross-examination of the expert witness Cameron[709]:
CIVIL PARTY, ATTORNEY LUCIA - Listen, Professor, one of the arguments that you use to justify... to hold that the tax exemption of these... the tax exemption of the payments prescribed in the resolution agreement, on page... excuse me, at paragraph 104, you say that "they essentially wanted to restore the original rights", I am reading verbatim from the Italian text. Now, my question is this: but in fact, if I understand properly, Malabu, which had not even paid the original signature bonus of 1998 and never paid anything, got a considerable amount, 1.084 [sic] billion. So, you don't think that this situation conflicts with what you are saying? In other words, a restoration of the original rights. Meaning, you do not instead think that Malabu realized a genuine capital gain (inaudible, off-microphone)?

The implicit premise of the prosecution's hypothesis is that the Resolution Agreement was supposedly a sham agreement (a cosmetic transaction) intended to conceal the direct transfer of the asset by Malabu to NAE/SNEPCO. In this perspective, the amount of $ 1,092,040,000 paid to the Government should be treated as the consideration paid by NAE to acquire the license from Malabu, which would have thus *realized* a gain equal to the difference between the sale price and the acquisition price of the oil and gas license.
Nevertheless, that sort of an interpretation cannot be accepted because the change in the terms of the deal beginning in November 2010 was not caused by the desire to evade taxes by constructing a fictitious negotiating framework. The transition from the formula of a direct transfer of the license from Malabu to NAE to the one that took form in the settlement agreement named Resolution Agreement addressed the need to *sterilize* the risks surrounding any future litigation resulting from Mohamed Sani Abacha's claims to the uncertainties stemming from the impossibility to complete due diligence on Malabu. The aim of the oil and gas companies was to have the Federal Government as its real contractual counterparty, which assumed the legal responsibility of awarded a license free of previous third-party legal claims. Therefore, the change in the economic and contractual framework of the agreement was accompanied by a different allocation of contractual responsibilities, in consequence of which we can affirm that the settlement was really the contractual type sought and executed by the contracting parties. When evaluated together with the arguments made by the expert witness Oditah,

[709] Hearing minutes of June 12, 2019, page 23

these observations allow us to rule out that the transfer of $ 1,092,040,000 by NAE to the Government can be considered in the same way as an increase in the taxable value attributable to Malabu.
Given what we have just said, it would be superfluous to wonder whether the top administrative officials of the Federal Republic of Nigeria were legally *authorized* to grant the tax exemptions discussed here. At any rate, the Public Prosecutor's own expert witness gave his own opinion on the issue as follows:
PUBLIC PROSECUTOR – So, you have said that in general, the tax exemptions are specifically envisaged by law, is that right? By specific laws that you have cited in your report.
INTERPRETER - "Yes, correct".
PUBLIC PROSECUTOR – Or may they be based on executive orders?
INTERPRETER - "The President is the head of the executive branch and may issue executive orders, if this is what he desires. But he has to follow the procedure and this is transcribed in the Federal Gazette".
The expert witness Ayoade then *recognized* the existence of a power held by the President of the Republic to mandate specific tax exemptions, but he pointed out that exercise of that power is conditioned on the fulfilment of certain procedural steps. In any event, failure to comply with those procedures certainly could not be ascribed to the oil companies and their top executives. Moreover, clause 12 of the Resolution Agreement affirms that: "The FGN confirms that the terms for this FGN Resolution Agreement have been approved by all the competent agencies of the FGN, including the Ministry of Finance and the Federal Inland Revenue Service". Finally, the Resolution Agreement was signed by the Petroleum Minister, the Attorney General and the Minister of Finance.
In its final pleadings, the prosecution abandoned these specific observations, insisting only on the following point, defining it a genuine depredation of national oil and gas resources in *favor* of European companies, which were accused of neo-colonialism.

7.4.3.2 Resolution Agreement adopted "with the provision of the applicability of favorable tax treatment (the one provided by the Deep Offshore and Inland Basin Production Sharing Contracts Act CAP D3, Laws of the Federation of Nigeria 2004"

Expert witness of the Public Prosecutor

Clause 6 of the FGN Resolution Agreement prescribes: FGN gives confirmation to NAE and SNEPCO that the tax treatment envisaged in the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria, 2004, will be applicable to the PSA between NAE and SNEPCO with reference to Block 245.
A Production Sharing Contract (PSC) is an oil and gas agreement between a Contractor and NNPC or another holder pursuant to which the Contractor covers all the exploration costs and is compensated only if it makes a commercial discovery and brings it into production. According to this scheme, NNPC or the holder are the assignees of the license, while the contractor will handle the technical activities.
Instead, a sole risk arrangement is the type of agreement where NNPC is not involved and ownership of the concession is vested in the assignee.
Article 18 of the DOIBPSCA 2004 defines:

- "Production Sharing Contracts" as an agreement or arrangement between NNPC or the [Italian translation omitted] [English in source text:] license holder [translation resumes:] and any other oil exploration company for the purpose of oil exploration and production in deep offshore and inland basis";
- [Italian translation omitted] [English in source text:] "License holder" [translation resumes:] as any Nigerian company holding an oil exploration concession or an oil extraction concession located in deep offshore and inland basins in accordance with the relevant provisions of the Petroleum Act, as amended". The implication is that the OPL is held either by NNPC or by a Nigerian company. Although the law does not define "Nigerian company", it is clear that reference

is made to [Italian translation omitted] [English in source text:] Indigenous Nigerian owned companies and not to subsidiaries of international oil and gas companies.
- [Italian translation omitted] [English in source text:] "Contractor" [translation resumes:] as "any oil exploration and production company that has signed a [English in the source text] a Production Sharing Contract [translation resumes] with the [English in source text] Corporation [translation resumes:] or has stipulated an agreement or arrangement with any Nigerian company holding an oil exploration concession or an oil extraction concession located in deep offshore and inland basins".
- [English in source text] Corporation [translation resumes:] as the "Nigerian National Petroleum Corporation".

It is deduced that in connection with a PSC, the Contractor contracts with NNPC or with a Nigerian company holding an oil prospecting license ("OPL") in deep offshore waters.
Neither NAE nor SNEPCO can be described as "Nigerian companies" since they do not fulfil the prerequisite 51% equity stake held by a Nigerian citizen. Although the DIBPSA does not contain any relevant definition, reference has to be made to the provisions of Art. 106 of the NOGICDA.
Once the oilfield starts producing commercial crude oil, the PSC model envisages:
- "royalty oil", which is a payment to the Government by the licensees in exchange for the concession of rights to the petroleum resources;
- "cost oil", which allows the Contractor to recover its operating costs;
- "tax oil", which is usually assigned to NNPC or to the holder of the OPL and which has to be sufficient to pay the monthly petroleum profit tax ("PPT");
- "profit oil", which is calculated on the remaining crude oil and which is divided between the Contractor and NNPC.

These characteristics are defined in the PSC between NNPC and SNUD (the "Contractor") of 2003, and in Clause 9 of the PSC 2005 Model. On the contrary, the Production Sharing Agreement ("PSA") of 2012 between NAE Ltd and SNEPCO is an agreement between the parties that does not envisage the participation of NNPC. Clause 13.2 ("Assignment and extraction of the available crude oil"):
- assigns the royalty oil to each party in an amount sufficient to pay royalties and licensing fees;
- does not contain any rules for the cost oil;
- assigns the tax oil to each party to generate funds to be used for the monthly petroleum profit tax (PPT);
- assigns the profit oil to NAE and SNEPCO in proportion to their respective shareholdings.

So, the terms of the PSA of 2012 are significantly different from the PSC models and Nigerian practice for the following reasons:
(a) sole risk agreements or agreements in which there is no NNPC participation are unusual for deep offshore operations;
(b) there are no provisions for cost oil;
(c) the profit oil is divided between the parties with the exclusion of NNPC;
(d) The DIBPSA indicates that the OPL should be held by NNPC or by a Nigerian-owned company, while neither NAE nor SNEPCO have these characteristics;

Expert witness of Eni
The provisions of the DIBPSA, whether or not they concern tax, were conceived for all deep offshore and internal basin operations. The aim was to apply more favorable tax conditions to the capital-intensive exploration activities.

Independently of the preceding, there is no doubt that the PSA is an agreement covered by the definition of PSC pursuant to the DIBPSA. The different arguments found in the Public Prosecutor's expert witness report are unacceptable because:

a. [710] an analysis of the Annual Report on the Nigerian Oil and Gas Sector of 2017 published by the DPR confirms the existence of a discreet number of concessions assigned on a sole risk basis for deep offshore blocks (OPL 215 assigned to Noreast, OPL 326 assigned to Northsouth Petroleum, OPL 322 assigned to Dajo Oil). Two more examples of deep offshore blocks with a production sharing agreement are OML 140 (of which 50% of the property rights to the asset is held by Oil and Gas Nigeria Limited and Star Deep, governed by a production sharing agreement, and the applicable tax conditions are those prescribed by the DIBPSA) and OPL 322 (of which 50% of the property rights to the asset is held by Dajo Oil and SNEPCO, governed by a production sharing agreement, and the applicable tax conditions are those prescribed by the DIBPSA);

b. [711] the cost oil is allowed only if a party finances the deep offshore asset oil and gas operations. Nevertheless, when both of the contracting parties pay for their own share of operating costs (as in the case of the PSA, where both NAE and SNEPCO contribute jointly to the operating costs for oil and gas operations), it is absolutely unnecessary to assign the cost oil to just one of them;

c. [712] The proviso that NNPC could not claim any right to benefit from the profit oil stems from the fact that OPL 245 was assigned to NAE and SNEPCO on a sole risk basis. Article 10 of the DIBPSA allows that the only parties that are entitled to allocation of the profit oil are the parties to the oil agreement. Article 10 prescribes that: "The profit oil, represented by the residual crude oil after deducting the royalty oil, the tax oil and the cost oil, must be allocated to each party in compliance with the [Italian translation omitted] [English translation in source:] production sharing contract". [translation resumes:] In defining a production sharing contract, the rules for interpretation of the DIBPSA recognize that NNPC is not party to all the PSC. A propos, it is observed that in the example of OML 127, NNPC does not participate in the profit oil because it does not own any share in the cited concession;

[713] It is incorrect to affirm that NAE and SNEPCO cannot be classified as a "Nigerian company " on the basis of the meaning given to that expression by the DIBPSA. Pursuant to Article 2(2) of the Petroleum Act, a license or concession may be awarded to a company formed in Nigeria on the basis of the CAMA. Consequently, for the purpose of awarding a license or concession, "Nigerian company" must be construed as any company formed pursuant to the CAMA. NAE and SNEPCO are companies incorporated pursuant to the CAMA and, as such, must be legally classified as Nigerian law companies qualified to be holders of OPL 245. It would be misleading to interpret the DIPESA on the basis of a law that was made more than ten years after the law contained in the NOGICDA.

---

[710] Sole risk agreements or agreements in which there is no NNPC participation are unusual for deep offshore operations.

[711] there are no provisions for cost oil;

[712] The cost oil is divided between the parties with the exclusion of the government (NNPC). The exclusion of NNPC from sharing in the
profits denies the very existence of the PSCs, which is based on the principle of profit sharing between the government and the contractor.

[717] The DIBPSA indicates that the OPL should be held by NNPC or by a Nigerian-owned company, while neither NAE nor SNEPCO do not have the right to hold OPL 245.

Expert witness of Shell

The introduction to the PSC law describes it as: "A law that aims, inter alia, to give effect to specific tax incentives granted to the oil and gas companies operating in Deep Offshore Waters and Internal Basins pursuant to the production sharing contract between Nigerian National Petroleum Corporation or other companies that hold oil prospecting licenses or oil and gas extraction concessions and various oil exploration and production companies. "The legislator's intention is to "give effect, inter alia, to specific tax incentives granted to the oil and gas companies operating in Deep Offshore Waters and Internal Basins". Article 17 states that "Deep Offshore Waters" means all waters more than 200 meters deep and the tax incentives prescribed by the PSC Law apply to the oil and gas companies operating in these areas. There is no dispute over the fact that the OPL is located in the deep offshore waters of Nigeria.

For that matter, Shell was aiming to preserve the terms applicable to the blocks on the basis of the 2003 agreements. The difference from that time consisted in the fact that NNPC was not party to the PSA in 2012. Nevertheless, this difference is not substantial since the contractual structure obligated the IOC to pay the Tax Oil to the Government and included a favorable provision on the back-in right, as would have been agreed if NNPC had had an operating role from the beginning.

Conclusions of the Court

To assess the legitimacy of clause 6, we first have to clarify whether the structure of a production sharing contract presupposes that the party to the contract as license holder is NNPC or a Nigerian company. If the first question is answered in the affirmative, it will then be necessary to ask whether the concept of Nigerian company to be referred to is the one defined in Article *2(2)* of the Petroleum Act (for which it is sufficient that the company be incorporated in Nigeria on the basis of the CAMA) or is instead the one defined in Article 106 NOGICDA (for which it is necessary that the company be incorporated in Nigeria in accordance with the provisions of the CAMA and that at least 51% of its equity capital be controlled by Nigerian citizens).

Consequently, it is useful to recall the introduction to the DIPBSA that law as: *"A law that aims, inter alia, to give effect to specific tax incentives granted to the oil and gas companies operating in Deep Offshore Waters and Internal Basins pursuant to the production sharing contract between Nigerian National Petroleum Corporation or other companies that hold oil prospecting licenses or oil and gas extraction concessions and various oil exploration and production companies".*

Article 17 defines:

- *[English in source text] "corporation" [translation resumes:]* as the Nigerian National Petroleum Corporation (NNPC);
- *[English in source text] "contractor" [translation resumes:]* as *[English in source text] "any petroleum exploration and production company who has entered into a production sharing contract agreement* ***with the Corporation*** *or entered into an agreement or arrangement with any* ***Nigerian holder*** *of an oil prospecting license or an oil mining lease with the Deep Offshore and Inland Basin'-,*
- *[English in source text] "Deep Offshore" [translation resumes:]* as *[English in source text]* "*any water depth beyond 200 meters;*
- *[English in source text] "holder" [translation resumes:]* as *[English in source text] "any* ***Nigerian company*** *that holds an oil prospective license or a oil mining lease situated within the Deep Offshore and Inland Basin under the relevant provision of the Petroleum Act";*

- *[English in source text] "parties" [translation resumes:]* as *[English in source text] "the Corporation or any Nigerian Companies the holder and the Contractors";*
- *[English in source text] "production sharing contract" [translation resumes:]* as *[English in source*

[3 illegible signatures]

text] "any agreement or arrangement made between the ***Corporation or the holder and any other petroleum exploration and production company or*** *companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basin",*

A reading of the cited provisions allows us to affirm that, if it is true on the one hand that the purpose of the law is to introduce specific tax benefits for the companies that operate in deep offshore waters, on the other hand, it is just as true that the very introduction of the law limits those benefits to the companies that operate "*pursuant to the production sharing contract".* Therefore, we cannot accept the thesis maintained in the defense expert reports, according to which the tax benefits were supposedly owed for the mere fact that the oilfield is located in deep offshore waters. So, analysis of the definitions indicates that one of the parties of the PSC necessarily has to be NNPC or another holder, which is referred to in turn as a *Nigerian Company.*

That said, an initial reading of the provisions limited to the verbatim and systematic text would require us to ascribe to the expression *Nigerian Company* the stricter meaning given in Article 106 NOGICDA. In fact, Article 1 of the NOGICDA, prescribes that *"notwithstanding any contrary element contained in the Petroleum Act or in any other legislative act, the provisions of this law apply to all matters concerning Nigerian content as compared with all operations or transactions carried out in the Nigerian oil and gas sector or in connection with it".* Consequently the defining force of Article 106 is not limited merely to the text of the NOGICDA, but also extends to all provisions concerning the Nigerian oil and gas sector, including the provision contained in the DIBPSA. Nevertheless, that all-embracing power encounters a teleological legal limit tied to the purpose of the NOGICDA to incentivize the spread of Nigerian content, i.e. *"the quantity of composite value added to or created in the Nigerian economy by systematic development of skills and abilities through the voluntary use of Nigerian human resources and services and materials in the Nigerian oil and gas sector".* Therefore, the universal significance ascribed by Article 1 encounters an intrinsic limitation to only those sectors that concern *use of Nigerian human resources and services and materials in the Nigerian oil and gas sector,* with the consequent exclusion of the exploration and research sectors in the strict sense.

As argued in the Segun expert witness report, this interpretation finds support in Article 5 of the NOGICDA, which prescribes that: *"the Commission [i.e. the NCDMB] will implement the provisions of law to guarantee the measurable and constant growth of Nigerian content in all oil agreements and concerning the gas, projects, work, activities or operations in the Nigerian oil and gas sector".* This is additionally confirmed by Article 11 and the Annex of the NOGICDA, which prescribe a minimum *"Nigerian content"* to be developed and the parameters for measuring compliance with the objective of incentivizing Nigerian content. The Annex indicates the parameters for measuring compliance with the objective of developing Nigerian content. Those are based on components such as work hours, the volume, duration, number, cost, liters, use, loan amount, rate, number of certificates obtained, contracts and surface area. Neither the obligation to be a *"Nigerian company",* nor use of the participation in equity capital are listed as a parameter for assessing compliance with the NOGICDA. Therefore, a company incorporated in Nigeria and whose equity capital is wholly owned by foreigners that own oil and gas assets (e.g. NAE and SNEPCO) can prove that it is in full compliance with the NOGICDA by fulfilling the parameters prescribed in the Annex. A propos, it is material that, as emphasized in the Eni expert's report, a series of service companies in Nigeria have been required to bring their ownership structures into compliance with the definition of *"Nigerian company"* since the NOGICDA was promulgated. That request was not made to any company operating in the upstream oil and gas sector (like ENI, SNEPCO, Total, Chevron and ExxonMobil). Moreover, it is worth the trouble to point out that in 2017, the NCDMB praised NAE for its collaboration and for complying with all the obligations related to *Nigerian content i*n connection with its own development project in the Zabazaba oilfield[714].

[714] Source: https: ncdmb.tzov.ng 2017 04 tenders-open-for-naes-13-5bn-zabazaba-deep-\\atcr-project ;

For that matter, by holding a different opinion, we would have to reach the conclusion that holders of a license for oilfields in deep offshore waters only be companies that are majority owned by Nigerians. Nevertheless, exploration activities require the investment of financial resources and technical expertise that can be found only in the most important international oil and gas companies. A strict limitation like the one described in the Public Prosecutor's expert witness' report would thus lead to the paradox of effectively rendering the exploitation of offshore oilfields impossible, with the consequent thwarting of the incentivizing goals for the local economy, which are based on the rules prescribed in the NOGICDA.

The legitimacy of clause 6 is also confirmed in an appeal court judgement of 2018 cited in the Eni expert witness' report *(Federal Inland Revenue Service* v. *CNOOC Exploration and Production & Anor)*[715], where the Court of Appeal confirmed that the *Farm-in Agreement* (subsequently renamed *production sharing agreement)* with reference to OML 130 was a de facto PSC pursuant to the DIBPSA although NNPC was not party to it. In particular, the Court of Appeal affirmed that: *"the legal treatment of Article 4 of the DOBIA concerns the production sharing contracts executed by the parties in connection with oil and gas operations and nothing else. A propos, a "Production Sharing Contract" is defined in Article 17 of the DOBIA as an agreement or commitment between the Corporation (NNPC) or the owner and other oil and gas exploration and production companies for the purpose of exploring and producing oil in Deep Offshore Waters and Internal Basins". Therefore, the name or title ascribed to those agreements by the parties is immaterial as long as they are covered by the definition of production sharing contract. The genesis of the dispute in the examined case is that on March 19, 1998, the Second Defendant [SAPETRO] executed a Farm-in Agreement, Annex Al with Total Upstream Limited (TUPNI) and Brasoil Services Company, in which it assigned 24% and 16%, respectively, of whole shares that it had in OPL 246 for the purpose of joint oil and gas exploration and production. Evidently, that agreement [the Farm-in Agreement] represents a PSC stipulated before July 1, 1998 and is not even disputed by the parties themselves that the "applicable tax incentive be the "Investment Tax Credit pursuant to Article 4(1) of the DOBIA... It does not appear in dispute that the "tax incentive applicable to the production sharing contract signed on March 19, 1998 [and, therefore, the Farm-in Agreement] is the ITC".*

Let it be added to this that the tax conditions applicable to the production sharing agreement of the production for OML 130 are those prescribed by the DIBPSA - a circumstance that had also been admitted by the *Tax Appeal Tribunal* of Nigeria in the case *South Atlantic Petroleum Limited et al.* v. *Federal Inland Revenue Service.* And then it is definitely worth recalling two additional examples of a resolution agreement cited in the Eni expert witness' report to which are applied the tax conditions prescribed by the DIBPSA, i.e. OML 140[716] and OPL 322[717].

It also has to be pointed out that the lack of rules on cost oil and the failure to attribute profit oil to NNPC has to be explained more specifically.

With reference to cost oil, Article 8 of the DIPBSA affirms that this *"has to be ascribed to the contractor in amount equal to the earnings from it sufficient to recover the operating costs incurred in connection with the oil prospecting licenses as defined in the* Production Sharing Contracts *and in the extraction concessions deriving from it".* This provision is justified in the economic presumption that the exploration costs have been borne entirely by just one of the parties and who, specifically for this reason, has the priority right to recover its outlays Nevertheless, when both of the contracting parties pay for their own share of operating costs (as in the case of the PSA), it is absolutely unnecessary to

(715) (2018) LPELR (LawPavilion Electronic Law Report)-45345 (CA);

716 Source: https: ncdmb.tzov.ng 2017 04 tenders-open-for-naes-13-5bn-zabazaba-deep-\\atcr-project ;

(717) Ibid.

[3 illegible signatures]

assign the cost oil to just one of them.

With regard to the failure to allocate profit oil to NNPC, it must be noted that such an eventuality is specifically rooted in the very definition of PSC, where it is envisaged that the holder may be either NNPC or another Nigerian company. In particular, Article 10, entitled *"allocation of profit oil",* affirms that "*profit oil [...] shall be allocated to each party in accordance with the terms of the production sharing contract".* In turn, Article 17 defines *"parties"* as *"the Corporation or any Nigerian Company as the holder and the Contractors".* In the conclusions, it is significant that the prosecution abandons its allegation of illegitimacy deriving from the tax stabilization clauses.

7.4.3.3 *Resolution Agreement* adopted *"with the provision of the applicability [.../ of a grandfather clause in the event of future changes in the tax treatment"*

Expert witness of the Public Prosecutor

Clause 6 of the FGN Resolution Agreement prescribes as follows:
[...] If new laws are issued or amendments are made to Nigerian laws or regulations or to rules, procedures, guidelines, instructions, directives or policies, applicable to this FGN Resolution Agreement and/or to the Oil Prospecting License (OPL) for Block 245 and/or the subsequent Oil Mining License (OML) deriving from it, including the aforementioned tax deadlines, introduced by any government or parastatal office or agency, occurring after the execution date, substantially and negatively impacts the rights and obligations or the economic benefits of NAE and SNEPCO, the affected Parties may agree on an amendment to this FGN Resolution Agreement and/or to any consequent agreement between the affected parties to remedy and remove the negative impact of those amendments retroactively to the date of said negative amendment.
The stabilization clauses were used in contracts involving Nigerian upstream oil and gas.
An example is Clause 27 of the PSC 2005 Model, which prescribes that: "The parties agree that the conditions of the Contract are based on the tax provisions envisaged in the Deep Offshore and Inland Basin Production Sharing Contracts Act of 1999. In case of legislative or regulatory amendments that have a substantial impact on the benefits envisaged in the Contract, the Parties will consult with each other and amend this Contract and will restore as much as possible the commercial benefits available pursuant to the contract at its effective date".
In any event, the Nigerian courts have not ruled specifically on whether or not the stabilization clauses are legal and on their capacity to exclude the legislative powers of the National Assembly. However, it is unlikely that the judicial authorities can permit a measure that limits national sovereignty and the constitutional mandate of the National Assembly.

Expert witness of Eni
The use of stabilization clauses to alleviate the tax effect of statutory changes is a common practice and their presence in the resolution agreement does not suggest any form of favorable treatment. We can cite the PSC for OPL 242, the PSC model for the 2005 tender procedure, the PSC for OPL 222.

Expert witness of Shell
A stabilization clause is a term in the agreement between the parties used to avoid the unexpected effects of exercise of the legislative power, which might otherwise block an investment due to a unilateral amendment to the law. Stabilization clause are found in numerous agreements of the Nigerian oil and gas sector. In effect, the PSC 2005 Model issued by the FGN in preparation for the

Bid Round of 2005 contains a stabilization clause at point 26. Since the Nigerian contractual right is based on the principle that the parties are free to agree the terms of their contracts, a stabilization clause does not constitute a violation of a Nigerian law or regulation.

Conclusions of the Court
The Public Prosecutor's expert witness admits that stabilization clauses are extremely widespread in practice and are specifically envisaged even in the official PSC 2005 model. So, the ruling of illegitimacy is thus inferred only on the basis of an isolated *obiter dictum* of a trial court ruling in the 2010 decision *(Niger Delta Development Commission v. Nigeria Liquefied Natural Gas Limited).*
However, this thesis cannot be accepted in light of the spread of similar clauses in oil and gas sector practice, to the point that they were already introduced in abstract form in the legal model of the PSC prepared in 2005. It must be added that the basis of the stabilization clauses is not found in a unlawful privilege granted to the oil companies, but is justified in light of the peculiarities of the oil and gas sector, which is characterized by enormous investments in view of earnings prospects lying years out.

7.4.4 *Back-in rights*
First of all, this issue has to be dealt with as charged in the count of indictment.

Resolution Agreement adopted "*with express limitations and constraints on the power of the Nigerian government, and all governmental entities and agencies, to take over the exploitation of the oil block"*

Expert witness of the Public Prosecutor
Clause 11 of the Resolution Agreement prescribes as follows:
The Parties make this Contract with the understanding that NAE and SNEPCO and/or their own authorized transferees are the only and exclusive owners of Block 245 for the duration of the Oil Prospecting License (OPL) and of any OML derived from it, including any renewals allowed by law. Notwithstanding the foregoing, if at any time the FGN and/or its agencies and institutions decide by law to participate or acquire interests in the Oil Prospecting License (OPL) or in any OML for Block 245, assigned pursuant to this FGN Resolution Agreement, FGN promises to NAE and SNEPCO so that:

i. the interest of FGN and/or its agencies and institutions is exercised through the acquisition of an interest not exceeding fifty (50%) per cent of the Oil Prospecting License (OPL) or the related Oil Mining Lease (OML), on condition of payment by FGN to NAE and SNEPCO of the cost borne by them for the "acquisition of Block 245, for an equivalent amount - in proportion to the interest acquired by FGN and/or its agencies and institutions - to the amounts paid by NAE and SNEPCO pursuant to Clauses 2 and 3 of this FGN Resolution Agreement, net of any tax plus accrued interest, as agreed by the involved parties;

ii. and (ii) FGN and/or its agencies and institutions make a Production Sharing Contract with NAE and SNEPCO as Contractors for exclusive management of the oil and gas Operations in relation to the interest acquired from the FGN in Block 245 ("PSC of the FGN'"). The terms of the PSC of the FGN will not be less favorable than the terms previously agreed between NNPC and SNUD in the "agreement envisaged in Preamble E;

iii. and (iii) a share - in proportion to the interest acquired by the FGN and/or by its agencies and institutions - of all the costs incurred by NAE and SNEPCO in Block 245 from the OPL assignment date, pursuant to Clause 1.3, until the acquisition date of the interests by the FGN and/or its agencies and institutions pursuant to Clause 11, will be recoverable by NAE and

[3 illegible signatures]

SNEPCO pursuant to the PSC with the FGN.

State participation is a fundamental aspect of Government policy, which is entitled to take over any oil block by affirming its own sovereignty. The capacity of the Nigerian State to have a stake in the resources is expressed in the Deep Water Block Allocations to Companies (Back-in-Rights) Regulations (BIRRegs) Art. 17 2003, which is a subsidiary form promulgated by the Petroleum Minister on the basis of the power to issue regulations pursuant to Art. 9(l)(a) and (h) of the Petroleum Act 2004.

Article 2(2) of the BIRRegs states: "the Federal Government exercises its own rights to participate in the oil mining lease by acquiring five sixths of the concessionaire in the applicable oil prospecting license (OPL) and oil mining lease (OML) (rounded to the entire percentage point closest to the total interest in the deep offshore block) at the terms that can be established from time to time by the Federal Government: the terms of the contract(s) that govern the stake acquired by the Federal Government in the oil prospecting license cannot be less favorable for the Federal Government than those in force when this Regulation came into force, and especially to the tax provisions in force and the more recent ones among the provisions applicable to the Corporation in the model Production Sharing Contract (PSC Model) of the Federal Government in force when this Regulation is issued or those in force when the deep offshore block is assigned".

So, the Government has the right to acquire five-sixths of the licensee's interest in the OPL or OML, on condition that this right be specifically envisaged from the time that the license is issued.

Clause 11 of the Resolution Agreement prescribes three limits: (a) the back-in right is pre-set in the amount of 50%; (b) if the Government wants to exercise its own back-in right, the parties will have to reach a PSC in which NAE and SNEPCO will be contractors; and (c) the Government will have to pay a proportionate share of all purchase costs, net of taxes and other tax charges.

The attempt to limit the back-in right to 50% conflicts with the supremacy of the law in governing relations between the Government and private entities. Moreover, the payments owed to NAE and SNEPCO would be important enough and the result of those provisions is to prevent exercise of the back-in rights. The Government has never paid to exercise its back-in rights in different transactions before and after the BIRRegs, for example in Zebra Energy, Oil and Gas Ltd, North South Petroleum, Famfa and SAPETRO.

Expert witness of Eni

The resolution agreement does not limit the right of the Government to participate in exploitation of OPL 245 but, on the contrary, it reserves for it the right to participate in OPL 245 or any OML derived from it. Referring specifically to the concessions on deep offshore blocks, the right to acquire shares can be found in rule 2.1 of the Back-In Regulation, which prescribes that "The conditions specified in this Regulation apply if the assignment of a deep offshore block as envisaged in Paragraph 1 of this Regulation includes a right of first refusal for the Federal Government to an OML deriving from an oil prospecting license". This means that the Back-In Regulation will apply only if the Government has an explicit right of first refusal to hold a stake in a deep offshore asset in the relevant award.

The NAE/SNEPCO award letter complies with Article 11 of the Resolution Agreement, which recognizes the latter's right to get back OPL 245 and predetermines the terms for participation in any resulting OML. That predetermination of the terms of participation complies with the Petroleum Act insofar as the right to take it over may be obtained only after negotiating with the asset holder. Ruling on the right to participate in a resource, the Supreme Court ruled as follows in the Famfa Case: "The Federal Government may participate by acquiring a share... but the terms of participation are subject to negotiation between the Minister and the applicant for the license or concession [...] The most appropriate time to negotiate is when the license or concession application is evaluated. This is because negotiations are held between the Minister and the license or concession applicant and not

[3 illegible signatures]

between the Minister and a licensee or concessionaire". The Supreme Court also ruled that: "...the reasoning for this rule is that during the negotiations, the Minister must take into account the enormous sums of money that have been spent by the applicant for drilling the oil wells...".
The Government and NAE/SNEPCO have acted in compliance with the law by agreeing on the terms for future exercise of the back-in rights, since the aforementioned provision requires that the negotiations must be held with "an applicant licensee/concessionaire". More specifically:

- *with regard to the alleged infringement of the 50% limit on the back-in right, it must be observed that we are not dealing with a limitation, but rather a practice in compliance with the back-in rules. The Government exercised its 50% back-in right on OML 127, 130, 140 and 322;*
- *with regard to the obligation to make a PSC in the event of exercise of the back-in right, it must be observed that this aspect does not represent a peculiarity of the Resolution Agreement. Taking the aforementioned examples into consideration, the NNPC entered into several PSC covering the acquired 50% shares;*
- *with regard to the alleged infringement connected with the fact that the Government would be obligated to pay a proportionate share of all the acquisition costs, it must be observed that the Supreme Court has declared that the acquisition through exercise of the back-in right on OML 127 is null and void while criticizing the failure by the Government to pay the consideration to Famfa. The Supreme Court concluded as follows: "The Federal Government of Nigeria has the right to participate with a share of 50% in FOML 127 (and in any other OML). "In light of the failure by the Minister of Petroleum Resources to comply with the clear provisions prescribed in Paragraph 35 of Annex 1 of the Petroleum Act, the acquisition by the Federal Government of Nigeria in relation to OML 127 was illegal and unconstitutional because it violated Article 44(1) of the Constitution"[718]. Article 44(1) of the Constitution requires the payment of an indemnity for the compulsory acquisition of an asset by the Government: "no movable or immovable property may be acquired compulsorily and the rights to such assets may not be acquired compulsorily anywhere in Nigeria, except in the ways and for the purposes envisaged by law which, inter alia - (a) require timely payment of an indemnity; and (b) grants any person that demands such a payment the right to apply to the courts or competent body in that part of Nigeria to determine his right and the amount of the indemnity".*

Expert witness of Shell
The Petroleum Act prescribes the back-in right of the Government, but it affirms that the right must be negotiated with the applicant before granting a license. The relevant paragraph prescribes that: "if it deems it to be in the public interest, the Minister may subject a license or concession envisaged by the Annex to special terms and conditions that are not inconsistent with the Law, including participation by the Federal Government in the company to which the license or concession refers, pursuant to terms to be negotiated between the Minister and the license or concession applicant". This provision has been confirmed in Nigerian National Petroleum Commission v. Famfa Oil Ltd. (2012) 17 NWLR [Part 1328] 148 ("Famfa Case").

Conclusions of the Court
The clause in question complies with the guidelines prescribed by Nigerian law and case law. As decided in the *Famfa Case* - which was cited in the expert witness reports and to be construed as fully cited here - the Supreme Court explained that exercise of the back-in right is conditioned on

holding negotiations with the concessionaire and that the most appropriate time for reaching an agreement is right before the license is granted. Clause 11 of the Resolution Agreement complies fully with those guidelines since it was elaborated at the end of long negotiations involving the managers of

[718] Pages 196-197 in Paragraphs H - A of the case NNPC v. Famfa Oil Limited (2012) 17 NWLR (Pt. 1328) 148;

the oil and gas companies and the top officials of the DPR and NNPC on behalf of the Ministry of Petroleum Affairs.
The Public Prosecutor's expert witness report mentions the existence of the obligation to negotiation, but it seems to affirm the right of the Government to take over without paying any economic compensation and without any additional condition. Nevertheless, it is clear that such an arrangement is intrinsically contradictory , since exercise of the back-in right cannot refer to anything other than the crucial aspects considered in the Resolution Agreement, i.e. the percentage of the stake, the compensation to be paid to the counterparty, and the forms of the future partnership.
Moreover, the inclusion of the back-in right represents a significant change in favor of the Government as compared with the economic and legal framework at the basis of the concessions of 2002 and 2006. In fact, as previously mentioned, Para. 2(2) BIRRegs subjects exercise of the back-in right to the condition that that right be granted at the time the license is issued. Well, none of the instruments prior to the one of 2011 granted such a right to the Government, since clause 11, far from representing a limitation on the sovereign rights of the State, constitutes an important change for the better for the public party.
Realizing the unsustainability of the position assumed by its own expert witness and admitting the findings made in the trial proceeding, the public and private prosecution modified their original positions, admitting that the back-in right was only formally valid, and essentially neutralized by the conditions to which actual exercise of the right was subjected, and ascribing to the mere demand of the companies to exclude it validity as circumstantial evidence of the existence of the underlying illegal agreement.
With regard to the enormity of the claim, we have already had the opportunity to observe that it involved a claim legitimized not only by the party's natural interests but, above all, by the fact that the companies wanted to acquire a license that the Government had already granted to Malabu as being free of any back-in rights. Therefore, the circumstantial evidence has to be transferred to any illegal agreements underlying the requests made by Malabu in 2006 and in spring 2010. No evidence that the oil companies participated knowingly has emerged in connection with those concessions.
We have already pointed out the intrinsic contradiction of the issue in relation to the objective impossibility for the Government actually to exercise the right due to the high cost that it involved, not only on account of what the Nigerian Supreme Court had affirmed in terms of compensation, but especially because it leads one to hold that the price paid by the companies was anti-economic, while the thesis of the public and private prosecution has always been that of alleging that the companies had unilaterally set a favorable price, which was considered too low only by Etete, but on the contrary accepted by the complacent Government in accordance with illegal agreements.

So, it is worth the trouble to address what was revealed during the trial proceeding with regard to the amount of the price paid for the license by the companies.

7.4.5 *Resolution Agreement* adopted *"at the price unilaterally set by Eni and Shell"*

One of the specific charges raised in the count of indictment refers to the fact that the price of the deal would be determined *unilaterally* by Eni and Shell. According to the prosecution's allegations, the value of the asset was around $ 3.5 billion, and the lower amount that was paid was supposedly the result of corrupt arrangements between the top executives of the oil companies and the Nigerian public officials. Then, most of the money flowed to the personal accounts of Dan Etete and the public officials, while the remainder supposedly returned illegally into the hands of the Eni and Shell executives.
The Public Prosecutor and the civil party have submitted expert witness reports to prove that the amount paid was far lower than the real value of the oilfield. The defense attorneys instead submitted appraisals in which it is argued that the amount was consistent with market values at the time.
Nevertheless, the issue of the fairness of the amount paid appears relevant only if it were to be

determined that the defendants contributed to determining that amount. In fact, in the contrary case, the issue would be reduced to a mere theoretical discussion on the reliability of the oil companies' internal valuation systems and would have no significant impact on the outcome of the trial.
However, as a preliminary matter, it appears necessary to highlight the intrinsic contradictoriness characterizing the prosecution's reconstruction. A typical criminal method for profiting from bribes or obtaining illegal kickbacks is to overestimate the value of the asset that is the object of the transaction, so as to create an additional "pool" of money that can be divided up among the participants of the illegal arrangement. Instead, in the case examined here, there was supposedly an incomprehensible underestimation of the asset, in consequence of which the earnings margins for the public officials were supposedly reduced and greater difficulty for the unfaithful managers to carve out a portion for kickbacks to themselves. An illegal transaction of that sort would be even more irrational if we agreed with the thesis that the real value of the license was even more than $ 3.5 billion. In fact, it is common knowledge that two international companies of the caliber of Eni and Shell would have had the economic resources to handle such an outlay and, if the indicated amount had been consistent with market values, the top managers of the companies could have gotten approval for the transaction from their own boards of directors. If the settlement had been reached for a higher amount - which, according to the Public Prosecutor and the civil party, would have been the correct one - nearly double the cash would have resulted, with the consequent and hypothetical multiplication of the margins on which to profit from bribes and generate slush funds for the kickbacks. Instead, by depressing the value of the license, the defendants allegedly did realize an enormous savings for the oil companies but, at the same time, they would have reduced the margins for their own allegedly illegal gain without any reason to do so.
That said, we will reconstruct the economic terms of the settlement and the steps in the negotiations through which agreement on the amount of $ 1.3 billion was reached.
Then we will consider the internal procedures used to determine the price, in order to comprehend whether the amount paid was calculated with the defendant's contribution.

The amount paid and its allocation among the oil companies can be summarized as follows:

	Eni	**Shell**
50% share of the Total Price	650 million	650 million
+/- Value of Operatorship for Eni	+ 100 million	- 100 million
+/- Value ascribed to the previous activities of Shell	+ 230 million	- 230 million
Final price	**980 million**	**320 million**

The table above shows that Eni paid about $ 980 million for a 50% share and that Shell paid about $ 320 million for a share of the same dimensions. The fact that the portion of the total price paid by Eni was greater than was justified by the added value attributed to the fact that Eni was also designated as operator (i.e. it was the party that would effectively manage the oil operations on the Block), by the activities previously performed by Shell (with the consequent economic and financial costs that it had borne) and by the fact that Shell had abandoned its pending litigation with Malabu and the Government.
In turn, the $ 320 million paid by Shell were broken down into $ 208 million for the signature bonus,

$ 26 million for interest and an additional $ 85 million as a contribution to close the deal.
The economic terms of the agreement were finalized at a meeting held on November 15, 2010 at the Attorney General's offices. When he informed Claudio Descalzi about the outcome of the summit, Roberto Casula described the meeting in these terms: "*Meeting with the Attorney General over (he summoned us yesterday evening for a meeting today with Shell at the Ministry). He had received a direct mandate from the President to verify the positions of all parties concerned. Together with Shell we described the key legal, fiscal and contractual aspects of the offer. A representative of the seller was also there and reiterated the fact that our offer ($ 1.26 billion) had been rejected, because a greater amount was expected. However, together with Shell we explained that our offer reflected detailed technical, economic and risk analyses; that there was only room for a slight increase, but provided that the conditions set out in the letter of offer were met. After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion".*
The final breakthrough accomplished in November was also mentioned in a subsequent memorandum with an update that Roberto Casula wrote in the middle of January and sent to Donatella Ranco, Vincenzo Armanna and Marco Bollini: *"[...] in November, on the initiative taken by the Attorney General, Mr. Bello, numerous meetings were held at the Ministry of Justice by Shell, Malabu and Eni. After those meetings, an agreement was reached on the price of the settlement.*
Numerous messages were exchanged during the negotiations concerning developments in the price negotiations. Specifically:

- on July 9, 2010 (8:53 A.M.) John Copleston wrote to Peter Robinson and Guy Colegate to report on the contents of a meeting that he had had with Ednan Agaev after the latter had spoken with Gusau: *"I saw Ednan again after his meeting with Gusau and the other evening he telephoned me from the airport because Gusau had asked him to meet a second time. Ednan said that he had spoken again about Eni on Thursday morning, and the latter confirmed that there had been some highly confidential discussions with Peter Voser with regard to the possibility of Eni taking 100% of 245 from Malabu to then, through a subsequent transaction, transfer 60% of the block to Shell. Ednan seems certain that these discussions will have a positive outcome, that is, in principle an agreement has been reached in this regard. He believes that, as discussed at the second meeting with Peter, that the Chief could settle for something like $ 1.5/2 billion for the whole 100%";*

- on 6 August 2010 Emeka Obi met with Roberto Casula in Milan: [English in source text:] *"Obi meeting with Casula. Value of block discussed - SNUD claims $1bn, ENPs view is $700m – S1.1bn. Malabu has until end of September (90 day deadline).*
  Casula criticizes Bayphase valuation of OPL 245M";

- on 20 September 2010 Emeka Obi noted: *"Obi meeting with Descalzi (Milan airport). Discuss valuation ($1.2 - $1.5b), Shell and ENI joint bid for 100%, Etete attempts to discuss ENI direct, back in rights and reserves figures".* [Translation resumes]*;*

- on 23 September 2010 (19:21) Peter Robinson updated lan Craig, German Burmeister and Guus Klusner on the status of the negotiations: *"[...] ENI is sticking to a maximum value of $ 800 million; They think that a fictitious price of $ 1.5 billion will be fine, with a net inflow of $ 1 billion for Etete, $ 200 million for the signature bonus to the FGN, with the delta from the fictitious $1.5 billion' (but with a certain bargaining logic). Nevertheless, this logic, in combination with their $ 800 million, still left a void (Y) that they wanted to be filled by Shell. We continue to repeat that Y=0, but we are conceding the signature bonus if it is clear that we are not part of the mandate;*

– On 11 October 2010 (19:03) Malcolm Brinded informed Peter Robinson and lan Craig about a meeting with Claudio Descalzi. The outline of the offer for 100% of the OPL had been hammered out by the end of that meeting:*"lan, Peter, I have agreed with Claudio and then also with Peter (and confirmed again with Claudio) on the following agreement. A declared offer of 1.3 million; ENI puts in 980 million; SHELL puts in 210 million for the signature bonus (25 million in interest from the signature bonus; 85 million in cash); SHELL keeps 100% of the cost recovery; ENI is the operator. We have not agreed on anything if it goes over 1.3 billion [...] our intention is keep these numbers, which is an advantage for Malabu, which keeps far more than 1 billion (=1090)";*

– on 28 October 2010 Malcom Brinded forwarded a summary memorandum (*group investment proposal)*[719] to Peter Voser and Maarten Vetselaar, in which he summarizes the matter and discusses the imminent offer in these terms: [English in source text:] *"NAE will make an offer to Malabu of 1.25 bln range, as agreed with Shell. Whilst the initial offer will be presented as non negotiable, it may indeed transpire that final negotiations are required to reach agreement as per mandate. It is not envisaged that Shell or NAE will consider an increased offer".* [Translation resumes]

Given the development of the negotiations summarized above, we should dwell on the meaning of the expression *"price unilaterally set"* that is used in the count of indictment. The formula seems to suggest that the amount of the settlement was imposed by Eni and Shell without the counterparty having had the possibility to discuss or obtain a better amount. The basis for the charge is found in the circumstance the amount allocated by Eni to acquire the license did not change significantly during the negotiations. In fact, as documented by an e-mail dated 1 April 2010 and sent by John Copleston to Peter Robinson and Guy Colegate, the final price does not differ from what Dan Etete had already initially accepted, before pulling back on several occasions: [English in source text:] *"Just got a call they have agreed a deal at 1.3 will be papered asap starting Monday - ed said it has been an "absolute theatre" with the chief storming in and out of negs since tues. Chief will go home tonight so al bets could be off again but ed says Its first time a handshake on price has happened".* [Translation resumes]
Even before addressing the specific issue of the amount paid and its determination, it thus seems useful to make a number of general comments on the variables that can impact the course of any contractual negotiations. It is common knowledge that the actual finalisation of the price of an asset is influenced not only by its intrinsic value, but also be factors like the seller's economic situation, the existence of other potential investors interested in the same deal, and the buyers' willingness to raise their offer. Referring to these parameters, we have to point out that at the time of the events, Dan Etete was dealing with an unstable economic situation, since he had recently been convicted by a French court and ordered to pay over Euro 8 million for money laundering. His difficulty in obtaining sufficient funds to maintain his high standard of living had gotten to such a point that he managed to finance his own travel only thanks to gifts of money made to him by Richard Granier Deferre and Ednan Agaev. Precisely in order to induce him to curtail his unrealistic demands and close on the deal, these latter individuals had decided to cut his credit lines once they got to the final phase of the negotiations[720].

[719] RDS 675
[720] 4 November 2010 (18:23): Guy Colegate writes to John Copleston and Peter Robinson to describe the strategy to convince Dan Etete to accept the offer. It is envisaged that Granier Deferre cut the credit lines and that PAG send him the message that the block will be revoked: *"I talked to Ed - we agreed on the next steps: 1) He is cutting the lines of credit*

This circumstance is revealed not only by an e-mail sent by Guy Colgate on 4 November 2010 but was also confirmed by Ednan Agaev himself, who affirmed: *"I exerted a bit of pressure on Etete, exactly as it is written here, Shell asked me to stop paying, and to ask Granier-Deferre too to stop paying Etete, so Etete would be placed in a difficult financial position and therefore he would meet halfway. I was covering his travel costs, hotels...* From the political point of view, Dan Etete's demands were no longer sustainable even by the Government, for which the protracted stall was causing
10 the dual problem of lost exploitation of the oil field and the approaching decision by the ICSID on the complaint submitted by Shell, with the consequent possibility of it being exposed to the obligation of paying extremely high compensation. It was in this context that during the months after summer 2010, not only economic pressures from his lenders arose but also political pressure aimed at inducing Dan Etete to accept the proposals made by Eni and Shell. In fact, after confirmation of the award of 100% of the license to Malabu, the company was obligated to pay $ 208 million within 12 months or forfeit the license. The prospect of not being able to pay the signature bonus and not benefit from other extensions had thus become an increasingly real possibility that Dan Etete had to deal with during the negotiations. A propos, we cite the following excerpts:

- on 22 August 2010, Peter Robinson wrote an e-mail to Malcom Brinded with the subject line *"OPL245 Brief for ECMB call with Descalzi",* where he reported the need to *"[...] try to bring political pressure to bear on Etete to force him to close on the basis of the proposed settlement".*

- on 29 August 2010 (10:03) Peter Robinson sent an e-mail to John Copleston and other officials with a file attachment named *"swallow water and 245" [...] CD stated that the P said he wants to see this resolved ASAP. Wants the production; (has been stalled since 1998-2000) and said that this was a "normal commercial Issue between you (ENI), Malibu and Shell" (Indicating he doesn't want to be involved directly)";*

- on 25 October 2010 (17:17) Ian Craig sent an e-mail to Malcom Brinded, to which he attached the document "OPL 245 status update - October 27, 2010". In the document, we read, inter alia: the *Attorney General (PR informal meeting 26 Oct): In an ambiguous language, Etete will be told to accept the offer; Failure to do so will result in block being put "back in the basket";*

- on 27 October 2010 (13:09) Roberto Casula wrote to Claudio Descalzi, Donatella Ranco, Vincenzo Armanna and other officials: *"Yesterday evening Shell met informally with the Attorney General, who said: + the seller is under general watch to close; + if it does not sell, the block will revert to FG control; + at that point it will be re-assigned (Shell says with priority given to them, while other sources say by means of a call for tender)"; The seller was informed of the importance of the multilateral settlement agreement with the Authorities;*

- on November 12, 2010 (8:19), Ednan Agaev wrote to Emeka Obi: *"Papa is going to Nigeria today. The government is putting pressure on him so that he will accept the offer and close the deal";*

Proceeding now to the possibility that an oil and gas company other than Eni and Shell would get involved instead, we must remember that the user faced numerous jurisdictional claims concerning

[3 illegible signatures]

ownership of the license. So, the succession of multiple awards and revocations by the Government had provoked such a situation where an oilfield having enormous potential had lost much of its market appeal due to the uncertainty surrounding the underlying legal situation. Exploitation of the asset - both in the form of commencement of exploration activities by the oil companies and in the form of monetization of the license by Dan Etete - was thus conditioned on an agreement previously being reached between Shell and Malabu. Without such an agreement, as demonstrated by the absence of concrete alternative proposals made by other *IOCs*, de facto the asset had no real market value and thus Dan Etete could not land other potential buyers to satisfy is own demands. What has just been said is also confirmed in an e-mail of 20 July 2010, in which Sunmonu Mutiu, Managing Director of SNEPCO, writes to Peter Robinson and lan Craig that *"Etete will be unable to sell the block as long as the litigation is pending".*

Finally, as we will see better hereunder, Eni and Shell would not have been able to raise their offer in any event to satisfy Dan Etete's requests because the value of the oilfield and the maximum amount allocated for the deal had been calculated by the competent corporate departments on the basis of parameters that could not be modified by the negotiating team.

The foregoing comments on the lack of any other possible buyers, on the lack of any room for Eni and Shell to raise their offer and on the economic and political pressure exerted on Dan Etete demonstrate that his inability to stick to his requests - which were also somewhat wavering and not based on technical estimates of the value of the oilfield - depended on structural contractual contingencies that in no way impacted the legitimacy of the negotiations.

7.4.5.1 Determination of the price of an oil and gas license

Before addressing the issue of calculation of the price, we have first have to state several purely economic notions. It is common knowledge that the financial value of oil and gas reserves depends on the capacity to convert those underground resources into money. So, the value creation process begins with the investment to discover the resources, followed by construction of the infrastructure to permit mining of the oil and gas from the oilfields and their distribution on global markets. The mining of oil and gas at offshore oilfields requires that the oil and gas companies invest large amounts of capital to generate financial returns over very long periods. For a company in the upstream sector, the cash flow of the investment cycle thus consists of four basic elements: investment, revenue from sale of the mined oil and gas, operating costs (the annual costs necessary to generate revenue), and taxes.

The net cash of every year is calculated as the difference between revenue and operating costs, capital expenditure and taxes. The standardized valuation method used in the sector is known as the *Discounted Cash Flow* method.

The net present value is the present value of the right to receive the cash flow generated over the lifetime of the project, as discounted for the payment of all taxes to the host government according to the formula contained in production sharing contracts and tax obligations. The *Net Present Value* - NPV is defined as the present value of the cash flow expected from an upstream asset. To calculate the net present value, all the cash flows expected over the lifetime of an upstream asset are discounted.

The weighted average cost of capital ("WACC"), also known as the discount rate, is the rate used to discount the expected cash flows. The choice of a discounting rate is a key factor in calculating the net present value of an asset. When all other conditions are kept equal, the higher the discounting rate is, the higher the net present value.

The hurdle rate instead is the minimum acceptable rate of return on a product or acquisition required by a company.

Finally, the internal rate of return ("IRR") is a benchmark used to measure the appeal of a project or acquisition and measures the total return of an investment.

During the discovery phase, a conflict between the positions of the civil party's expert witness, Mr. Rogers, and the expert witness for Eni, Mr. Kotler, in connection with the relations between *WACC*

and the *hurdle rate.*
According to Rogers, the concepts of *WACC* and *hurdle rate,* although abstractly distinct, would tend to overlap in practice since *"many companies use the WACC as their Hurdle Rate, which has the benefit of being a clear and objective benchmark"*[721].

In Kotler's opinion, instead, *"the equivalence between the WACC and the Hurdle Rate is semantically misleading. The oil companies use Hurdle Rates higher than the weighted cost of capital ("WACC") as the premise for approving projects to create value for the company and shareholders. On the contrary, the investments that give returns equal only to the WACC would not generate any added value for the shareholders; just as the investments that returned less than the WACC would destroy value for the shareholders. So, it is true that companies should never make an investment that returns less than the WACC, and in this sense, the WACC represents a minimum return. Nevertheless, the WACC is the minimum return that a realizable project yields without giving any consideration to the possible profit for the company. If the management of an oil company were to set the WACC as its own Hurdle Rate for all projects, the company would cease to exist with the passage of time. Therefore, all oil majors have internal investment policies that they use to determine the appropriate threshold over the WACC to guarantee the profitability of the projects, i.e. the Hurdle Rates"*[722].

7.4.5.2 Determination of the price at Eni

The process used to determine the price offered by Eni can be reconstructed by using the documental and testimonial evidence. In particular, the minutes of the Eni Board of Directors meetings on 17 November 2010 and 27 April 2011, the New Project Authorization Report *(RANI report),* the Eni document giving the update on the hurdle rates in 2010, and the testimony of Paolo Ceddia are of key importance here. We learn from these sources that:

the valuation was based on a long-term Brent crude oil price of $ 70/bbl, with annual inflation at about 2%. The same forecast would be used for all Eni acquisitions during that period;

- The Eni Model had adopted a weighted average cost of capital (the *"Nigeria WACC")* of 9.0% to determine the *Discounted Cash Flow* valuation of OPL 245;
- Eni had used an internal hurdle rate of 11.5% for all of its investment decisions in Nigeria.

In light of these benchmarks, the minutes of the Board of Directors meeting on 27 April 2011 concludes: *"the economic valuation of the stake with the long-term price scenario at October 2010 ($ 70/bbl) provides the following NPV values (for the Eni stake, inclusive of the consideration):*

- *with a discount rate equal to the WACC adjusted Nigeria (9%): $ 1.8 billion.*
- *with a discount rate equal to the hurdle weight (11.5%): $ 1.2 billion.*

Therefore, the consideration of $ 980 million to be paid by Eni is amply covered by the economic valuations. The IRR of the acquisition is greater than 12.5%".

The data processing procedures were explained by Paolo Ceddia, who at the time of the events was in charge of the reserves planning and control and portfolio streamlining department of the Eni *Exploration & Production* Division: "*The key role of the planning and control department was to support the working group on what was the economic valuation of the project on which they were working. How was the economic valuation prepared? According to Eni procedures, the economic valuation was based on a metric that is called the discounted cash flow method, i.e. the discounting of the cash flow of the project that were adjusted to their present value at a rate, which we call the average cost of capital, in such a way as to say what the value was for which that initiative... the maximum value that can be offered. Another metric used is the internal rate of return that that initiative generates,*

[721] Expert Witness Report in Reply, page 7.
[722] Expert Witness Report of 20 January 2020, page 2.

of the internal rate of return used in English nomenclature [...] The volumes have to be given a value, and then the volumes go, to arrive at determining what is then the line of the cash flow tied to the cash revenue, must be given a value for a price. And the price is provided by our colleagues in an office of the research and study department that specialized in analyzing the trends of what could be the price trends of any commodity [...] The economic valuation is carried out by putting together all the types that have been given, entering what is also macroeconomic data, while also entering the variables linked to taxation, and through one of our units dedicated to developing the model itself... let's say the computer model in which these data were entered with algorithms designed by our IT specialists, we arrive at determining the undiscounted cash flow. Afterwards, application of the discount rate gives us the value, the discounted net present value [...] That valuation is provided to the work group and on that occasion... especially to the negotiations office, and so to Dr. Ranco, who was in charge of the negotiations office, who had the big picture of both the negotiating aspects and of the meetings... for the discussions that had been held with the counterparty and what was then supposed to be the line to follow for the initiative [...] This valuation was taken to the Board of Directors in February".

Paolo Ceddia then illustrated the results of the process to determine the maximum amount that could be invested in the project. Then he explained the results – processed by an independent internal division commissioned to perform this type of study for every economic project of the group – they could not be modified by the members of the negotiating team or by other executives without the prior approval of the Board of Directors.

WITNESS CEDDIA - *At this point, from what... in terms of a valuation we had arrived at an Eni contribution of 980 million in the offer [...] Which for us represented the level, in the context of the total return of the project, that we had to reach and beyond which we could not go.*
DEFENSE ATTORNEY DIODÀ - *I'm curious, given your experience and also how things happened then, could this value that had been determined by your valuation system be modified by someone at their own discretion? From the highest Board of Directors to the lowest ranking executive?*
WITNESS CEDDIA - *No, the results of the economic valuations cannot change because, as I was saying before, the prices are set and are given by an office and those have to be used. The WACC was given to us by an office...*
DEFENSE ATTORNEY DIODÀ – *Excuse me, what is the WACC?*
WITNESS CEDDIA - *The weighted average cost of capital. It is used by an office in the Finance Department, and it has to be used... and it is the one that has to be used. The Finance Department also gives another benchmark, which is the "hurdle rate", i.e. the minimum rate of return that a project has to have, which was 11.5 at that time for Nigeria, according to the duration of the investment, up to 12.5 per cent.*
DEFENSE ATTORNEY DIODÀ - *So, these valuation data...*
WITNESS CEDDIA - *Another important thing. Moreover, it's that these valuations were not only processed by us on the basis of the benchmarks, but they were also checked, seen and analyzed by our colleagues in the corporate planning office, with whom we continuously exchanged information, and why? Because any economic valuation that went to the Board or was higher than Euro 10 million, had to be validated, it had to be approved by the CFO, the Chief Financial Officer. So, there was no... there was no possibility with these economic valuations to say "Let's change this benchmark" instead of "Let's change this other one". The data as they arrived from the technical offices, or the macroeconomic scenario data or the WACC data were...*
DEFENSE ATTORNEY DIODÀ - *They were rigidly set.*
WITNESS CEDDIA - *They were the figures from the offices and could not be changed.*

The same procedures - in addition to being confirmed by reading the internal documents cited above -

were also described by Donatella Ranco:

DEFENSE ATTORNEY DE CASTIGLIONE - *Was there also a team responsible for pricing, to your knowledge?*
WITNESS RANCO - *There is a function that is responsible for the economic valuation of the asset, it is made up of planning and control staff, who are assigned to the exploration and production division but report functionally to the corporate function, which is the central function. For transactions of this size, the assessment is developed within the division to which the asset pertains but then it is also verified and validated by the central functions.*
DEFENSE ATTORNEY DE CASTIGLIONE - *So, there was an entire team that worked on establishing the price, to your knowledge.*
WITNESS RANCO - *The economic valuation requires the contribution of a number of functions that provide the input data. They include the technical functions, such as exploration and development, which provide data on the size of the oil field, its potential yield, expected development costs, and the tax aspects associated with the oil field. There is also a specific function that processes and analyzes this information using standardized procedures. These are formalized procedures for performing these valuations, they establish which economic model is to be used, the price scenarios and the discount rate, to determine a value.*

Paolo Ceddia was then asked whether certain defendants had intervened in the pricing process. The witness answered in the negative every time.

DEFENSE ATTORNEY SEVERINO - *With regard to the economic valuation prepared by your team, by our office, did Mr. Descalzi ever give you instructions, ever tell you: "Increase this benchmark", "Reduce that other one"?*
WITNESS CEDDIA - *No, we were never given instructions of this sort, unless they were clarifications on how the data were processed and because there were deviations from one valuation to the other, but there were never any instructions to us one benchmark rather than another. This was partly because, as I said previously, we had to show the valuation to our corporate office colleagues, and then as... let's say, I reported functionally to them too, I would have had to explain why we were using one parameter instead of another, and it was not possible.*
DEFENSE ATTORNEY DAGOSTINO - *Did Mr. Armanna contribute, if he did contribute and in what way, possibly to set the price for the economic valuation or for the technical valuations?*
WITNESS CEDDIA - *As far as I know, no.*
DEFENSE ATTORNEY RINALDINI - *For Pagano. I wanted to know whether you had any discussions with Mr. Pagano about OPL 245.*
WITNESS CEDDIA - *I with Mr. Pagano, no, I never had any discussions, no.*

7.4.5.3 Determination of the price at Shell

The procedures and benchmarks used by Shell to determine the value of OPL 245 are obtained from the contents of several e-mails exchanged by the managers of the company and, especially, from the data present in the document named *group investment proposal (GIP)*[723]. The latter was prepared shortly before the closing of the deal in order to submit the terms of the settlement for approval by the top management of the company. It summarizes the various assumptions at the basis of the various oil price development projections. The obtained results are then compared with what was expected to be obtained if it were preferred to continue with the arbitration proceeding. The shown valuations are based on application of discount rate of 7%.

[723] RDS 677

[English in source text:] **Table 1 below shows the value of the proposed settlement next compared to SNUD's disputed 100% contractor right and also the expected values of the arbitration award (based on probabilities of a number of distinct outcomes and**

NPV ($mln)	**Contractor rights 100%**	**Licenseholder rights 100%**	**Settlement 50/50**	**Value Gain/(Loss) [illegible]**	**Arbitration: expected outcome [2]**
SV (ISO/bbl)	**218**	**539**	**358**	**(140)**	**400-800**
RV ($60/bbl)	**819**	**792**	**785**	**(34)**	**500-900**
HV ($80/bbl)	**1,937**	**1,294+**	**1,595**	**(3+2)**	**800-1,200** [Translation

7.4.5.4 Conclusions of the Court

The preceding exposition reveals that Eni and Shell calculated the value of the OPL 245 license on the basis of partially different economic benchmarks. In particular, Eni maintained a more conservative approach, using an estimate of the future value of oil of $ 70/bbl and using a discount rate of about 12%. The hurdle rate was then set at 11.5%. The Shell valuation was based instead on a maximum estimated crude oil price of $ 80/bbl and used a trend discount rate of 9%. That diversity should not be surprising because, as also affirmed by the civil party's expert witness, Mr. Rogers, "*certain companies, for example ENI, use subjectively high rates, higher than the WACC, as their hurdle rate. This increase functions as a form of internal rationing of capital, risk tolerance and portfolio control. Effectively, these "qualitatively" higher hurdle rates aim to "assure" specific profitability levels in a project"*[724]

At any rate, in both cases, the valuations were elaborated by the competent internal divisions according to objective and predetermined benchmarks, by applying to the economic potential of OPL 245 the minimum rates of return that the companies had set ex ante for transactions in the Nigerian context. Moreover, it has been determined that the defendants played no role in determination of the price, but held the negotiations in compliance with the top spending limit that had been set by the specifically delegated corporate offices. This conclusion is reached in light of the tenor of the submitted documentation, which reveals that the economic valuations were calculated by taking into account rigid mathematical and financial parameters and standardized calculation algorithms. In addition to this, it has been proven that the internal organizational units of Eni and Shell are broken down according to a distinct division of functions, so that, for example, during the negotiations, the negotiators have a margin for economic maneuvers that is predetermined by the financial planning department. For that matter, such an organization is the only realistic one in a sector where valuation of the assets requires highly specialized expertise, as it is evident that the figures used cannot be set by the negotiators "intuitively" or without taking into account additional spending commitments that may involve the company in other areas of the business. Moreover, Paolo Ceddia's testimony on this point has proven to be linear, without contradictory elements and in complete harmony with the submitted documents. In fact, it is appropriate to recall that no trace has been found in the countless e-mails submitted of any intervention by the top executives of Eni or Shell aimed at modifying the calculation entries at the basis of the assumed value of the asset. In light of these considerations, it is superfluous to wonder whether the amount paid to acquire the license is in line with the market value of the oilfield and whether the

[724]Expert Witness Report in Reply, page 7.

economic indicators at the basis of the estimate were acceptable or not. So, it does not appear important to wonder any more about what might be the most correct forecast of the future price of oil is or about the conclusions of the civil party's expert witness, according to whom: *"it is the WACC adjusted Nigeria indicated by ENI as 9% that should have been applied as the more quantitatively strict rate in the valuation of the OPL 245 assets. The highest discount rates are simply qualitative and informal in nature. They diverge from the strict analysis conducted by ENI itself in connection with the relevant WACC that should be applied and are by nature purely ambitious targets. They reflect rates that the company wishes to achieve, and not the rate that it has to achieve. Therefore, it is a fallacious method for asset valuation".* In fact, such an analysis does not appear to have any value in trial and would be translated into an abstract valuation of the merits of the corporate economic policies pursued by the company. The detailed study necessary for our purposes here can be considered exhaustive once it is ascertained that the defendants had nothing to do with the pricing process and that it was set on the basis of benchmarks that, even if they were deemed opinions, reflected the objective valuations of the companies for that sort of transaction.

CHAPTER 8
THE FINANCIAL FLOWS

8.1. Introduction

Due to the documentary nature of the evidence, the movements of the money constitute a certain basis of uncontested facts, even if the defendants have criticized the completeness of the information regarding the movements of the money, and above all the arguments that the prosecution has deduced from the flows, with particular regard to those relating to the case of the real estate transfer concerning "Plot 3271" involving the bank accounts of the public official Adoke Bello.
Given the above, the Court, summarizing the most relevant facts, will devote greater attention to the controversial issues, hereby specifying that the failure to fully examine all the steps of the matter will result in inevitable simplifications that hinder a circumstantial reconstruction that is legally resistant to reasonable doubts.

8.2 The payments due based on the agreements of April 29, 2011

In accordance with the agreements of April 29, 2011, in exchange for the issuance of a new OPL 245 license the companies Eni (NAE) and Shell (Snepco) had committed to pay the government (FGN) the sum of 1.3 billion dollars divided as follows:

- $207,960,000.00 as a signature bonus, releasing the deposit paid by SNUD into an account with JP Morgan.
- $1,092,040,000.00[725] to allow the government to compensate Malabu which, with another and different agreement, waived its rights to the OPL 245 license.

Shell in turn waived its ongoing disputes with the government over the rights to the license.
We have already discussed the issue of the legitimacy of the transactions in the previous chapter and also the legitimacy of the negotiations in chapters 3 and 6, but it seems necessary to reiterate that this legitimacy was also recently confirmed by the Nigerian judicial authority through the ruling of Judge Binta Niako, also considered by the prosecution. The logical consequence of this further ruling is the legitimacy of the payments that were made as a result of the obligations deriving from the settlement agreements and the groundlessness of the suggestive thesis according to which these were "cosmetic" agreements aimed at giving a semblance of legality to the largest bribe in Italian legal history. Below is the sequence of the transcript where the prosecution's thesis is summarized, which appears above all still permeated with the already highlighted ambiguity deriving from confusing the thesis of the knowledge of a Nigerian bribe based on the agreement between Etete and the public officials (everyone knew) with the thesis of the participation of the defendants in an illicit agreement that called for simulated legal agreements for the sole purpose of allowing the payment of the bribe.
PP: A stratagem was devised during the negotiations, and the stratagem was to not make the transaction look like Eni was buying an asset that was both disputed and of possible criminal origin, such as OPL 245. And I just want to remind you that this idea of interposing the Government, about which Eni has not clearly explained who suggested it and why, was intended for greater safety, because of the Sani Abacha case, etc. But who proposed it in practice and in what forms, etc.... However, we have a document that tells us this quite straightforwardly: it's an email dated March 12, 2011, Burmeister met with Casula, and he says, “Roberto suggested the idea of removing M from the RA,” meaning the idea of taking Malabu out of the Resolution Agreement. We know from an email dated a few days later, also from Burmeister, Exhibit 15, that Burmeister said, “I spent about 15 min with Roberto on 245. I informed him that we had set down the framework of the new structure.” So the idea was Roberto

[725] Eni paid 980 million and Shell, in addition to the signature bonus (210 million), paid 110 million as compensation including interest (25 million) and compensation (85 million).

Casula's, and hence Eni's. The practical, legal implementation is of Shell's structure, because they talk about the new structure in some draft documents, so there is no doubt that they wrote it. On April 14, they all met to initial this agreement. The resolution agreement, which, however, at that point no longer included Malabu as a party to the transaction, precisely because of the decision to remove Malabu from the RA, but [included] all the others, the oil companies, the Government, etc. Curiously, in the email.... Robinson says, "There were representatives from Malabu present who signed all the agreements," even though the structure of the agreements had removed Malabu from the resolution agreement with the Government. But, so to speak, for the avoidance of doubt, they all signed, and in any case the fact is that, as to the contracting party that had been excluded due to unreliability, legal uncertainty, reputational problems, etc., in short, the representatives of that party were still there up to the last day to check; we can almost see them, checking each piece of paper and signing all the agreements. So Eni knew it was purchasing this license from Malabu. And as we have said in every way possible, Malabu was Etete. I must say, however, that thanks to our persistence on this point with some of the witnesses from Eni, they in substance admitted, also because many of them had actually met Dan Etete, that "Yes, obviously it was Etete, there was no one else." Of course, no one can have us believe that individuals such as Seidougha Munamuna, or other persons whose identity is barely known, were contractual counterparties to one of the world's top oil companies, since Eni too, while it's not as big as Shell, is quite important. So we can say that, from Eni's point of view, Etete was behind Malabu, evidently. This was not entirely evident from Shell's point of view, based on the statements made by Shell defendants during my examination. On this point, Shell's defendants' attorneys claim I treated their clients a little roughly and that Ian Craig didn't deserve my remark that he was a colorless witness. But I don't think we have been particularly harsh. But, for example, the head of Shell's legal department keeps telling us, "It wasn't clear to me who was behind Malabu, Etete could well have been a consultant." So the problem of paying Malabu, as you can see and as we have written in the brief, was a really serious problem because for everyone it meant giving a sum of money to a gentleman who would split it up with the Public Officials who supported him. Everyone knew this, even though Attorney Severino told us that we can't claim that "everyone knew." In fact, we have detailed in our brief how and why they knew.

The groundlessness of the prosecution's thesis that postulates the illegitimacy of the agreements has already been broadly discussed, but it is appropriate to highlight how the examination of the steps that were involved in the payment process only reinforces the criticism of the prosecution's argument which is summarized as "everyone knew," since "everyone" includes, aside from the Eni employees who were responsible for monitoring the payments, such as Vicini who was never even investigated, also two Ministers of Finance, the Secretary of State, the State Accountant and the Soca officials who were responsible for authorizing the payment of transfers from the government account to that of Malabu, knowing that the company was owned by Etete.

These considerations allow us to reconsider the evidential solidity of the prosecution's thesis, flawed not only by the ambiguous overlap of plans highlighted above, but also by the transposition of knowledge acquired afterwards, that is, the cash monetization of more than half of the compensation paid by the government to Malabu, improperly attributed to all the defendants regardless of their real knowledge as resulting from the evidence gathered during the process.

Precisely the further examination of the money's movement through the various stages allows us to appreciate that there is no evidence that the defendants had any knowledge of the concrete destination of the money after the payments made by the government, with only precise yet equivocal and therefore insufficient evidence with respect to the defendants Armanna and Falcioni, the only ones involved in the phase of the government's attempts to pay the compensation to Malabu through Falcioni's company Petrol Service.

On the other hand, the aforementioned movements of money are seriously indicative of Etete's position,

even if doubts remain regarding the legal qualification of the bribe paid considering the exclusion of Etete, replaced in the management of these aspects by a different person, Alaji Aliu Abubakar. Failure to investigate the manager of the vast monetization operation allowed the introduction of doubts also about the fact that it is not at all certain that this person has operated as a "representative" of Etete, there remaining, as already underscored in chapter 5, paragraph 4, also other alternative hypotheses of his efforts on behalf of the other hidden shareholder of Malabu, Sani Abacha, or exclusively on behalf of the public officials who forced/persuaded Etete to renounce more than half of the fees that derived from the waiver of the license by Malabu, the legitimate owner of the rights.

8.2.1 Bank transactions in the period May-July 2011

I As required by the first Resolution Agreement and according to the testimony of NAE manager Stefano Pujatti, on May 24, 2011 the sum of $1,092,035,000 was transferred from the escrow account of NAE and Snepco to the escrow account of the Federal Government of Nigeria at JP Morgan Chase Bank in London.

8.2.1.1 The payment of the bank fee

With regard to this apparent detail, Eni's defense pointed out that the company paid the bank charges, making a separate bank transfer to JP Morgan of $5,000.00 on the same date as the payment,[726] consistent with industry practice and what it had announced also at the preliminary agreements to the offer of October 30, 2010. It is a common commercial practice that the costs of the transaction are borne by the purchaser unless otherwise agreed. This is relevant because, as we have seen, the prosecution derives circumstantial elements of the criminal arrangement precisely from Eni's manifest willingness to pay the fee. However, the fees mentioned must be understood as bank costs of the transaction and not as compensation for the intermediary Obi, as instead proposed by the prosecution.

8.2.1.2 The payment through the company Petrol Service

On May 25, 2011, with a fax sent from the Transcorp Hilton Hotel in Abuja, Finance Minister Aganga sent to JPMorgan the order to transfer the sum to the company of the defendant Falcioni Petrol Service Co. on an account at Bank BSI in Lugano following the accords relating to the Resolution Agreement between the government and Malabu, recipient of the consideration.

The payment of the compensation intended for Malabu to a third party made by the Minister of Finance according to agreements made by Etete with only the defendants Falcioni and Armanna represents evidence of corrupt arrangements that is not only imprecise, because it involves the powers of a public official (Minister Aganga) who is extraneous to the corrupt arrangements, but also equivocal because motivated by different needs related to the payment of commissions to private parties. In any case, the argument will be better developed in the chapters dedicated to the defendants directly involved, who acted privately and personally, as demonstrated by the use of Armanna's personal email and by the lack of involvement of other co-workers accused of having participated in the corrupt arrangement. In this regard, it should be noted that for all the other agreements the decisions were shared not only by the local team but also with the central headquarters, all working together as a group as is typical for Eni's operations, as illustrated by all the witnesses.

On June 1, 2011 the sum was returned by BSI to the government's account with JP Morgan [English in source text:] "for compliance reasons" [Translation resumes:] that the bank itself explains as the desire not to enter into relations with Dan Etete, identified as the main person entitled to receive the funds, for the reputational risks related to his position as Minister in the military government.

With regard to the probative value of the circumstance, we have already had the opportunity to verify its lack of seriousness and above all precision, given that it is a decision taken by the Minister of

[726] Document 262 attached to the documentation produced at the hearing on January 29, 2020.

Finance in a manner that was absolutely independent of the oil and gas companies. Indeed, the information was known only by a narrow circle of persons, including Armanna, who acted based on private accords unrelated to those that led to the conclusion of the Resolution Agreements, accords adopted to deal with Malabu's expected difficulty to collect the fees because of its ties to Etete. The problem dates back to the plans of Agaev and Granier Deferre in January 2009 and Obi's idea to interpose a company – originally EVP – that would make it possible to overcome this obstacle, and at the same time guarantee the brokers the payment of the commissions negotiated with Etete, considered unreliable with respect to the fulfillment of contractual obligations, as demonstrated by the need for Obi and Agaev to file lawsuits to get paid.

8.2.1.3 The cases brought by the brokers Obi and Agaev

On July 3, 2011, Obi filed a lawsuit to collect the professional fees agreed with Etete, and on July 18 the Court ordered the seizure of the sum of money in dispute. Subsequently, on August 4, 2011 the sum of $215 million was transferred from the Nigerian Government's account to the account held by the Accountant General of the Senior Courts.

In the meantime Agaev also obtained the precautionary seizure of almost $75,000,000 to guarantee the lawsuit filed to obtain the compensation agreed with Etete for the work done as broker.

The civil cases filed by Obi and Agaev certainly represent evidence against their involvement in corrupt arrangements, taking into account Etete's refusal to fulfill the obligations deriving from the professional assignment conferred on Agaev and the exclusion of Obi from any distribution agreement, including those lawfully negotiated because related to legitimate fees for the brokerage performed for the company Malabu.

On July 11, 2011, with a transfer order signed by the Secretary of State, the Nigerian government ordered a new transfer of the sum again to Falcioni's Petrol Service, this time to a Lebanese Bank.

This transaction was not completed either, although for different reasons than before, and specifically due to the requests for clarification by JP Morgan regarding the legitimacy of the signing powers of those who had ordered the transfer given the resignation of the Minister of Finance and the related officials who had the signing powers for the account where the sum to be transferred was deposited.

On July 20, 2011 the government provided the credentials of the new Minister and the new officers authorized to sign for the account, including the Secretary of State who had ordered the transaction, but the bank JP Morgan did not proceed with the execution of the transfer due to the aforementioned seizures, highlighting that the remaining availability was limited to the sum of $801,000,000.00.

On July 25, 2011, with the signature of the new Minister of Finance and the State Accountant, the government issued a new order to transfer the sum of $801,000,000.00 to the Malabu company, again to its account at the Bank of Lebanon.

This order would not be executed either, this time due to the request for information on the legitimacy of the underlying transaction.

8.1 The SOCA authorization

In the meantime, following the aforementioned complications on June 8 and with each new transfer order (June 25, July 11 and 21, August 1 and 7), the bank JP Morgan send the relative reports to SOCA, the English government agency responsible for verifying suspicious operations as part of its efforts to prevent transactions linked to organized crime, requesting express authorization to proceed with the payment (SAR), in the form of increased protection, highlighting the involvement in the operation of the convicted money launderer Etete, former Petroleum Minister of the dictator Abacha, identified as the holder of all or almost all of the shares of the company Malabu, beneficiary of the transfer orders.

On August 15, 2011 JP Morgan received the last authorization from the Serious Organised Crime Agency (SOCA) to execute the bank transfer.

In this regard, the prosecution, diminishing the value of this "administrative" procedure that does not assume probative value in a criminal trial, underscored how the banks had expressed doubts about the legitimacy of the underlying transaction, referring to Etete's presence. Eni's defense, which further explored the subject in the brief on the financial flows, rightly argued that the granting of the authorization excludes the circumstantial relevance of mere doubts of third parties in a transaction that provided for the payment of a very significant sum to Etete, a person convicted of money laundering who had assigned the license to himself when he was Petroleum Minister, an argument used extensively by the prosecution in the course of its conclusions.
On this point we have already had the opportunity to explain the reasons in the previous chapters, but here it must be reiterated that the arguments based on culpability (convicted of money laundering) and on the conflict of interest reveal their intrinsic weakness when the SOCA granted the authorization to proceed with the payments despite being aware of all the findings and doubts detailed in the reports of The Risk Advisory.
Equally devoid of evidentiary value is the fact that the Minister Adoke Bello intervened in the context of these communications, guaranteeing the legitimacy of the agreements underlying the payments, legitimacy that has already been demonstrated and would in fact also be recognized by the Nigerian judicial authority at the request of the same public official (see the ruling of Judge Binta Niako).
The prosecution's argument, based on the fact that the defendants knowingly provided the money for the bribe paid by Etete to the public officials, is reasonably contradicted by the outcome of the SOCA authorizations, which, while not proving the absence of underlying corrupt arrangements, nevertheless confirm the legitimacy of the legal agreements and related payments made not only by the oil and gas companies, but also by the government to Etete's company Malabu.

8.3 The payment to Malabu and the bank transactions of August 2011

On August 16, 2011, following a new request from the Nigerian government, JP Morgan transferred the remaining amount of $801 million to Malabu Oil & Gas, specifically:

- USD 401,540,000.00 to account no. 3582-059964-001 at the First Bank of Nigeria in Abuja.
- USD 400,000,000 to account no. 04-435-183 at Keystone Bank in Abuja.

The payment of the compensation to two different accounts of the company Malabu had already been hypothesized since January 2010 by Etete's consultants, and it has already been possible to appreciate the equivocal nature of the value of the evidence in terms of the division of the proceeds from the sale of the license, the company's only asset, to the two original hidden shareholders Dan Etete and Sani Abacha, the son of General Abacha.
The prosecution, starting from the unproven assumption of Etete's full ownership of 100% of the shares of Malabu, considers that this is serious evidence that half of the remuneration is destined for the payment of public officials. However, it has already been pointed out that this reasoning also contrasts with the fact that the existence of two accounts had been hypothesized at a time, in January 2010, when corrupt public officials had not even taken up their public duties.
If we accept the prosecution's argument that Etete planned on giving more than half of the compensation received to public officials, we would also have to accept the unbelievable hypothesis of a corrupt arrangement freely promoted by a corrupt party, among other things someone who is known for rarely respecting agreements regarding payments, renouncing more than half of his own compensation. The size of the bribe itself leads one to consider more realistic the hypothesized different qualification of the undue donation or coercion by virtue of the threats of revocation without compensation that the public official Adoke Bello had in fact made known in November 2010, thus managing to force/persuade Etete to accept the price of 1.3 billion offered by the oil and gas companies.

8.4.1 The management of Malabu's accounts

The accounts at Keystone Bank Ltd are as follows and are the only ones where Etete can operate exclusively:

[3 illegible signatures]

no. 3610042472 (1005552028) in the name of Malabu Oil and Gas Limited;
no. 3610042596 (1005556552) in the name of Rocky Top Resources Limited;
The accounts at First Bank of Nigeria are managed by Alaji Alju Abubakar and are as follows: no. 2018288005 in the name of Malabu Oil and Gas Limited;
no. 7272900000170 (2017560045) in the name of A Group Construction Company Limited;
no. 4382900731157 (2017557391) in the name of Megatech Engineering Limited;
no. 2016238518 in the name of Novel Properties & Development Company;
no. 20117557690 in the name of Imperial Union Limited.
Malabu's two accounts at First Bank and Keystone were opened in August 2011.
Immediately after the funds arrived ($801 million), they were transferred via two accounts to four companies: Rocky Top Resources Ltd, A Group Construction Ltd, Megatech Engineering Ltd and Imperial Union Ltd, companies that the prosecution claims are shell companies, mere legal fronts without any real business or organizational structure. This affirmation is based on the prosecution testimony given by the investigative reporter Idris Akinbajo on January 9, 2019 who directly ascertained that the companies' registered addresses were non-existent or were actually residential dwellings. There is no sign of any actual business activities or bona fide companies. Rereading the testimony, it is noted that the investigations were made in June 2013 and made it possible to ascertain that the address of the company Rocky Top no longer existed, but from the information gathered from the residents it corresponded to another address where a house is located that again according to the residents corresponded to the home of Alhaji Abubaker Aliyu. The address of the company A-Group did not existent, while that of Novel Properties existed but none of the residents had ever heard of the company. At the address of the Imperial Union company there was a building without company name plates and the guard stationed there had not provided any information. During the hearing the Public Prosecutor questioned the prosecution witness Bashir Adewuni, who declared he was a manager of the company A-Group, salaried and operational not only at the time of the facts but also in 2019, specifying that the company has three directors, including Alhaji Abubaker Aliyu, the one who gave the orders. He does not know nor has he ever seen Dan Etete operate or work in the company.

The account of the company Rocky Top Resources Ltd is the only one on which Dan Etete has exclusive signature authority to transact. The analysis of the activity on the associated account allows us to associate payments with Etete's interests. The Court agrees with the prosecution that these transfers reveal Dan Etete's personal activities (aircraft, luxury goods, friends, family members and consultants), while the transactions on the accounts of A Group Construction Ltd, Megatech Engineering Ltd and Imperial Union Ltd reveal the exclusive management of Alhaji Abubacar Aliyu, the only defendant who was delegated to perform transactions using the accounts. During the hearing of January 9, 2019, Bashir Adeweuni, manager of A Group, confirmed that he worked under Alhaji Abubaker Aliyu and revealed that he had not been made aware of the financial capabilities of the company, despite having the task of signing invoices on the instructions of Alhaji Abubaker Aliyu, the true head of the company.
Alhaji Abubakar Aliyu was the person who was present at the negotiating table at the Attorney General's office in November 2010 on behalf of the Malabu company.
It is evident that the aforementioned money transfers reveal a different reality from what was summarized by the prosecution in the conclusions (i.e., Eni and Shell paid and Etete bribed, the Public Officials provided the favors. That's it, it's not much more complicated than that). First of all, the movements of the money show that it was Alhaji Abubaker Aliyu who managed the money that the prosecution claims was destined for bribes, and in the indictment the same public prosecution identifies him as an intermediary of the public officials and not of the private briber Etete.
Furthermore, the equal division of the company's income into two different accounts, already foreseen in January 2010 (before the public officials took over the public offices involved in the alleged bribe)

reveals an internal division of the company's property that could lead to the speculation that Alhaji Abubaker Aliyu represented the other hidden shareholder of Malabu, Sani Abacha, who had revealed himself with the aforementioned judicial initiative precisely coinciding with the appearance of Alhaji Abubaker Aliyu in the negotiations.
In addition to these clarifications, we must remember what emerged in the previous chapter on the legitimacy of the agreements of April 29, 2011, agreements that were concluded only because the government has assumed the burden of issuing a new license, thus excluding direct legal relations between the companies and Malabu, overcoming the issues that Eni raised regarding the unclear situation of the company's ownership and Etete's role. The Court considers that the contractual structure cannot be dismissed as merely cosmetic, meaningless, because it at least introduces a reasonable doubt about the existence of a reliance on the legitimacy of the government's work. The payment of the price to the government, even knowing of the subsequent transfer to Malabu, constitutes a passage that is both formal and legal, especially since the payments to Malabu were made by public officials different from those accused of corruption.

8.4 The thesis of the pipeline

PP: Then there is the theory that fractionates the conduct and says, "at the time when the amounts...," this has led to countless discussions in the trial, [when it was claimed] "that's not Eni's money, because once it was transferred to the Government's escrow account, the link of pertinence, or more precisely of provenance, between the money in question and the Italian source was broken. Those funds clearly no longer belonged to Eni since they came into the possession of another entity." The Prosecutor's expert witness said that the Government's account, and so it is if you look at it objectively, without mental contortions, acted as a pipeline, in Italian we would say "un tubo". It's a pipeline. The money that was put into the pipeline by Eni was the same...the same liquid cash, let's say, to keep the reference to the money, the cash put in by Eni was the same liquid that came out of the pipe, just the same. Another argument, of the commingling of money, claims that if there was some mixing of money in an account, the money that is eventually paid to the bribee is commingled and therefore cannot be said to originate from the bribery offense. But this old theory that the Court of Cassation, in its judgment in the Berruti case has literally...has heavily attacked with a number of arguments. But even from the viewpoint of this theory, of avoiding commixtio liquidis, the commingling of money, we can say there was no such commingling here, because the pipeline account served precisely as a pipeline, it did not do anything else, no transactions were carried out on that account, there was nothing, it was just a pipeline, precisely. And so my main objection to the defense attorneys' arguments is that they consider everything in single pieces. Eni paid, the pipe took the money, the pipe gave the money to Etete, Etete did what he wanted with the money. But if we put things like this, no trial can have any meaning.
The thesis of the prosecution, certainly suggestive, is based on a reading of the events that does not correspond with reality, or rather it is based on a logical aporia as it presupposes that which it wants to demonstrate. The confirmation of the circularity of the prosecution's thesis derives first of all from the consequent inconsistent identification of those responsible. In fact, starting from this last piece of information, if the corruption underlying the transaction had been so obvious and evident to everyone, it is not understood how SOCA could have authorized the payments without being investigated itself, despite being aware of the destination of the funds to the company Malabu owned by the convicted money launderer Etete, Petroleum Minister at the time of the assignment of the license to the company. The same reasoning applies to the Finance Ministers and senior officials who arranged the payments to Malabu, including through Petrol Service, and also to the employees of the oil and gas companies who monitored the payments, such as Vicini, to verify that the operation was successful.
Again, there are weak circumstantial arguments that start from certain facts and go on to consider facts as proven that instead are unknown based on arguments that do not stand up to reasonable doubts deriving from the record of the case.

We agree with the prosecution that more than half of the funds received by Malabu were diverted to the companies managed by Alhaj Abubakar Aliyu, who arranged for them to be transferred to the so-called bureaux de changes, whose function was to purchase foreign currency to be paid in cash to those asking, as testified by the heads of the various offices who confirmed that the money was delivered in cash based on the orders of Alhaj Abubakar Aliyu.[727]
Even if the cash prevents documentary reconstruction of the financial flows, it is true that the statements and documents link this huge amount of money to Alhaj Abubakar Aliyu alone, and it must be said that all this constitutes strong evidence of the unlawful destination of the money. However, it is equally true that this is unclear evidence of the accusations made against the defendants, and the prosecution itself shows that it is aware of this, so much so that in the final part of the relevant chapter, in order to confer accuracy on the evidence, it uses Agaev's statements, the comments contained in Shell's emails and the documentation relating to Adoke Bello's bank account into which, starting from 2012, the equivalent in local currency of USD 2,264,011.32 is deposited, a sum that certainly did not come from the salary of a public official.

9. **Adoke Bello and the property identified as plot** 3271

We have already had the opportunity to discuss these events that involved the bank account of the Minister Adoke Bello, events that were reconstructed both by the PP and by Eni's defense counsel in the "financial flows" brief. The divergences between the reconstructions relate to issues that do not affect the evidentiary value deriving from the ascertained payment of over $2 million in cash in the period close to the monetization of the proceeds of the sale of OPL 245. Regardless of the formalization of the purchase of the property, the relations between Minister Adoke and the companies of Alhaj Abubakar Aliyu, further confirmed by the exhibits produced by the Public Prosecutor during the rebuttals, prove a mix of economic interests that is seriously probative from the point of view of the receipt of benefits deriving from the payments to Malabu. However, as will be seen, Agaev's statements do not at all constitute proof attributing precision to the evidence, but on the contrary weaken the circumstantial relevance of these events. In fact, Agaev claims to have learned from Etete that he had had to use the proceeds of the sale of the license to pay the lawyer Adoke Bello for professional legal services provided in the past. These statements are backed by documentary elements already presented and cited by the Public Prosecutor.
On the evidentiary value of the comments contained in Shell's emails, please refer to what has already been discussed in the previous chapters and to what will be better argued with regard to the motivation of the various individual positions, having to exclude that it is evidence that allows attributing precision to the matter examined here, except with regard to the hypothesized Nigerian domestic corruption/induction/misconduct.

10. **Conclusions**

While we agree with the prosecution that the amount of untraceable money moved in the manner described is circumstantial evidence of the generically illicit nature of the payments derived from the proceeds of OPL 245, we do not agree with the concluding assumption that most of that cash – if not all – ended up in the pockets of the Nigerian public officials who enabled the unlawful agreements on OPL 245.
We also do not agree with the prosecution's certainty that the present defendants were involved and contributed to those unlawful payments, an argument that will be the subject of the next chapter.

[727] Thus, Aminu Ahmed, director of As Sunnah BdC, Babangida Ahmed, director of As Sunnah BdC, Abubakar Hassan Dantani, director of Ashambrack BdC, examined at the hearing of January 9, 2019 and Isamusa Yano, director of Al Gulam BdC (statements acquired with the consent of defense counsel).

CHAPTER 9
CRIMINAL LIABILITY AND COMPLICITY

9.1 Introduction

The critical remarks made in the previous chapters would usually be sufficient to exclude the need to explain the lack of liability of the individual persons. However, a duty of completeness and the prosecution's approach entail the need to elaborate on the liability and complicity of the individual defendants, also in order to test the prosecution's argument, the limits of which become increasingly evident in light of the individual positions, not only in point of fact but also with respect to its legal bases, which are discussed here only as far as they pertain to what is strictly necessary to explain the motivations behind the Court's decisions.

9.2 The thesis of fractionated material conduct

During the hearings dedicated to the rebuttals, the Public Prosecutor argued on the point of complicit liability according to the thesis of so-called "fractionated complicit conduct", supported by authoritative legal theory. This thesis attributes complicit liability also to the conduct of co-participants who, while not appearing to be directly involved in the proper sense, they make their contribution through the application of the rule of condicio sine qua non, facilitating/making possible the occurrence of the event, in terms of the certainty of its occurrence.

Now in the final brief, in the summary of the events, we have outlined the stages of the agreement. So that it is clear once and for all, that the agreement on the price was reached on November 15th, when... either the 15th or the 16th, I don't remember, one of those days, when, after the multiple phone calls to the seller, the Government told the seller that 1.3 was the sum the seller had to accept. All the parties were there. That is, if we want to talk about a civil law agreement, everyone was there, because the parties or their delegates were there. There was the Government, there was Adoke, who would take the money in the manner that we have already explained. There was also the seller's representative, i.e., Etete, as well as Casula, if I'm not mistaken, and there was also Robinson, for Shell. And so we have included these two pages in the introductory overview of the case because, bearing in mind certain rulings on very big Supreme Court cases, we wanted to provide...sometimes it is useful to provide a short description. Thus, in the introductory part of our brief, we listed the phases of the agreement, as if it were a signpost. So, imagine that more than 100 pages of the brief, from page 34 to page 185 to be exact, are dedicated to Public Officials, Eni and Shell. In the final draft, we put a 3-page signpost at the beginning, to say, "Ladies and gentlemen, for those of you who didn't understand, this is the agreement." The agreement took place in mid-November as far as the price is concerned, in mid-December as far as the structure is concerned, and after that the structure was further modified to completely erase Malabu, so it would no longer figure in the settlement deed. And that's what happened. But in essence, what we deplore is a fragmentary, disjointed, and cursory reading of the trial evidence. The defense counsels did not address the trial evidence, with the exception of Armanna, who was treated like a kind of...one of those funfair targets that everyone shoots at, but, as we will see, this makes little sense. But in terms of the rest of the evidence, Obi's text messages, Obi's various timelines, Shell's emails, the documents, the various witness statements, which are also very important because they explain Obi's inconsistency, the fact that Obi was imposed from the outside. The defense attorneys seemed not to want to address any of this evidence. So they dwelled on the agreement that had to be reached, precisely, by all the people sitting around the table, all of them saying, "So, Mr. President of Nigeria, how much money are you demanding?", and the President... That is, these are things... I honestly don't wish to continue on this topic because we risk becoming really farcical. But it is the situation that is farcical. Because we are talking about an offense that involves multiple parties, with a fractionated execution. I have here my old legal textbook, Ferrando Mantovani, which I studied at University, but I will not read it from it, because this would be criticized by the Court, it's the book

which explains that in offenses committed by more than one person - I will not submit the book as it still has all my notes in it - “where perpetration of the offense is split between several individuals, the determination of the criminal liability of each individual should be made by reference to the overall offense”; and this is what is set out in the 150 pages of our brief that I mentioned.
In actual fact, the causal contribution was made: it was Eni's causal contribution of $980 million, and Shell's of about $110 million. I'd say a pretty big causal contribution, at least in monetary terms. And that's where another argument comes in, which is a bit of a last resort argument, namely, “At most it's a domestic bribery.” But it was a domestic bribery done by Etete with money from the oil companies, which wanted to gain an advantage from this transaction. In my opinion, labeling this as domestic bribery only gives us a picture of half of the story. We will come back to this photographic eye later, when the picture expands to the other half of the story and covers it all, i.e., Eni and Shell paid and Etete bribed, the Public Officials do what was expected of them. That’s it, it's not much more complicated than that. However, if, to go back to Mantovani’s legal textbook, if we look at things separately, we have another picture.
Here it seems excessive to elaborate on the danger of the argument expanding into the field of probabilistic reasoning since – contrary to what was stated – the Public Prosecutor did not rely on the complicity argument given that the final brief is structured in a manner that is diametrically contrary to the methodology proposed by the theory presented. In fact, the prosecution does not start from an analysis of the causal contribution of each of the defendants to ascertain the degree of impact each had on the corrupt arrangement, but rather from the logical proof of the existence of a criminal arrangement (inherent in the monetization of more than half of the compensation paid by the companies to win a license, under very favorable conditions), and thus attributing complicit liability to whoever facilitated its accomplishment, simply summing up the various actions. This inverse path followed by the prosecution is made even more complex and sometimes confusing as its argument oscillates between the material participation of all the current defendants acting in concert to promote the unlawful arrangement and the alternative thesis of their mere facilitation as third-party intermediaries to the material conduct of the sole briber Etete.
All without even mentioning the subjective element that, evidently, is considered to exist, in re ipsa, not only for the briber but also for third-party intermediaries.
However, the consequences of such an argument lead the prosecution to exceed the limit represented by an assessment of complicity in probabilistic terms, reaching the conclusion that there is a sort of generalized, widespread liability, which – borrowing terms that have become familiar these days – could be defined as "herd liability", since intent would be construed in anyone who facilitated the payment of a sum that is considered lower than the value of the license, purchased under very favorable conditions through the intercession of corrupt public officials by Etete's company Malabu, who was known to have been convicted of money laundering in the past, and who would certainly have therefore repaid the public officials involved. At this point consistency would have required that all the members of the various teams within ENI and Shell who contributed to the conclusion of the resolution agreements, as well as all the intermediaries and consultants involved in the negotiations be named as defendants in these proceedings, avoiding isolating individual conduct based on arbitrary criteria.
PP: That is, the multiple-party offense can only be understood when you look at everything as a whole, if you look at it in bits and pieces honestly...this, by the way, is a multiple-party offense relating to a negotiation, and we all know, because we have all purchased something, such as a property, a used car, that the seller and the buyer do not exactly have coinciding interests. Here you have to consider that the vendor, that is Etete, could not consider the payment as being all money for him, because, as shown by the great number of documents that we have quoted, this money had to be shared with the government, so he wanted more. The vendor, Etete, wanted more. This is written in every possible way, indeed he rejected the offer of 1.26 billion. Then there were various government officials, because we definitely know that Jonathan gave the mandate to Adoke, definitely Diezani Alison-Madueke,

whom unfortunately we have called Diezani many times throughout this trial, but actually her last name is Alison-Madueke, but everybody called her Diezani, she was the Petroleum Minister, so she was the person who had the last say on everything. Then there were Eni and Shell, which wanted to pay as little as possible. Indeed, the document that we have just seen, RDS 606, says that Eni wanted to pay 800, but instead, again partially at the expense of its public shareholder, that is the Italian government, paid an additional 180 million. And it is explained why, etc. On top of that, there are the demands of the brokers, who had been excluded from the divvying up of the loot, because that was the formula. If you are now looking for a somewhat rhetorical expression, it was most of all Obi who was excluded from the divvying up of the loot. Indeed, he started to complain when Falcioni's money didn't go back to him, not before. Before this he remained silent. All of these parties establish a picture of difficult relationships, of a complex negotiation, where, surely, some individuals might even play two sides, but nevertheless this was a fractionated offense in which, by purchasing OPL 245, Eni and Shell expected huge results, a block that did not pay royalties, a block in which the Nigerian government would not receive any share of the profit oil, a very large block, the largest in Nigeria, that would give everything to them and nothing to Nigeria. So many things. A block given to them without a tender procedure, as had been the custom at the time of the military regime, and as was no longer done, because on this no one has seriously considered our cross-examination of the expert witnesses for the defense when we forced them to admit that allocation of the oil block via private negotiation, direct allocation, was the system that was used with the President's seamstress, at the time of the military regime, without a tender procedure.

Starting from this perspective of the event, taken as a postulate, we proceed by attributing the categories of the offense of complicity in a manner that cannot be acceptable without distinguishing – in a way that is far more acceptable – between the contribution that necessarily influences the corrupt arrangement and the contribution that merely facilitates it, and above all without distinguishing between contributions by those who are necessarily aware of participating in a corrupt arrangement and contributions by those who are unaware of the existence of a corrupt arrangement organized by others.

Nor should we forget that the crime of bribery requires an association of persons with a bilateral structure that provides for the complicity of a third party unrelated to the material conduct of the briber only in the forms of intermediation necessary to facilitate not the execution of the arrangement but the arrangement itself, as stated by the recent decision of the Supreme Court that was already mentioned, which is reproduced in the note for the convenience of the reader.[728]

From this point of view, the example of a robbery and the facilitating function of the lookout is misleading because robbery is not precisely a crime requiring an association of persons, and therefore it seems appropriate to remain within the scope of the crime alleged here, which, as already argued in chapters 2 and 6, requires the participation of all actors – even if only intermediaries – in a corrupt arrangement, participation that can be fractionated into complementary conduct only if the parties delegated to act have the full mandate of others to negotiate the unlawful remuneration of the public officials.

Contrary to what the prosecution asserted, even with large bribes carried out through the delivery of sums of cash, as is alleged in this case, the illicit negotiation concerns sums that are significant yet still specific, or at least specifiable if agreed to as a percentage of the price relating to the lawful purchase of an oil license.

It has already been pointed out (see paragraph 8 of Chapter 6) that for bribery, both domestic and international, it is not sufficient to prove participation in the execution of the arrangement itself (contrary action and payment of the bribe). It is necessary to have personally contributed to the

[728] Sec. 6 -, Judgment no. 26740 of 09/18/2020 It is possible to be complicit in the crime of bribery – a crime requiring an association of persons and a bilateral structure – if the contribution of the third party, while not participating in the actual execution of the corrupt arrangement, takes the form of an intermediation aimed at achieving an indispensable connection between the necessary authors.

arrangement with full awareness of the objective of bribing the public officials involved.
The material conduct cannot therefore be indiscriminately divided in the context of lawful negotiations that, involving several dozen people, have led the prosecution to select only the most significant contributions, with obvious inequities of treatment, as already underscored and as will be better appreciated in the examinations of the individual positions.
To better understand the flaw in this legal approach, it is sufficient to refer to the moments that the prosecution itself defines as central to the reconstruction of the corrupt arrangement, so first on November 15, 2010 when an agreement is reached on the price of 1.3 billion dollars for the purchase of the license from the Malabu company, or when the new negotiation posture is decided on to overcome the issue of title ownership triggered by the legal action brought by Sani Abacha. According to the thesis of fractionated complicity, all those involved, even just as delegates, should have been considered complicit in the crime and therefore liable. Instead, many people, including Nike Olafimihan, have never even been investigated, and – in the opinion of this Court – justifiably so, as they were merely participants in a lawful negotiation regarding the sale of an oil exploration license.

9.3 The conscious causal contribution of the individual participant in the corrupt arrangement

The reference to the thesis of the crime of fractionated complicity, even if extended to the simple facilitation of the execution of the arrangement, nevertheless requires full awareness of the existence of a precise corrupt arrangement, and we have already verified the inconsistency of the argument that "everyone knew that the money put in the 'pipeline account' would end up with the convict Etete, a friend of the President of Nigeria." Again in this case, the groundlessness of the thesis starts from the observation of the obvious arbitrary selection of the parties responsible with a view of complicity via causal contribution that is merely facilitating. Just to illustrate, in the previous chapter it was seen that the two Ministers of Finance, together with the senior officials who arranged the transit of funds to Etete's Malabu through the "pipeline account" were never mentioned by the Public Prosecutor, even though they were aware of the danger of possible corrupt arrangements posed by Etete, the person convicted for money laundering, so much so that they persuaded the banks to request and obtain SOCA's authorization. The Court maintains that the Public Prosecutor rightly failed to postulate the involvement of the aforementioned persons, as well as others already mentioned, because – far from being aware of the underlying corrupt arrangements – they were at most aware of a generic danger justifying an abstract suspicion of corrupt arrangements, with obvious repercussions in terms of negligent liability that are far removed from the malicious intent required by the crime alleged.

9.4 The indirect intent of the complicit third-party intermediary

The foregoing considerations remain valid even if we were to contemplate the broader category of indirect intent, given that, according to case law of the supreme court, the subjective element that postulates a lesser consistency of the intentional aspect requires the full knowledge of the criminal event, and therefore in this case of the details of the criminal arrangement that may have already taken place between the bribing private party and the corrupt public officials, having to distinguish malicious intent from negligence even if with anticipation of the event.

Merely by way of example, the following citation is offered:
Sec. 4, Judgment no. 39898 of 07.03.2012 Willful recklessness, which consists in the knowledge of the event as a possible result of the conduct and in the expectation that it will not occur, differs from indirect intent for the fact that the latter involves the acceptance of the risk of occurrence of a necessarily specific event, not directly intended although known, so that the generic knowledge of the dangerous situation resulting from the action taken is not sufficient to constitute said intent.
Even if we accept the prosecution's allegation that the public officials received the entire sum monetized by the person who was absent from this trial, the defendant of different proceedings Alaji

Abubaker Alyu, it is not possible to automatically attribute this inference to parties other than Alaji Abubaker Alyu and the public officials who received said sums: for all the other defendants it is necessary to prove the knowledge of at least these facts. It follows that the abstract possible knowledge of the existence of an underlying risk of corruption does not seem sufficient to color the participation of third parties in the phases of lawful negotiation and especially in the phase of the discussions that led to the signing of the resolution agreements, not to mention the subsequent phase of payments to the government account and then the subsequent transfers by the government to Malabu.

Without specific evidence of the knowledge of the subsequent monetization of the funds by Alaji Abubaker Alyu, any causal contributions even if only as facilitators of this last chronological step are not sufficient to establish the liability of the third-party intermediaries. As we will see later, the only position that takes on a character of complicity with respect to how the money was handled by Alaji Abubaker Alyu is that of the defendant Dan Etete, but it has already been said that the examination of his exclusive responsibility is not allowed due to lack of jurisdiction as it is a case of Nigerian corruption, and therefore an offense committed in its entirety in a foreign country.

[3 illegible signatures]

CHAPTER 10
VINCENZO ARMANNA

10.1 Who is Vincenzo Armanna

Vincenzo Armanna described his role in the OPL 245 negotiation as follows: I was the focus point, practically speaking, Eni procedures called for a project leader, the person to whom all the communications are sent...so all the communications came to me, and my responsibility was to make sure that all the members of the group and all the parties involved in the project were informed".

The definition of Project Leader is contained in Eni circular no. 335 of 2008, "Authorization and Control of Buying and Selling Transactions": "Project leader – responsible for managing the purchase and sale transaction and, in particular, for establishing and coordinating the work team in the preliminary, negotiation and execution phases of the transaction."

Vincenzo Armanna is therefore a figure who appears throughout the whole affair. He is the Eni executive who participates in the first meeting with Emeka Obi and Dan Etete in Lagos in December 2009. And it is also he who keeps in touch with all the parties involved, who participates in the meetings at the office of the Attorney General, who follows the final stages of the deal.

But his presence extends beyond April 29, 2011. In fact, in the months following the conclusion of the resolution agreement he would continue to take an interest in the money paid by the companies by contacting Gianfranco Falcioni and the company Petrol Service, to the point of receiving a bank transfer from Bajo Ojo of over a million dollars with the reason "Giuseppe Armanna inheritance."

The professional relationship with Eni came to an abrupt end in May 2013 when he was dismissed following disputes regarding exorbitant unauthorized expenses:

"I was based in Qatar, on May 31, 2013 I get called for a meeting to be held on May 31, 2013 where some of my expenses were contested as not following procedures, as if it were a scam, for 292,000 euro, and I am fired on the spot. They seized all the material, my hotel room was emptied, my office.... A charge of 88,000 euros, in the end Eni accused me of having stolen 380,000 euro. At the end of all this, in October 2013 we closed with an agreement, which I reserve the right to... a settlement report that I reserve the right to submit for the record."

However, Vincenzo Armanna takes a different position from the other defendants in this trial. In fact, on July 30, 2014 he voluntarily appeared at the Milan Public Prosecutor's Office and made a long statement in which he stated that the fee for Obi was actually a kickback of money to the Italians, and that all Eni executives were aware that part of the amount paid "benefited the political sponsors of the transaction".

Another aspect of the figure of Vincenzo Armanna is his peculiar insertion into a web of relationships that has at least facilitated his professional history and characterized his modus operandi. According to what he himself reported during his deposition, he had started working for Eni at the end of 2006, with the duties of advisor to the procurement manager Sergio Polito, while he had previously had work experience in FIAT, Ernst & Young, Capgemini, Roland Berger and Trenitalia, as procurement manager, "thanks to Roberto Testare." He had known Luigi Bisignani for a long time, so much so that he had helped him during the illness of his son and had hosted him several times at the studio in Piazza Mignanelli in Rome, where he had witnessed phone calls to Massimo D'Alema, Gianni Letta and Paolo

Scaroni. He boasted friendly relations with Andrea Peruzy, general secretary of the Italian-European Foundation, in his opinion close to Massimo D'Alema, with Paolo Quinto, "head of Anna Finocchiaro's secretariat," and with Ezio Bigotti, "well-known entrepreneur" (all characters that will re-emerge below). He thus presents himself and gives himself the image of a person accustomed to moving easily in networks of economic-political relations, where the weight of the interests at stake, together with cunning in the use of strategies, are the basis of every action.
The following pages will first address the issue of the charge brought against the defendant for his participation in the alleged unlawful agreements relating to the OPL245 license.
Subsequently, his many accusatory statements will be assessed in the light of the interpretative parameters of art. 192 of the Italian Code of Criminal Procedure established by the Supreme Court.

10.2 The responsibility of Vincenzo Armanna

Armanna, in his capacity as senior adviser to NAOC (Nigerian Agip Oil Company) and Vice President at Eni, sub-Saharan upstream activities

- having had relations from the very beginning with Obi and Etete, being fully informed of the transfer of most of the amounts paid by Eni to the political sponsors of the transaction and the agreements for the kickback of large amounts to the senior managers of Eni and Shell;
- informing Bisignani of the status of the negotiations and receiving instructions as to how to act;
- meeting on several occasions with Attorney General Muhammed Adoke Bello and discussing the topic of the fees to the brokers with him;
- attending meetings at the Attorney General's office from November 18 to 25, 2010, at which Attorney General Adoke and Alhaji Abubakar were present, where the financial terms of the deal were agreed to (1.3 billion);
- in December 2010, receiving an indication from Adoke as to the negotiated arrangement most recently adopted and which centered on an active role by the Nigerian government (FGN); based on the agreements, it would transfer the OPL 245 license to Eni and Shell and would receive the "consideration" of €1,092,040,000 intended for Etete;
- coordinating with Falcioni and Bajo Oyo for the further transfer of the money paid by Eni to the Nigerian government's account at JP Morgan Chase London and subsequently receiving €917,952 from Bajo Oyo with the false description "Armanna inheritance";

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations (both aimed at defining the settlement agreements of April 29, 2011 and parallel discussions aimed at remunerating the various intermediaries) and illegal negotiations on the alleged remuneration of the public officials. Furthermore, the tenor of the general part of the charge concerning all defendants leads one to believe that everyone is being charged for their direct participation in the corrupt arrangements (it having been agreed), while the interpretation that is more in line with the letter of the specific accusation relating to Armanna's position suggests that the only charge is the mere knowledge of unlawful arrangements entered into by Etete alone with public officials.

The discussion does not help to resolve these issues given that here the prosecution seems to infer evidence of Armanna's participation in illegal arrangements from the unreliability of the justifications given for the Falcioni affair on the attempts to transfer money from the government to the company Petrol Service, and from his presence at the key moments of the lawful agreement:
Vincenzo Armanna's position has already been discussed during analysis of the given statements and assessment of their reliability. The illustration of the Petrol Service affair then highlighted its active role even in the attempt to transfer money back through Gianfranco Falcioni's company. **Therefore, while referring to those parts for an analytical illustration, we can briefly summarize here how**

Armanna played a central role in the negotiation and finalization of corrupt agreements. Placed by Descalzi to direct the operations as Project Leader, he accepted from the outset the role of Obi as a figure linked to his friend Bisignani and his boss Scaroni, accommodating his claims with regard to the different contingencies and requests of Eni's organizational units. He led the entire negotiation on the Eni side, interacting with the members of the legal and negotiating function, with NAE representatives, with Casula, constantly informing Descalzi and agreeing with him on the solutions to be pursued, interacting with Shell representatives and, if necessary, also with the politicians. He was present at the defining moments of the negotiations, from the debut with Etete in Lagos, to the October 30, 2010 offer to Etete, to the price agreement of November 15 at the Attorney General's office, to the agreement on the "tripartite" structure (the government as a protective agent) of December 15, up to the "technical" meetings – designed to further the exaggerated wishes of the oil companies in 2011. Finally, he backed Falcioni in an attempt to directly withhold $50 million from the price paid by NAE, reformulating their "agreements with the Nigerians" if necessary without, however, being able to use Petrol Service as a payment channel. Finally – as a definitive seal of a judgment of responsibility – he received the sum of $1,200.000 from Bayo Ojo, who in turn had received more than 10 million from Etete, attaching to his defense an unlikely justification whose cogency did not withstand the test of trial.

Neither aspect of the allegation is acceptable, either from the point of view of the reconstruction of the facts or, with regard to the second aspect, from the point of view of the legal categories.

Armanna is the person who managed the lawful operation throughout the negotiation on behalf of Eni as project leader, with the knowledge, in his words, that Etete had "thought" about the relationship with the public officials. Later we will see more clearly that the defendant is not reliable, but in any case the declared generic awareness that Etete would allegedly manage relations with public officials is still not sufficient – for the reasons already illustrated above – to render illegal participation in a negotiation that is lawful in itself, since the element of knowledge necessary to support intent, even indirectly, required to constitute assistance of a third-party intermediary in the corrupt arrangement entered into by others cannot be considered to have been met.

In fact, the only serious evidence against the defendant does not derive from his generic and unreliable statements, but rather from his involvement – paid privately with over a million dollars – in the phase following the payment of the price by the oil companies, the phase related to the attempts of the Nigerian government to pay the amount agreed with the company Malabu for the waiver of its rights, through the company Petrol Service of the defendant Falcioni. It is no coincidence that Vincenzo Armanna then tried to reinterpret his role in this part of the affair with statements that, as acknowledged by the public and private prosecution, were grossly false.

However, this information cannot be considered seriously incriminating because it proves his involvement in the use of funds to pay fees to private third parties and not to public officials. The circumstance is also shared by the prosecution, which in its concluding brief states as follows: The illustration of the Petrol Service affair then highlighted his active role even in the attempt to transfer money back through Gianfranco Falcioni's company. The use of private email and not that of the company, together with the fact that no other defendant was involved, not even copied in the messages, underscores the private nature of his involvement.

The function of Petrol Service as a transit account had the following dual purpose. First, to facilitate the payment to Malabu, which, due to its connection with Etete, convicted of money laundering, had reputational difficulties, promptly raised by the officials of the J.P. Morgan bank managing the funds on behalf of the government. Moreover, given the notorious difficulties of the intermediaries in collecting the fees agreed to with Etete, "a bad payer," the transit of the funds through the accounts of Petrol Service would have guaranteed the payment of the fees to the private consultants appointed by Etete himself.

It has already been argued that the disputed payments to public officials took place in the phase subsequent to the management of the funds by Alaji Abubaker Aliju through the account opened by the company Malabu at the First Bank of Nigeria, a phase that is subsequent to the transfer of money from the government to the company Malabu.

10.3 The credibility of Vincenzo Armanna

To begin with, it is necessary to remember the criteria to be followed when assessing the reliability of those like Vincenzo Armanna who assume the role of co-defendant making accusatory statements.
As is known, the Supreme Court stated first of all that "the Court, even before ascertaining
I the existence of external confirmation, must verify the subjective credibility of the witness and the objective reliability of his statements."[729] More specifically, "the court must first assess the credibility of the witness, evaluating his personality, his socio-economic and family conditions, his past, his relations with those accused of being complicit and the reasons that led him to confess and accuse the co-authors and accomplices. Second, it must verify the reliability of the statements made, evaluating their intrinsic consistency and characteristics, having regard, among other things, to their spontaneity and autonomy, their accuracy, the completeness of the narrative of the facts, their consistency and constancy. Finally, it must verify the existence of external findings in order to obtain the necessary confirmation of reliability.[730]
II The judgment of subjective credibility therefore has a "primary function of determining the level of rigor necessary for the control of the statements, so that if the witness has the propensity to lie, the utmost caution is imposed in the assessment of the evidentiary input provided and with the utmost scrupulousness in refuting defense's objections as to the tenability of the story."[731]
In the light of these guidelines, first we shall examine the subjective credibility of the witness. The inherent reliability of the statements made will then be assessed, and finally the issue of a fractionated assessment of the statements will be addressed.

10.3.1 The credibility of the witness

In order to assess Vincenzo Armanna's credibility it is necessary to retrace the initial stages of his presentation to the authorities and his conduct during the investigations.
As seen, on July 30, 2014 the defendant made a voluntary statement with strong accusations against Eni and its top executives.
After receiving a notice of investigation, on September 21, 2014 Claudio Descalzi gave an interview in which he proclaimed his total lack of involvement.[732]

On October 7, 2014 Vincenzo Armanna gave an interview in which he revealed to the press most of the circumstances that were the subject of his voluntary statement on July 30.
In 2016 Armanna was heard several times and made statements on various aspects of the affair. However, on May 27, 2016, he sent the prosecutors a brief in which he significantly reduced the accusations made against Claudio Descalzi:
"I always worked according to the instructions of Descalzi, who was my direct superior, and I have always shared his positions of extreme caution", and he then gave examples: "As regards the price, he

[729] Court of Cassation, Fourth Criminal Division, decision no. 34413 of 6.18.2019; similarly, see Court of Cassation, First Criminal Division, ruling no. 22633 of 2.5.2014, Court of Cassation, United Divisions, decision no. 20804 of 11.29.2012.
[730] Court of Cassation, Second Criminal Division, decision no. 21171 of 5.7.2013.
[731] Court of Cassation, First Criminal Division, decision no. 19759 of 5.17.2011.
[732] *"That's enough. I want to shout out to the world that I'm not dishonest. After a lifetime of working in the oil industry, during which I kept well away from unsavory circles, the idea of being associated with a Bisignani or other traffickers with whom I have nothing in common. Just now that I was changing everything at Eni, after nine years of Scaroni management."*

always refused to increase it, he has always been against the inclusion of a broker. He objected to the initial hypothesis of a direct Sales Purchase Agreement (SPA) with Malabu, he has always avoided any direct confrontation with Paolo Scaroni, who at the time was the deus ex machina of all of Eni.... At the point where I report my meeting with Descalzi was recorded "including any kickbacks" the word 'kickbacks' could lend itself to different interpretations while for me it simply means that if there had ever been third parties, such as creditors, or Eni managers, or otherwise we would never have been able to know because Malabu would have taken care of it.

Finally, Armanna points out that Eni executives had never known for sure "that a portion of Eni money benefited Nigerian political sponsors." In fact, the destination of the money to the politicians "was not a certainty but a hypothesis and a suspicion."

On March 6, 2017, the defense of the company Eni, filed directly with the Public Prosecutor's Office of Milan a number of emails with an accompanying letter which states that "Eni S.p.A. is unable to assess whether these are authentic documents or whether, if they are authentic, they report facts that are truthful or otherwise." The documents in question are an email exchange between Armanna and the lawyer Giuseppe Lipera, defense attorney of one of the suspects in the proceeding aimed at ascertaining the existence of efforts to tamper with the evidence in the proceedings against Eni. The correspondence shows that on February 14, 2017 Vincenzo Armanna had contacted the lawyer Lipera to advise him that he would like to have his client questioned pursuant to art. 391 bis of the Italian Code of Criminal Procedure. This email is linked to another that Armanna had sent five days earlier to the lawyer who was defending him at the time, the lawyer Fabrizio Siggia, and that was therefore also sent by mistake to the lawyer Lipera. In this second email Vincenzo Armanna writes that his former defense attorney Santa Maria had tried to convince him "repeatedly and in many different ways" to declare that "Eni was aware that the final beneficiaries of a part of the sum paid were the politicians," as "the prosecutors' decision to dismiss my case or obtain preferential treatment depended on this."

During the hearing, the Public Prosecutor asked the defendant to explain the reasons for his shifting attitude. Vincenzo Armanna then argued that in 2016 he was allegedly approached by Eni through the lawyer Piero Amara, who allegedly proposed to him to retract the accusations against Claudio Descalzi in exchange for the promise of a future reinstatement in the oil and gas company: "I was asked if I could issue a memo that in part eliminated the corruption section from the reports I had issued before." He also said that the final points of the brief in which he spoke of "kickbacks" and "Nigerian political sponsors" had been handed to him already written by Claudio Granata on behalf of Descalzi.

A few days later there was a second interview: *Dear director, I would like to point out that this article contains, at least in part, statements that I have never made.... Eni has been well managed for many years, with rigorous and segregated processes of proposal, evaluation and approval that have been respected by all those who have worked on the acquisition of Opl 245 with Shell, at every hierarchical level up to approval by the Board of Directors. I therefore do not think it is correct to say that "at Eni everything was decided by Scaroni."*

As for the emails of February 2017, he explained: "The tension with my attorney started after the written submission that I filed in May 2016. And in light of everything that was happening, due to a meticulous procedural strategy, the objective was to undermine.... I am saying what I was told by the attorney Mr. Amara and what was agreed, was to undermine the credibility of all the previous reports

on my notice of filing. And therefore also casting doubt on the defense strategy proposed by the attorney Mr. Santa Maria. Therefore the email was written with the aim of making it difficult to draw up the previous reports. This was the goal that led to the email. We agreed on it with Amara and Granata, and this email. Amara took care of the fact that it would reach the Eni defense."

To fully understand the genesis and development of the story, however, it is essential to add an additional extremely important piece.

At the hearing of July 23, 2019, one of the defense attorneys of the defendant Casula took the floor to explain that he had participated in a review procedure on behalf of another client in a different proceeding. On that occasion, one of the documents filed by the Public Prosecutor was a report of the Italian Finance and Customs Police in which it was acknowledged that there was a video recording that, in the opinion of the defense attorney, would have been very relevant for these proceedings. The recording had been made clandestinely by the lawyer Piero Amara and concerned a meeting on July 28, 2014 between Piero Amara, Vincenzo Armanna, Paolo Quinto, and Andrea Peruzy on the premises of the company STI S.p.A. of Ezio Bigotti.

Urged to take a position on the defense attorney's motion, the Public Prosecutor confirmed that he had had the document for some time, but added that he had neither brought it to the attention of the defense nor submitted it to the attention of the Court because it was considered irrelevant.

"PUBLIC PROSECUTOR: ...We have filed, from these proceedings which concern alleged attempts to tamper with the investigations and proceedings ongoing against Eni and others, just what seemed to us to be important in relation to Armanna's statements, because it was a piece of evidence that we were about to take on, and therefore for the reasons already stated the other time, I would not want to repeat myself, we wanted the defending attorneys to know where we were heading."

[…]

"PUBLIC PROSECUTOR - Perhaps I did not express myself well. I absolutely do not want to blame anyone. What I want to say is that the reason why we did not file this record was not so as to cause any weak point, because there are many other records that could to some extent be relevant, but due to that establishment of boundaries that you made reference to at the start, we only considered those records that could directly affect the development of Armanna's statements."

Following the request of defense counsel, the Public Prosecutor finally produced the video, and its content proved extremely important in understanding the intentions behind Vincenzo Armanna's presentation to the Public Prosecutor on July 30, 2014.

To understand the tenor of the discussions that took place during the meeting on July 28, 2014, remember that at the time of the recording Piero Amara was a lawyer who worked with Eni, while Vincenzo Armanna had recently been fired from the company and continued to deal with investments abroad in the oil sector. As the video shows, one of the businesses followed by the defendant concerned Nigeria and the purchase of blocks owned by Eni: "We have a huge lead...I mean, I am ready...to bring an industrial group to the table, an industrial group that takes 50 percent of Eni's oil refineries...and supplies the oil to be refined...and puts in the money."

The rest of the recorded conversation shows that Vincenzo Armanna saw the presence of Ciro Antonio Pagano as an obstacle to his projects in Nigeria, as he was considered a trusted man of Roberto Casula. Precisely to overcome these difficulties, Vincenzo Armanna states that he would work to "get him sent a notice of investigation."

Vincenzo Armanna. **"...because the avalanche of shit that I am bringing along at this point in time** (laughs)....

Vincenzo Armanna: "you'll see a strong river coming out, eh...."

Vincenzo Armanna: "No, not before the end of September, but **that avalanche of shit that is coming, you will see it speeding up."**

Vincenzo Armanna: **“Excuse me, but can we not change the boss of Nigeria? ...Instead of Ciro Antonio Pagano?...**
Piero Amara: "...Sorry, is Antonio Pagano on the board of directors?... ENI...then you're wrong...who is this?"
Vincenzo Armanna: ...Ciro Antonio Pagano is the interessor (phonetic) manager of Nigeria....
Piero Amara: I don't know him....
Vincenzo Armanna: he’s a right-hand man of Casula, like another named Luca Cosentino;
Piero Amara: Are they relevant in this operation?
Vincenzo Armanna: Yes!... They can create a real mess locally, if you have the company you're actually selling Nac Gelivee Faitlander (phonetic) and the CEO of that company is against you...it's a mess....
Vincenzo Armanna**: ...I mean, he must certainly put a person over Nigeria who he trusts 100%....**
Andrea: I understand, but it's not a change...it's not like they change them just like that.
Paolo: Change these two [speaking to the lawyer Amara, ed. note] Cosentino and.... Vincenzo Armanna: No, Nigeria is important, the Congo....
Vincenzo Armanna: For the time being we don't give a damn....
Paolo: Cosentino and **Ciro Antonio Pagano"**
Piero Amara: **(notes the two names)** Eh, it's not that I propose anything. He's already official.
Vincenzo Armanna: but not yet Nigeria...so the concept is this: **You should use the lawyers saying that perhaps it's better that all those involved in 245 [referring to the OPL 245 oil concession] are no longer in Nigeria.**
Vincenzo Armanna: So**you take Antonio Pagano and you remove him**...where do you send him? To Kazakhstan.
Vincenzo Armanna: But I'm telling you that Ciro Antonio Pagano is heavily involved in 245, okay?... Donatella Ranco's sister's husband is the head of the financial administration.
Vincenzo Armanna: Donatella Ranco's sister, don't ask me what her fucking name is because I don't remember, he's the husband of...he's the head of finance...Donatella Ranco and Ciro Antonio Pagano have been heavily involved in 245, **I wouldn't rule out that they'll soon be getting a notice of investigation (he laughs)."**
Vincenzo Armanna: **because they are involved in 245, and I would not rule out the arrival of a notice of investigation...I’m working on him getting one...(he laughs).**
"Andrea: **If you don't control the playing field...it's not secondary....**
Vincenzo Armanna: No, in fact, I...we're entering into the operational strategy, on the one hand we're moving to close the deal....
Vincenzo Armanna. On the other **we're moving to reduce the problems that we could have in the area as much as possible....”**

…

Vincenzo Armanna: No, so **we have to work...but now we have to eliminate...anything that could be a problem, okay....**
Andrea: Yep.
Vincenzo Armanna: ...so the man from Finance and the man...
Vincenzo Armanna: **...because these two are a problem, because they can raise or lower the price of the asset.”**
From the transcript it is clear that Armanna was interested in "changing the bosses in Nigeria," to replace them with men of his liking and thus facilitate business. The instrument to implement this plan was precisely "to work" to discredit people judged to be obstacles and "to have them sent a notice of investigation." This intention, already very clear from the tenor of the conversation reproduced here,

was then confirmed in the discussion with Armanna himself [733] with disarming glibness:
PUBLIC PROSECUTOR - Let me understand, disclosing this news about OPL 245 to the press, Eni would have to get rid of Pagano and Casula.
DEFENDANT ARMANNA - Exactly.
PUBLIC PROSECUTOR - Was this the plan, in a nutshell?
DEFENDANT ARMANNA - That was the idea."
[…]
DEFENDANT ARMANNA: ...if you listen closely to the audio, it does not appear in the transcript, there is the specific explanation of why Pagano and Casula were a problem, it is absolutely not a question of a grudge or anything else, it is a mere question of business.
In light of the foregoing, it is incomprehensible that the Public Prosecutor chose not to introduce into the record a document that sheds light on the contrived use that Vincenzo Armanna intended to make of his statements and the desired consequent launching of investigations, all extraordinary elements in favor of the defendants. Such a decision, if successful, would have had the effect of depriving the defense and the Court of extremely important evidence.
The Public Prosecutors minimized their failure to produce the video as according to them the document only portrays a "boastful" and harmless side of Armanna. The reason for this interpretation is allegedly the fact that Donatella Ranco was never investigated and that Ciro Pagano was only investigated a long time later, because Armanna did not make particularly accusatory statements against them. However, without returning to the numerous differences in treatment seen with respect to the selection of the subjects under investigation, in order to understand the importance of the recording it is necessary to be able to interpret the blackmail language of those who announce an intention to make accusatory statements that would certainly have impacted the top management of Eni at least indirectly. In fact, at the time of the OPL 245 negotiation Donatella Ranco was responsible for international negotiations and reported directly to the director general Claudio Descalzi, whose involvement in the affair would therefore have been an inevitable consequence of Armanna's statements. The intention expressed was to cast a halo of illegality on Eni's management with respect to the acquisition of the oil exploration concession, in order to obtain – through Amara's intervention – the removal from Nigeria of those who had participated in the negotiation, especially Ciro Antonio Pagano, replacing him with someone more accommodating towards the conclusion of the ongoing deal. This aspect, in particular with regard to the business pursued by Vincenzo Armanna and his associates in Nigeria during the period considered, has not been the subject of any further investigation.
The content of the document – recorded just two days before his presentation in the Public Prosecutor's Office – is disruptive in itself in terms of assessing inherent reliability because it reveals that Armanna, dismissed by Eni a year earlier, had tried to blackmail the top management of the oil company by announcing his intention to turn to the Milanese PPs to send "an avalanche of shit" towards some top executives of the company. In this regard, Armanna advises Piero Amara to take advantage of Eni's lawyers to remove Donatella Ranco and Ciro Pagano because they are considered heavily involved in the OPL 245 affair.[734] The subsequent use of the term "work" to send notices of investigation, in the context of promoting deals as a private consultant of companies competing with Eni, seems truly disturbing and demonstrates the ability of this person to exploit the judicial system and the consequent media response resulting from the publication of news regarding the ongoing investigations for personal purposes.

[733] transcription of the hearing on on 07.24.2019, pages 10-11
[734] Armanna suggests to Amara: "you should use the lawyers saying perhaps it is better that everyone involved with OPL 245 in Nigeria be removed.... Donatella Ranco and Ciro Antonio Pagano have been heavily involved in the 245, and I wouldn't rule out that they will shortly receive a notification of investigation."

Therefore, the Court does not share the trivializing interpretation of the document, which, to the contrary, allows us to appreciate Armanna's willingness to blackmail Eni's top management by clearly letting Piero Amara understand that his accusatory statements could have been tempered by an agreement, making a clear reference to Descalzi and more generally to managers other than those expressly mentioned.

We also disagree with the Public Prosecutor's interpretation of the partial retraction made during the investigations. According to this point of view, the behavior of the defendant should be assessed as counting against Claudio Descalzi, who allegedly sought to condition Armanna's accusatory statements through Piero Amara and Claudio Granata.

"These circumstances declared by Armanna at the hearing, namely that persons on behalf of Descalzi, in the case of the May 2016 brief, and the company Eni as a whole, in the case of the emails produced by Eni's Defense to the Public Prosecutor of Milan in 2017, tried to interfere with Armanna's statements, mitigating them and, ultimately, completely undermining their reliability, reducing them to bargaining chips between a defense attorney (Mr. Santa Maria) and the prosecution – you say this and I will help you – these circumstances have to be considered against the defendant Descalzi and the company Eni. The attempt to eliminate the evidence against him clearly constitutes incriminating evidence. Armanna's statements regarding the pressure he suffered, which this prosecution would have wanted to reinforce with the statements of other participants in the hoax, first of all lawyer Amara (see request for evidence at the hearing of 2.5.2020) are however confirmed by the very tenor of the documents and their intrinsic inconsistency."

Armanna's statements regarding Eni leaders' attempt to persuade him to retract his statements were considered of extreme importance by the Public Prosecutor, to the point that, after an investigation lasting more than two years, at the hearing on February 5, 2020 Piero Amara was asked to be heard pursuant to articles 493 and 507 of the Italian Code of Criminal Procedure, therefore in a procedural context characterized by the decisiveness of the evidence. The subject of Piero Amara's examination was articulated in 14 detailed circumstances in a written memorandum produced at the hearing. The first 13 points did not present anything new since they concerned attempts to contaminate the evidence during the preliminary investigations, actions that the Public Prosecutor had brought to trial in 2017, therefore before the beginning of these proceedings. In addition to the pressures described, Piero Amara was supposed to testify about an attempt to discredit the investigations carried out, including through accusations filed with the Public Prosecutors investigating this trial (points 9 and 13) and some vague "interference with Milanese magistrates by the Eni defense and some defendants regarding the OPL 245 trial" (point 14).

The request was rejected with an order in which it was stated that the new evidence was not absolutely necessary, thus reiterating a previous decision of December 11, 2019 in which it was argued that, at the outcome of a long and complex investigation, even the new evidence must be decisive according to the parameter of art. 507 of the Italian Code of Criminal Procedure.

The non-admission of Piero Amara's hearing is mentioned several times in the final brief of the Public Prosecutor, and therefore on this point it seems necessary to make some further clarifications. However, from the start we note that we will not dwell on point 14) since the extraneousness of the exhibit with respect to the circumstances in question, as outlined by art. 187 of the Italian Code of Criminal Procedure, and the evident irregularity of the request would impose assessments that do not fall within the competence of this Court.

That said, the futility of the search for confirmation of Armanna's account of possible attempts at conditioning stemmed in the first place from the consideration that the further statements he made had already proved unreliable and had been denied by the relevant witnesses. Indeed, as presented, the evidence would have served to illustrate a fact that had already been established at the trial given that

the attempt at contamination had been reported and “overcome” by Armanna himself, who at the hearing confirmed the accusatory statements that, according to him, the Eni executives sought to neutralize. Moreover, the statements that Piero Amara could have made did not contain direct knowledge, but referred to information learned by others, as easily deduced from the evidence as requested by the prosecution, evidence that therefore had a mere exploratory function, or in any case introductory of other evidence.
In any case, the confirmation of what Armanna reported about an attempt to persuade him to retract his previous statements would not have constituted the indication of a crime committed by Claudio Descalzi. The position taken by the Public Prosecutor is that the evidence of the defendant's attempt to condition a witness represented in itself an indication of the defendant's guilt with respect to the merits of the charges.
A similar judgment of the experience, even if shared, is however inappropriate if considered in the context of this case.
In fact, in the case in question it must be considered that the reasons underlying Armanna's accusatory statements emerge irrefutably from the video mentioned above. His primary intent was certainly not to make his own contribution to justice with the information he had. Instead, his presentation pursued the primary purpose of throwing mud on Eni executives who could hinder his business, embarrass the company, and, ultimately, make a splash in the media about criminal matters that would put him in a strong position with respect to his former company. Indeed, the fact that the real purpose of the defendant was to create the greatest possible clamor is confirmed by the fact that, a few weeks after his deposition in the Public Prosecutor's office, he gave an interview to a national newspaper and handed over the material in his possession to a journalist in order to make public the investigation that he himself had helped to spark.
Faced with this scenario, Eni was a publicly traded company that, although certain that it had not committed any wrongdoing and aware of Armanna's blackmailing intent, was exposed to immense reputational and financial damage caused by the dissemination of news about its alleged involvement in a bribe worth over one billion dollars.
In light of this situation, we must now ask ourselves what meaning is to be attributed to a possible action taken by Claudio Descalzi aimed at persuading Armanna to retract the accusations.
In the opinion of the Court, such conduct – if it exists – should be interpreted as the conduct of an executive who, in order to protect his team from the slanders that were directed at it, agrees to enter into an agreement with the blackmailer, and in exchange for the cessation of the defamation of the company grants him what is requested, namely the promise of reinstatement in the company.
In any case, the facts that occurred during the investigations and any resulting responsibilities will be clarified by the investigation of these circumstances that is still ongoing. Whatever the outcome of these investigations, there is no doubt that these findings could in no way affect either the assessment of the untrustworthiness of Vincenzo Armanna or more generally the position of the defendants with respect to the crime that is the subject of these proceedings.
In conclusion, Vincenzo Armanna's shifty behavior during the investigations does not constitute evidence against Descalzi, or at least not serious, unambiguous evidence. To the contrary, his opportunistic attitude reveals an ambiguous personality, capable of exploiting his role in the proceedings for personal gain, and ultimately denotes an intrinsic unreliability that certainly could not have been rehabilitated by Piero Amara's testimony.

10.3.2 The reliability of the statements made

The entire narrative jumble deriving from three hearings devoted entirely to the examination of the defendant will not be retraced here.

For a more effective dialectical discussion of the prosecution's arguments we will follow the same expository scheme of the final brief and explain why the conclusions presented therein are not considered acceptable. Thus we will first address those points of the story that might demonstrate a general reliability of the witness (“it is not an exaggeration to say that much of his story is not only true, but that it is clearly true"). We will then consider the two passages in the brief that are referred to as "points in question," i.e., the "awareness of political corruption" and "the money racket." Finally, a third sub-chapter will be devoted to a subject that is not treated separately in the brief but that is certainly worthy of a dedicated analysis: the evidence against Armanna's statements offered by the witnesses.

10.3.2.1 The story that is not only true, but it is clearly true

The Public Prosecutor identified ten points that allegedly attest to Vincenzo Armanna's overall reliability. Before examining them in detail, it is interesting to note that most of these points concern moments in the negotiation when the defendant participated by virtue of his professional role at Eni. The unacceptable overlap between the negotiation (lawful) for the acquisition of the license and the possible negotiation (unlawful) for the payment of public officials is therefore proposed once again.

- It is true that Eni had another broker, in addition to Obi, in the person of Femi Akinmade, Eni's former Nigerian executive.

This can clearly be deemed to be false. The complexity of Obi's figure stems from the fact that, acting as a skilled businessman, in the initial stages of the negotiation he managed to gain the confidence of both Eni and Etete as a person able to successfully negotiate with the counterpart. On the one hand, in fact, Obi was introduced to Dan Etete thanks to Ednan Agaev, who had already received an assignment from Malabu and was looking for a collaborator. On the other hand, he manages to exploit his acquaintance with Gianluca Di Nardo to get Luigi Bisignani to suggest him to Paolo Scaroni as a possible key for discussions with Etete. However, the development of the events shows that Emeka Obi was acting as a mediator on behalf of Malabu. On this point, it is sufficient to recall that (i) Malabu issued a formal mandate to him; (ii) throughout the negotiations he dealt as a counterpart to the Eni negotiating team; (iii)

upon conclusion of the negotiations, he filed suit against Malabu to obtain a commission for the professional work done; (iv) the merits of these claims and Malabu's resistance to an assignment were confirmed by the judgment of a British Court. The circumstance reported by Armanna according to which he was the one who introduced Obi to Dan Etete at the meeting of December 28, 2009 is contradicted by the documentary evidence coming from both Obi and Malabu, produced by the PP, which place the origin of the Obi/Etete relationship on December 9, 2009, so at the meeting of the 28th the subject of the amount of the fee that Obi expected from Malabu had already been raised (see Chrono-Unprotected). The claim that Femi Akinmade acted as a broker on behalf of Eni is also contradicted by the evidence produced. In this regard, it is sufficient to consider that (i) Akinmade himself explained that he had worked as an agent of Etete[735]; (ii) one of the documents shown to Akinmade by the Public Prosecutor is the mandate that had been issued by Malabu on October 30, 2009[736]; (iii) he participated in the meetings at the Attorney General's office as a representative of the

[735] PUBLIC PROSECUTOR – Okay, please go to the document on page 006. This document is dated November 30, 2009, it's a letter from a gentleman named Rasky Gbinigie of Malabu to you. Can you tell us if this represents the mandate you received from Malabu, or are there other documents?
PRESIDING JUDGE - From Malabu, mandate from Malabu.
INTERPRETER - "Yes, this is the mandate I was given."

[736] PUBLIC PROSECUTOR – If you look at this document it says that "we confer [English in source text:] you are authorized to receive (inaudible) of our Company (inaudible) proposal from well-intended companies, (inaudible)’....’ [Translation resumes:] That is, it says that...can you explain what these well-intended companies are? What does well-intended companies mean?
INTERPRETER - As a consultant he has to do his due diligence, that is, do background checks on companies to provide assurances, that

seller and (iv) he received compensation from Dan Etete for the work done for him.[737] What instead emerges – and is rather anomalous – is the personal relationship between Femi Akinmade and Armanna himself. In fact, it was the latter who invited Akinmade to Paris at the end of October 2010 to try to convince Dan Etete to accept the offer that ENI was about to make, as confirmed by the consultant himself, and that, using the company's payment instruments, paid the invoice relating to Akinmade's stay at the Hotel Bristol in Paris, where he himself resided. This payment, considered unjustified, would later be indicated by ENI as one of the causes of his subsequent dismissal, according to the witness Luigi Zingales. On this point, in his deposition Armanna argued that it was Roberto Casula who had named Femi Akinmade as someone to contact for any problems in Nigeria relating to the OPL 245 affair, and that since Akinmade's financial situation was not particularly prosperous he had authorized him to cover any costs. Significantly, however, there is no evidence of these instructions or authorizations in the record, and Armanna never reported on anything about his contacts with the Nigerian.

– It is true that it had been expected that there would be an excess price that had to be returned to Obi to be distributed.

This circumstance is true only in part, and Armanna's knowledge of it derives from his participation in the negotiations. In any case, it is true that Obi's original project was to be remunerated by Dan Etete according to the excess price scheme. Such a mechanism allegedly entailed the conclusion with the seller of an agreed price, the start of negotiations with buyers to get the highest possible selling price, and finally the possibility for the intermediary to retain the excess price, i.e., the difference between the selling price and the agreed price. However, the development of the events showed that this mechanism, which, moreover, does not have any automatic unlawful implication, was never accepted by Dan Etete. In fact, both during the negotiations and in the subsequent legal action, Emeka Obi quantified his compensation at a fixed amount of 200 million dollars. The final point according to which this possible excess price "had to be returned to Obi to be distributed" is generic and without any evidence. Aside from the consideration that the names of the beneficiaries of this hypothetical distribution are not specified, what has been established is that once the compensation established by the English Court had been received, Emeka Obi paid a part of the fees to Gianluca Di Nardo, the one who had raised his name in the early stages of the affair. It is therefore clear that the absolute irrelevance of the verb "to distribute" is symptomatic of the bias of Armanna's statements. The use of a term characterized by a negative meaning, far from being an unfortunate lexical choice, betrays the real meaning of the defendant's illusions, namely the fact that the money received by Obi was then, in his opinion, destined to end up with the managers of the Italian company. However this circumstance is devoid of any supporting evidence, and on the contrary the only manager to have received money of

---

is what well-intended means, that is, he as a consultant has to research companies.
PUBLIC PROSECUTOR - On which companies?
INTERPRETER - "There are many of them, the Korean one, and I have a list."
PUBLIC PROSECUTOR - Yes, I understand, but was the mandate to receive an offer from some companies in particular or in general? From any company.
INTERPRETER - "In general."

[737] PUBLIC PROSECUTOR – Last question. But then you were paid by someone for this activity?
INTERPRETER - "Yes, Malabu...."
PUBLIC PROSECUTOR - How much and by whom?
INTERPRETER - "Malabu, 1 million."
PUBLIC PROSECUTOR - How did it pay you? In Nigeria? To your bank account?
INTERPRETER - "In cash, in Nigeria."
PUBLIC PROSECUTOR - A million what, dollars?
INTERPRETER - "Yes."
PUBLIC PROSECUTOR - *When did you get it?*
INTERPRETER - "*He doesn't remember, but it was much later," so he had to pay his other expenses.*

dubious origin was Vincenzo Armanna himself.

- It is true that Eni was concerned about the lack of a mandate from Etete to Obi and that the management of relations with Obi created "embarrassment" for the negotiation team headed by Ranco.

The circumstance faithfully reflects Vincenzo Armanna's story, but once again reveals the witness's ability to be intentionally misleading. What emerged, in fact, is that the members of Eni's negotiating team, starting with Roberto Casula, demanded that Obi show the mandate and that every obligation assumed by the company be subject to proof that the mandate was conferred by a person having the authority to represent Malabu. These requests were then translated into the presentation of the mandate in mid-February 2010 and the insertion of specific clauses that made the effectiveness of all agreements with EVP conditional on the existence of an effective mandate, a condition that would not occur until the conclusion of the negotiations and that would impose the tripartite solution of the negotiating agreement. This dialectic is not surprising in the context of a negotiation, and the use of the term "worry" to describe the attitude of Eni managers is aimed at creating a fog of suspicion around normal exchanges of views. Similarly, the alleged “discomfort” resulting from Obi's participation in the negotiations is such a vague concept that it is useful only to shroud each phase of the affair with a generic suspicion. Questioned on this point, Donatella Ranco herself excluded that there were particular anomalies in the negotiation: “it has happened that in the early stages some investment banks have required us to speak only with them.”[738]

- It is true that the exclusivity to Obi was unusual and the Eni executives, primarily Armanna, were opposed because this gave the mediator enormous power.

This circumstance is only partially true in that the method of exposition aims to convey more than what is actually proven. The only result is that Eni executives tried to eliminate the exclusivity clause demanded by Obi. Such a contractual dynamic is part of a normal discussion in which both parties seek to maximize their benefits and reduce their constraints. On the other hand, it is certainly untrue that the exclusivity clause would have resulted in "enormous power" for the broker. The precondition for the recognition of the exclusivity clause by Eni was that Malabu would first confer an exclusive mandate on EVP. So, it is not clear what power Eni attributed to Obi, given that he had already been recognized by the seller as the only person with whom it was possible to interface. It is therefore clear that not agreeing to relate exclusively with EVP would have meant not being able to enter into discussions with the seller, and ultimately abandoning the deal even before starting the negotiations.

- It is true, as Armanna clearly explained: ”From our point of view this made the difficulty of negotiating insurmountable, us giving the money to him [Etete] to pay for something that he would sell to us.” It is perhaps the central point of the story, the payment to the “fraudulent owner,” Etete, who was legitimized by his politician friends and waiting for bribes.

This circumstance is unfounded in its factual assumption and is logically incomprehensible. For the first point, it has already been seen that Etete was the only counterparty with which Eni could talk since the Nigerian government had repeatedly reiterated that Malabu was the holder of the license and that Shell no longer held any title to OPL 245. Moreover, it does not appear that Vincenzo Armanna raised the issue in any of the dozens of emails produced, and in any case the only alternative to dealing with Malabu would have been to abandon the negotiations altogether. Finally, in the last point it is assumed that politicians were waiting for bribes and that this circumstance was known to everyone. We will not return to these points because they have already been dealt with elsewhere. It should be noted, however, that this point, in this case considered a prerequisite and obvious, is not at all proven.

---

[738] Transcript of the hearing of February 27, 2019, page 57.

- It is true that Descalzi had long-standing relationships in Nigerian circles.

The circumstance is as true as it is obvious and irrelevant in any respect. Claudio Descalzi had worked for a long time in Nigeria and it is therefore normal – as well as entirely legitimate, and indeed desirable – that in this time he had cultivated institutional and personal relations with the local authorities.

- It is true that there was a meeting between Descalzi and Jonathan in the first six months of 2010, probably May, where there was talk of intermediation. This was reported by Armanna in 2016 when there was no information about it. During his questioning on 6.27.2016, Descalzi had admitted that a meeting with President Jonathan actually took place and the latter "mentioned the fact that it was better to have a direct relationship with Malabu without intermediaries." The circumstance was confirmed again by Armanna during the interview with Descalzi, which took place on July 29, 2016. During the interview, Descalzi very weakly tried to make distinctions, admitting that the meeting may have been there but denying that there were other ministers and Armanna: "the basic concepts are there and I am not refuting them, but the fact that I did not meet together... I may have met him alone. Indeed I also said this in my witness statements, I seem to recall that the President said: "Do things directly". So I am not rebutting. But not in a plenary context (page 12)...I have no doubt that the meeting took place. I do not question the context and the content. I can even see myself there (page 17)." The circumstance was "found" years later in Shell documents transmitted by the Dutch authorities. Reference is made to the cited document of 4.21.2010, which contains a report on the conversation between Brinded and Descalzi: "Claudio will see the AP [Acting President, i.e., Jonathon] the third week of May and will have dinner with him as a 'friend.'"

The matter was dealt with at length by the Descalzi defense, explaining that the alleged meeting in May 2010, initially requested by Eni through official channels, was then canceled and absorbed into the next meeting in August. Specifically, on April 14, 2010 the head of public relations of NAOC wrote to the Presidency of the Nigerian Republic requesting an appointment for Descalzi, Casula, and Pagano on April 30. The request was accepted with letter dated April 20, 2010, setting the date for April 30, 2010. However, on April 21, 2010, NAOC requested a postponement of the meeting as Paolo Scaroni had also indicated his desire to meet with President Jonathan. Therefore, in order to optimize the visit, it was requested to postpone the appointment until the end of May 2010. On April 26, the Presidency of the Nigerian Republic rescheduled the meeting for May 27, 2010. However, the meeting did not take place on that date either because on May 24, 2010 NAOC again asked to postpone the appointment for reasons that had nothing to do with OPL245, but rather with a different issue to be addressed with the Nigerian government, namely the Okpai plant project.

In sum, a detailed chronological reconstruction of the emails shows that the meeting in May that the defendant talks about never took place. Therefore, Claudio Descalzi's hesitations on this point are an indication of spontaneity and not a sign of an artificial reconstruction.

The same email from Malcolm Brinded cited by the Public Prosecutor is explained precisely in light of the fact that the meeting had initially been scheduled and then postponed several times. The confirmation that this meeting was not held is also derived from the fact that among the hundreds of emails and text messages produced there is no other trace of the existence of the meeting or its hypothetical content. The witnesses lan Craig and Keith Ruddock also stated that they did not know if the meeting had actually taken place, and in any case that they did not receive any feedback on it: "I don't even remember receiving feedback about what...at the meeting that had taken place.... I don't specifically remember if those meetings took place in this period.... I don't remember, because...I don't

really know, because the only reference that I remember seeing is in this memo about the discussion.

- It is true that Descalzi's attitude was one of subservience towards Bisignani, given the influence Bisignani had over his boss Scaroni, and therefore Obi had a fast track.

This circumstance is true only in part, as the term "subservience" does not adequately describe the relations between the parties. Descalzi himself admitted to having had an attitude of respect towards Obi since the latter had been suggested by Paolo Scaroni and Luigi Bisignani: the former was his hierarchical superior, while the latter was a person who, in his opinion, could have facilitated his future appointment as new director of the company. In practice, however, acquiescence to Obi resulted in frequent meetings and a direct dialog that never led to any appreciable results.

- It is true that there was a dinner at Casula's house, attended by Armanna, Casula, Pagano and Robinson, Copleston and Burmeister of Shell before the offer of October 30, 2010 and that at that time it was decided to increase Shell's cash contribution.

The fact that there was a dinner at Roberto Casula's house is documented by the email of September 19, 2010, with which Roberto Casula offers Claudio Descalzi a summary of the issues addressed with Shell, all attributable to legitimate negotiating dynamics.

- It is true that during the November meetings at the Ministry of Justice, Alhaji Abubakar Aliyu showed that he had strong influence over the Attorney General, controlling him just with a glance, nodding, often going out of the meeting room with the Attorney General to call "the Principal" (Etete).

The presence of Alhaji Abubaker Aliyu at the meetings in the office of the Attorney General is a clear fact that emerges from all the reports that the Eni executives present forwarded to headquarters. The particular behavior reported – which goes as far as some unexplained control over the Attorney General with a simple look – is unlikely, however, considering the role of the persons involved: in fact, on the one hand there was the Attorney General in full function; on the other hand, the person who allegedly exercised such a sinister influence was someone that the public officials themselves had designated as their front man and who was destined to deal with the "dirty work" of collecting and distributing the money.

At the end of the review of the points that the Public Prosecutor defined as surely true, it is possible to affirm that some of Armanna's statements, far from being proven, turned out to be clearly false. For example, the role of alleged Eni broker that is attributed to Femi Akinmade, or the insistence with which the existence of a private meeting between Descalzi and Jonathan in May 2010 is reiterated.

In contrast, the aspects having a seed of historical truth were often recounted in a deliberately ambiguous manner or connected in an evocative way in order to create a cloud of suspicion around completely normal situations.

10.3.2.2 The points in question

Having completed the analysis of Armanna's statements that are allegedly indisputably true, it is now necessary to address the issues that are defined as "points in question" in the Public Prosecutor's brief. These unclear aspects are "two points of Armanna's statements, which are very closely linked to the judgment on the existence of the subjective element in the hands of the defendants who acted in contact with Armanna: Descalzi, Casula, Pagano and the then CEO, Paolo Scaroni."

10.3.2.2.1 Awareness of political corruption

The first topic that the Public Prosecutor deems necessary to investigate is the alleged awareness of all the defendants of the destination of the fee paid to constitute the sum that would then be distributed to the public officials. The statements concerning the general awareness of the unlawful use of the sums are drawn from two excerpts from the depositions of July 22 and July 17.

On the other hand...the kickbacks for the Nigerians, there was never any doubt, even at the explicit admission of Dan Etete on several occasions, that he would handle everything: Adoke Bello, Alison-Madueke Diezani, the Nigerian president. He did not want Italians in the middle of the dealings between himself and the Nigerian institutions... I separate the Italians from the Nigerians, the Nigerians were, right from the start, forgive the term, covered by Dan Etete, there was no need for any outside intervention.... Right from the start, Dan Etete said: There is no need for Emeka Obi because his relations with the Government are non-existent compared to mine."
Yes, we knew...Casula, Descalzi, me, Pagano, Vicini, everyone.
PUBLIC PROSECUTOR - Excuse me, how can you say this?
Because we talked about it. In fact, for us the fact of Adoke's relationship with Dan Etete was also a problem, because for us it was a problem that Adoke had been Dan Etete's attorney, a serious problem. From a procedural point of view, Adoke's intervention was also outside normal Nigerian practice.
Even before dwelling on the alleged findings, it should be noted that the analysis of Armanna's statements as a whole does not allow us to arrive at the linear summary proposed by the prosecution.

To the contrary, in discussing the key topic of the agreement in the fall of 2010, the defendant contradicted himself several times and excluded that the subject had been discussed in the meetings with the Attorney General. Indeed, Armanna specified that the topic allegedly emerged for the first time at a meeting in which fees were discussed with Obi, who, in confidence and without the knowledge of the others present, allegedly confided to him that he had to split the remuneration with the Petroleum Minister, Diezani. However, it is this same co-defendant who stated that he did not believe Obi, maintaining that what was said was simply bluster to justify the enormity of the compensation requested, since the Minister did not appear at all to be incisive during the negotiations:
DEFENDANT ARMANNA - And basically in this negotiation – which was in fact very hard – at a certain point he called me out and told me that I had to understand that half of his fees were intended for Alison-Madueke Diezani, Diezani Alison-Madueke. To the Petroleum Minister. He told me openly. But sincerely I saw it very much as bluster.
For greater completeness with respect to one of the key points of the matter, all the statements made by Armanna on the subject are included here.
As will be seen, the transcripts show the generic nature and contradictions of the story, which is deliberately confused for the obvious purpose of blurring knowledge about the most sensitive parts of the accusations, those concerning payments to public officials. In fact, in the space of just a few lines Armanna first argues that Etete had spoken of the current corrupt public officials, then of generic officials and ministers, and then returns to the three names specified in the indictment as corrupt public officials, finally going so far as to speak of 30-40 paid public officials. There are also contradictory statements about the amounts because he says that Etete would split the compensation in half with public officials, then specifies that the amount was 200 million, i.e., the figure demanded by Obi. With specific regard to the information that Victor confided to him, he first denies that the latter had mentioned other names, and then, after being challenged, he remembers them, but for some he specifies that he had learned about them only from open sources. However, it seems clear that it is not credible that the defendant does not remember exactly what Etete allegedly told him or what Victor allegedly confided in him.
PUBLIC PROSECUTOR - If you do not mind we will come back to this afterwards because...I would like to go pedantically in chronological order, otherwise it becomes a bit like so. What exactly did Nike tell you about these 200 million?
DEFENDANT ARMANNA - She told us that...the whole operation was jeopardized and that we would be arrested, the same thing that the Attorney General said, and that this could not be paid by Shell, that

the fee could not be paid by Shell.
PUBLIC PROSECUTOR - But was it qualified as a bribe?
DEFENDANT ARMANNA - As bribes of Italian officials.
PUBLIC PROSECUTOR - Italians, that is what Nike said, but said...
DEFENDANT ARMANNA - No, friendly.
DEFENDANT ARMANNA - No, and not even from Peter Robinson. They said, “Solve this problem with Obi, it is your problem, so solve it.
PUBLIC PROSECUTOR - So Nike advised that Shell did not want to pay...
DEFENDANT ARMANNA - Absolutely.
PUBLIC PROSECUTOR - That was the idea.
DEFENDANT ARMANNA - Yes, the concept was Shell does not want to pay anything to Obi. Shell does not recognize any broker. Shell's reasoning was very linear, very direct. We have been on this block forever, we do not allow people who appear at the last minute to come and increase our costs.
PUBLIC PROSECUTOR - And what did Obi tell you about Gusau?
DEFENDANT ARMANNA - That in fact was one of his main sponsors.
PUBLIC PROSECUTOR - Let's get into this important concept of sponsor: what does it mean to sponsor? That he helped him in return for...
DEFENDANT ARMANNA - There is an English word that conveys the idea perfectly, it is backing. Supported from behind
PUBLIC PROSECUTOR - Backing, in the sense that he supported him.
DEFENDANT ARMANNA - He propped him up.
PUBLIC PROSECUTOR - But did he talk to you about possible financial interests of General Gusau?
DEFENDANT ARMANNA - The only time he talked to me about financial interests was with the Petroleum Minister.
PUBLIC PROSECUTOR - So Gusau was just a guy who backed him.
DEFENDANT ARMANNA - Yes, Gusau is a complicated person, he is not one who...he is not famous for being corrupt. Guasu is complicated, very complicated.
PUBLIC PROSECUTOR - When you said he was not famous for being corrupt you are talking about currently.
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - Famous in Nigeria.
DEFENDANT ARMANNA - That is right, he was not one who was known for asking for fees to take meetings, in Nigeria people are...some ministers have a price list for meetings.
PUBLIC PROSECUTOR - In contrast Diezani was famous....
DEFENDANT ARMANNA - Wow.
PUBLIC PROSECUTOR - In the opposite sense, let's say.
DEFENDANT ARMANNA - Yes....
PUBLIC PROSECUTOR - Final means reaching an agreement.
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - Please.
DEFENDANT ARMANNA - In this case the position, shared both with the Attorney General and with the services and so on, was that Obi...
PUBLIC PROSECUTOR - Which services?
DEFENDANT ARMANNA - Nigerian, SSS.
PUBLIC PROSECUTOR - So Gusau?
DEFENDANT ARMANNA - Gusau, exactly. Was that Obi was not necessary. Diezani was the only

one who could defend Obi's position, so she was left alone in that meeting, and at that point even Diezani distanced herself from Obi. These are typical negotiating maneuvers, one eliminating all, only one remaining standing in the end. At that point Diezani dropped him completely, Gusau dropped him. So Obi...in fact, there was no reaction from the Nigerians when Obi was removed from the process. None, there wasn't any....
PUBLIC PROSECUTOR - And what did Etete say about these 200 million, on this...
DEFENDANT ARMANNA - That we were stealing them from him and that it was we...they were for me... PUBLIC PROSECUTOR - Who was stealing them from him?
DEFENDANT ARMANNA - We Italians.
PUBLIC PROSECUTOR - Italians.
DEFENDANT ARMANNA - Always, he only talked about "Italians," "Italians," "Italians."
DEFENDANT ARMANNA - No, he was essentially talking about the top manager, the management of Eni, directly.
PUBLIC PROSECUTOR - And what did he say? If you can remember the words, even if many years have passed.
DEFENDANT ARMANNA - That this money was for me, Descalzi, and Scaroni.
PUBLIC PROSECUTOR - Because you said something slightly different on this point, on April 21, 2016, on sheet 3, "At the Bristol meeting in October 2010, Etete returned again to the question of money for the Italians, 200 million to be paid to Obi, and told me: [English in source text:] 'Boy, you know for whom is this money, for your boss Paolo Scaroni.'" [Translation resumes:]
DEFENDANT ARMANNA - I knowingly omitted Claudio Descalzi.
PUBLIC PROSECUTOR - At the time.
DEFENDANT ARMANNA - Because this is after the meeting we'll talk about later. PUBLIC PROSECUTOR - To be honest you also omitted yourself.
DEFENDANT ARMANNA - No, for Dan Etete...I was always involved! I mean, according to Dan Etete I was always going to it.
DEFENDANT ARMANNA - I, Roberto Casula and Ciro Pagano on our side, and on Shell's side, Peter Robinson, Copleston and Ghermaister (phonetic).
PUBLIC PROSECUTOR - Burmeister, German Burmeister.
DEFENDANT ARMANNA - German.
PUBLIC PROSECUTOR - Was there talk or not of this matter of the fees to be paid to Obi?
DEFENDANT ARMANNA - Yes, yes, we spoke expressly of this.
PUBLIC PROSECUTOR - And what was said, fundamentally?
DEFENDANT ARMANNA - That we would use the upside, I mean, the increase in the offer, to give a budget to Dan Etete to pay the fees to Obi.
PUBLIC PROSECUTOR - There was a discussion about who would pay for this... DEFENDANT ARMANNA - It was already in the agreement made in July 2010 that they would pay for it.
PUBLIC PROSECUTOR - You mean Shell.
DEFENDANT ARMANNA - Yes. But the motivation wasn't the fee, the motivation was that all upsides would be paid by them up to 1.3 billion....
PUBLIC PROSECUTOR - But the meeting, which I can now specify directly because you mentioned it this morning, when the Attorney General said: "They're bribes, I'll put you all in jail," when was that? And who was there?
DEFENDANT ARMANNA - It was the first one with a bigger group, so it was...I think it was after November 15.
PUBLIC PROSECUTOR - And what did he say exactly?

DEFENDANT ARMANNA - That they were bribes and that we were blackmailing Dan Etete and forcing him to pay a fee to Obi and that we would be arrested.
PUBLIC PROSECUTOR - Before leaving the topic Obi, I wanted to know: did you talk to Obi about the destination of the fees that Obi was supposed to receive?
DEFENDANT ARMANNA - Yes, there was a rather turbulent meeting where the Eni negotiating team couldn't find an agreement with the team whose leader was in the hands of Emeka Obi. In this meeting there were people...
PUBLIC PROSECUTOR - I didn't hear, "whose leader," what's that?
DEFENDANT ARMANNA - The leadership, I mean the leader.
PUBLIC PROSECUTOR - Ah, leadership, I understand, excuse me.
DEFENDANT ARMANNA - And basically in this negotiation – which was in fact very hard – at a certain point he called me out and told me that I had to understand that half of his fees were intended for Alison-Madueke Diezani, Diezani Alison-Madueke. To the Petroleum Minister. He told me openly. But sincerely I saw it very much as bluster, because in negotiations if one has a relationship with the Minister of this type you pick up the phone and two seconds later my phone rings because the Minister has called Casula and Casula calls me. And instead...
PUBLIC PROSECUTOR - It didn't happen.
DEFENDANT ARMANNA - No. So the Minister would have had a hundred million reasons to call....
PUBLIC PROSECUTOR - But, sorry, at this point I have a very open question: these 200 million for Bisignani was too much. Who would it go to in the end, did you understand? DEFENDANT ARMANNA - All to Obi.
PUBLIC PROSECUTOR - All to Obi. DEFENDANT ARMANNA - Almost all to Obi. And Obi was obviously... Obi was obviously the intruder in the transaction.
PUBLIC PROSECUTOR - And since Obi was no one, who...
DEFENDANT ARMANNA - Exactly.
PUBLIC PROSECUTOR - And so, sorry if I allowed myself but you said so before, what's the next step that you have understood from all these events?
DEFENDANT ARMANNA - That Obi wasn't necessary in the transaction....
PUBLIC PROSECUTOR - but when 200 had to get paid to him, after the plan that you understood, if you understood, what was it? To whom would it go?
DEFENDANT ARMANNA - Except for a small percentage, which would have been around 20-30 million, something... 40 million to Di Nardo/Bisignani, the rest for Obi. Obi wasn't the real broker, Obi had been inserted into this operation by the Italians. And this is something that is demonstrated by the facts because when we removed him no one intervened on his behalf. But there was no need for official intervention, just informal intervention was enough. I would have been called by the Attorney General and the Attorney General could have said to me and Casula, "No, look, you can't dismiss him this way." For Obi...from a point of view of the negotiation Obi's contribution was valued, overvalued at 40 million. This was the value that Obi should have taken from this transaction. And this figure should have included all the remuneration of those who had supported him, meaning Bisignani and Di Nardo. I mean, Obi was removed from the process because he represented no one but the buyer himself.
PUBLIC PROSECUTOR - So basically the part that had to go... this part that from the beginning you were reprimanded for as "the part that had to go to the Italians...."
DEFENDANT ARMANNA - It went all the same but there was no need for Obi.
PUBLIC PROSECUTOR - No, let's reread this paragraph, which is rather, so apparent...it's a little eye-catching, let's say. "If all of this doesn't work out, the agreements between us and the Nigerians have to be redone, where we authorize the remittance of the entire amount to that bank in Lebanon. At the

same time our fees are being transferred to a new account in Lebanon, where we will do what has to be done."
DEFENDANT ARMANNA - Let's explain the difference. The difference in operations is totally different. First scenario: Falcioni received the full amount, 1.092 billion, withheld the fees and sent away the difference.
PUBLIC PROSECUTOR - Falcioni's fees?
DEFENDANT ARMANNA - The underlying contractual fees.
PUBLIC PROSECUTOR - Yes, the fees are money. How much did he keep?
DEFENDANT ARMANNA - So what I imagined to be, was something around 50 million.
PUBLIC PROSECUTOR - Why did you imagine this?
DEFENDANT ARMANNA - Because this was the figure that.... I mean, Falcioni wasn't added to these operations by Nigerians.
PUBLIC PROSECUTOR - No.
DEFENDANT ARMANNA - No. Falcioni is the financial substitute for Emeka Obi.
PUBLIC PROSECUTOR - In whose interest?
DEFENDANT ARMANNA - The Italians.
PUBLIC PROSECUTOR - And who are the Italians?
DEFENDANT ARMANNA - In this case I think they were directly Bisignani and Di Nardo. PUBLIC PROSECUTOR - For themselves or on behalf of others?
DEFENDANT ARMANNA - No, for themselves. 50 million for themselves, they're the expected fees...that were expected by Bisignani and Di Nardo, 20-30 million and the other 20 were going to someone else, who I can't imagine who it was. In the second case of the Lebanese, however, the scheme is totally different, because the money goes to an account of Malabu and then from there the fees have to be sent. Dan Etete is famous for not paying anyone. Absolutely no one. So the chances that these fees would come back were zero.
PUBLIC PROSECUTOR - Sorry, "our fees" aren't Falcioni's and his fees? DEFENDANT ARMANNA - No, they're Falcioni's and Bisignani's fees. And Falcioni knew the relationship between me and Bisignani.
PUBLIC PROSECUTOR - Did he also know of the relationship between Scaroni and Bisignani?
DEFENDANT ARMANNA - Yes, of course.
PUBLIC PROSECUTOR - Of course because you talked about it?
DEFENDANT ARMANNA - Yes, we talked about it. But these aren't fees for... they're Bisignani's and Di Nardo's fees.
PUBLIC PROSECUTOR - The ones he's talking about here.
DEFENDANT ARMANNA - Yes....
PUBLIC PROSECUTOR - But regarding this problem of the kickbacks, was it clearly said who they would go to? Did Descalzi say something? Please tell us.
DEFENDANT ARMANNA - Kickbacks on the Falcioni side?
PUBLIC PROSECUTOR - Yes, in this Petrol Service transaction, let's call it.
DEFENDANT ARMANNA - Regarding the Petrol Service transaction, essentially people were talking about Bisignani, Di Nardo and that's it, essentially.
PUBLIC PROSECUTOR - No, I wanted to understand the discussion that you had with Descalzi.
DEFENDANT ARMANNA - No, the real problem was something else, the problem was that since...
PUBLIC PROSECUTOR - Can you respond to the first question? Because if not we risk losing...
DEFENDANT ARMANNA - Yes, excuse me. Can you repeat it for me?
PUBLIC PROSECUTOR - My question was if during this meeting in London, with Descalzi, did you

speak in detail about this problem of kickbacks or part of this sum, and what did you say and what did Descalzi say? That's the question.
DEFENDANT ARMANNA - We spoke in detail because I pointed out that this was an excellent vehicle to generate slush funds, and so I said that we had to absolutely get rid of a vehicle of this type, beyond the fact that it was legally indefensible, it was clear that, with an ex post analysis, Petrol Service was being used to withhold part of the money that supposedly went to Dan Etete to make payments to someone else, and therefore Petrol Service was not only unacceptable from a contractual point of view, it was also unacceptable from the point of view of the logic of the legal transaction.
PUBLIC PROSECUTOR - Was there a discussion between yourselves about the possibility or otherwise of conducting this transaction with others?
DEFENDANT ARMANNA - Yes, yes, there was open talk about Rothschild, who was also a consultant during that period, and this was also done because if it had really been Mr. Scaroni, it was impossible to explain why Rothschild was not involved instead of Petrol Service. That is, simply an investment bank like Rothschild or Morgan Stanley or JP Morgan, or any other investment bank, is capable of handling significant fees and significant payments, compared to Petrol Service and BSI.
PUBLIC PROSECUTOR - But did you also discuss the possibility of doing everything with the Nigerians, including any kickbacks?
DEFENDANT ARMANNA - To be clear, this problem was...the types of kickbacks should be separated, the kickbacks to Italians, of which we had to...I had to start from the assumption that there were none, except for the part for Bisignani's and Di Nardo's finders' fees, they were kickbacks that we could manage outside of the OPL 245 transaction. On the other hand...the kickbacks for the Nigerians, there was never any doubt, even at the explicit admission of Dan Etete on several occasions, that he would handle everything: Adoke Bello, Alison-Madueke Diezani, the Nigerian president. He did not want Italians in the middle of the dealings between himself and the Nigerian institutions.
PUBLIC PROSECUTOR - Because in the transcript of April 27, 2016 you stated, about this meeting with Descalzi, "I told him that it would be much better to have the Nigerians do everything, including any kickbacks of money and not get ourselves involved directly."
DEFENDANT ARMANNA - Exactly.
PUBLIC PROSECUTOR - This is the meaning of your statement.
DEFENDANT ARMANNA - That is the meaning of it.
PUBLIC PROSECUTOR - Which you are clarifying for us today.
DEFENDANT ARMANNA - I separate the Italians from the Nigerians. The Nigerians were, from the start, excuse me for using the phrase, covered by Dan Etete, there was no need for any outside intervention, so the Italians were never certain that they would have to pay the Nigerians and they would never have allowed it. From the beginning, Dan Etete said, "there is no need for Emeka Obi because his relations with the Government are non-existent compared to mine," so the problem of why Dan Etete was not accepting Obi and Obi's value was because he saw no added value except for the fact that he would bring Eni in, which made it possible to have the money to be able to sell the block. Because the concept was that the block was unsellable. This was the biggest problem.
PUBLIC PROSECUTOR - Excuse me, a punctilious question: by Nigerians, do you mean individuals from the Nigerian government?
DEFENDANT ARMANNA - Those who legitimized the availability of the block.
PUBLIC PROSECUTOR - Fine. This is the discussion that you had with Descalzi, but you have still not said what Descalzi told you.
DEFENDANT ARMANNA - No, Descalzi told me that we could not allow there to be a vehicle that would suggest that slush funds were being created, and it was right that all this remained under the

Nigerian's responsibility, in a very dry way. So we did not need to know....
PUBLIC PROSECUTOR - Does all this mean the kickbacks?
DEFENDANT ARMANNA - Exactly.
DEFENDANT ARMANNA - No, I received confirmation that what Dan Etete had said in person was all true, namely essentially that the information that Victor was providing was that Dan Etete was not boasting when he said that he would take care of the Nigerian officials, the Nigerian ministers, and that more than half would go to them.
PRESIDING JUDGE - But you have not answered the question.
DEFENDANT ARMANNA - Then I have not understood it.
PRESIDING JUDGE - The question is whether Victor specified, even spoke about the recipient of this money.
DEFENDANT ARMANNA - Yes, he talked to me about the recipients of this....
PRESIDING JUDGE - This was the question.
DEFENDANT ARMANNA - Excuse me. He talked to me about the recipients of these funds and he openly told me that what he knew was that they were going to ministers of the Nigerian government. And this is definitely....
PUBLIC PROSECUTOR - Which ministers?
DEFENDANT ARMANNA - And this is definitely.... Adoke Bello, Diezani, and the President of the Republic.
PUBLIC PROSECUTOR - So these three people.
DEFENDANT ARMANNA - These three people.
PUBLIC PROSECUTOR - **No other names were mentioned.**
DEFENDANT ARMANNA - **No.**
PUBLIC PROSECUTOR - Just these three.
DEFENDANT ARMANNA - Just these three. And this **was confirmed directly by Dan Etete, because at the meeting that I had in Milan, and that I had in Paris with Akinmade, Dan Etete repeated that Obi was useless because he was taking care of all three...this is why I thought I had answered the question, excuse me.**
DEFENDANT ARMANNA - That was the clearest occasion, because during the course of that meeting, in which the discussion with Akinmade explicitly concerned Obi, therefore I do not understand how he can say that this is not the case, given that there is also an email from Akinmade to me, in which Akinmade tells me "The friends of the guy," who would be Obi, "already know that the offer is in Obi's hands and they do not understand why Obi is not delivering it." Therefore Akinmade knew very well about Obi, at that meeting with Dan Etete there was explicit talk of why Obi was useless from Dan Etete's point of view, and that he was too expensive for the figure that he was asking for, because it wasn't enough to cover it. Now, another silly thing, but Dan Etete's thinking was that covering political sponsors was natural, and therefore Obi was boasting in saying that he was covering them himself, it was an absolute falsehood in order to justify his 200 million. Therefore Obi did not deserve 200 million because the only thing that he had truly done was to bring Eni to invest money.
PUBLIC PROSECUTOR - But did Etete mention any specific names? Who did he have to reimburse?
DEFENDANT ARMANNA - He spoke unkindly of the Petroleum Minister, he spoke about the President and the Attorney General.
PUBLIC PROSECUTOR - Did he mention any figures?
DEFENDANT ARMANNA - He did not share the figures....
PUBLIC PROSECUTOR - Did he explain how the amount received was distributed overall?
DEFENDANT ARMANNA - No, he said that about 200 million of this was going to these people, without specifying the split amounts, however.

PUBLIC PROSECUTOR - So an overall figure. Still on this topic of the beneficiaries. Did you speak to Victor about this on other occasions...about people who could have taken money from this....
DEFENDANT ARMANNA - Yes, of course, we spoke to Victor, there were some people in lower positions who took more, namely, Senators, several people who had taken money from this transaction were discussed. PUBLIC PROSECUTOR - Can you say who? If you remember the names.
DEFENDANT ARMANNA - I honestly don't remember the names, the names are very....
PUBLIC PROSECUTOR - I object that you stated "I remember that...." It should be pointed out that this recollection came after the end of the deal in the winter of 2012, so a bit further back, "Victor mentioned some names to me: David Mark, President of the Senate at the time." DEFENDANT ARMANNA - Exactly.
PUBLIC PROSECUTOR - "A role that he held until 2015,"
DEFENDANT ARMANNA - Exactly.
PUBLIC PROSECUTOR - Do you remember this?
DEFENDANT ARMANNA - Yes, I can confirm this, certainly.
PUBLIC PROSECUTOR - Was anything specific said about this David Mark?
DEFENDANT ARMANNA - No, it was said that he was very close...he was an old ally of Dan Etete in the presidential elections, and it was him that defended him when Obasanjo had him arrested.
PUBLIC PROSECUTOR - That defended who?
DEFENDANT ARMANNA - Dan Etete. Not as an attorney, as a politician.
PUBLIC PROSECUTOR - Because Etete was arrested by Obasanjo?
DEFENDANT ARMANNA - Yes, he was arrested by Obasanjo, and he made...the thing that nobody has ever said until now is that Dan Etete's first allocation allocated two blocks to Malabu, and the agreement with Obasanjo was terminated because one of those blocks was revoked and assigned to Danjuma, I would not want to get it wrong. The other block was equivalent to 245, and it was used, but immediately. PUBLIC PROSECUTOR - Was it called 246, perhaps?
DEFENDANT ARMANNA - No.... I wouldn't like to say.
PUBLIC PROSECUTOR - Do you remember the names of the Senators who supposedly received the money? DEFENDANT ARMANNA - Look, right now...at this moment I am drawing a blank.
PUBLIC PROSECUTOR - Because in the questioning of July 13, 2016, on page 6, you stated "There was Senator Obiorah."
DEFENDANT ARMANNA - Obiorah, yes.
PUBLIC PROSECUTOR - What did he tell you about this Senator Obiorah?
DEFENDANT ARMANNA - That he was an important channel for Gusau.
PUBLIC PROSECUTOR - For Gusau.
DEFENDANT ARMANNA - Yes, and so he kept him on board. If you tell me the names, I will remember them, clearly.
PUBLIC PROSECUTOR - I can tell you the names that are in the record. Excuse me, but what does "he was an important channel for Gusau" mean?
DEFENDANT ARMANNA - He was someone who provided him with great political support, for example to bring proceedings to Shell to pay 500 million in compensation. In the various cases in which there was claw back action, there were various political figures who intervened in support of Dan Etete. When the block was revoked, Dan Etete made sure that the Nigerian House of Representatives sentenced Shell to pay 500 million dollars, which is an exceptional case.
PUBLIC PROSECUTOR - A parliament sentenced, what does that mean?
DEFENDANT ARMANNA - Yes, they made a....
PUBLIC PROSECUTOR - A recommendation.
DEFENDANT ARMANNA - They made a recommendation, yes. This is also in the....

PUBLIC PROSECUTOR - And excuse me, and what relationship did Senator Obiorah have with this affair? DEFENDANT ARMANNA - I — they are people who I never met, so I can tell you that they were used but not...if you ask me what Senator Obiorah's added value was, I do not see it.
PUBLIC PROSECUTOR - But Victor said to you that he was there.
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - And that there was....
DEFENDANT ARMANNA - Yes, but there were also other people, we are talking about roughly thirty people in total, 30-40 people.
PUBLIC PROSECUTOR - Do you remember the names of other ministers?
DEFENDANT ARMANNA - The name....
PUBLIC PROSECUTOR - Or ministerial figures?
DEFENDANT ARMANNA - No, the name of the Finance Minister, Finance of State, was mentioned, but nothing significant.
PUBLIC PROSECUTOR - Look, I will read this point directly to you because actually...you said "There was also the name of the Minister of Power, a young person whose name I don't remember right now." Do you remember that you said....
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - Because the Minister of Power, what does the Minister of Power do?
DEFENDANT ARMANNA - The Minister of Power was Emeka Obi's first sponsor. Practically, the Minister of Power enters the affair, he had no right to enter the affair concerning the license, but he enters the affair as a political sponsor of Emeka Obi, therefore he was one of the channels....
PUBLIC PROSECUTOR - Excuse me, how do you know this?
DEFENDANT ARMANNA - Because Emeka Obi explicitly boasted about it. He was a very young minister, very capable, according to what Emeka Obi said, and it was he who had helped Emeka Obi establish a whole series of relationships and with whom he had worked. Clearly Dan Etete has a very simple way of reasoning: if this was the sponsor that Obi had, he would intervene to take his sponsor away. That is, Emeka Obi essentially claimed all of Obi's political contacts, I mean, Dan Etete stole all of Obi's political contacts.
PUBLIC PROSECUTOR - To finish, do you remember anyone, from among these final beneficiaries, let's say, who was close to President Jonathan?
DEFENDANT ARMANNA - Yes, two quite famous twins, but I don't remember their names, who were the ones who monitored all of the business, from trading to imports, to electricity plants, and it was them who later, in the newspapers, appeared in Goodluck Jonathan's electoral campaign as beneficiaries of 100 and something million dollars from....
PUBLIC PROSECUTOR - From?
DEFENDANT ARMANNA - From Dan Etete. I thought....
PUBLIC PROSECUTOR - Then I have not understood this.
DEFENDANT ARMANNA - The newspapers reported....
PUBLIC PROSECUTOR - You are making reference to open sources at the moment.
DEFENDANT ARMANNA - Open sources, absolutely. It came out in the newspapers that, practically, these two brothers received, as a contribution to Goodluck Jonathan's electoral campaign, 100 million. Open sources, I will get them.

The judgment that Vincenzo Armanna's story is radically unreliable would make it unnecessary to dwell on the findings indicated by the Public Prosecutor about the fact that Etete allegedly divvied up the money with the government. In any case, for the sake of completeness of the analysis, it seems appropriate to investigate these four aspects in greater depth to underline that the alleged findings are also devoid of demonstrative effectiveness:

– The first point is "that – despite countless press releases and official positions –

it is clear from the proceedings that everyone in Eni knew that the money would go to Etete, convicted for money laundering and friend of the rulers who had then favored him in every way (reconfirming his 100% ownership of the license, extending the time for payment of the signature bonus).

The circumstance described is certainly true (everyone knew that the money would go to Etete), but it leads to a consequence that is not at all obvious, namely the subsequent sharing of the sums with the officials. That the recipient of the money was Etete is so obvious that the two initial offers formulated by Eni were expressly addressed to Malabu, and even one of the three Resolution Agreements involved the formal participation of the company of the former Petroleum Minister. In view of these elements, it is clear that the positions taken in press releases correspond to a question of image that cannot, however, be exploited as evidence in criminal proceedings. Coming to the logical implication that the Public Prosecutor derives from the awareness about the fact that Etete was the recipient of the money – that is, that the money would then be automatically shared with friendly government officials – it is worth noting that the actions indicated as favoritism received by the former Minister are both non-existent. After all, the confirmation of 100% of the license is a measure adopted by the Obasanjo government, while the act of July 2, 2010 assumes mere recognition of a term that was also established in the original reallocation.

- The second point is that "in the Shell documents that describe the interactions between the two companies to establish how much to pay, repeated reference is made to the 'expectations about the profits that Malabu is to receive and the political contributions that will derive from this', or the 'payment to Etete that is acceptable to all the players in Abuja.'"

The expressions referred to are actually contained in the documents mentioned, but it has already been explained that a correct interpretative approach makes it possible to exclude that they refer to the payment of bribes to Nigerian politicians.

- The third point is "logical. Through Obi, and even during a direct meeting that took place after Etete's night-time meeting in Milan, Casula knew that the Attorney General was working hard to get money (tens of millions) for the broker Obi. This behavior of the AG can only be explained in the context of a corrupt negotiation or at least cannot be explained in the context of a normal commercial negotiation.

The circumstance indicated does not seem material or relevant with respect to the attempt to offer a response to Armanna's statements about the awareness of the payment of bribes to the politicians. Moreover, the information provided – i.e., that Casula allegedly learned from Obi of an intervention by the Attorney General to guarantee the fees to the Nigerian broker – is in logical contrast with the prosecutor's reconstruction that sees Obi as unpopular with the public officials and as a collector of kickbacks for Italians, including Roberto Casula himself.

- The fourth point "is also logical (but only partly so), and it is that Emeka Obi, according to the documentary evidence, met in different situations (and at different times) with Casula and Descalzi for over a year to discuss OPL 245 and did not make any secret of his relations in Nigerian political circles."

The numerous meetings between Obi, Descalzi, and Casula are explained both by the amenable attitude that Eni executives had towards the Nigerian businessman due to his proximity to Luigi Bisignani, and because in any case Eni had signed a confidentiality agreement that had constantly been violated since October 30, 2010. With this in mind, it does not seem unusual to try to maintain good relations with a counterpart who could well have filed a lawsuit, thus creating further problems in an already very complex negotiation. Moreover, the "relations in Nigerian political circles" referred to by the Public

Prosecutor proved to be of little significance if it is true – as repeatedly argued – that all the Nigerians demanded the exclusion of Obi from the negotiation and that his remuneration would be paid only by the Italians.

10.3.2.2.2 The money racket

The second of the subjects for which the Public Prosecutor considers it necessary to seek confirmation concerns the Eni executives' awareness "that almost half a billion of the money paid by Eni and Shell – through the 'pipeline' constituted by the Government's escrow account – was exchanged in cash and then distributed in many tranches of various amounts by Alhaji Abubaker Aliyu, the man who sat next to Attorney General in the November 2011 meetings. No one in Eni admits to knowing that Gusau and Bature still handled cash from OPL245 parked at the Bureau de Change 313 in 2014. Adoke received from Aliyu, without spending a penny, an immense piece of land – plot 3271 – in a very central area of Abuja. That Bajo Oyo received from Etete, shortly after the arrival of the money in Nigeria, on 12.28.2011 the considerable sum of $10,026,280."

The statements to be corroborated would be those of July 17 2019:

PUBLIC PROSECUTOR: "did you talk to Pujatti about this payment of 1.092 billion to BSI Lugano Petrol Service?

DEFENDANT ARMANNA - Absolutely, both with Pujatti and Giorgio Vicini. I was informed.

Moreover, according to Armanna, even Descalzi had been informed about Falcioni's role and the fact that the money had been sent to Switzerland:

Armanna: "I told you, if you remember, that they were replicating the Obi scheme. Except they were totally replicating it outside of the thing. We went for a smoke and I told you I didn't know you smoked. Descalzi - I don't know if I was smoking or not. I was smoking, yeah. Then I quit. But something like that, I would have.... Look, Vincenzo, I would have remembered. I know you did everything in the spirit of safeguarding...but I would have remembered, because I would have intervened. You can't help but intervene in something like that.

According to the Public Prosecutor, there were at least two confirmations of the fact that at Eni the people who were following the deal knew that a problem had arisen with the money that had been transferred to the Federal Government account.

The first confirmation allegedly comes from Giorgio Vicini's statements about a meeting with JP Morgan official Bayo Osolake at NAOC in Nigeria[739]: "I tried to organize for them a meeting with the department in question, which was the finance department, for possible new activities. Bayo Osolake at that point, but in a corridor, in other words, unofficially, told me that there had been a problem...some issue related to the federal government account.... He literally told me 'some issues'...."

And later on in the deposition: "this matter that Osolake Bayo told you, 'there are some issues with the FGN account,' did you tell any of your superiors?

Witness Vicini - If I remember correctly I transferred it. I told...but there again, it was a very general matter, I told Pagano, rather than...but there now I don't remember exactly, to Pujatti.

Public Prosecutor - Excuse me, 'rather than' means one or the other or both together. Witness Vicini - No, not together, but to both.

The second confirmation is allegedly in an email sent on June 22, 2011 by German Burmeister to Guus Klusener, Nike Olafimah, Peter Robinson and others: Attention. I just spoke to Giorgio. GMD called Ciro for a meeting today to discuss 245. Both Ciro and Giorgio are out of Abuja today. GMD did not specify the purpose of the meeting. Eni confirmed that the money is still in the escrow account of the Federal Government of Nigeria. Eni's position is that officially they know nothing about it and that

[739] Transcripts of the hearing on 11.20.2019, page 70

what happens between FGN and Malabu is not their business.
It is surprising that Armanna's statements are even taken into consideration with respect to that phase of the affair – i.e., the movement of moneys following the resolution agreement – which he himself is strongly implicated in and with respect to which he has provided testimony that the same Public Prosecutor considers to be grossly false. In any case, according to the proceedings the only certain fact is that Giorgio Vicini had generically and casually learned – during a conversation in the hall – that the Nigerian government had had problems with the management of the money. Nonetheless, it does not appear that the issue was ever discussed to any extent by the negotiating team or that someone deemed it necessary to intervene to resolve the situation. On the contrary, what is evident is the will of the company not to get involved in the subsequent movements of the money that were arranged directly by the top officials of the Nigerian administration and over which it had – and could not have – any control.

10.3.3 The evidence against Vincenzo Armanna's statements: the witnesses

It is now time to address some aspects of Vincenzo Armanna's story that have been contradicted by statements made in the hearings.
I Three points that will be discussed are so central that the first two were included in the charge. More specifically, these are facts that the defendant testified that he had learned from a certain Victor Nwafor, head of security at the official residence of the President of the Nigerian Republic. This information was then conveyed in the presence of AISE official Salvatore Casti Retti, who allegedly participated in the discussions with the Nigerian official.
II The reference concerns the following circumstances:

- Those 400 million dollars were allegedly earmarked for the payment of public officials.
- That huge trolleys containing 50 million dollars for Italian managers had allegedly been delivered to Roberto Casula's house.
- That the transfer of the money to the BSI in Lugano was allegedly sabotaged to avoid creating suspicions about Paolo Scaroni's position.

Below are excerpts from Armanna's statement on the aforementioned facts.

- <u>On the payment of bribes to public officials</u>:

DEFENDANT ARMANNA - Practically, about 400 million dollars was almost immediately withdrawn using the typical Nigerian tricks, which are bureaux de change and other cash withdrawals.
PUBLIC PROSECUTOR - Therefore, in any case, you found out more or less at the time of the events.
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - Who told you? Something rather....
DEFENDANT ARMANNA - Victor from the SSS.
[-]
PRESIDING JUDGE - The question is whether Victor specified, even spoke about the recipient of this money.
DEFENDANT ARMANNA - Yes, he talked to me about the recipients of this....
PRESIDING JUDGE - This was the question.
DEFENDANT ARMANNA - Excuse me. He talked to me about the recipients of these funds and he openly told me that what he knew was that they were going to ministers of the Nigerian government. And this is definitely....
PUBLIC PROSECUTOR - Which ministers?
DEFENDANT ARMANNA - And this is definitely.... Adoke Bello, Diezani, and the President of the

Republic.
[...]
PUBLIC PROSECUTOR - So an overall figure. Still on this topic of the beneficiaries. Did you speak to Victor about this on other occasions...about people who could have taken money from this....
DEFENDANT ARMANNA - Yes, of course, we spoke to Victor, there were some people in lower positions who took more, namely, Senators, several people who had taken money from this transaction were discussed.

- On the delivery of trolleys to Roberto Casula's home:

PUBLIC PROSECUTOR - And so what did you discover then?
DEFENDANT ARMANNA - Then people continued to say that 50 million dollars was going directly to the Italians.
PUBLIC PROSECUTOR - When you say "people continued," you should, if you can...tell us who said it.
DEFENDANT ARMANNA - Yes, essentially I had very close contact with Victor Nwafor, no only with him but essentially with him, and we were monitoring the entire development of what happened afterwards, also to try to minimize any risks for the company and the Italians themselves.
PUBLIC PROSECUTOR - By Victor Nwafor, do you mean the head of the security services for the presidential villa.
DEFENDANT ARMANNA - Absolutely.
PUBLIC PROSECUTOR - Please.
DEFENDANT ARMANNA - That is, his rank is at least colonel, so he is not a bodyguard. We were talking about these exchanges, in the presence of these conversations, I repeat, there was an official from AISE [the Italian Information and Foreign Security Agency], and with regard to all these comments we were trying...we were trying to get confirmation or otherwise of all this information: I will give an example, if we had known that the plane would go, as Victor Nwafor was saying, directly to Europe, then we would have been able to track it easily with a flight plan.
PUBLIC PROSECUTOR - Which plane, excuse me?
DEFENDANT ARMANNA - A plane that the cash was loaded on. And instead....
PUBLIC PROSECUTOR - How much money and for whom?
DEFENDANT ARMANNA - 50 million dollars delivered to Roberto Casula's villa. I did not attend this handover, I was told about it, and it was not disclosed just to me but it was also disclosed to the AISE official, and there was a colonel from Mossad with us. We checked whether there was an Eni plane, there was no Eni plane.
PUBLIC PROSECUTOR - Yes, excuse me, excuse the suggestiveness but it is just to understand. Please. What did he tell you, in detail? Essentially, about this transport.
DEFENDANT ARMANNA - In detail, he spoke about two trolleys, which were being loaded from a car and were brought to Casula's villa. Over and above the details, he showed some photos of people unloading trolleys, many of us saw these photos, we weren't able to see what was inside the trolleys. The trolleys were very big, in that to call it a trolley, it was not a hand luggage trolley, it was a trolley that was more or less this high and this wide.

- On the alleged intervention with BSI in Lugano to block the bank transfer:

DEFENDANT ARMANNA - No, I have them here because I tagged them. Another important thing: my intervention was a bit borderline in this action because as Eni we no longer had control over the money, because it had already left our account, and had arrived in the government's account.
PUBLIC PROSECUTOR - Nigerian.
DEFENDANT ARMANNA - Nigerian, sorry. All the interventions that we could do afterwards were

certainly questionable interventions. I mean, I won't get into it, certainly someone, in this case Petrol Service, could have sued, Malabu could have sued us, but it was an operation to create an embarrassment in the receiving bank so that it would be sent back. Otherwise they would have received it just as the Lebanese bank would have received it.
PUBLIC PROSECUTOR - But how was this embarrassment created?
DEFENDANT ARMANNA - Anonymous emails, “Paolo Scaroni's bribe is coming.”
PUBLIC PROSECUTOR - You sent such an email to....
DEFENDANT ARMANNA - Not me.
PUBLIC PROSECUTOR - Not you.
DEFENDANT ARMANNA - No.
PUBLIC PROSECUTOR - Someone else?
DEFENDANT ARMANNA - Yes.
PUBLIC PROSECUTOR - Can you tell us the name?
DEFENDANT ARMANNA - Yes, it was Victor Nwafor.
These transcripts show that Victor Nwafor was the source of almost all the information and that the AISE official Castilletti attended many of the meetings.
Well, at the hearing on January 23, 2019, Victor Nwafor was heard as a witness for the Public Prosecutor and the Armanna defense. The person connected by videoconference from Nigeria confirmed his personal information and declared that he had served at the security services of the Presidential Villa, but not with any position of responsibility. Questioned about his relations with Vincenzo Armanna, he said he had never met the Italian manager.

PUBLIC PROSECUTOR - I wanted to know if he currently works for the State Security Service or if he's retired.
INTERPRETER - "Retired."
PUBLIC PROSECUTOR - Retired how long?
INTERPRETER - “End of March 2018."
PUBLIC PROSECUTOR - How long was he a member of the State Security Service?
INTERPRETER - “35 years."
PUBLIC PROSECUTOR - He worked in this role at the Presidential Villa?
INTERPRETER - From March 28, 2010.
PUBLIC PROSECUTOR - And what functions did he perform? He was a bodyguard, what exactly did he do?
INTERPRETER - He was a bodyguard of the President.
PUBLIC PROSECUTOR - How many bodyguards did the president have?
INTERPRETER - At that time he had about 100.
PUBLIC PROSECUTOR - But was he the head of these bodyguards or was he just one of many?
INTERPRETER - “No, I worked with the President but I was absolutely not the head of the bodyguards.
PUBLIC PROSECUTOR - Was there someone in charge of the bodyguards? And what was his name? The first should be Gordon Obua (phonetic), can you ask?
INTERPRETER - Yes, and he was essentially the President's head of security.
PUBLIC PROSECUTOR - He was the chief security officer?
INTERPRETER - Yes, chief security officer for the president.
PUBLIC PROSECUTOR - Does he know if this person still works for the SSS, if he's retired?
INTERPRETER - He's not in the...he's dead, he died.
PUBLIC PROSECUTOR - So he died. Another thing, was there another person in the State Security

Service named Victor?
INTERPRETER - Yes, he remembers a person but he doesn't know if he was in the bodyguards corps or....
PUBLIC PROSECUTOR - Obodaghe (phonetic).
INTERPRETER - There is a certain Victor Obodaie (phonetic) who was a bodyguard.
PUBLIC PROSECUTOR - Victor Obodaghe, Obodaie, Obodaghe.... Okay, you met, while working at the Presidential Villa, you met people from the Eni company or the NAE company, Nigerian Agip Exploration.
INTERPRETER - No.
PUBLIC PROSECUTOR - Did you deal with many Italians when you worked at the Presidential Villa?
INTERPRETER - The Presidential Villa is still a public institution, it is certainly a public institution so he saw the comings and goings and the presence, the traffic of many people from both Italy and America.
PUBLIC PROSECUTOR - Have you ever known a person named Vincenzo Armanna?
INTERPRETER - No.
PUBLIC PROSECUTOR - Have you ever known a person named Dan Etete?
INTERPRETER - No.
PUBLIC PROSECUTOR - Do you know who Dan Etete is in Nigeria?
INTERPRETER - At the time Dan Etete was the petroleum minister in Nigeria.
PUBLIC PROSECUTOR - Have you ever known a gentleman named Roberto Casula?
INTERPRETER - No.

Victor Nwafor was then excused and the hearings continued until July 17, 2010 without looking into the matter any further. During his examination, Vincenzo Armanna then claimed to have seen an image of the man who had presented himself as Victor Nwafor and stated that he immediately realized that he was not the person with whom he had had relations in Nigeria.

PUBLIC PROSECUTOR - Of Victor Nwafor. This is a chapter that's perhaps best clarified at this point, because this person who has this name...let's start from the beginning. Who is Victor Nwafor? Apart from the discussions you've had with him, who is he?
DEFENDANT ARMANNA - He's the head of the SSS security services of the President of the Nigerian Republic.

PUBLIC PROSECUTOR - Is or was?
DEFENDANT ARMANNA - Was, at the time. Not the person you interrogated here.
PUBLIC PROSECUTOR - Excuse me, how do you know?
DEFENDANT ARMANNA - Because I saw the photo.
PUBLIC PROSECUTOR - Where did you see it?
DEFENDANT ARMANNA - In a message, they sent me the picture and I wrote....
PUBLIC PROSECUTOR - The photo of the video conference?
DEFENDANT ARMANNA - Yes, and I wrote, “No, it's not him at all.”

He then explained that the identification of the wrong person might have depended on the fact that, possibly, the man who had presented himself as Victor Nwafor might have actually been someone else:

many times, when you go to sensitive dinners or sensitive meetings you never give your real

information, you try to avoid.... Those who are in front of you know who we're, what our various roles are, but it's not objective information.... I never gave my ID and he never gave me his ID. But attention, this person we met with Roberto Casula, with Salvatore Castilletti of AISE, with Ciro Pagano. I mean, it's not a person who was only with us on this operation, he's a person who was with us on many operations.

The defendant's examination continued with other questions on the merits of the case and ended with Armanna's commitment to try to contact "the true Victor."
At the hearing on November 20, 2019 it was announced that the defendant had been able to identify Isaac Eke as the senior Nigerian officer who had presented himself to him under the false name Victor Nwafor and who had been the source of much of the sensitive information reported.
The Public Prosecutor then requested that the person be heard as a hearsay witness pursuant to art. 195 of the Italian Code of Criminal Procedure, and in support of the request produced two emails received the previous day from the address ekeisaac72@gmail.com, enclosing a letter signed by Isaac Chinonyerem Eke and a photocopy of the cover page of the passport of the same person, with a certificate of authenticity produced by the Nigerian lawyer.
In the letter Isaac Eke represented that he had been called to testify by Armanna with regard to their relations and reported that he had met the Italian manager in 2009, introducing himself with the name Victor Nawfor:

I was asked by Mr. Armanna to come and testify at the trial being held in Milan on the relations between me and Mr. Armanna in the period from 2009 to 2016. I have only recently been able to respond to this request. I was introduced to Mr. Armanna by an American friend in common during a dinner in at the end of 2009. I was introduced as Victor Nawfor. Armanna was introduced to me as the "main contact person" for Agip.
At the hearing on January 29, 2020 Isaac Chinonyerem Eke presented himself as a former Nigerian police officer and said he had never worked at the State Security Service, nor had he ever served at the Presidential Villa in Abuja or had relations with the security corps thereof. He also reported having met Armanna only twice: the first time in 2014 thanks to his mutual friend Timi Aya, and the second time in 2015, again with Aya. Under no circumstances, however, did he present himself to Armanna under the name Victor Nwafor.
In response to a specific question on the point, he clarified that the letter sent on November 19 to the Milan Public Prosecutor's office had been written by Timi Aya, who had asked him to sign it, reassuring him that the letter would be used privately. Finally, in response to a question from the civil party, he denied that he had ever met managers or representatives of Eni or its subsidiaries.
PUBLIC PROSECUTOR - During this time you worked at the Presidential Villa, the residence of the President of Nigeria, known as Aso Rock?
INTERPRETER - "Not at all, I never had any contact with Aso Rock Villa, I was performing my duties as a police officer, nothing else.
PUBLIC PROSECUTOR - In what sense did you perform your duties? In any case you worked with the security at the Presidential Villa?
INTERPRETER - "Not at all."
PUBLIC PROSECUTOR - Have you met Mr. Armanna, who is here?
INTERPRETER - "I met him briefly twice through a friend of mine, Timy Aya."
[…]
PUBLIC PROSECUTOR - But you were introduced to Armanna by a mutual friend? And on that

occasion he said his name was Victor Nwafor?
INTERPRETER - “Never.”
[…]
CIVIL PARTY, ATTORNEY LUCIA - So let's go back then if you've met, if you've met managers of Eni or Agip, because the name of the company...or in any case managers of the oil industries, Eni and Agip interests me in particular.
INTERPRETER - “Not at all.”
CIVIL PARTY, ATTORNEY LUCIA - You never....
INTERPRETER - “No, never.”
The epilogue of the incident involving the witness Victor Nwafor/Isaak Eke requires some conclusions to be drawn. The Public Prosecutor downplayed the incident by claiming that what happened “signals the difficulty of dealing with people who gravitate in intelligence, all the more so in a context such as the Nigerian one known at the moment to be characterized by a harsh dialectic between some institutions, such as the DSS and the EFCC.”
In the opinion of the Court, however, the events presented confirm the incredible dishonesty with which Vincenzo Armanna uses the tools of justice for his personal purposes, to the point of orchestrating an impressive vortex of falsehoods that in the end he himself could not control.
The statements made during the examination about the non-correspondence of the man identified as Victor Nwafor as the source of his information had already revealed macroscopic elements of implausibility. Suffice it to say that the defendant claimed to have seen a photo of the man being heard in court and to have immediately noticed that it was not the person he knew. However, such a reconstruction is implausible for anyone who heard Victor Nwafor's testimony. In fact, the witness was heard via videoconference and the images were broadcast on the monitors in the courtroom. The quality of the images coming from Nigeria was quite poor and the camera was not close to those who spoke. Moreover, the unidentified person who allegedly took the picture in the courtroom allegedly acted quickly and secretly, since the pictures had not been authorized and no one noticed a cell phone pointed at the monitors. Finally, Vincenzo Armanna's defense counsel was present at that hearing and at all subsequent hearings and never suggested the disavowal of his client.

In any case, while the new evidence presented by Armanna appeared anomalous on its face, Isaak Eke's request for a hearing was accepted in order to ensure the parties the broadest right to prove the facts brought to trial. However, the outcome of the further investigation was the embarrassing hearing of a man who had come from Nigeria to deny the contents of a letter that he himself had signed just a few days earlier.
A not dissimilar probative result led to the hearing of Salvatore Castilletti, the AISE official who was supposed to confirm most of Vincenzo Armanna's statements.
While admitting to having met both Armanna and Casula during his time in Nigeria, Salvatore Castilletti denied having ever dealt with the acquisition of block 245 as part of his official duties or otherwise. He then denied that he had ever talked to Vincenzo Armanna or heard of a movement of money that concerned the OPL245 deal, and also denied having met Victor Nwafor. Finally, regarding the appointment of Falcioni as honorary vice-consul, he reported that he was not aware of any role of Eni in the procedure and that he limited himself to dealing with information for AISE.
DEFENSE ATTORNEY ALLEVA - Thank you. Now I'm going to ask you a few questions about something a little different. Have you ever known a gentleman who answers to the name Victor Nwafor?
WITNESS CASTILLETTI - I don't know him.
DEFENSE ATTORNEY ALLEVA - Do you know anything about the operation called OPL 245?
WITNESS CASTILLETTI - I've read newspapers.”

[…]
PUBLIC PROSECUTOR - I'll ask you ad abundantiam, Judge, excuse me, but it could be...I mean the purpose, if necessary, is a request for discussion also on this point, then the Court will decide if this discussion can be useful. So you and Vincenzo Armanna never talked about moving the money that concerned the OPL 245 affair?
WITNESS CASTILLETTI - Absolutely not, I never knew about any kind of money or anything else of that kind."

10.3 The fractionated assessment of the statements

Aside from the above considerations, the Public Prosecutor agrees that the defendant made false statements with regard to his involvement in the Petrol Service affair. However, the prosecution maintains that such falsehoods do not prevent a positive assessment of the other statements made because they are precise and consistent, given that they "follow the course of events with precision and concrete recollection of the facts of those who experienced the story in person."
The argument of the Public Prosecutor is clearly no longer current in light of the arguments above about the general falsity of Armanna's deposition. The reasoning proposed would in any case be unfounded in law because it employs the principle of severability in contrast with the necessary canon of the independence of declarations, which must not concern related matters.[740] In this case, on the other hand, the connection is evident, all the more so if we look at it from the prosecution's point of view, considering that the Public Prosecutor's office infers a serious circumstantial value to the participation in the agreements on private fees, renamed kickbacks, because it places agreements on fees between private individuals within broader illegal agreements with public officials.
It must also be noted that Armanna's assessments of participation in unlawful arrangements, even in the minor form of conscious complicity in unlawful arrangements with others, are expressed solely on the basis of the defendant's confessional hearsay, which have not only been denied by direct sources but are also intrinsically unreliable because they are generic and contradictory.

10.4 Conclusions

The radical unreliability of Armanna's statements makes it possible to exclude all but his denied participation in the agreements with Bayo Ojo and Falcioni, in the phase related to the attempt of the Nigerian government to pay Malabu the agreed price for the waiver of the legitimate rights to the OPL 245 license. Paradoxically, the only truth that can be reconstructed regarding Armanna's position with respect to agreements other than the lawful accords that fell within his duties as project leader of operation OPL 245 is the one specified above.
However, the private participation in these agreements parallel to those between the oil companies and Malabu does not represent direct evidence of the participation of public officials in the corrupt arrangements. In fact, as seen, the arrangements that Armanna participated in were agreements between private individuals (Bayo Ojo at the time did not hold any public office) aimed at organizing the payment to Malabu through another company, already the subject of the notes drawn up in January 2010 by the consultants of Etete, Granier De Ferre, Obi and Agaev, in the period prior to the assumption of public office by the public officials who are charged with taking bribes in these proceedings.
Indeed, the prosecution rightly states that Falcioni, together with the never-investigated partners Fiotti and Bianchi, replaced Obi in the task of facilitating the payment to Malabu, having correctly foreseen the reputational problems that the hidden partner Etete would pose to the banking system, as in fact happened.

---

[740] Among many, lastly: First Division, Judgment no. 7792 of 12.16.2020. In the matter of assessing evidence, based on the principle of the severability of statements the trial judge may well consider only a part of the confession made by the defendant to be true and at the same time disregard other parts if the circumstances of the two parts do not interfere with each other logically and factually (in the case in question, the justification of a confessed murder in terms of self-defense), and provided that the choice be adequately justified.

The agreements also had the function of guaranteeing the payment of commissions to the private intermediaries who had agreed on fees with Etete, notorious for not respecting agreements, as demonstrated by the lawsuits brought by Obi and Agaev.

The Court agrees with the prosecution that there is serious convergent evidence regarding Armanna's participation in these agreements, first of all the compensation of over a million dollars received from Bayo Ojo. However, even taking into account the criteria for assessing circumstantial evidence, from this reconstruction it is not possible to infer the further deduction of his participation in other corrupt arrangements aimed at remunerating public officials.

10.5 The subjective extension of Armanna's accusatory statements

Armanna's generic and therefore insufficient – from a legal point of view – knowledge is then extended to all the other Eni employee defendants based on two other passages with a logical leap that cannot be accepted.

Various arguments are linked together in the prosecution's case, improperly overlapping the widespread knowledge of Etete's personal relationships with public officials and the knowledge of an unlawful arrangement that could certainly have been facilitated by familiarity with the actors involved, but that cannot be proven solely on the basis of previous relationships that, as we have seen, can represent weak circumstantial evidence for a variety of possible scenarios.

Below are the logical passages presented by the prosecution in its closing brief.

The previous simple professional relationship between Etete and Adoke:

Yes, we knew...Casula, Descalzi, me, Pagano, Vicini, everyone.

PUBLIC PROSECUTOR - Sorry, how can you say that?

Because we talked about it. In fact, for us the fact of Adoke's relationship with Dan Etete was also a problem, because for us it was a problem that Adoke had been Dan Etete's attorney, a serious problem. From a procedural point of view, Adoke's intervention was also outside normal Nigerian practice.

The well-known greed of Petroleum Minister Diezani Madueke:

Descalzi knew that Diezani had a bad reputation, that during his meeting with Armanna, he used circumlocution (“We didn’t want to see the Minister...remember that we did not want to see her, why was it better to stay away?") that finally Armanna summarizes, not denied: “She was a little voracious” (questioning, page 16). That Diezani had been an assistant to Etete was known to Scaroni's trusted advisor, Luigi Bisignani.

In conclusion, the brief tries to prove the extension of Armanna's indirect knowledge of the corrupt arrangements to the fact that the other Eni executives were also aware of the previous professional relations between Etete and Adoke and the voracity of the Petroleum Minister. In reality, all were also aware – because it was noted in the Trag report – of the close relationship between Etete and the President of Nigeria, but this does not diminish the obvious logical leap of the deduction.

CHAPTER 11
GIANFRANCO FALCIONI

11.1 Charge

• accepting the task, during the concluding phase of the transaction, of distributing the money paid by Eni for the OPL 245 license and, for that purpose, incorporating the company Petrol Service and opening bank account A209798 in the name of Petrol Service CO.LP at BSI Lugano, to which $ 1,092,040,000 was wired on 5.31.2011 (which was returned a few days later by the BSI bank of Lugano to JP Morgan Chase of London for "compliance" reasons);

• maintaining contacts and entering into written agreements with Bajo Oyo to kick back a portion ($50 million) of the amount paid by Eni, and informing Armanna of the existing relationships with Bajo Oyo;

From the reading of the specific charges against the defendant Falcioni, reference is missing – even only in the attenuated form of awareness – to any participation in the corrupt arrangements with the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello, only Bajo Oyo being cited, who had no public power at the time of the facts in question (2009-2011). As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants, the tenor of the charge leads one to believe that everyone is under accusation for their direct participation in the corrupt arrangements (it having been agreed), while the interpretation more in line with the letter of the specific charge relating to the position of the defendant Falcioni leads one to believe that the function of intermediary at the stage of payment of the bribe is under accusation, being aware of the unlawful arrangements between Etete and public officials.

The discussion does not help to solve these problems, given the brief statements dedicated to this position in the final brief that is reproduced in full to highlight that the prosecution derives evidence of Falcioni's direct participation in the illegal arrangements exclusively from his participation in the accords with Bayo Ojo in the phase relating to the government's attempts to pay the company Malabu, through Petrol Service. However, with regard to the evidentiary value of participation in these agreements, we have already had the opportunity to argue with respect to the position of the defendant Armanna, the conclusions of which are reproduced here because they are even more applicable to the position of the defendant Falcioni, since for this defendant there is no element – not even circumstantial – of his awareness of participating in precise corrupt arrangements. On the contrary, as evidenced by the defense, in the email that Falcioni wrote to Armanna on June 9, 2011 to inform him that the BSI had refused to transfer the funds because they were intended for the previously convicted Etete, he concludes with a sentence that highlights Falcioni's good faith, complaining that he was not duly informed of the problems underlying the operation.

His participation in the agreements could constitute a culpable liability for negligence and recklessness,[741] thus leaving us with mere conjecture on the fact that Falcioni had sensed that there were generic unlawful arrangements underlying a bank transaction that was certainly not transparent.

It has already been shown that the case law of the supreme court has found that such generic awareness does not constitute the knowledge aspect of the subjective element even for the most mitigated form

[741] See email June 19, 2011: "as you see, the problems that no one told us about were many."

of indirect intent, especially in the case of the crime of bribery, given the already argued and acceptable legal theory[742] on the insufficiency of participation in the executive phase of the illegal arrangements in the context of a crime characterized by the conduct typical of an illegal arrangement between a private individual and a public official.
The radical unreliability of Armanna's statements makes it possible to only assess his participation in the agreements with Bayo Ojo relative to the payment of fees to private individuals in the phase related to the attempt of the Nigerian government to pay the Malabu company the price agreed with Malabu itself for the waiver of the legitimate rights to the OPL 245 license. The participation in a private capacity in these agreements parallel to those between the oil and gas companies and Malabu does not represent direct evidence of participation in the corrupt arrangements of the public officials, as these were agreements between private individuals (Bayo Ojo at the time did not hold any public office), as already highlighted, aimed at carrying out the project of paying Malabu through another company, a project that had first been drawn up in January 2010 by Etete's consultants Granier de Ferre, Obi and Agaev, in the period prior to the assumption of public office by the public officials who are charged with the corruption that is the subject of this trial.
Indeed, the prosecution rightly states that Falcioni replaced Obi in the task of facilitating the payment to Malabu, having correctly foreseen the reputational problems that the hidden partner Etete would pose to the banking system, as in fact happened.
The agreements also had the function of guaranteeing the payment of commissions to the private intermediaries who had agreed on fees with Etete, notorious for not respecting agreements, as demonstrated by the lawsuits brought by Obi and Agaev. In this regard, we underscore the contradictory nature of the following argumentative passage of the closing statement where the prosecution first excludes any lawful function of the legal transaction stipulated by Falcioni, and then concludes by admitting the function of conveying private commissions deriving from the agreed banking transaction: Once it was made clear that the money that Petrol Service would keep had no valid contractual motivation, the reference to “our fees” indicated in the email exchange between Falcioni and Armanna clearly demonstrates the nature of “kickback” of the sum in question: money that had to go to Falcioni and Armanna, at least.
The Court agrees with the prosecution that there is documentary evidence of Falcioni's participation in these agreements, in consideration of the contract and compensation agreed with Bayo Ojo. However, even taking into account the criteria for assessing circumstantial evidence, it is not possible to infer from participation in lawful agreements between private individuals the further deduction of one's participation in corrupt arrangements aimed at remunerating public officials, as also appears from the relative argumentative passage used by the prosecution, which literally states: On the Nigerian front, the documents acquired prove the existence of a contractual link with Etete and Bayo Ojo, which at least testifies to the latter's trust in him.
The results of the aforementioned documentary evidence are reproduced here to show, as noted by the public prosecutor, that they only demonstrate the existence of a fiduciary relationship that has the objective of creating a transit account aimed at the management of fee payments to Bajo Oyo, Armanna, Falcioni and his partners.
We have the documents sent by Petrol Service to BSI, prepared so that Malabu could receive the billion of compensation agreed with the Nigerian government, through Petrol Service.
The first document, dated December 1, 2010, is an agreement between Dan Etete and Bayo Ojo, the Attorney General who handled the agreement of November 30, 2006. This document is a mandate, [English in source text:] “Legal Advisory Mandate to Bayo Ojo", [Translation resumes:] signed by Etete and Bayo Ojo, under which Bayo Ojo was to receive $50 million for the consulting provided to

[742] See especially chapters 1 and 5.

Malabu in the event of the success of the OPL245 operation.
The second document, without a date, is an escrow agreement, which shows that the billion Malabu would receive would have passed through the account of Petrol Service, which, in exchange for compensation of $5 million, would have had to withhold another 45 million, to be distributed according to the instructions provided by Bayo Ojo. The third document is dated April 20, 2011 and contains the payment instructions given by Bayo Ojo to Petrol Service, “Final Payment Mandate Agreement.” Based on this document, Falcioni, as an escrow agent, would have kept the sum of $25 million and paid another 20 according to Bayo Ojo's instructions.
On June 19, after BSI's refusal to transfer the funds, Bayo Ojo sent Falcioni a new mandate dated June 20, 2011 with which the principal company Malabu instructs the agent Petrol Service to transfer, in place of BSI, to a Lebanese bank, and precisely Banque Misr Liban Sai, based in Via Riad E1 Solh Beirut, Lebanon, the sum of 1,000,092,000.00 that the government had allocated to Malabu for the waiver of the rights to the OPL 245 license. With the same agreement, Malabu agrees to provide all the necessary documents required for due diligence, as well as to compensate Petrol Service with $50 million.
The aforementioned documents do not show certain evidence of the involvement of Falcioni in any corrupt arrangement aimed at remunerating the public officials involved in the sale of the OPL 245 license that envisaged the payment of one billion dollars to compensate Malabu. Even Armanna, who says that there was widespread knowledge among Eni executives of the corrupt arrangements stipulated by Etete with the public officials, does not mention Falcioni among those who allegedly had generic knowledge of the matter, confusingly presented and analyzed in the previous chapter.
This agreement does not appear to have been entered into, and even this second transfer of funds to the Lebanese bank is not successful for the reasons already set out in the previous chapter 7, to which reference is made in its entirety, with obvious repercussions in terms of the complicit liability of the defendant Falcioni, lacking first of all in terms of causal contribution.
The documentary evidence presented shows Falcioni's awareness of participating in agreements aimed at transferring $50 million dollars to private individuals, first among them Bayo Ojo, who had carried out public functions in 2006 with regard to the reassignment of the license to the company Malabu, a matter that the prosecution considers to constitute a subsequent hypothesis of corruption. In this regard, we have already had the opportunity to explain the failure to contest the case because it dates back to agreements that may have been made in 2006, while the current case begins in 2009, and furthermore Bayo Ojo is indicated as an intermediary in the corruption of the public officials involved in the settlement agreements of April 29, 2011 and not as a necessary part of the corrupt arrangements concluded in 2006. In any case, these are corrupt arrangements committed exclusively in Nigeria and therefore beyond Italian jurisdiction.
Returning to the charge against Falcioni, as an intermediary of the corrupt arrangement between Etete and the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello, the arguments of the Public Prosecutor in the final report are reproduced here to highlight how the logical conclusion, without adequate evidentiary support, is taken for granted in an apodictic manner only by virtue of the assumption deriving from the fact that any agreement in Nigeria must necessarily involve the corruption of public officials, as testified by the former ambassador Giandomenico, whose generic statements, however, at most speak to an environment of graft but not bribery.

11.2 Concluding brief of the Public Prosecutor

Falcioni is the person who, acting through Petrol Service, lent himself to intermediating the kickbacks between Etete and the management of Eni, Armanna in the first place. In this sense, he must be held responsible for having actively participated in the agreements on the destination of the sum paid by NAE to Etete through the Nigerian government, to be divided between Etete himself, the public

officials who allowed the assignment and the Eni managers for their locupletative purposes.
Falcioni had important business relations with Eni in Nigeria: he had been a supplier of Eni through Alcon for some time and was responsible for the accommodation of Eni staff. Certainly he had debt-credit relationships for transactions worth several tens of millions of euros, which he discussed with Ciro Pagano, for example, right during the period when the role of Petrol Service was manifested. Therefore, it was natural that he was known to the leaders of Eni in Nigeria, who attended his residence on the occasion of some dinners and with whom he seemed to be familiar. With his appointment as Honorary Deputy Consul, regardless of Eni's role in his appointment, relations with Eni/NAE staff naturally continued on an institutional basis also.
On this basis, the inclusion of Petrol Service in the transaction sits within the context of already consolidated relationships with the Italian company.
On the Nigerian front, the documents acquired prove the existence of a contractual link with Etete and Bayo Ojo, which at least testifies to the latter's trust in him.
It has already been pointed out that a review of the chronology of the Petrol Service affair reveals the activity of this company vehicle essentially for the exclusive purpose of receiving the money from the Nigerian government:
Petrol Service was established in October 2010 (the request for the establishment of Marco Macchi in Exhibit 103) and the only documented activities are those aimed at obtaining the opening of a current account with BSI in Lugano, finally opened on March 22, 2011.
Falcioni had already agreed with Etete in December to send the entire consideration ($1,092.040.000) to Petrol Service accounts at BSI. These agreements are shared with the Nigerian government, since it is the Minister of Finance who transmits to JP Morgan London - where the government’s [English in source text:] escrow account [translation resumes:] was held - the payment instruction in favor of Petrol Service.
The return of money by BSI for compliance reasons made it necessary to find a new way to distribute the money: Falcioni, Armanna and Bayo discussed this in the emails. Ojo, who reported to Etete (remember the passage of Bayo Ojo's email: [English in source text:] “At a meeting now with Chief. Will call you back"). [Translation resumes:]
It is worth remembering again that at this stage, the plan to share part of the money paid by Eni and Shell is expressed on one occasion in a very explicit way in the communications between Falcioni and Armanna:
Another bank that we’re talking with and which is open to us is HSBC, which has promised to give us an answer by today. If none of this works out, the agreements between us and the Nigerians have to be redone, where we authorize the remittance of the entire amount to that bank in Lebanon. At the same time, our fees will be transferred to a new account in Lebanon, where we’ll then do what has to be done. Meanwhile, since it was no longer useful for this purpose, the closure of the account with BSI was requested on June 21. It then came to the solution that the entire consideration would be paid into Malabu's account in Lebanon and Malabu would commit to transfer $50 million to Petrol Service, onto another account opened with FBN in the United Kingdom.
Finally, the money was transferred to Malabu's accounts in Nigeria, net of more than 200 million seized as a result of Emeka Obi's action.
In October 2011, when the money had now been transferred to Nigeria, Falcioni gave instructions for the dissolution of Petrol Service, confirming that the company served exclusively to receive the money from OPL 245.
Once it was made clear that the money that Petrol Service would keep had no valid contractual motivation, the reference to “our fees” indicated in the email exchange between Falcioni and Armanna clearly demonstrates the nature of “kickback” of the sum in question: money that had to go to Falcioni and Armanna, at least.

So, Falcioni's liability is obligatorily determined:

- by the willingness to make available an ad hoc bank account (of a company established ad hoc) to hold the enormous fund for the bribery ($1,092,040,000);
- by the activity aimed at facilitating the kickback of sums of money, inter alia for its own benefit.

11.3 The discussion of Falcioni's defense

11.3.1 The appointment of Falcioni as honorary deputy consul

The defense criticized the prosecution's argument, defined as "fictional" because it was based on conjecture unsupported by evidence in the trial and derived from statements made by Armanna, who argued that the appointment of Falcioni as Vice Consul was completely piloted by Eni. In this regard, reference is made to the final brief of the defense which correctly includes the reliable statements of the witnesses Giandomenico and Castilletti, consistent with the documents deposited by the defense of the defendant. The prosecution itself, moreover, evocatively cites the circumstance,[743] but maintaining due distance because of the unreliability of the witness.

11.3.2 The constitution of Petrol Service

The defense's arguments aimed at refuting the accusation that Petrol Service was created in order to allow Etete to pay corrupt public officials appear to be acceptable, the thesis being based on the fact that Petrol Service was a shell company created for illicit reasons. The defense documented the need for Falcioni and his partners to replace the company Elencraft with the company Petrol Service. The due diligence and the opening report at BSI show that the Beneficial Owners were already known to the bank ("they are our customers"). The reference is to an internal transfer of funds from Helencraft that was in the process of being liquidated. The bank states that "customers inform us that the reason for the change is due to changes at the level of the shareholders (Piotti became a shareholder) and for tax optimization. The new Canadian company Petrol Service Co.LP. will take up the business and the banking operations of Helencraft." The defense points out that the witness Piotti specified that since April 22, 2010 it was prohibited in Nigeria to make use of a technical partner, as was Elencraft, due to the fact that the Nigerian Development Act privileged the Nigerian workforce, so it was necessary to replace Elencraft. Indeed, the defense refers to invoice no. 123/11 of 02.23.2011 issued by Emmgi Finanziaria to Petrol Service relating to the work of consulting, assistance and services to set up the company, open a bank account and related services. A note on the margin of the invoice reads "paid by Helencraft." Invoice 11-686 of 04.15.2011 issued by Harvard Business Services, Inc. to EMMGI Finanziaria for activities related to "Petrol Service Co. Ltd. L.P. - UPS - Proxies" also appears to have been paid by Helencraft according to a note in the margin. Invoice 11-295 of 02.17.2011, again issued by Harvard Business Services, Inc. to "Petrol Service Co. LP. - Legalization of documents" was also paid by Helencraft. The email that Falcioni sent to Marco Macchi on 03.01.2011 is also indicative of the continuity between the two companies: "regarding Petrol, for the moment we'll continue exactly as it was with Helencraft, including account B that Achille used for small expenses." On 12.29.2010 Macchi received an email from Helencraft Ltd, in the person of Mr. Salvarezza, asking for confirmation that Petrol Service would operate the same as Helencraft (address, postal code, post box, telephone and fax), due to the fact that Helencraft had received several reports from customers who had experienced difficulties getting in touch with it.

The need to establish the company Petrol Service materialized in July 2010.

The defense produced an email of July 2010, where Bianchi, Piotti and Falcioni ask their own trust company set up in Switzerland to dissolve Elencraft and give life to a new corporate ownership structure. In the email of October 8, 2010, Mr. Macchi of EMMGI Finanziaria wrote to Rick Bell of Harvard Business Services (a company that was responsible for establishing companies in Canada): "I

[743] With his appointment as Honorary Deputy Consul, regardless of Eni's role in his appointment....

am following up on our meeting in Lugano to confirm the intention to form the company Petrol Service Limited, a company whose purpose will be trading in oil and gas, and the provision of technical Service and assistance to oil companies, with the opening of a current account in Lugano." In the same email, it is requested that the company have an EPC license.
Petrol Service was thus founded on October 20, 2010, as also stated by the witness Ferri. The mandate of incorporation was signed on 10.11.2010 by the beneficiary shareholders, but the request for the establishment of the company Petrol Service had been made even before that, since on 07.23.2010 Marco Macchi wrote to Primo Bianchi: "for the new Canadian (proposed name: Petrol services Company Ltd) should the shareholders have the same proportions?? Can you still be the directors??". Heather Manerchia of Harvard Business Service Inc., on 11.09.2010 wrote to Mr. Macchi confirming that Petrol Service Co. Ltd had been incorporated in the Marshall Islands and that on 10.21.2010 she had asked Canada to issue the license to operate as an EPC, the cost of which had previously been established at approximately $3,500. Finally, she specified that the issuance of the EPC license would take four to six weeks.
Instead, with regard to the opening of the Petrol Service account at BSI, from the emails exchanged between the two trustees, the Swiss one and the Canadian one, it was learned that between October 8, 2010 and December 1, 2010, the Canadian company sent the requested documents to the Swiss trust company, including the certificate of good standing, the issuance of the power of attorney to Bianchi, Piotti and Falcioni, and on January 3, 2011 the Banca Svizzera Italiana finished processing the application for the account opening. We agree with the defense that the opening of the bank account with BSI Lugano had been completed before the actual opening, and therefore had no involvement in the matter that is the subject of these proceedings, as supported by the documents cited in the defense brief. Specifically, in the email sent to Mr. Rick Bell of Harvard Business Service on 10.08.2010, Mr. Macchi already noted his intention to open the bank account of the Petrol Service company in Lugano ("The bank account will be opened in Lugano with our authorized signatories"). To this end, on several occasions he contacted Ms. Manerchia (on 12.01.2010 and then on 01.14.2011, 01.25.2011 and 01.28.2011) requesting information and asking what documents were needed to open an account with BSI, as mentioned in the brief, to which reference is made.

11.3.3 Relations with Bayo Ojo

The defense points out that the witness Piotti reported that the lawyer Bayo Ojo, together with two other lawyers, had presented himself to the shareholders Falcioni, Bianchi and Piotti in April 2011 proposing the possibility of participating in this agreement, named escrow agreement, and, in other words, to act as guarantors for the payment of a fee charged by Bayo Ojo and his firm in connection with a letter of engagement of a professional agreement that he had stipulated with Malabu oil and gas. Falcioni's involvement as an escrow agent of the lawyer Bayo Ojo originated from the legal consulting mandate stipulated between Bayo Ojo and Malabu with the aim of further guaranteeing the receipt of the agreed compensation for the successful conclusion of the OPL245 operation. The shareholders of Petrol Service were subject to the Legal Advisory Mandate stipulated on 12.01.2010 between the Bayo Ojo Law Firm (Bayo Ojo & Co.) and Malabu Oil & Gas Limited through which the former, as Advisor, undertook to assist Malabu in the identification of potential buyers of Block 245, in the definition of commercial alternatives and in the planning of a legal scheme for the purpose of an amicable resolution of all disputes with the contracting parties. According to the aforementioned consulting mandate, the sum that Malabu would have received if the Agreement between the aforementioned parties had been reached amounted to USD 1,092,040,000.00, with simultaneous waiver by the former and by SNUD of all the cases previously filed against the FGN or reciprocally. With regard to the clauses of this contract, closely related to the Resolution Agreement stipulated in the following four months between the aforementioned parties, it was expected that the legal advisor Bayo Ojo would be paid USD

50,000,000.00 when NAE made the payment of the total amount referred to in the previous paragraph. Moreover, it was established that the sum of USD 1,092,040,000.00 was to be paid by JP Morgan at the direction of the Nigerian government to Malabu to a guarantee account 1 opened with the BSI in Lugano and according to an agreement ("Escrow Agreement") contained in Schedule 1 of the Legal Advisory Mandate. In the aforementioned Schedule 1 - Escrow Agreement between Malabu oil and gas LTD and Petrol Service Co LTD and Bayo OJO & Co, stipulated between the consultant Bayo Ojo & Co, Malabu and Petrol Service, the latter acted as depository ("escrow agent") for the purposes of guaranteeing the successful outcome of the legal consulting provided to Malabu by the law firm Bayo Ojo & Co during the OPL 245 transaction. According to this second document, Petrol Service would assume the role of escrow agent, receiving directly the entire sum agreed for OPL 245 from NAE: "NAE shall deposit in the ESCROW ACCOUNT to the ESCROW AGENT the aforementioned amount of $1,092,040,000.00," and it was expected that, once it received the sum of $1,092,040,000.00, Petrol Service would have to immediately transfer it – after deducting the 50 million due to the Escrow Agent and the Advisor in the respective amounts of 5 and 45 million – to Malabu on its Lebanese account with Banque MISR Liban Sai. Point c) of the agreement highlights the clause desired by Petrol Service according to which "due to the regulations of international banks regarding large transfers of funds, MALABU must, if requested, provide the Escrow Agent's bank with all the information necessary to comply with the mandatory due diligence process, provided that in no case shall the Escrow Agent hold the funds to be transferred. To keep times to a minimum, the parties shall start the dilution immediately after the execution of this agreement. All this information obtained must be kept strictly confidential by the bank and the escrow agent." Finally, Annex 2 of the document (see Annex 26: [English in source text:] Schedule 2 - Particulars of Escrow Account [Translation resumes:]), containing the signatures of Etete, Falcioni and Bayo Ojo, included the details of Petrol Service's account at Banca della Svizzera Italiana in Lugano: account number A209798AA.

The third document, linked to the two previous ones, is dated April 19, 2011 and contains the payment instructions given by Bayo Ojo to Petrol Service in relation to the remaining $45 million: "Block 245 - Malabu - Final and Irrevocable Payment Mandate Agreement." The document specified that, of the 45 million earmarked for the Advisor, 20 million would be paid to the lawyer and 25 million to the law firm. In fact, the clause referred to in no. 3 provided that "the Advisor hereby irrevocably confirms that the sum of 25 million will be retained in the Escrow Account by the Escrow Agent as full and final additional compensation for the consultancy and commercial expenses incurred by the Escrow Agent for the finalization of the sales contract of block 245." Defense counsel stated that although the wording of the clause raised some doubts, it is obvious that the reference could not have been to Petrol Service which had not carried out legal and contractual consulting. Moreover, this circumstance was clarified both by Mr. Bayo Ojo and Mr. Piotti, who confirmed that the 25 million would be retained by the Bayo Ojo & Co. law firm. Subsequently, the Credit Suisse banking channel was activated by Piotti without Falcioni knowing anything about it, as Piotti himself stated. Instead with regard to the banking channel of London, after a meeting held in Lugano with Falcioni and Bayo Ojo in the first days of June 2011, the bank allegedly agreed to open a current account registered in the name of Bayo Ojo, onto which to transfer any amount that might arrive from the Banca Svizzera Italiana. It is an email chain that arrived on June 15, 2011, but the defense underlines that on June 17, 2011 Falcioni wrote to the company Malabu saying that Petrol Service was no longer functional to the operation.

On June 19, Falcioni received the new mandate to send the compensation to Malabu on an account of a Lebanese bank, again through Petrol Service which was supposed to withhold $50 million for commissions, but the agreement would not be finalized and the government proceeded with the payment of the compensation to the Nigerian accounts of Malabu itself.

Finally, the defense deals with the unreliable statements made by Armanna and the relations with Bisignani, and the Court refers to the defense brief, considering that these are extraneous arguments

given what has already been explained with regard to Armanna's position and what will next be explained with respect to Bisignani's position.

CHAPTER 12
LUIGI BISIGNANI

12.1 Charge

- providing Scaroni with the opportunity to close the OPL 245 deal through Obi's intermediation and receiving Scaroni's approval;
- meeting Claudio Descalzi at Scaroni's house and confirming that Obi's brokerage was needed, in light of Obi's relationships with Nigerian government circles;
- meeting with Armanna and pleading Obi's cause with him;
- discussing with Descalzi about the progress of the negotiations and giving suggestions on how he should behave;
- constantly being in touch with both Scaroni and Descalzi when the agreement on the economic conditions of the deal (1.3 bn) was being finalized in November 2010

From the reading of the specific charges against the defendant Bisignani, reference is missing – even only in the attenuated form of awareness – to any participation in the corrupt arrangements with the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello, only a generic reference to the fact of having confirmed the need for Obi's brokerage being cited, taking into account the latter's relationships with Nigerian government circles.

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), while the interpretation more in line with the letter of the specific charge relating to the position of the defendant Bisignani leads one to believe that the function of conscious intermediary of unlawful arrangements entered into by Etete, through Obi, with public officials is being contested.

11.2 Discussion of the Public Prosecutor

The discussion does not help to solve these problems, given the brief statements dedicated to this position even in the final report.

The most significant excerpts are reproduced in full to highlight how the prosecution derives evidence of Bisignani's direct participation in the illegal arrangements exclusively from an interpretation of the statements made by the defendant himself regarding the "sponsorship" of Obi due to his familiarity with the Nigerian government, as Di Nardo had told him.

The prosecution affirms that Bisignani "confirmed that the aim of personal enrichment was still accompanied by the awareness that Obi's role could help in relations with Nigerian public officials. Di Nardo told him: "He told me that Obi had an investment bank in London and that he had strong relations with government circles in Nigeria"; he told Scaroni: "I told Scaroni that I knew that Obi was a person who had strong relations with Nigerian government circles, so much so that in the past he had been in charge of the privatization of the telephone network in that country."

Bisignani was also aware of relations with the Minister of Petroleum and the latter's relations with Dan Etete: "I had found out from Di Nardo, who had in turn been informed by Obi, that a minister of the Nigerian government at that time was one of Etete's former assistants at the time when he was the

Petroleum Minister. So, Obi and Di Nardo took this minister's support for granted."

The Court does not agree with the interpretation of the "confessional" value of Bisignani's statements given the impossibility of inferring even a generic awareness of underlying unlawful agreements from such statements, an awareness that would be based exclusively on Obi's "expertise," having dealt with other important contractual events involving the Nigerian government. Specifically, the reference to contracts relating to the privatization of the telephone network in Nigeria appears to give weight to Obi's experience, which represented a legitimate reason for his "sponsorship," even if Bisignani was motivated by personal financial interests, expecting a commission from Obi for the intermediation performed on his behalf.
The further argument used by the prosecution is the statement, considered as an admission, on the previous acquaintance between Etete and the Petroleum Minister Diezani Madueke, who had been an assistant to Etete at the time when he was Petroleum Minister, knowledge that, in the statements of Bisignani, certainly facilitated the operation of acquiring the license. It is clear that Bisignani's statement follows a logic that is different from that of corrupt arrangements, if anything alluding to the logic of favoritism based on personal relationships, which, to the contrary, exclude corrupt relationships. In the Public Prosecutor's view, the corruptive nature of any agreement reported by Bisignani between Etete and the Petroleum Minister derives exclusively from the triple suggestion deriving from the fact that Bisignani was previously convicted for bribery, Etete was previously convicted for money laundering and Minister Diezani is known for her voracious greed. However, these are aspects related to the past and the personality of the subjects involved, and consequently do not have a direct evidential value with respect to the historical facts that must be proven in the context of this trial.
In any case, it has already been shown that the generic awareness of unlawful arrangements underlying lawful ones is not considered sufficient by the case law of the supreme court to constitute the knowledge aspect of the subjective element even in the most mitigated form of indirect intent.
In conclusion, regardless of the comments on the judicial history of the defendant, convicted in 1997 for violation of the rules on the illegal financing of parties and for misappropriation and not for bribery, a crime for which he plea-bargained two counts, in 1999 the first and in 2011 the second, in the discussion the Public Prosecutor did not even mention arguments relating to evidence of the defendant's involvement in the crime alleged, consistent, moreover, with the content of the specific charge, without any criminally relevant accusations.
The most significant passages of the prosecution's discussion are reproduced in order to directly appreciate their inconsistency in terms of criminal liability.

Bisignani's connection with OPL 245 stems from his friendship and long-standing relationship with Paolo Scaroni, a relationship confirmed by Scaroni in the statements above in which he also explains that Bisignani "has daily relations with members of the Government, with Journalists and with representatives of the Institutions" and for this reason he had turned to him to find out the topic of a meeting with Berlusconi.
Bisignani says that he turned to his friend Scaroni on the recommendation of Gianluca Di Nardo.
Turning OPL245, Bisignani said: "In 2009 Di Nardo talked to me about a Nigerian friend of his, Emeka Obi, whose family he also knew. He told me that Obi had an investment bank in London and that he had close relationships with government circles in Nigeria. Di Nardo told me that Obi could handle a very important deal, namely, the resolution of a problem, that also had legal issues, relating to an oilfield in Nigeria. Di Nardo explained that this oilfield was tied up in serious litigation as to its ownership. The owner, who I then learned was Dan Etete, had engaged Obi to represent him in view of a possible sale of this asset to ENI and Shell. Di Nardo asked me to talk to Scaroni about it to see if

ENI had any interest" (questioning 4.16.2014, page 2).
It is Bisignani, therefore, who inserts Obi into the negotiations, meeting Scaroni, explaining what Di Nardo told him and even providing Scaroni with Obi's phone number: "I had an Obi phone number, I think of London and I told Scaroni who told me that after some checks they would contact him!"
In fact, as already pointed out, at the end of 2009, contacts between Eni and Obi began, although Obi still had no mandate from Etete, and in fact he had never met before the Vienna meeting with Agaev and Granier Deferre.
The reason for Luigi Bisignani's activism, the recommendation to Scaroni and the support given to Obi, have, by the explicit admission of the defendant, a purely pecuniary basis: Question: During this affair, did you and Di Nardo discuss the amount of commissions in your favor? Answer: We were expecting commissions. In particular, we were expecting that Obi give us a part of the compensation that he would receive from Etete. In any case, I and Di Nardo had played a role in the negotiations, so we expected some financial return. This return could not come from ENI because ENI does not pay commissions."
The statement, in addition to explaining the purpose of the conduct of Bisignani (and Di Nardo), reveals the circularity of the flow of payments: Eni pays Etete, who pays Obi, who pays Bisignani. However, this payment could not come from Eni "because ENI does not pay commissions." This statement is a sort of monument to hypocrisy.
Bisignani confirmed that the aim of personal enrichment was still accompanied by the awareness that Obi's role could help in relations with Nigerian public officials. Di Nardo told him: "He told me that Obi had an investment bank in London and that he had strong relations with government circles in Nigeria"; he told Scaroni: "I told Scaroni that I knew that Obi was a person who had strong relations with Nigerian government circles, so much so that in the past he had been in charge of the privatization of the telephone network in that country."
Bisignani was also aware of relations with the Minister of Petroleum and the latter's relations with Dan Etete: "I had found out from Di Nardo, who had in turn been informed by Obi, that a minister of the Nigerian government at that time was one of Etete's former assistants at the time when he was the Petroleum Minister. So, Obi and Di Nardo took this minister's support for granted". In short, Bisignani was well informed of the premises of the deal. But his role was not limited to referring Obi to Scaroni, since throughout the negotiation – and especially in times of crisis – he continues to have information from Obi through Di Nardo ("I heard from Di Nardo that during 2010 there were meetings between Casula and Descalzi on the one hand and Obi on the other. According to Di Nardo, the main issue on the table was to resolve the outstanding litigation with Shell").
Above all, he takes care to protect his own interests through direct action with Descalzi and Armanna. Descalzi had been presented to him by Scaroni at a Roman dinner, as reported by Descalzi himself (see above, page 239). During the negotiation there were many contacts between Descalzi and Bisignani in relation to OPL 245 and Obi's role. Descalzi says so, expressing concern at Bisignani's insistence. "During this time I had some telephone contacts with Luigi Bisignani.... I would like to point out that Bisignani's phone call came to me through Scaroni's secretary and so I obviously made myself available.... In any case, each of the communications I had with Bisignani was reported by me to Scaroni and in all cases he approved of the fact that I spoke with Bisignani...." (Descalzi questioning, page 9). Agnese Fusco confirms. This is clearly stated by Bisignani himself during the questioning, when he was asked to clarify some telephone conversations between him and Descalzi: beyond the statements regarding the content of the calls, he notes the fact that Bisignani claims to have had documentation from Di Nardo to be delivered to Descalzi on OPL 245 "The note that I should have delivered to Descalzi is a sheet that Di Nardo had given me. This sheet was about the status of the

negotiations, but today I am not able to report what the content of the note was."
Bisignani also had close relations with Armanna, who called him an old friend. "I know him, I know him well because he helped me in a moment of great difficulty for my son, I mean...an operation performed on him when he was an infant (hearing 7.17.2019, p. 76). Friendship confirmed by Bisignani who also refers to some meetings with him in relation to OPL 245 and the exchange of documentation: "I've known Armanna for a long time because we have friends in common. I also met Armanna in the negotiations on this oilfield. In particular, I received information from him on the production capacity of OPL 245. I also got some paperwork. Armanna was informed that I had a connection with Obi through Di Nardo" (Bisignani questioning, 4.16.2014, page 4).
In short, it is documented that Bisignani had continuous contacts and exchanges for OPL 245 with his partner Di Nardo, with his friend Scaroni and with Eni's superiors in charge of the Descalzi and Armanna project.
It should be added that it would be a serious error of perspective to believe that Bisignani's activity was limited to Obi's initial recommendation, and the final receipt of about 21 million collected by his partner Di Nardo – which would still be no small thing.
Bisignani knew perfectly well who the people circling around the deal were: Question: Did you know about the existence of a gentleman named Agaev in the negotiations? Answer: I learned during the course of the affair that there was a Russian who maintained relations with Etete. (questioning Bisignani, p. 2).
Moreover, Bisignani, as shown by the calls intercepted in Naples (here used as telephone traffic data in compliance with the provisions of the Court) had telephone relations with Eni superiors until at least November 18, 2010, when Adoke had now centralized management of the negotiations. `And in fact Bisignani knew perfectly well that the Nigerian government had come directly into play **(in the dirty game)**. The point is admitted in the interrogation by Bisignani himself: From what I was told, the President of Nigeria and this Minister took over the negotiations and in the same period Etete no longer recognized Obi as advisor by not renewing Obi's mandate to negotiate on his behalf, which he had previously given him...(questioning, p. 5) And again: "the initiative had been firmly taken over by Scaroni, who had opened a negotiating channel directly with the government, in our terminology "Fortunato è la signora." I had understood that ENI didn't want to break definitively with Obi" (questioning, p. 5).
Equally irrelevant is the circumstantial nature of the knowledge of the phases of the operation that the defendant Bisignani demonstrates that he is aware of, as it is an expression of the lawful interest in a contractual matter, the outcome of which would have allowed him to obtain lawful personal gains. Here again, Bisignani's statements can only be inferred as being admissions by "coloring" or rather "dirtying"[744] the lawful negotiations with an assumption of necessary underlying corruption.

12.3 Armanna's statements

Even Armanna does not directly accuse Bisignani, since he states that he did not know the amount of the fees equal to 200 million dollars, requested by Obi:

PUBLIC PROSECUTOR - So Bisignani somehow reprimanded you for your behavior and then basically what did he say? DEFENDANT ARMANNA - He told me that Paolo Scaroni would fire me if I continued in this way. PUBLIC PROSECUTOR - Was the discussion really so brief?

[744] The term derives from the expression in parentheses (in the dirty game) used by the PP to justify the confessional value of the statements.

DEFENDANT ARMANNA - Yes, but we're good friends, the relationship is very direct and I replied that if we involved Obi we would all be arrested. PUBLIC PROSECUTOR - And did he reply? DEFENDANT ARMANNA - When I told him about the 200 million he said I was right. PUBLIC PROSECUTOR - Did you explain it to him there? DEFENDANT ARMANNA - Yes. PUBLIC PROSECUTOR - What exactly did you tell him? DEFENDANT ARMANNA - I told him, "Excuse me, Luigi, but do you get 200 million from this contract? Why do you have a problem with the Nigerians," he told me "200 million? No, not at all." PUBLIC PROSECUTOR - Did he tell you how much he would get? DEFENDANT ARMANNA - No. PUBLIC PROSECUTOR - But he denied the 200.... DEFENDANT ARMANNA - No, but he was very surprised at the figure and asked me to prepare a note with all the details of why those 200 million... I mean, why the role of Obi wasn't sustainable and why we had a situation, to use a euphemism, of embarrassment with the Nigerians. I mean, if he had been representing the Nigerians then Obi wasn't our problem. But he was representing the buyer and therefore was our problem. PUBLIC PROSECUTOR - You mean of Eni. DEFENDANT ARMANNA - Of Eni, yes. PUBLIC PROSECUTOR - But did Bisignani discuss this question of if Obi was connected with the Nigerians? DEFENDANT ARMANNA - No, he didn't tell me...he told me that Obi was a person who was extremely close to the Nigerian government and I told him that it was absolutely not true and that Claudio Descalzi, with whom he had a relationship, knew it very well, because he had been told directly by the Nigerian President, the Petroleum Minister and the Attorney General, that is, so the political role of Obi was unquestioned, I mean, Obi at that time...maybe before he had had, but at that time.... At that time Obi had no support from Nigerian political officials, not one. PUBLIC PROSECUTOR - How did things end with Bisignani? I mean, what was.... DEFENDANT ARMANNA - He asked me to send him the note, I prepared it for him.... PUBLIC PROSECUTOR - But in the note did you also put the figure? DEFENDANT ARMANNA - Yes, 200 million, yes. In pen.

12.4 The final brief

For the sake of completeness, the additional arguments that the prosecution uses against Bisignani in the closing brief must be evaluated, erroneously or suggestively interpreting evidence. First of all, we refer to the statement that "Armanna claims that Bisignani had also 'recommended' the inclusion of Falcioni in the payment phase." In reality, reading the statement made by Armanna at the hearing on 7.22.2019, on p. 4: "I was informed by him [Falcioni] that, practically, his involvement came directly from Rome, and in this specific case he was representing interests that were clearly linked to Luigi Bisignani," it can be noted that he does not express a knowledge, but rather an evaluation based on two connections that can appear logical only with a superficial reading.

In fact, Armanna claims to have been informed by Falcioni of a piece of news (the recommendation of Falcioni by Bisignani) that to the contrary he does not know, so much so that he has to resort to a double deduction to communicate it. The first deduction is based on the financial interest of Bisignani and the second on the fact that Bisignani had many connections to Rome.

There is an intentional suggestive fusion of statements that Armanna himself wanted to separate, those relating to the licit compensation that Bisignani expected from the intermediary Obi or Falcioni, and those relating to the unlawful remuneration destined for public officials through Etete: "The arrangement must be made distinct, that is, there were some amounts which should have gone to Luigi Bisignani and they should have been sent to him irrespective of whether they came from Obi or if they came from Falcioni. Then there were some amounts which should have been sent via Dan Etete, and this is something I would like to discuss in more depth later, and they went to political sponsors."

Equally suggestive is Bisignani's statement on the reasons why he was no longer interested in the matter: "Since December 2010, for several months, I have been involved in the judicial case in Naples,

the one from which this proceeding derives, and I have not been able or willing to talk to anyone.
It has already been shown that it was incorrect that between February and March 2011 negotiations slowed down and Obi's expectations became less and less rosy, in conjunction with the summons of Di Nardo, Scaroni and Bisignani to the Public Prosecutor's Office to answer questions, inter alia concerning OPL245. As seen, the investigations in Naples began before February-March 2011 and the negotiations were stalled in that period due to the resistance of the government to the contractual conditions proposed by the oil and gas companies.
In summary, the evidence that the prosecution presents against Bisignani is not acceptable:

1. his actions aimed at including the intermediary Obi in the negotiations in order to receive commissions;
2. The influence exercised on Descalzi and Armanna, via Scaroni, in order to ensure that Obi would receive unlawful remuneration;
3. awareness of the possibility of influencing, via Obi, how the Nigerian government behaved;
4. The influence exercised in order to get Falcioni included in the deal;
5. the receipt of a substantial part of the proceeds of corruption (CHF 21,185,156) released following a lawsuit filed by Obi and transferred by the latter in favor of Bisignani's partner Gianluca Di Nardo.

The first is lawful conduct, the second also, taking into account that Obi's remuneration is not only lawful, but was legitimized subsequently by the ruling of the English Judge Gloster. The third point is misleading since influence on the government can assume multiple meanings and not all illegal, nor can it be automatically expressive of corrupt relationships. The fourth point is based on Armanna's unreliable statements and the fifth point does not express any unlawful conduct.

12.5 The defense's discussion

Here are the most relevant passages of the defense's discussion because they can be fully accepted. The defense rightly affirms that Bisignani "limited himself to mentioning Emeka Obi's name to Mr. Scaroni, by giving him a telephone number, which initially turned out to be the wrong one, and he received some information, which just happened to be entirely uninfluential, about OPL 245, but all of this went on until the proposal was rejected on October 30, 2010. Bisignani did not decide anything, he did not give any causal support to finalization of the agreements between the contracting parties, not even to the alleged bribery agreement between Etete and the public officials, but he did not have any impact in the subsequent phases, or even in the specific phases of the negotiations. Not even through third parties. And he certainly did not have any role in the conclusion of the settlement agreement, with the Public Prosecutor's Office having considered those acts contrary to official duty committed by the public officials. No one asked him, no one involved him in the preparatory and decision-making phases.
The defense argues that "With regard to the role ascribed to Bisignani, it is certainly not that of a necessary accomplice, a private briber, but rather possibly that of a so-called third party. In fact, in the reconstruction, Bisignani certainly is not the public official, but not even the individual who would have bribed anything or anyone. As generally known, the consolidated line of decisions by the Supreme Court of Cassation with regard to the possible complicity of a third party has emphasized that "it is logically necessary to ascertain the causal relevance of the acts committed by the third party to the criminal conspiracy organized by the necessary accomplices," Court of Cassation judgment no. 33,435 of 2006. And that "it is necessary for the evidence of that measurable causal contribution be supported, as in all other hypotheses of complicity, by the informed intent, a psychological element, to participate in the overall scheme and ultimately commit the typical act of the crime", Court of Cassation judgement no. 3,388 of 2002. On the basis of these principles and the previously mentioned absence of a corrupt

arrangement, the specific acts ascribed to Mr. Bisignani must be examined.

12.5.1 Providing Scaroni with the opportunity to close the OPL 245 deal through Obi's intermediation and receiving Scaroni's approval

Leaving aside the non-technical terminology (closing the deal or receiving the approval), no one can fail to see how the charged acts exhibit nothing anomalous or obscure or much less unlawful.[745] A friend informs the manager of a potentially interested company, and does not even know whether it is actually an acquisition, he passes on the name of an intermediary of the private seller company. As we shall see, the mediator has been recognized as a highly qualified individual.[746] This circumstance is quite strange, when it clearly turns out that Bisignani received that referral through another professional in that sector, Di Nardo. Even less anomalous is that Mr. Scaroni passed on the referred name to person in charge of such matters inside Eni. Nothing illegal. Meeting Claudio Descalzi at Scaroni's house and confirming that Obi's brokerage was needed, in light of Obi's relationships with Nigerian government circles. Having said that, per se, even if events had gone in the way described in the generic and indefinite charge (when, where and how), they would not reveal any illegal acts or any causal connection with the alleged bribery.

The court hearings then highlighted how Obi's presence was not at all necessary to finalize the agreements, and likewise his alleged political relationships. In fact, he was kept out of any negotiations after the October 30 proposal. The agreement...on the contrary, the agreements were made without his contribution, at different conditions than those in the proposals, which were all conditional, received from him, months later, with a different scheme and at different conditions. One should also look, with all the appropriate reservations, at Armanna's statements, both with regard to the circumstance that Obi was of no interest to the Nigerian politicians, in fact, there was no reaction when he was excluded from the negotiating process, both with regard to the circumstance that even before the conditioned proposal excluded him, Armanna was excluding Obi, while privileging the presence of Akinmade instead, on instruction by hierarchical superiors, page 91 of July 17.

12.5.2 Meeting Armanna and pleading Obi's case with him

These are generic and absolutely neutral acts, when they are true. Just like receiving information about a potential deal between private citizens from whom a consideration could be expected, for having put one of the seller's mediators in contact with Eni, a potential buyer. During questioning before the Public Prosecutor concerning his relations with Armanna, Mr. Bisignani denied having pleaded anything but having simply received documents from him concerning the production capacity of the OPL. Then, on the other hand, Armanna never mentioned any intervention by him, by Bisignani, or any contribution whatsoever to the negotiations, much less of a mandatory nature.

The fact that Armanna received that email from Falcioni which says "We will send the money to Lebanon, we will send our fees on the new account and then we will do what there is to do...." I am referring, and the Public Prosecutor is referring, to the email of June 9, 2011 contained in the Public

---

[745] So, Bisignani referred a professional to Eni, whose work...is known in the Italian legal system as an atypical intermediary. Recently, the 2017 ruling of the United Divisions, obviously civil, number 19,161, states that ordinary intermediation can be flanked by brokered negotiations, which is called "atypical intermediation." This possibility exists in the case where a party, wishing to close a single deal, engages others to perform activity with the aim of finding someone interested in closing the same deal at certain, predetermined conditions.

[746] The ruling of Judge Gloster of the High Court of London has described Obi, at paragraph 319, as an individual who offered precious skills to Malabu, had negotiating experience, collaborations, and contacts with top Western legal and negotiating advisers, and also had experience in the promotion, discussion and conclusion of deals at the level of an OPL block sale. The judgment also reconstructs the financial aspects...in the meantime determining what percentage was due to it, excluding any fraudulent activity by EVP, point 246, illustrating the activity performed by EVP and its consultants, pages 289 ff., and naturally explaining the reasons for acceptance of the claim made by EVP and award to it of compensation for the work it had done, the criteria for calculating it in the amount of 8 percent.

Prosecutor's case binder and addressed by Falcioni to Armanna, moreover to the private address, armanna@gmail.com, to a transaction that had been finalized by that point, to repeat, when Bisignani had disappeared for some time. The text of this message was crystal clear, leaving no room for interpretations, "if all of this doesn't work out, the agreements between us and the Nigerians have to be redone, where we authorize the remittance of the entire amount to that bank in Lebanon. At the same time, our fees will be transferred to a new account, where we'll then do what there is to be done." After being questioned on this point, on the fees, by the Public Prosecutor, Armanna responded how, and incredibly our fees, of Petrol Service and Armanna, become first a fee for Falcioni alone, and then the Italians' fees, then the fees of Falcioni and Bisignani, page 148. But shortly thereafter, on page 149, the fees change destination yet again and become those of Bisignani and Di Nardo. This circumstance was clearly untrue, never confirmed, and fortunately not believed even by the Public Prosecutor. He should have confessed his role in the transaction. Moreover, Armanna says that he learned about this circumstance from Falcioni, he does not say where, he does not say when, he would have found out because he was the most powerful person from Eni in Nigeria, according to Falcioni, as Armanna says. These statements, which obviously lack individualized confirmation, but which Armanna made without remembering that he had excluded them, shortly before he was confronted with the previously mentioned email, and thus that he was ascribed a role even in the relationships with the Nigerians after finalization of the agreement, any operational connection between Bisignani and Falcioni. In fact, in response to the question that the Public Prosecutor had asked him before this challenge, "Did you ever learn of an operational link between Bisignani and Falcioni?". Armanna candidly responded, on page 121 of the July 17 hearing, "No, no one." Statements about the connection between Bisignani and Falcioni, Rome and the Italian right-wing, unconfirmed, and if the Public Prosecutor believed it was necessary to assess them...to assess their trustworthiness, a confirmation, but which he actually did not find. This is notwithstanding the fact that one of the two Public Prosecutors believes that the thesis is not outlandish, albeit recognizing that these were unproved claims. What Armanna does not do is to clarify his position, and Falcioni's role in this affair, and he does not clarify at all, on the contrary, even with regard to this action by Bisignani, he could have explained to us how Bisignani had contacts with Falcioni, whether he had them, and he probably did have them, and through Vincenzo Armanna. A turn of phrase that was probably invented not to admit that Armanna's statements had no value in the trial, they are unconfirmed recognizing and he is unreliable. Moreover, even in this case, the digitalized case binder is pitiless, correspondence between Armanna and Falcioni from that period exists, but Falcioni's name obviously never appears in any proof, in any individualized confirmation, any evidence. A defendant, Armanna, who does not say, does not clarify, is tight-lipped, systematically lies, but whom the Public Prosecutors nonetheless attempt to validate, especially when they mention Bisignani. Bisignani's name is often thrown out there, both by Armanna, but I would say by the Public Prosecutor's Office too, in a somewhat simplistic manner, let's see what happens, perhaps they were thinking of manipulating or probably to avoid admitting Armanna's untrustworthiness, whose statements, as we have seen, had been systematically used to support the theories of the bribe, that bribe that keeps going back to the person who paid it. The substance is that the Public Prosecutor's Office did not try to prove, not even through the untrustworthy Armanna, anything concerning Bisignani's contribution to the bribery scheme.

12.5.3 Discussing with Descalzi about the progress of the negotiations and giving suggestions on how he should behave

We would have expected clarification by the Prosecution in the closing arguments, but instead, as usual, nothing. The Public Prosecutor says nothing in response to the generic nature of the charges in the closing arguments. He obviously does not indicate and does not prove in what matters Bisignani intervened, what his advice to Descalzi was, how he should have behaved in the negotiations. The

conduct to be engaged in when, where, with whom, given the multiplicity of the aspects in play and the numerous parties (Shell, Malabu, Government, Eni), key clarifications given the complexity of the negotiations, their duration, given that inter alia, the actual closing took place in Spring 2011, months after Bisignani had stopped calling. The Public Prosecutor does not indicate and consequently does not prove whether Bisignani's arcane instructions were actually received by Descalzi, and what effect they had in realization of the alleged crime. If anything, yet again, we have confirmation of the contrary of what the Public Prosecutor seems to be alleging. In fact, before everything else, if this had involved relevant acts, something in the famous computer file would have come out (a message, something). If anything, it has been revealed that Descalzi limited himself to act by relying on internal Eni procedures, who have never affirmed that they had heard mention of Bisignani (Ranco, Bollini, Caligaris and many others). Instead, it has turned out that Obi was excluded, all obviously without Descalzi justifying or saying, as was right and proper, all of this to Bisignani, without suffering repercussions, any pressure, nothing like fear or submission, as proposed by the Prosecution or Armanna himself. To repeat, this was a relationship where the Public Prosecutor is unable to provide us with any content, process and relevance, and above all illegal acts.

12.5.4 Constantly being in touch with both Scaroni and Descalzi when the agreement on the economic conditions of the deal was being finalized in November 2010

Here again, the previously expressed observations apply here again, underscoring the absolutely generic and deficient evidence of the illegal nature of the acts. The being in constant contact, a concept that is quite subjective and an absolutely irrelevant circumstance, when it is not specified and proved especially that this constant contact with Scaroni, a friend for decades, and Descalzi, was connected to and serving a significant aspect, on the contrary, a key aspect, of the allegedly corrupt agreement.

CHAPTER 13
PAOLO SCARONI

13.1 Charge

Paolo Scaroni, in his capacity as Chief Executive Officer and General Manager of Eni

- giving his approval to the intermediation by Obi proposed by Bisignani and asking Descalzi to act accordingly; maintaining direct contacts with Bisignani;
- being constantly informed by Descalzi of the status of the negotiations and of Etete's role and approving the terms of the deal;
- meeting personally, along with Descalzi, with the President of Nigeria, Goodluck Jonathan, both in the agreement finalization phase (August 13, 2010) and in the final phase, during an electoral rally in Nigeria on February 22, 2011;

From the reading of the specific charge against the defendant Scaroni, there is no reference, even only in an attenuated form, to any awareness of participation in corrupt agreements with the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello, being cited only conduct aimed at promoting, supporting and deciding the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these contested acts fall within the activities of the executive position held at the time, at most being able to consider the dispute to be debatable in terms of loyalty to corporate policies, given Eni's declared policy of not using intermediaries. In any case, such a dispute would have nothing to do with criminal liability.

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), while the interpretation more in line with the letter of the specific charge relating to the position of the defendant Scaroni leads one to believe that the function of conscious intermediary of unlawful arrangements entered into by Etete, through Obi, with public officials is implicitly being contested.

For completeness, the most relevant passages of the discussion of the Public Prosecutor are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals, activities that, far from representing a fragmentation of the facts, instead represent the necessary analysis of the responsibilities that, even in the case of complicity in the commission of a crime, remain individual, in the terms indicated in chapter 9.

13.2 Discussion of the Public Prosecutor

Scaroni was the CEO of Eni from 2005 to 2014, therefore for the entire period during which the disputed facts took place he was in charge of company policies, including

the OPL 245 transaction. Consequently, the improper "disputes" relating to the promotion, management and control of the negotiation for the acquisition of the oil license under discussion are fully acceptable, because they are lawful.

Equally acceptable are the following additional statements of the prosecution, moreover confirmed by the admissions of the defendant himself:

"Scaroni enters with a leading role in the events of OPL 245 not only for the position he held, but also

because in fact it is thanks to his impetus that the negotiations leading to the Resolution Agreements resumed. We have already seen, in fact, that a first attempt by Eni to obtain the license had been bluntly rejected on 3.13.2007 by a Shell warning signed by Ann Pickard, in which the exclusive rights of the Anglo-Dutch company were reiterated. In 2009 Eni made another proposal, floating an agreement with Shell, and above all using the mediation of Emeka Obi, expressly legitimized by the signing of the Confidentiality Agreement. As has already been extensively recounted, Emeka Obi assumed a crucial role in the negotiations because he represented the economic aspirations of Luigi Bisignani, a long-time friend of Paolo Scaroni. That friendship, although it cannot technically be ascribed to the category of common knowledge, was in any case widely known by all the characters involved in the affair and confirmed by those directly concerned. The close relationship between Scaroni and Bisignani is confirmed by Scaroni's personal secretary at Eni, Agnese Fusco, who at the hearing on 3.20.2019 reported that Scaroni and Bisignani had certainly known each other for many years and that before Scaroni arrived in Eni "they already had a close relationship, which I would call friendship" (hearing 3.20.19 pages 6 ff.). Report that continued assiduously during the period of time under dispute, with telephone contacts but naturally also with frequent personal meetings, not at Eni's headquarters on Piazza Mattei but in a more discreet office in the center of Rome. It was after Luigi Bisignani's recommendation, as previously mentioned, that Scaroni told Descalzi that they had to turn to Emeka Obi to negotiate OPL 245. This circumstance is reported by Armanna and Descalzi, but above all it is confirmed by Scaroni himself in the statements made to the judicial authorities of Naples on March 8, 2011: About a year ago, Bisignani told me that there was a small English investment bank headed by a Catholic Nigerian who said he had a mandate to sell a share held by MALABU. In that regard, I introduced Bisignani to Descalzi, who is the head of the OIL division of ENI, i.e., he is the man at ENI who was supposed to handle the matter. Those negotiations were unsuccessful.... I do not know either Etete or Di Nardo. I assume that they were talking about the "block 245" that I have mentioned and that the aforementioned Etete is somehow a shareholder of MALABU, which holds the concession (summary information report 8.3.2011, p. 4-5).

13.3 The investigations of the Public Prosecutor's Office in Naples

Not acceptable, on the other hand, are the assessments on Scaroni's awareness of the participation/existence of a corrupt arrangement based on the fact that he allegedly blocked the negotiations because, investigated by the Public Prosecutor of Naples in the P4 investigation and aware of the illegal agreement underlying the OPL 245 operation, he was allegedly afraid that the prosecutors might discover the corruption underlying the legal negotiations.

The argument is groundless on a logical level because, if true, Scaroni certainly would not have allowed the operation to be closed at the end of April 2011, notwithstanding the continuation of the investigations of the Public Prosecutor's Office of Naples, only one month after making it known that he did not want to conclude the deal.

In the final report, the Public Prosecutor seems to affirm that Obi's exclusion from the negotiations was linked to the fears of Scaroni, his sponsor, of being discovered: The negotiations that, finally, "were unsuccessful," were only those with Obi for his and Bisignani's compensation. In fact, after the questioning of Di Nardo (February 22, 2011), Scaroni (March 8, 2011), and Bisignani (March 9, 2011) at the Public Prosecutor's Office of Naples, Obi's contacts with Eni's top management grew increasingly sporadic.

In reality, it has already been seen that the exclusion of Obi from the negotiations dates back to the fall of 2010, a period that is certainly prior to February/March 2011, and therefore does not depend in any way on the fear of the investigations being carried out by the Naples Public Prosecutor's Office. The

arguments expressed in the preceding paragraphs show instead that the exclusion of Obi had been determined by the will of Etete not to pay him compensation for the work done.

Contrary to what the prosecution argued, Scaroni's comment on the cessation of negotiations that "were unsuccessful" was duly realistic if contextualized on March 8, 2011 when Scaroni himself was heard by the prosecutors. As shown by the documentary evidence, the cessation of the negotiations certainly did not depend on the investigations of the Public Prosecutor's Office of Naples, but rather due to the impossibility of concluding due diligence on Malabu and the resistance of the government offices to accept the contractual conditions inseparably linked to the offer of the oil and gas companies.

A simple chronological reading of the documents dating from the days before and immediately after March 8, 2011 shows that Paolo Scaroni's statements to the Public Prosecutors of Naples faithfully reported the status of the negotiation. Specifically:

- on 1 December 2010, after the government intervened in the negotiations[747] and the notification of the writ of summons filed by Sani Abacha, Claudio Descalzi informed Paolo Scaroni that the negotiating team would continue to seek more information on the corporate structure of Malabu: "in light of the disputes that we have recently learned of, regarding ownership of the company Malabu, it is essential to have a complete picture of the situation to confirm that the conditions are in place such that the initiative is viable and expedient";

  before the Management Committee meeting set for March 2, 2010, Claudio Descalzi writes to Paolo Scaroni: "it still has not been possible to complete the due diligence on Malabu for the purpose of confirming its ownership structure and the director of that company, which is necessary inter alia to verify the powers of representation of the individuals involved in the discussions and authorized to sign the agreements. Moreover, a claim has been recently notified by an alleged shareholder excluded from the ownership structure of Malabu[748];

  following this communication, Paolo Scaroni comments "I want to get to the bottom of this Malabu issue[749]";
- the Management Committee meeting was held on March 2, 2011 and the minutes stated that, having noted the "delicate issues about Malabu's signing powers" that had emerged from Claudio Descalzi's report, it had been decided that "the project" was "to be considered shelved";
- at the meeting held on March 10, 2011, Paola Scaroni informed the Board of Directors that the conditions for finalizing the transaction relating to the OPL 245 block are not met at present.[750]

In the light of the documents referred to above, it is clear then that Scaroni made a statement to the Public Prosecutor's Office of Naples on March 8, 2011 ("Those negotiations were unsuccessful"[751]). In fact, it is clear that the defendant's statements were not "an attempt...to mislead" or to "minimize,"[752] but were the faithful representation of the decisions adopted by the Eni management at that precise historical moment. As seen in the previous chapters, the development of the negotiations would take a definitive turn only in April 2011, when the contractual structure of the transaction was broken into "three agreements instead of one single agreement,"[753] in order to overcome the critical issues that had

[747] See B.o.D. November 18, 2010, exhibit 197 of the memorandum included in the document submission on January 29, 2020.
[748] See exhibit 224 of the memorandum included in the document submission on January 29, 2020.
[749] See closing argument of PP De Pasquale, transcripts of the hearing of July 21, 2020, p. 97.
[750] See exhibit 228 of the memorandum included in the document submission on January 29, 2020.
[751] See witness statement of March 8, 2011, page 4, acquired by the Court by order of July 17, 2019.
[752] See transcripts of the hearing of July 21, 2020, p. 97.
[757] See doc. 230 of the documents produced on January 29, 2020: this is an email from Casula forwarded by Descalzi to Scaroni with the following content: ***For the MC and BOD meetings on March 2 and 10 March, it was stated that the conditions for finalizing the transaction had not yet been met and that authorization would be requested from the BOD only if three main issues were resolved: a) confirmation of the shareholding structure and Malabu's representatives*** *(the shareholding structure is the subject of litigation in the Federal Court in Abuja), b) confirmation of the stability of the tax terms requested by NAE and Shell, c) confirmation that*

led to the shelving of the operation at the beginning of March.

In the rejoinder brief, to which reference is made, the defense returns to the matter highlighting the incompatibility of the decisions taken by Scaroni, in particular with regard to the Management Committee meeting of March 2, 2011, with the prosecution's hypothesis of his involvement in the corrupt arrangements that would have been concluded on November 15 and December 15, 2010.
The prosecution diminishes the probative value of the document, insinuating the doubt that it is the pre-constitution of a defense for future reference. However, the doubt is not reasonable because it is based only on the aforementioned triple prejudice, since it is not based on other elements. The Public Prosecutor's argument is even incompatible with other contemporary documents, such as the emails sent in February/March by Casula, Descalzi and Brinded, and above all with the fact that the meeting with the President of Nigeria on 22 February 2011 did not include the OPL 245 operation on the agenda, as evidently it had been shelved.
We also disagree with the circumstantial value that the Public Prosecutor's Office attributes to Scaroni's lack of precision in his recall.
It also seems significant, and worth consideration against Scaroni, that there were exchanges of "papers" and coded discussions between him and Bisignani, not clarified in any way by Scaroni ("I don't remember") although the conversations dated to just a few months before the hearing.
PP Question: what are the "papers" that you and Bisignani refer to in the conversations corresponding to progressive no. 640, 709, 715, 719 of 10.6.2010 recorded on telephone number 334.1846054 used by Bisignani (which are played to the party with a simultaneous reading of the relevant transcript)? Who is the person you define as "our man"? What is the thing that, according to Bisignani, "may interest" him (Scaroni) and that Bisignani would have told him "up close"? Answer: I do not remember what we are referring to; I have no idea at this time what "papers" we are referring to (summary information report 3.8.2011, p. 4).
The assessments expressed on the circumstantial value of meetings between Scaroni and Obi in Milan and Paris, different and additional to the official meeting with the President of Nigeria in August 2010, cannot be accepted not only because Armanna's unreliable statements have not been confirmed, but also because no trace of meetings or even telephone appointments can be found in Obi's scrupulous chronological records. In fact, not even the prosecutor can provide direct evidence of these further meetings with respect to the conduct of the contested crime, at most being able to logically trace the whole to an unproven interest in brokerage fees that does not have direct criminal relevance, referring to payments between private parties.
The passage of the Armanna examination is reproduced in its entirety where the unreliability of the witness is evident, admitting a confusion between actual memories and deductions obtainable from reading the documents, since the lack of specific memories on such a relevant circumstance can certainly not be considered credible. The justification provided (three years have passed) seems truly

---

NNPC/Government will not exercise the 'back in rights.' In subsequent weeks, ***the Eni and Shell teams modified the contractual structure of the transaction, which*** *would now be divided into* ***three agreements instead of a single agreement*** *(Resolution Agreement between FGN, NNPC, NAE, SNUD and SNEPCO, Malabu), specifically: 1 - 'Reallocation Agreement' between Federal Government, NNPC, NAE, SNUD and SNEPCO (with which FGN agrees to pay the signature bonus and further consideration to allocate block 245 to NAE and Shell with the corresponding license); 2 - 'Resolution Agreement SNUD' between Federal Government, SNUD, SNEPCO (with which Shell waives litigation on Block 245); 3 - 'Resolution Agreement Malabu' between Federal Government and Malabu (with which Malabu waives litigation on Block 245 and any right to the block itself).* ***Based on this new structure NAE will no longer have a direct relationship with Malabu either in terms of contractual agreements or in terms of payment.***
The Reallocation Agreement, in addition to regulating the Federal Government's reallocation of the Block to NAE and Shell (free of litigation), also regulates the timing and methods of payment of the signature bonus to the Federal Government as well as the additional amount. Both payments (for a total of $1.3 billion) will be made under two escrow agreements with the FGN."

laughable considering that more than three years had passed since the events that Armanna spoke about:
PUBLIC PROSECUTOR - Because you stated in the minutes of April 7, 2016, if I'm not mistaken, that Obi and Scaroni had met, that's it.... Look, I'll tell you everything, most things you have already said though. "Did Scaroni know Obi?"... "Scaroni knew Obi, Casula," transcript 04.07.2016, "who was my boss in Eni from 2008" etcetera etcetera, "told me on several occasions that Obi and Scaroni had met in Milan and Paris and on one occasion Descalzi was also present. These things were told to me to make clear the importance of Obi and to overcome certain doubts that I had about him.
DEFENDANT ARMANNA - Yes, I am remembering now. That is what he told me, but here my memory is influenced by the records I have read, I admit it. I mean, I have no evidence and I did not find any evidence in the record of any meeting between Dan Etete and Mr. Scaroni.
PUBLIC PROSECUTOR - Not Dan Etete, Obi.
DEFENDANT ARMANNA - Yes, but when there was Obi there was almost always Agaev, or there was someone else present, so I removed that part. PUBLIC PROSECUTOR - Yes, but this thing that you said at the time, you said on the basis of your memories I believe.
DEFENDANT ARMANNA - Absolutely, yes. Let's just remember that it has been three years since then.
The following statements of the prosecution are acceptable since, as already argued, monitoring large operations was one of the official duties of the CEO, who at the time was the defendant.
It is natural, moreover, that Scaroni did not merely give impetus to the new negotiations but continued to monitor the situation of OPL 245 as CEO of Eni and took care to safeguard the interests of his friend Bisignani. He was certainly constantly informed about the negotiations by Claudio Descalzi. For example, see the exchange of emails on November 15, 2010 (PM3 268), in which Descalzi reports on the outcome of the meeting with the Attorney General ("After an intense discussion lasting two hours, and several telephone calls to the seller, the seller accepted to close the deal at $1.3 billion"), and that Scaroni commented with a terse "Excellent."
On the contrary, the bad faith judgment that the prosecution derives from the answers provided to the investigators of the Public Prosecutor's Office of Naples cannot be accepted, answers that would reflect the awareness of having conducted illegal negotiations.[754] The prosecution's interpretation appears to be the result of the same triple prejudice, deriving from the "guilt of the perpetrator" inferred from the criminal past of the persons involved, already negatively commented on in chapter 12, to which reference is made. Moreover, the alleged bad faith evidenced by the prosecution contrasts with the request that Paolo Scaroni made to the director of the legal department responsible for anti-corruption to carry out an internal investigation to verify the propriety of the conduct of the managers who had dealt with the OPL 245 negotiation.

Specifically, on April 15, 2011 Paolo Scaroni wrote to the Director of Legal Affairs of Eni, Massimo Mantovani: "Massimo, Claudio informed me this morning that an agreement would be reached for our entry into block 245. I would like to point out that when I was deposed in Naples as a person informed about the facts, one of the questions was precisely related to block 245. I have no doubts about Claudio and his work but I would like you and your anti-bribery team to look carefully at this project to make sure everything is okay. Talk to Claudio to gather all the necessary elements and then confirm the outcome of the checks (we'll present the proposal for an initial examination at the next MC

[754] PP: *The reticent or completely misleading nature of the statements he made in Naples confirms his total lack of good faith. He could have invoked the protection of Art. 198, paragraph 1, Code of Criminal Procedure, but instead preferred to tell a made-up story ("the little investment bank headed by a Nigerian Catholic") to engender the belief that the Nigerian deal was one of the many commercial opportunities that sometimes flourish in distant countries and vanish into thin air.*

meeting)."[755]

After checking things, Massimo Mantovani replied: “Paolo, I confirm to you that in our capacity as the Anti-Corruption Unit, we have analyzed the structure of the deal as most recently negotiated by our colleagues in the E&P Division and, in particular, by the representatives of our subsidiary in Nigeria. In this regard, we have asked for a number of additional information and confirmations from the E&P Division, in addition to what has been represented in the memorandum sent to the Eni Management Committee. As far as Eni is concerned, the contractual relationships are established solely with the Nigerian Federal Government (and with NNPC, the state-owned oil company) and Shell, in addition to JP Morgan as Escrow Agent in the related escrow agreement. Therefore, the final structure as negotiated does not envisage any contractual relationship with Malabu and envisages that it be excluded from future management of the concession. In fact, a new concession will be issued by the Federal Government directly to Eni/Shell after revocation by the Federal Government of the current concession registered in the name of Malabu and confirmation by it that the pending lawsuits on Block 245 have been settled. The payments for the new concession issued to Eni/Shell will be made solely in favor of the Federal Government. Moreover, I emphasize that the negotiations were handled for the Federal Government directly by the Attorney General, given the pending litigation between the Government/Malabu and Shell. Finally, the division has confirmed that Eni does not have any intermediaries/advisors (except for the legal advisors, with costs that we deem more than appropriate). Therefore, we see no obstacles to proceeding.”[756]

The email exchange reproduced here, in addition to confirming that the statements made to the public prosecutors of Naples reflected the state of the negotiations at that precise historical moment, represent an element that is incompatible with the participation of the defendant in any illegal arrangement related to the OPL 245 deal. In fact, it is clear that if the acquisition of the license had been an operation arising from illicit dealings, Paolo Scaroni would not have requested further attentive verification by Eni's anti-bribery unit, which was composed of several people[757] and "made a periodic report to the control bodies, the Risk Control Committee, the Board of Statutory Auditors and the Supervisory Body."[758]

13.5 Meetings with the President of Nigeria

As for the meetings between Scaroni and the President of Nigeria, it should be noted that this is a custom imposed by the duties of the office of Chief Executive Officer, and it is therefore not possible to derive the negative value attributed by the prosecution. The link between these meetings and Scaroni's awareness of the bribes that Etete "could/should" have paid to the President of Nigeria is in fact based on the unacceptable interpretation of comments contained in Shell's emails.

PP: As the no. 1 of Eni, Scaroni also had official meetings with President Jonathon. The first was the one on August 13, 2010 in Abuja, preceded by the interweaving of contacts already highlighted between Descalzi, Casula, Obi, Gusau and Alison-Madueke.

The official outcome of the meeting is reported in the Eni source documents (Eni Exhibit 158). Thank you and best wishes for a fruitful cooperation. The unofficial one can be found in Shell's aforementioned document (RDS 585) according to which President Jonathan's expectation of financial contributions was a point of view “reinforced by Eni's comments indicated above.” Comments that followed the “Scaroni guide" meeting.

The most important Eni source comment was that “CD stated that the President said that he wants to

[755] See Exhibit 1 attached to the memorandum dated October 5, 2016, signed by Mr. Scaroni.
[756] See Exhibit 2 attached to the memorandum dated October 5, 2016, signed by Mr. Scaroni.
[757] See testimony of De Rosa, transcripts of the hearing on December 5, 2018, p. 5.
[758] See testimony of De Rosa, transcripts of the hearing on December 5, 2018, p. 6.

see this resolved ASAP."
Another meeting between Scaroni and Jonathan was probably scheduled for October 7, as can be inferred from some messages exchanged between Obi and Agaev:

701	*10/4/10 2:24 pm*	*Agaev*	*Incoming*	*Are you aware that the top Italian is going to meet Goodluck?".*
702	*10/4/10 2:25 pm*	*Agaev*	*Sent*	*117*
703	*10/4/10 2:28 pm*	*Agaev*	*Incoming*	*Yes. Yes, the Dutch that they will try to persuade the top guy to push the cash before that.*
704	*10/4/10 2:30 pm*	*Agaev*	*Sent*	*The 7th has been planned for a while. It will be better for the Dutch because the Italians are having big problems explaining*
705	*10/4/10 2:32 pm*	*Agaev*	*Incoming*	*Yes. I told them to make effort. Do you think I should call my big friend and ask him to advise Goodluck to recommend that Paolo ignore the Dutch if they don't pay?*

No evidence was found that this meeting was actually held. Certainly, however, Scaroni led Eni's official delegation in Minna on February 22, 2011 to meet Jonathan at an election event ahead of the April presidential elections. The circumstance, not recalled by Scaroni in the statements made a few days later to the Public Prosecutor of Naples, is documented by Eni source documents.

We have already had the opportunity to point out in chapter 6.1.3, to which full reference is made, that the prosecution alleges this knowledge by misrepresenting the meaning of the document, based on current public rumors ("points of view of the country"), without confronting the statements of the witnesses, and in particular Craig and Ruddock. Also ignored is what was reported in the email RDS 580, which attributes legal value to the legitimate will of the President of Nigeria to conclude agreements to start production. In this perspective, given that the electoral campaign had begun, we also understand the expectations of political contributions, indirectly deriving from the availability of sums of money from Etete, a supporter of the President's political party.

13.6 Conclusions

In summary, therefore, according to the prosecution Scaroni's responsibility rests on:

1. *his direct contribution to including Obi in the deal in order to carve out illicit commissions;*
2. *his constant relations with Luigi Bisignani, sponsor of Obi and he too (Bisignani) directly interested in unlawful locupletations;*
3. *his constant contacts connection with Claudio Descalzi, who transferred to him, as shown by the documents, all official and confidential information about the deal;*
4. *in having provided Operation OPL245 with "urgent and unconditional recommendation and push" (Brinded's email to Descalzi) both within Eni and in relations with Nigerian politicians, first of all President Jonathan whom Scaroni met several times.*

As pointed out by the defense, the four points that the proof of Scaroni's criminal responsibility is based

on, even regardless of their validity for some aspects that cannot be accepted,[759] do not contain any reference to aspects of criminal conduct and therefore it seems necessary to conclude that the prosecution considers Scaroni to be a third party intermediary who has contributed to the criminal agreement by strengthening it through conduct that, although atypical, must still have a determining causal importance, in addition to the full and conscious knowledge of the unlawful arrangement of others, on the basis of what has been argued in chapter 9 to which reference is made in full.

[759] Obi's fees are not unlawful at all, as also affirmed by Judge Gloster's ruling. The same must be considered for the fees expected by Bisignani. Confidential information is not automatically unlawful. Brinded's "pushes," however licit, were not accepted by Scaroni.

CHAPTER 14
CLAUDIO DESCALZI

14.1 Charge

Claudio Descalzi, in his capacity as General Manager of Eni's Exploration & Production Department since July 2008

- *personally maintaining contacts with Emeka Obi and with Eni's operatives in Nigeria, Casula and Armanna, and being informed about the request for fees;*
- *receiving instructions from Bisignani about how to handle the negotiations;*
- *agreeing with his counterpart at Shell, Malcolm Brinded, on the price of the deal, for 1,3 billions of dollars, and, thereafter, until the deal was completed, coordinating with Brinded the position of the two companies, Eni and Shell; keeping Scaroni constantly informed of the status of the negotiations and Etete's role;*
- *meeting, along with Scaroni, with President Jonathan to iron out the deal;*

Here again, from the reading of the specific conduct that the defendant Descalzi is charged with, there is no precise reference, even only in the attenuated form of awareness, to the typical conduct of participation in corrupt arrangements that allegedly led the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello to adopt the settlement agreements of April 29, 2011 in contrast with Nigerian law in order to benefit the oil and gas companies. In fact there is only conduct aimed at promoting, supporting and deciding, on the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these contested acts fall within the activities of the executive position held at the time.
As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), while the interpretation more in line with the letter of the specific charge relating to the position of the defendant Descalzi leads one to believe that the function of conscious intermediary of unlawful arrangements entered into by Etete, through Obi, with public officials is implicitly being contested.
Since the charge is ambiguous both forms will be addressed, that of the accusation of having directly participated in the corrupt arrangements, and that of having acted complicitly, as an intermediary, aware of arrangements involving other parties.

The defense chronologically retraced the entire OPL 245 operation, with specific reference to the numerous events involving the Director General Descalzi, highlighting his extraneousness to direct participation in any corrupt arrangements, on multiple occasions taking decisions that were incompatible with the prosecution's thesis, which therefore represent contrary evidence. As for the "spare" argument that he acted as a mere conscious intermediary, there is a lack of evidence supporting these alleged arrangements sufficient to constitute the materiality required by the appeals case law cited in chapter 9 above, to which reference is made.
It would therefore be sufficient to refer to what has already been argued in order to satisfy the requirement to provide a motivation. However, for completeness, the most relevant passages of the

discussion are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals.

14.2 The privileged relationship with the President of Nigeria

The final brief of the Public Prosecutor starts with Descalzi's direct acquaintance with the President of Nigeria, an acquaintance that the prosecution itself traces back to the defendant's management position at Eni, which was engaged in many commercial initiatives in Nigeria.

PP Brief: According to Malcolm Brinded, Descalzi's familiarity with the Nigerian environment reached the point of being able to count on the personal friendship of President Goodluck Jonathan, with whom he had "friendly" contacts, adding that "this is clearly a privileged relationship and Claudio is therefore able to send direct messages to the AP in a way that I doubt we can match."

Defense discussion: ...so, we are talking about what Brinded thinks, which would have originated in the past and which would have allowed the latter (Descalzi) to easily convey messages to the then Acting President of Nigeria. Assuming that the aforementioned circumstance is true, that is, that they had met for work reasons, I imagine that Descalzi was often in Africa because that was his department, aside from the suggestion that this can create, no document or statement has ever described the relationship between Descalzi and Jonathan with illicit tones or corruptive content. To the contrary, it should be remembered, as will be seen later, that in the Public Prosecutor's reconstruction it was Shell, in November and December 2010, that got the Nigerian government to play a more active role in the negotiations. It was not Descalzi who called on the government to take a more important role in the negotiations. It is therefore evident that Shell did not need Descalzi, nor his alleged privileged relationship with the President to convey messages to the Nigerian government, since they had been working on that project for years....

The defense's comments are not only acceptable, but, if the observation of Brinded is contextualized, it can be noted that Shell's executives were convinced that the measure confirming the assignment of the license to Malabu in July 2010 was the result of the interested initiative of Eni, through Descalzi, to be able to purchase the entire license from Malabu. However, these are biased opinions, deriving from the fear of losing the rights acquired and the subject of arbitration, which at the time saw Shell as a counterparty to the Nigerian government. An impartial interpretation of the documents reveals how Shell's "malicious" comments were unfounded, given that Eni was not involved in the procedure for confirming the license to Malabu, given the multiple sources that prove that Descalzi himself was not even aware of the initiative, as he was informed by others of the possibility of purchasing the entire license and not only a portion of it.

Obi notes a meeting with Descalzi on June 12 precisely to inform him of the possibility for Eni to purchase the entire license, and Descalzi's refusal, based precisely on sharing the joint venture operation with Shell to manage the operation together, excludes that he was the creator, or even only the means of the initiative that the company Malabu had taken, also consistent with what was decided by the settlement agreements with the previous government in 2006.

14.2.1 The meeting with the President of Nigeria

In the final brief it is believed that an informal meeting between Descalzi and the President of Nigeria in May 2010 was proven, but these statements are based on the unreliable statements of Armanna, who, in any case, does not attribute any illicit purpose to the meeting, referring it exclusively to the problem of the fees claimed by the broker Obi.

The unreliability of Armanna has already been fully discussed, but, with regard to this meeting, it should be noted that the matter was dealt with at length by the Descalzi defense, explaining that the alleged meeting in May 2010, initially requested by Eni through official channels, was then canceled and absorbed into the next meeting in August. Specifically, on April 14, 2010 the head of public relations of NAOC wrote to the Presidency of the Nigerian Republic requesting an appointment for

Descalzi, Casula, and Pagano on April 30. The request was accepted with letter dated April 20, 2010, setting the date for April 30, 2010. However, on April 21, 2010, NAOC requested a postponement of the meeting as Paolo Scaroni had also indicated his desire to meet with President Jonathan. Therefore, in order to optimize the visit, it was requested to postpone the appointment until the end of May 2010. On April 26, the Presidency of the Nigerian Republic rescheduled the meeting for May 27, 2010. However, the meeting did not take place on that date either because on May 24, 2010 NAOC again asked to postpone the appointment for reasons that had nothing to do with OPL245, but rather with a different issue to be addressed with the Nigerian government, namely the Okpai plant project.
In sum, a detailed chronological reconstruction of the emails shows that the meeting in May never took place. Indeed, the same email from Malcolm Brinded cited by the Public Prosecutor to demonstrate that this meeting had been held[760] is explained precisely in light of the fact that the meeting had been scheduled and then postponed several times. The confirmation that this meeting was not held is also derived from the fact that among the hundreds of emails and text messages produced there is no other trace of the existence of the meeting or its hypothetical content. The witnesses lan Craig and Keith Ruddock also stated that they did not know if the meeting had actually taken place, and in any case that they did not receive any feedback on it: "I don't even remember receiving feedback about what...at the meeting that had taken place.... I don't specifically remember if those meetings took place in this period.... I don't remember, because...I don't really know, because the only reference that I remember seeing is in this memo about the discussion."
The Public Prosecutor's considerations regarding Descalzi's participation in the August 13 meeting with the President of Nigeria are also acceptable, but its institutional value excludes that it can assume the connotations of illegality described by the prosecution. Following are the expressions used by the prosecution to demonstrate the irrelevance – once we clear away the suggestion deriving from equating feedback and bribes – of a comment that takes for granted that which is trying to be proved. The previous normal contacts with Obi, aimed at implementing the legitimate anticipations on the operation by government officials, are automatically linked to illegal arrangements in terms of mere probability even by the Public Prosecutor.

PP: Descalzi was also one of the protagonists at the institutional meeting held on August 13, 2010 in Abuja between the Eni delegation led by Scaroni and President Jonathan.
It is no coincidence that before the meeting, he considered it necessary to meet Emeka Obi: text message 489 dated 8.12.2010 at 2:07 pm "Tomorrow morning, before the meeting with the President, we can try to meet for a moment. Please try to make arrangements with Roberto. If it is not possible, we can see each other in London. Regards."
The reason for the pre-meeting with Obi is explained by Descalzi as follows: Probably we had to see him to discuss again about our approach to submit a common offer along with Shell and understand whether in the meantime Obi had had some feedback from the Nigerian government.
It should be noted that Obi in those days was in contact both with General Gusau and "Auntie" Diezani Alison-Madueke, so it seems likely that he may have had some feedback from the Nigerian government environment.
The genesis and the object of the meeting of August 13, 2010 were explained by Claudio Descalzi: "In the summer, we usually made a tour of some African capitals, in the countries in which we operate.

---

760 *[English in source text:] "Note that Claudio is personally very close to Jonathan Goodluck – since Jonathan and Claudio met in Bayelsa in 1995/6 when they were much more junior, and have stayed close as they've developed their careers over the years. This is clearly a privileged relationship and Claudio is hence able to give direct messages to the AP in a way which I doubt we can match. Claudio will see the AP 3rd week of May and will have dinner with him "as a friend". I think it would be good to proceed with Malabu - and in parallel with Eni - before that meeting, to see if we can possibly leverage that dinner date try to get the AP to agree an outcome and ensure this issue really gets resolved." [Translation resumes:]*

The visit to Nigeria was part of that tour and we planned to talk about a number of issues concerning our activities in the country, including OPL 245. We wanted to give a heads up to the President that we would try to reach an agreement with Shell on the OPL issue."
On closer inspection, the confirmation that the meeting in question was institutional in nature and that it concerned the numerous affairs of Eni in Nigeria is also evident from the letter of thanks sent by Paolo Scaroni to President Jonathan on August 18, 2010, stating that the project relating to the Okpai plant had been discussed. This point, as seen above, should have been one of the topics discussed at the meeting in May 2016, then postponed several times and finally absorbed into that of August.
It is also not possible to obtain information about the alleged illegal nature of the issues discussed during the meeting on August 13, even from other sources referred to by the Public Prosecutor's Office, namely Shell's emails of August 22 and 29, which the Public Prosecutor discussed at length.
In particular, on 23 August, Peter Robinson wrote to Malcom Brinded to inform him about the status of the negotiations in view of an imminent telephone call by him to Claudio Descalzi. Among other things, Peter Robinson wrote that [English in source text:] "In country view is that the President is motivated to see 245 closed quickly – driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence." [Translation resumes:]
The content of that message could not be used in itself, due to its limiting itself to reporting current public gossip. However, the interpretation of the expression "political contribution" became topical again on 29 August, when Peter Robinson wrote a new email to other Shell executives, repeating the same words that he had already used and adding that that hypothesis – i.e., that the President was driven to close the deal by the possible political contributions that would derive from it – is [Translator's note: English in source text] "reinforced by Eni comments above" [Translator's note: translation resumes, although leaving the source text translation into Italian of the English phrase intact] i.e. "rafforzata dai commenti di Eni riportati sopra."
The comments made by Eni were supposedly the result of the meeting between the top executives of the Italian company and the Nigerian President on 13 August and, therefore, the Public Prosecutor exploited that email to argue that during that meeting, he would talk specifically about possible political contributions. According to that approach, there would be no doubts as to the fact that the political contributions would be simple bribes to be given to the public officials.
However, this thesis cannot be accepted since it reconstructs in imaginary terms the tenor of the Eni comments referred to by Peter Robinson. Indeed, to comprehend what those comments by the Italian executives were, no interpretation is needed since Peter Robinson himself explains that the aforementioned comments are cited "sopra" ("above"). In fact, just a few lines before, Peter Robinson reports what Claudio Descalzi had said after his meeting with Goodluck Jonathan: [Translator's note: English in source text] "CD stated that the P said he wants to see this resolved ASAP. Wants the production; (has been stalled since 1998-2000) and said that this was a "normal commercial Issue between you (ENI), Malibu and Shell" (Indicating he doesn't want to be involved directly)." [Translation resumes:] The points that Claudio Descalzi had understood from the meeting of August 13 were therefore twofold:

- the President wanted production to start up, resolving the stall that had existed since 1998-2000;

- for the President, the matter involved a normal commercial issue among Eni, Malabu and Shell (and he did not want to be directly involved).

In light of this clarification, it is even superfluous to point out that the meeting on 13 August, while far from having any value as circumstantial evidence of the consummation of the crime of bribery, does demonstrate the absence of any criminal intent. Instead, it is interesting to observe how the Eni

comments help us settle even any uncertainties over the expression “political contributions” used by Peter Robinson. In fact:

- the Eni comments concern the fact that the Chairman wanted the block to become operational and that production be guaranteed;
- those comments had reinforced the idea that the President expected “political contributions” from the successful outcome of the deal;
- then, according to a process of normal logical inference, the nature of the political contributions expected by the President was intimately tied up with the production and beneficial effects that would have ensued in employment and economic terms.

Such a reconstruction has also been confirmed by Ian Craig, one of the top managers of Shell who were the recipients of the emails and who were examined during the trial as witnesses: “Peter reports rumors floating around Abuja regarding this topic. And with this we return to the comments that I was making previously with regard to the fact that Jonathan was from the south, and thus if he had managed to further a settlement, that would have bolstered his re-election prospects because he would have improved his future consensus among the population in the south. Because at that time, he had to face election, and it was the first time that he had to do so, just six months ahead”.
An analogous explanation was also given by witness Keith Ruddock: “In the southern states of Nigeria, which are among other things the oil-producing states, there had been a long history of violence and disorder that caused interruptions and violence in the oil production of Shell as well as the other oil companies. Acting President Jonathan, who came from the southern states, had proposed “an amnesty as one of the key points of his policy and had followed through, I believe in 2009. Etete also came from the southern states, from the state of Bayelsa, and was considered a senior figure and very influential, so from the point of view of the Nigerian government it was important that Etete supported the amnesty.”

14.3 Relations with the brokers

The following statements of the prosecution on the "confidential" and non-institutional nature of relations with Obi and Bisignani are acceptable. However, these facts do not legitimize the conclusions reached regarding Descalzi's participation in the corrupt arrangement by virtue of a weak circumstantial reasoning because it lacks the requirement of unambiguousness, since the known fact, i.e., informal contacts, has an equivocal meaning, indeed, unambiguous, but in a different direction from that of participation in corrupt arrangements.
As stated by the defendant and also admitted by the prosecution, the contacts were motivated by reasons other than those of conveying corrupt arrangements that, as has already been seen, certainly could not include Obi, who would be excluded from the negotiation. These conversations stemmed from the desire to please the CEO Paolo Scaroni and Luigi Bisignani for obvious reasons related to career aspirations, as well as from the need not to deal directly with Etete for equally obvious reasons of corporate reputation.

PP. *General Manager of Eni’s Exploration & Production Department, he directed the OPL 245 operation at the highest level, following the instructions of Paolo Scaroni and appointing Vincenzo Armanna Project Leader. At the time Descalzi was in effect Eni's no. 2, subordinate only to Scaroni. He was extremely familiar with the Nigerian environment because in Nigeria in the 1990s he had held top positions in Eni's local companies. But the anomaly of his involvement is revealed in the first place by the certainly not institutional relations with Emeka Obi and his subordinate role towards Luigi Bisignani. Well aware of Obi's objective inconsistency, Descalzi has from the outset placed*

responsibility for the choice of intermediary on Paolo Scaroni's shoulders. It is clear that it was precisely the initiative described by Descalzi that allowed Obi to be involved in the negotiations, given that, as already reported, at the time of the first contacts with Eni Obi he had never even met Dan Etete. Subsequently, Descalzi always expressed full support for Obi, both by formally endorsing his negotiating claims (for example by authorizing the signing of the confidentiality agreement), by agreeing to participate in the dinner with Etete at the Principe di Savoia, by discussing with him the issues then discussed in the night meeting with Etete on 11.30.2010 at the Four Seasons, and in general by meeting him on several occasions in person and with continuous telephone contacts. The reason for this acquiescence lies, in the words used by Descalzi himself in the interrogation, in the existing relations between Obi and Bisignani and therefore with Scaroni:
"In essence, Bisignani in my eyes represented Scaroni. I wanted to please him somehow."

We agree with the prosecution that Descalzi has paid particular attention to the duo Obi/Bisignani. However, as already seen this stemmed from the desire to please the CEO Scaroni and Bisignani himself in view of future career prospects. It is therefore not possible to infer any certain criminal implications from the fact that the private intermediaries were paid following the conclusion of the deal. One must also consider, as the prosecution also confirmed, that *Obi's economic claims were objectively very high and in fact were considered excessive by Etete, a situation that led the negotiations to the brink of failure at the end of October 2010, and President Jonathan was against the use of intermediaries.*

Obi's intermediation was opposed by both parties to the alleged corrupt arrangement, and therefore Descalzi's willingness to "support" Obi, also for the benefit of Bisignani, ran counter to the corrupt arrangements, and therefore certainly did not facilitate them. In order to be able to find a causal connection between Obi and the corrupt arrangement, the Public Prosecutor comes to argue that *the only answer to these questions is that Goodluck Jonathan was not protecting the interests of the public but the private interests of Dan Etete, whose compensation would have been significantly less if he had to set aside a fee for Obi. For Jonathon, removing Obi meant giving more money to Etete.* The argument is an obvious logical contradiction: if the bribed and the briber were opposed to Obi's intermediation, it is not possible to infer any causal value of the Obi-Bisignani/Descalzi relationship from the point of view of conscious participation in corrupt arrangements. Moreover, the historical reconstruction of the events certainly excluded Obi from the last phase of the negotiation, the stage that led to the stipulation of the resolution agreements.

14.4 The awareness of unlawful arrangements between Etete and the public officials

The prosecution assumes the awareness of the existence of illegal arrangements on the basis of the unreliable statements of Armanna, of which we have already spoken and which do not take on any meaning in terms of evidence, as well as on the basis of an unacceptable interpretation of the following message, contained in the chronology of Obi.

PP: "*Although included in a broader set of considerations expressed in a concise and sometimes cryptic way, the expression "How much is principal shareholder of Malabu getting (50%?)" can only be interpreted in one way, that is as a question about the percentage of consideration that will remain in Etete's pocket. The logical corollary is that others, other than Etete, will take the rest. If Malabu is Etete, the other persons who had to take 50% of the OPL 245 money could only be the politicians who allowed Etete to monetize the unlawfully acquired block, that is, first and foremost Goodluck Jonathan, Adoke Bello and Diezani Alison-Madueke.*

First of all, the Public Prosecutor fails to consider the literal wording of the term "*main shareholder*" which leads to the conclusion that it is clear that the remaining 50% would have been allocated to other shareholders and not to politicians. We have already had the opportunity to verify that the equivalence was not so evident, and also, once again, the interpretation clashes with the meaning of the words that can be interpreted in the prosecution's perspective only by taking for granted the thesis that it wants to prove. Moreover, the final destination of the money in the two equal accounts, one managed by Etete and the other by Alhaji Abubaker Alhju, is susceptible to different interpretations, and the one specified by the PP is one possibility but certainly not the only one.

Following are the corresponding considerations of the defense counsel:
But this conclusion is the result of yet another single-minded reading of the content of the documents in the record. First of all, I would like to remind you that the phrase [English in source text:] "Eni-offer is best offer from 1.3 billions, how much is principal shareholder of Malabu getting (50percent?)" [Translation resumes:] certainly does not represent the words spoken by Mr. Descalzi, since it is an extremely concise formula reported in the Chrono Unprotected by Obi to describe the issues addressed at the Meeting of November 4, 2010, during which the topics related to the rejection of the offer of a few days earlier had been discussed. Then, it is not clear whether the question had been asked by Eni to its interlocutor Obi, or had it addressed it to itself, because the note speaks of Eni, not of Descalzi, but in short we can also assume that it is Descalzi, it doesn't matter. The indication of the percentage of 50 percent with the question mark is in fact included in a parenthesis, and not in the text in which the statement referring to Eni or Descalzi seems to be reported. Second, it seems appropriate to point out that in the text drafted by Obi it is not stated that the remaining part of the sum must go to the Nigerian Public Officials, this is a comment of the Public Prosecutor, least of all to the allegedly corrupt parties specified in the charge. Beyond the certainly sensationalistic effect of the question posed by the Public Prosecutor, and to which the Public Prosecutor gives his own personal answer, the question concerned only the percentage that would be due to the main shareholder of Malabu in the event of a positive closure of the operation. It is a question that, I must say, stripped of all those meanings that it did not have, could have been asked by Obi. And if it had been asked by Obi, it means that the maximum offer made by Eni and Shell is insufficient, given that the main shareholder would take, question mark, perhaps 50% of the price. The question...so if Obi asked the question it was only to plead poverty, i.e., "it's too little." The same question, if asked – less likely – by Eni or Descalzi, simply means that Eni did not know how much the main shareholder would take, either because Eni had continued unsuccessfully to insist on the analysis of Malabu's shareholding structure, or because it did not know what the costs were or would be for consultants and others. So it was a question that could be totally lawful, because the main shareholder was not known, it was not known how much of a percentage he legitimately had. There is nothing else in the summary that can refer to payments to Public Officials or that justifies that (inaudible) the evidentiary gap appears only a hiccup.

14.5 Participation in the legal agreements on the price of the offer
The following statements that deal with typical topics of the corporate office held by the defendant at the time of the events are entirely acceptable:

PP: *It was Descalzi, with Brinded, who set the economic terms of the agreement with reference to the contribution of Eni and Shell. It is natural that this is the case, as these issues are can be functionally resolved at their level, but it is further confirmed by Peter Robinson's email of 9.23.2010 (RDS 590) where he states that the amount of Shell's contribution can only be finalized after an agreement between Descalzi and Brinded: Clearly this conversation over Y will only be resolved at MB/CD level, and CD*

has planned to talk to MB early next week.

The following observation does not contribute in any way to characterizing Descalzi's conduct as unlawful if correctly contextualized, as already illustrated with regard to Scaroni's position with respect to the President of Nigeria's willingness to close the deal to make OPL 245 operational, in order to obtain political contributions deriving from the economic availability that Etete could have committed in the upcoming electoral campaign:

PP: *Descalzi admits that he knew that the closure of the agreement was due to "very high level" political intervention: On November 15, 2010 I received an email from Casula telling me that he had gone to the Ministry of Justice together with Armanna, that a representative of Malabu was also present and that, partly through phone calls to the "seller," an agreement had been reached to close at 1.3 billion. Days later Casula told me that it was still being discussed, but that "the president and the minister wanted to close." I understood that by now they had decided at the highest level to give the green light to the operation (Descalzi questioning, p. 10).*

Even the following comment on the defendant's statements does not contain any conclusive accusatory value in terms of probative certainty. On the contrary, it contrasts with the initial arguments based on Shell's comments that attributed to Descalzi alone the power to influence the government's choices:

PP: *Descalzi has admitted that Shell had made a huge push to finalize the deal and at a certain point had taken "command of the transaction and was able to exercise significant influence on the government."*

14.6 Conclusions

Following are the conclusions of the prosecution that, in this summary, abandons the main thesis of the direct participation of Descalzi in the corrupt arrangements to highlight his function as a conscious intermediary, without even clarifying whether these were illegal arrangements entered into directly by the private briber Etete or through the intermediary Obi:

Therefore, in summary, Descalzi:

- *knew about Etete's personality ("I knew of his role under the Abacha regime and that he had had legal problems" - Descalzi questioning, page 5)*
- *admitted to having accepted Scaroni's invitation to use the intermediation of Obi and Bisignani, aware that they would carve out commissions;*
- *admitted to having found out that Obi had "many connections" in the Nigerian government environment;*
- *admitted to having received advice from Jonathan against the intermediaries;*
- *discussed with Obi the destination of the money (50% in Etete, and the rest to whom?);*
- *had countless contacts with Obi;*
- *discussed with Brinded about the expectations of Nigerian politicians, and in particular President Jonathan, regarding "the profits that Malabu will receive and the political contributions that will result.*

In view of the factual circumstances ascertained and the defendant's extensive admissions, it is considered proven beyond any doubt that Descalzi was informed of the unlawful nature of the overall operation and in particular of the payments to Nigerian political sponsors close to Dan Etete.

The subject of conscious participation in the illegal arrangements of others has already been dealt with both in general in the first six chapters, but also in the previous paragraphs of this chapter.

As for the original accusation of direct participation in corrupt arrangements, the conduct of the defendant throughout the negotiations proves incompatible – even logically – with his alleged participation in corrupt arrangements.
As seen, Claudio Descalzi has repeatedly acted so that all the negotiating steps were subjected to the scrutiny of the various Eni departments, he guaranteed the maximum circulation of information and, while maintaining personal contacts with Obi, he always demanded that the due diligence on Malabu be carried out and that the agreements with EVP be subject to the actual existence of the mandate in his favor by the seller.
With this in mind, Descalzi submitted a request to the competent corporate departments in view of the Board of Directors' meeting of June 3, 2010 for authorization to formulate a restricted but conditional offer for the acquisition of 40% of the rights in OPL 245 from Malabu. The memo was sent on May 28 to Paolo Scaroni and CFO Alessandro Bernini, a person that the Public Prosecutor considers unrelated to the alleged offense. Based on this information, the Board authorized the submission of a bid according to the proposed terms. Despite having been authorized to proceed by the Board, Claudio Descalzi takes advantage of the postponement of the deadline for the submission of the bid from May 27 to July 7 to inform Donatella Ranco of his intention to wait for the results of the DeGolyer & MacNaughton review before sending the purchase proposal, so as to be sure of the consistency of the assessment of Eni's competent internal functions. The analysis of the audit comes on June 16 and confirms the results of the checks performed by the departments of the Italian oil and gas company.

The conduct aimed at ensuring the maximum circulation of information within Eni continues even after the intervention of the Attorney General in November 2010. As regards this phase of the negotiations, Roberto Casula sent an account of the first meeting to Claudio Descalzi, Donatella Ranco, Marco Bollini and Vincenzo Armanna at 7:33 pm on November 15:

"Meeting with the Attorney General over (he summoned us yesterday evening for a meeting today with Shell at the Ministry). He had received a direct mandate from the President to verify the positions of all parties concerned. Together with Shell we described the key legal, fiscal and contractual aspects of the offer. A representative of the seller was also there and reiterated the fact that our offer ($1.26 billion) had been rejected, because a greater amount was expected. However, together with Shell we explained that our offer reflected detailed technical, economic and risk analyses and that there was only room for a slight increase, provided that the conditions set out in the letter of offer were met. After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $ 1.3 billion";

Immediately afterwards, Claudio Descalzi forwarded the communication to Paolo Scaroni and CFO Alessandro Bernini. Putting oneself in the perspective of the prosecutor's reconstruction, however, such conduct would be inexplicable because in doing so the defendant would have transmitted the news of the unlawful arrangement to numerous people that the prosecutor deems to be unrelated to the corruption.

The achievement of a first agreement on the price is then immediately brought to the attention of Eni's Board of Directors, even though, on that occasion, no authorization is requested for the finalization of the transaction as too many points still needed to be clarified. Specifically:

- at 7:16 pm on November 17, Donatella Ranco writes to Claudio Descalzi: "*Claudio, draft for the Board of Directors for your consideration. In the end, you have to decide what threshold rate to get authorized";*

- at 7:46 pm on November 17 Claudio Descalzi replies: "*I'll talk to Scaroni tomorrow morning but I don't think I'll take it to the Board of Directors for approval, there are still too many uncertainties*";

- the minutes of the Board of Directors meeting of November 18 read: "*During the last few months negotiations with the seller have continued, and, in parallel, Shell's simultaneous involvement has been possible...The final scheme of the transaction agreed with the parties involved therefore provides that, at the closing of the sale, Eni and Shell will be the sole holders of the block with a share of 50% each, with Eni acting as operator. The seller has accepted, before the Nigerian authorities, a consideration of USD 1.3 billion of which approximately USD 210 million destined to the payment of the signature bonus for the original assignment of the license by the authorities."* More details follow regarding the composition of the price, adding that "*during these days, the last direct negotiations with the local authorities are underway to confirm the main assumptions underlying the agreed price, mainly relating to the applicable tax and contractual regime, as well as to close all pending disputes on the ownership of the license. This will be followed by the signing of the purchase agreement with the seller."* With regard to the due diligence on the seller, it was found that "*no obstacles have emerged to the finalization of the purchase agreement with Malabu, for which, however, we are waiting for an update on the company's data on its shareholders and members of the Board of Directors"* and clarifying that "*in coordination with the Anti-corruption Legal Support unit, appropriate anti-corruption commitments have been included in the sale agreement."* The minutes of the Board of Directors conclude with the following note: "*In the coming days, discussions with the local authorities will be finalized for the confirmation of the current fiscal and contractual terms applicable to the operation and the OPL, as well as for the termination of any ongoing litigation. As soon as all the terms are defined, we will return to the board for the final approval request as presented" anti-corruption commitments."*

With regard to what happened in those days of mid-November 2010, the Public Prosecutor derived circumstantial elements against the defendant from the fact that in the file *"chrono unprotected"* found in the briefcase seized from Obi two meetings between Claudio Descalzi and the Nigerian intermediary on November 16 and 17 at the COIN in Milan are noted. Specifically:

- on November 16: [English in source text:] *"ENI notifies EVP good news that Deal for $1.3bn agreed in AG office";* [Translation resumes:]
- on 17 November: [English in source text:] *"EVP complains and accuses Descalzi of circumventing EVP and threatens to invoke NDA and kill the deal."* [Translation resumes:]

According to the Public Prosecutor, these contacts are indicative of unclear relations between the parties and demonstrate the anomalous subjection of Claudio Descalzi to Emeka Obi.

However, these conclusions cannot be accepted.

First of all, it should be noted that the file also shows the answer that Descalzi allegedly provided in response to Obi's complaints. Specifically, the Italian manager allegedly simply stated that he did not

know the issue and offered a generic promise to further examine the matter [English in source text:] ("*Descalzi pleads ignorance and promises to investigate*"). [Translation resumes:]
In any case, in order to understand the reason for the conversations reported, it must be remembered that Eni had entered into an exclusive agreement with EVP and that the subsequent direct discussions with Malabu constituted a clear violation of the confidentiality clause. The point was known to the negotiating team and one of the topics prior to the meetings was precisely the possible violation of the Confidentiality Agreement signed with EVP. In summary, they wondered if sitting at the negotiating table with Malabu, Shell and the government would result in a violation of the commitments made and expose the company to possible claims for damages. In this regard, on November 18, Enrico Caligaris writes to Marco Bollini: "*Shell should arrive any minute in the meantime casula has given me a copy of the CA with enrgy venture partners. Some comments:*
- *formally the CA between NAE and EVP is still in force*
- *NAE would not be entitled to speak directly with Malabu*
- *in the CA reference is made to [English in source text:] "depriving EVP or Malabu of its benefits..." [Translation resumes:] As an effect of "circumventing" the commitments made in the CA*
- *there is an indemnity from NAE to EVP for any loss of fees due to them by Malabu."*

Marco Bollini replied: "*Correct observation. For the time being it seems to me that there have been no direct contacts with the seller (apart from their unsolicited letter to us). The area had reported that EVP had declared it was out of the picture. It would be important for them to confirm this in writing, if possible."*

When asked about the issue, Enrico Caligaris said:
WITNESS CALIGARIS - *This stalemate was overcome by the intervention of the Justice Minister of Nigeria who held direct meetings with the parties concerned, that is NAE, Shell and Malabu. This raised the problem of the commitment made by NAE in February 2010 in the non-disclosure agreement with EVP, because at the meeting with the Minister clearly we would meet directly Malabu, and the meeting took place in November 2010, hence in the year in which NAE had undertaken with EVP not to meet with Malabu directly. In addition to this commitment, the agreement also included an indemnification obligation by NAE for any damage caused to EVP in case of breach of its confidentiality agreement, either as concerns the confidentiality aspects or as to the requirement to talk only with EVP and not with Malabu.*
PUBLIC PROSECUTOR - *How did you solve this issue?*
WITNESS CALIGARIS - *The situation was assessed and it was good practice not to...*
PUBLIC PROSECUTOR - *You assessed the situation? Who assessed the situation?*
WITNESS CALIGARIS - *No, there was a team, there was a group of people participating.*
PUBLIC PROSECUTOR - *Try to give us exact details as concerns...*
WITNESS CALIGARIS - *The main support given by the legal department was to analyze the commitment made in the agreement, to see which claims EVP could make in case NAE breached its commitment under the agreement.*
PUBLIC PROSECUTOR - *This is an assessment made by you, as legal expert.*
WITNESS CALIGARIS - *The legal department, thus myself with Marco Bollini. Yes, at the time we from the Headquarters provided advice, especially to the negotiating team, that is to say Donatella Ranco and Guido Zappalà. We also described the business, the situation, the risks associated with accepting this invitation from the Justice Minister.*
[...]
PUBLIC PROSECUTOR - *For clarity, the question is how were the difficulties linked to the exclusive*

mandate given to EVP overcome.
WITNESS CALIGARIS - *I can say that no derogation from that commitment was sought from EVP.*
PUBLIC PROSECUTOR - *Why?*
WITNESS CALIGARIS - *It was not requested. Let's say that the situation was assessed, it is good practice not to refuse invitations from the Justice Minister, and the result of the assessment was that it was unlikely that EVP would claim breach of contract because of NAE's meeting with the Justice Minister in the presence of Malabu in the discussions, meaning that...*
PUBLIC PROSECUTOR - *Why, excuse me.*
WITNESS CALIGARIS - *it could happen later.*
PUBLIC PROSECUTOR - *Coming back to the Court's request to you, was this an assessment you made or was it made by Bollini or by someone else? What is the source?*
WITNESS CALIGARIS - *The assessment was made by the legal team, the negotiating team, along with the business side, so this included myself, Marco Bollini, the negotiating team consisted of Donatella Ranco and Guido Zappalà, and then on the business side there were... at the end of the meeting there was Roberto Casula, who was responsible for the geographical area, and Vincenzo Armanna, who was in charge of the OPL 245 purchase project.*

The foregoing considerations make it possible to correctly frame the meetings between Descalzi and Obi and to respond to the accusations made by the Public Prosecutor. In fact, in addition to the desire to maintain good relations with a person that had been identified by the CEO Paolo Scaroni and Luigi Bisignani, Claudio Descalzi tried to avoid a head-on collision with Emeka Obi in order to avoid that the latter could claim a violation of the Confidentiality Agreement and thus add new problems to the conclusion of the deal. That the reasons for the meetings are not illegal can be inferred both from the fact that nothing of this kind emerges from Obi's own chronology, and from the consideration that, as seen, in those same days Eni's negotiating team was discussing precisely the same issues that Descalzi had faced with Obi.

Going further, in the two final weeks of November the meetings would continue at the headquarters of the Attorney General, and on November 30 there was a meeting in Milan between Obi, Agaev, Etete and Roberto Casula. Moreover, on 26 November the writ of summons had been served by Sani Abacha, who presented himself as a shareholder of Malabu and warned the parties against concluding any agreement without his participation. Following these events, on December 1, 2010 Claudio Descalzi sent a communication to all members of the negotiating team to stop the negotiations: "*I refer to the negotiations relating to the OPL245 initiative. In light of the disputes that we have recently learned of, regarding ownership of the company Malabu, it is essential to have a complete picture of the situation to confirm that the conditions are in place such that the initiative is viable and expedient, bearing in mind, in addition, the circumstances that have affected certain service companies in the country. In this regard, it is important to carry on with the necessary checks and to monitor the situation over the coming days, before resuming discussions with the interested counterparties, in order to come up with a final report/recommendation for the Board of Directors."*

The same position is reiterated on December 6 also with Malcolm Brinded, who, on the other hand, was still confident about the closure of the operation and the fact that Descalzi was pushing in this direction on Eni's Board of Directors: "*Dear Malcolm*", writes Descalzi, "*it has indeed been a very difficult week. And certainly not just for our initiative. As already explained to your colleagues, we consider it essential to have a complete and precise understanding of Malabu's shareholding. Moreover, all the documents relating to the dispute, the grounds of the subsequent appeal and the*

summons must be carefully checked and the problem closed (I understand that the first hearing should be held in the coming days). Furthermore, in light of recent well-known events and the political situation, we are forced to act with great caution and to carefully assess the feasibility of our agreement in these circumstances. It goes without saying that only after the satisfactory completion of the aforementioned outstanding issues will I be able to present a final recommendation to the board. I am always available to discuss further on the phone."

Subsequent developments would see the substantial change constituted by the new draft agreement and the overcoming of the legal risks inherent in the conclusion of a contract that involved Malabu as a negotiating counterparty.

Here it does not seem useful to retrace the subsequent stages of the story, which have already been discussed in the previous chapters. We returned to some passages highlighted with particular force by the Public Prosecutor to emphasize that, if analyzed in context, the behavior of Claudio Descalzi appears incompatible with the conduct of a person involved in an illicit deal who would therefore have an interest in keeping the darkest parts of the transaction confidential. As seen, on the contrary, the defendant has always worked in synergy with the entire negotiating team, has maintained a prudential approach to the legitimacy of Malabu and has never had a channel of direct dialogue with the government. Moreover, in spite of the suggestive allegation drawn from his previous acquaintance with President Jonathan, it does not appear that Descalzi has ever had informal contacts with the Nigerian President or with other members of the government, which has always stood as a negotiating counterparty that pursued economic and legal interests opposed to those of Eni.

CHAPTER 15
ROBERTO CASULA

15.1 Charge

Roberto Casula, in his capacity as the head at Eni for operating and business activities in sub-Saharan Africa, based in Nigeria:

- on NAE's [Nigerian Agip Exploration's] behalf, signing the commitments with Obi and interacting constantly with Obi during the negotiations until shortly before the execution of the "resolution agreements";
- reporting to Descalzi;
- maintaining operating contacts with his counterpart at Shell, Peter Robinson, and scheduling meetings with Shell managers at his home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials;
- attending meetings held at the Attorney General's offices in Abuja (Nigeria) from November 18 to 25, 2010, at which Attorney General Adoke Bello and Alhaji Abubakar Aliyu were present, where the financial terms of the deal were agreed ($1.3 billion);
- attending the subsequent meeting with Dan Etete in Milan during the night between November 30 and December 10, 2010, in which Obi and Agaev were present, to settle the issues regarding the fees to Obi;
- preparing, with Obi and Descalzi, the meeting on August 13, 2010 in Abuja with President Jonathan relating to the OPL 245 deal and attending a subsequent meeting with President Jonathan on February 22, 2011;
- coordinating with Armanna;
- supervising the activities of the Eni negotiating team, up to the drafting of the texts of the "resolution agreements";

being informed of the movements of money after the signing of the "resolution agreements";
to that end, they acted in concert in the payment, on 5.24.2011, by NAE (Nigerian Agip Exploration) of **$1,092,040,000** into the escrow account of the FGN (Federal Government of Nigeria) at JP Morgan Chase London;
the funds ($1,092,040,000) were transferred on 5.31.2011 to the account of Petrol Service Co., a company associated with Falcioni, at BSI Lugano and thereafter, on 6.3.2011, returned by the BSI bank to JP Morgan Chase London for "compliance" reasons;
$801.5 million was wired on 8.24.2011 to Rocky Top's and Malabu's Nigerian accounts, and subsequently $50 million in cash was delivered to Roberto Casula's house in Abuja.

In this case, from the reading of the specific conduct that the defendant Casula is charged with, a precise reference to the conduct emerges (payment of fees to public officials) of his participation in the corrupt arrangements that allegedly led the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello to adopt the settlement agreements of April 29, 2011 in contrast with Nigerian law in order to benefit the oil companies in exchange for money. In addition to this typical, specific conduct, the charges refer to actions aimed at promoting, supporting and deciding on the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these acts fall within the activities of the corporate position held at the time, at the most being considered the work of supporting the activities of the broker Obi in terms of compliance with the Eni corporate policy, which was contrary to the use of intermediaries.
As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel

discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), and, taking into account the literal content of the specific charge relating to the payment of bribes to public officials and the personal kickback of part of the bribe, it must be considered that the direct participation in illicit arrangements entered into with public officials is being charged.
Since the charge is ambiguous both forms will be addressed, that of the accusation of having directly participated in the corrupt arrangements, and that of having acted complicitly, as an intermediary, aware of arrangements involving other parties.
The defense argued the extraneousness of the defendant Casula to the direct participation in any corrupt arrangements.
As for the "spare" argument that he acted as a mere conscious intermediary, there is a lack of evidence supporting these alleged arrangements sufficient to constitute the materiality required by the appeals case law cited in chapter 9 above, to which reference is made.
It would therefore be sufficient to refer to what has already been argued in order to satisfy the requirement to provide a motivation. However, for completeness, the most relevant passages of the discussion are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals.

15.2 Relations with Emeka Obi

PP: His activity was characterized above all by a close relationship with Emeka Obi, certainly not limited to a strictly functional scope. Casula met Obi in 2009, as documented by Obi's email of November 15, 2009, who turned to Armanna "following my previous discussions with Roberto Casula," concerning issues not related to OPL245. When Pagano transmitted the report of the meeting with Akinmade to Casula on December 14, 2009, on the same day, after less than an hour, Obi asked Eni for an expression of interest, claiming that he had received an exclusive mandate of two months. Obi was in Milan on December 21 and 22, and on the 23rd he had a meeting with Casula. On December 24 he sent a new request for an expression of interest by Eni which this time was given the same day.
Once the contact with Eni has been established, Casula accompanied Obi throughout the negotiations (and beyond), becoming, together with Descalzi, the main interlocutor within Eni, as documented by the emails on the record, from the contacts obtained from Obi's text messages **(219)**, and from the meetings recorded in the unprotected chrono file. It was Casula who conveyed to Obi the unconditional adherence to the "process package" (scheme of the initiative) proposed by Raiffeisen Investment AG - Vienna branch on behalf of EVP in April 2010. Casula was Armanna's interlocutor in May 2010 in the important message "Subject: V complained absence of..." (in PM3 88), which shows the absence of a title for Obi (V declared that they will give the letter to the boy but that he wants more* information) and the next confirmation of the title for Malabu (V declared that he will receive* official confirmation from the authorities* in charge of both the title and the law); message that according to Armanna reports the content of a meeting with Akinmade.
...It is a fearful Casula who is the only interface for an irritated Etete who arrived in Milan at the end of November 2010 to settle the Obi issue with Eni, as explained in Obi's text message no. 1126 of 11.24.2010 "they (his Nigerian friends) gave him an extension of one week to meet the head of the Italians and close the deal." Etete, to his great disappointment, ended up meeting at night (after midnight) in the lounge of the Four Seasons to talk to Casula, who – according to Agaev – did not have the power to negotiate and said he did not want to have anything to do with that matter ("Casula avoided giving an answer, he said that he had nothing to do with this" - Agaev, hearing of 6.26.2019 page 60). Nonetheless, Casula was very attentive to the fate of the intermediaries, as confirmed in text message

no. 1171 sent to Obi by Roland Ewubare on 11.29.2010 “I met the AG and he confirmed again that he did not request the broker's agreement. [Omitted Italian translation] [English in source text:] It’s Casula’s game. Casula was certainly attentive to Obi's position, so much so that he pleaded his case even in January, while the new draft agreement took shape. This is how the parenthetical remark contained in the email of January 11, 2011 (Annex 209 of the Eni final productions) should be read. Referring to the initiative of Attorney General regarding the new scheme of the transaction, it stresses the importance of the role of the advisor “2) Verification of Malabu's willingness to accept the scheme proposed by the Federal Government: the intervention of the advisor is important in this sense.” “This is the object of the meeting between Casula and Attorney General himself on January 17, 2011, as noted by Obi in the unprotected chrono file with the comment: “Casula reminded him [the Attorney General] that EVP prepared all the work for the transaction and produced the documents that everyone discussed during the meeting on November 15 – he says he is happy to work with EVP and therefore: let's try to solve the problem with Etete.”

Above all, Casula’s signature is on the receipt of the memorandum in which NAE declares that EVP is a company that "legitimately operates exclusively for Agip,” thus directly refuting all the documents that formally linked Obi to the intractable Etete. The simple receipt of this letter demonstrates Casula's involvement in negotiations and issues related to Obi's role, the need for him to receive compensation and his relationship with Etete, all eccentric circumstances with respect to Obi's role as a simple “representative of Malabu” and of which there is no trace in the official documentation from Eni sources.

In this first part of the final discussion, the prosecution attributes evidentiary value to the relationship with Obi on the basis of the usual assumption deriving from the certain participation of Obi in the corrupt arrangements, but it has already been seen that this is a weak circumstantial reasoning that clashes with the exclusion of Obi from the negotiations after the rejection of the offer of October 30, 2010.

Once again, the prosecution postulates the existence of corrupt arrangements that it must prove in order to attribute circumstantial value to arguments, such as proximity to Obi, which do not have any obvious intrinsically criminal content with respect to the alleged crime.

The defense rightly pointed out that the prosecution's approach is modeled on the unreliable statements of Armanna, who argues that Akinmade would have been a better broker to cultivate because he was already known to Eni. If we examine chapter 5 of the defense brief of the defendant Casula, we understand the role of Obi, justified by his specific experience in relevant commercial operations that also involved the Nigerian government, unlike Akinmade, who was a geologist without specific experience. Moreover, the company Malabu would entrust the mandate to Obi and not to Akinmade, which is sufficient reason to justify the choice of the current defendants to remain in contact with the broker Obi. Moreover, the witness Cerrito told the Court at the December 12, 2018 hearing that he knew who Obi was well before the OPL 245 deal, because Obi was involved in other search efforts looking for offshore oil in Nigeria. Witness Ranco stated that she had personally seen the mandate, which Obi had been discussing with Etete since before Eni's expression of interest. Moreover, the ruling of Judge Gloster ascertained the existence of a legitimate mandate that justifies the compensation obtained by Obi at the outcome of the case against Malabu.

Given the above, it is not possible to attribute to Eni's expression of interest, an act that is not binding, any circumstantial value with respect to the hypothesis of the crime contested, pertaining to the sphere of use of discretionary power, moreover exercised in accordance with the greater expertise that Obi had compared to Akinmade.

Another unsubstantiated statement of the prosecution is that Obi was actually the broker of Eni and only formally that of Malabu. The prosecution's argument is based on the interest – in particular of Casula and Descalzi – in the continued presence of Obi in the negotiations, and above all to get him

his compensation, to the point of Casula signing a sort of ratification of a mandate of Eni to Obi afterwards that was non-existent.
These are arguments that were already addressed for Descalzi's position, but it is clear that the arguments also apply to Casula, whose interest must be attributed to a desire to favor an intermediary in the belief that it would please the CEO Scaroni, who had proposed the person. In this regard, it should be noted that the Casula defense revealed how some meetings between Obi and Casula, documented by Obi's chronology, are in conflict with other commitments of Casula. These allegations show that this is relatively reliable evidence because it was reconstructed by Obi himself in view of the case against Malabu, in which he had to show that he had contributed to the conclusion of the agreements in order to obtain the agreed compensation.
The prosecution's argument definitively clashes with Obi's interest in seeking out other potential buyers, Eni's competitors, a circumstance completely ignored by the prosecution but documented by several messages and also by the email of June 16, 2010 from Obi to his consultants at Raiffeisen.
In any case, these are arguments that pertain to commissions to private brokers and therefore cannot automatically arise from circumstantial elements of the unlawful arrangement, especially given the expulsion of the intermediaries due to the rejection of the offer of October 30, 2010. Regarding the neutrality of Casula's interest in the subject, the defense rightly quotes Agaev's statements regarding Casula's behavior in the meeting of November 29 with Etete on Obi's fees.

15.2.1 The meeting between Etete, Obi and Armanna at the end of December 2009

According to the reconstruction of Armanna, at the end of December 2009 a meeting was held between Obi, Armanna, and Dan Etete in Lagos, where Armanna, according to him, attended on the orders of Roberto Casula. In that meeting Obi's fees were explicitly discussed, and on that occasion Dan Etete accused Armanna of trying to take 200 million from him through Obi.
In this regard, Casula's defense highlighted the documents produced by Malabu's defense in the English case, filed by Obi in an attempt to get paid, which refer to two emails of December 4, 2011 sent by Armanna to Casula, the first at 9:28 am and the second at 9:38 am. In these two emails, Armanna replied to Casula that he had never spoken to Etete about Obi's fees, and justified himself with his superior that he had merely said, We are interested, we could work with Shell but without their approval we will not move forward. In any case we need evidence of Malabu's ownership of the block and confirmation of EVP’s mandate to take part in the tender. I never said that he represented us, and I never talked about fees. In any case, if the facts reported by Armanna occurred, they certainly did not depend on the mandate of Casula, who had never been aware of Etete's position on Obi's commissions.

15.3 The dinners at Casula's house

PP: The meeting at Casula's house in Abuja was also held in August 2010. It was attended by Obi and Scaroni, in preparation for the formal meeting with Jonathan where OPL245 was discussed in depth and the information that Jonathan was in a hurry to close was obtained (“driven by the political contributions that will result” according to Shell's judgment).

We have already had the opportunity to argue the institutional nature of the meeting, which did not only concern the OPL 245 operation, but rather all of Eni's activities in Nigeria. The reports of the meeting confirm that the Nigerian authorities were pleased by the possible entry of Eni in the management of the license, taking into account that the Italian company was an accredited and recognized operator in the territory, also because the participation of a new investor could have unblocked resources.
From Obi's own text message, it can be seen that he had proposed to Casula to meet the night before, but Casula then arranged the appointment directly for the next day. Obi's interest in receiving information on the outcome of the meeting is documented by the subsequent contacts that he had with

his advisors in the management of the Clear Vision project.
In September, he made contact with Shell and Peter Robinson in particular: once again a dinner was held at his home, where it was decided that Shell would increase its contribution by 85 million to meet Obi's demands.
On September 17, 2010 a dinner was held at Roberto Casula's house, which was also attended by Ciro Pagano and Vincenzo Armanna for Eni and Peter Robinson, John Copleston and German Burmeister for Shell. As shown in the email of September 19, 2010 – sent by Casula to Descalzi and cc'ed to the Eni team involved in the negotiation – during the meeting the results of the access to Shell's data room and the agreements to be prepared for the sale of 100% of the block and possible prices were discussed, but it is not clear what the prosecution is referring to with respect to the difference of 85 million dollars that Shell was allegedly willing to pay, since, regarding the price, Casula specified that further verifications were necessary with Shell, first of all with regard to tax aspects, before being able to quantify and include such price in the draft offer that Eni would prepare for subsequent discussions.
Nothing is said about commissions, neither to private brokers nor to public officials. In reality, the specific participatory conduct in the illegal arrangement (discussions on commissions to public officials) should/could have taken place during these dinners, but the circumstance is not pursued in the final brief due to the evident lack of probative references other than Armanna's initial statements, moreover not even specifically reiterated in court.

15.4 Meetings with the public official Adoke Bello and the knowledge of Alhaji Aliyu Abubakar

PP: It was Casula who led the Eni delegation during the meetings with the Attorney General, in particular in the one of November 15 in which the agreement on the price to be paid to Etete was definitively reached ("After intense discussion lasting two hours and with continuous calls to the seller he agreed to close at $1.3 billion) and in the subsequent turns in the presence of Alhaji Aliyu Abubakar, who is the person who a few months later will exchange in cash over half a billion of the proceeds of OPL245 to deliver them to the sponsors of Etete and will give (free) to Adoke Bello a large property just purchased, Plot 3271. What is striking in this regard is the reading of the accounts of such meetings, in which the names of Alhaji Aliyu Abubakar and A.B.C. Orjako, indicated with ellipsis in Caligaris' email, appear in full only in the version written by Casula, demonstrating at least direct personal knowledge.
We have already had the opportunity to see the legitimacy of the government's intervention in the negotiations, justified by the rejection of the offer of October 30, 2010, and therefore we refer to what is argued in chapter 5 about the inconsistency of the evidentiary value of the legal agreements on the price and on the contractual conditions stipulated with the mediation of the Attorney General Adoke Bello. Moreover, the witnesses Zappalà, Caligaris and Ranco testified extensively on these meetings, which were held between November 18 and 25, 2010, the agendas focusing on commercial transparency as they dealt with issues that needed to be discussed with the Nigerian Federal Government, part of the litigation on the license.
In this perspective, the mere presence of Alhaji Aliyu Abubakar, obviously filtered of the subsequent knowledge of his work, suggestively remembered, does not assume any evidentiary value, otherwise it would not explain the fact that Zappalà, Caligaris and Ranco were never investigated, so much so that the prosecution is forced to obscure an imaginative reference to the greater precision of Casula compared to Caligaris in reporting the names of the people present, the only way to differentiate the positions.
The reality of the documentary and witness evidence taken shows the absolute lawfulness of these meetings where neither commissions to private intermediaries nor bribes to public officials were discussed.

15.5 The idea of different resolution agreements to exclude direct relationships with Malabu

PP: It was Casula who proposed to German Burmeister and Peter Robinson "the final solution" at a

meeting on 3.12.2011, to make Etete disappear from the text of the agreement with the government: Roberto suggested the idea of removing M from the RA [Resolution Agreement] making the transaction an agreement between FGN, S and E alone. (RDS891).

The argument, cited in the final discussion, although based on a specific piece of information from the record, does not assume a strong evidentiary value, highlighting only a possible generic awareness of the "dangerousness" of having direct contractual relationships with Malabu, but the circumstance was already extensively examined in chapter 8, to which reference is made because it is not sufficient to substantiate proof of the full knowledge of specific unlawful arrangements of others necessary for the complicity of an extraneous person in a corrupt pact.

15.6 The cash kickbacks

PP: In the face of these elements, Casula's participation in the corrupt agreements and the actions consequently implemented is certainly proven even independently of the lack of confirmation of Armanna's statements about Casula's receipt of $50 million in cash that would have been taken in two large trolleys to Casula's house in Abuja.

Excluding the circumstantial value of the mere acquaintance with Alhaji Aliyu Abubakar due to his presence at the legitimate meetings of November and December 2010, the only evidence that connects Casula to the corrupt arrangement remains the knowledge of the movements of money after the monetization thereof by Alhaji Aliyu Abubakar by virtue of the unreliable statements of Armanna on the kickback of the 50 million in cash, but this is an argument that the prosecution abandons.

15.7 Conclusions

PP: In summary, Casula:

- accepted, formalized and defended Obi's position;
- was Obi's constant interlocutor and tried to ensure that the required commissions were paid to him;
- hosted the meeting with Descalzi, Scaroni and Obi in his home in Abuja before the meeting with the Nigerian president;
- hosted the meeting with Shell at his home in Abuja to discuss Shell's increased cash participation (to cover Obi's fees);
- represented Eni in all negotiations, official and secret, with Nigerian public officials and in particular with Attorney General Adoke Bello;
- agreed with Adoke and Shell on the price to be paid to Etete;
- executed the instructions of Eni top executives to avoid references to Malabu in the Resolution Agreement and transmitted them to Shell.

In the previous brief accusations there is no precise dispute of the typical aspects of illegal conduct apart from the generic and unproven reference to not better specified hidden negotiations, a misleading term that certainly does not apply to the aforementioned legitimate meetings, which the witnesses Zappalà, Caligaris and Ranco also participated in.

CHAPTER 16
CIRO PAGANO

16.1 Charge

Ciro Pagano, in his capacity as managing director of NAE

- signing, on NAE's behalf, the offer presented on October 30, 2010 to the Raiffeisen bank, Obi's adviser, to purchase 100% of Malabu's "participating interest" in OPL 245 against the following payments: $207,960,000 to the Nigerian government as signature bonus and $1,053,000,000 directly to Malabu;
- attending meetings with Shell executives at Casula's home in Nigeria to discuss the terms of the deal and the payment of fees to brokers and public officials;
- attending the meeting with President Jonathan on February 22, 2011;
- signing, on NAE's behalf, the FGN Resolution Agreement of April 28, 2011.

Again in this case, among the specific actions a precise reference to typical conduct is cited (payment of fees to public officials) of his participation in the corrupt arrangements that allegedly led the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello to adopt the settlement agreements of April 29, 2011 in contrast with Nigerian law in order to benefit the oil companies in exchange for money. In addition to this typical, specific conduct, the charges refer to actions aimed at promoting, supporting and deciding, on the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these acts fall within the activities of the corporate position held at the time.

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), and, taking into account the literal content of the specific charge, relating to the direct charge against the defendant Pagano of having participated in the discussion of bribes to public officials at Casula's house, it must be considered that the direct participation in illicit arrangements entered into with public officials is being charged. Since the charge is ambiguous both forms will be addressed, that of the accusation of having directly participated in the corrupt arrangements, and that of having acted complicitly, as an intermediary, aware of arrangements involving other parties.

In its closing brief the defense argued the extraneousness of the defendant Pagano to the direct participation in any corrupt arrangements, moreover based on indirect evidence, since even Armanna does not directly involve Pagano, except with regard to the Falcioni affair.

As for the "spare" argument that he acted as a mere conscious intermediary, there is a lack of evidence supporting these alleged arrangements sufficient to constitute the materiality required by the appeals case law cited in chapter 9 above, to which reference is made.

It would therefore be sufficient to refer to what has already been argued in order to satisfy the requirement to provide a motivation. However, for completeness, the most relevant passages of the discussion are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals, pointing out that in the summary of the closing statement reference is made to the mere secondary thesis of participation in the negotiations that led to the agreements of April 29, 2011 with the knowledge of the unlawful criminal arrangements of others, without even mentioning the disputed direct participation in the agreements on the commissions to the public officials.

16.2 Conclusions of the Public Prosecutor

As Managing Director of NAE, he was, together with Casula, the most important person of Eni in Nigeria.

It was Pagano that expresses the wishes of Eni/NAE in the FGN Resolution Agreement of April 29, 2011, the act contrary to official duties in which the corrupt arrangement arose and established itself. In this role, he is naturally involved in all key moments of negotiation and execution.

It was to Pagano that Akinmade turned to convey Etete's interest in negotiating with Eni, meeting him on December 10, 2010 and illustrating the status of block 245. Pagano would report to Casula and immediately afterwards an email would arrive from Emeka Obi.

It was Pagano who signed offers to Malabu in April, June 2010 and October 2010.

It was also Pagano who sent Obi's invoice of $500,000 to Cerrito for payment, without attaching any contract. The $500,000 were paid without any fuss being made.

Pagano forwarded to De Rosa of the anti-corruption unit the set of documents relating to ENI Circular 379 (1. Malabu mandate to EVP.pdf 2.OPL 245 nota due diligence-circolare 3792009.pdf 3. rapporto TRAG 2010.pdf 4, Malabu ENI AVA Submission march 2010.pdf) the same documents transmitted the following year to Falcioni from the mysterious address uustates@yahoo.com.

Pagano was present at the meetings at Casula's house in Nigeria that were relevant to the proceedings: both on the eve of the meeting with Jonathan on August 13, which was also attended by Descalzi, Scaroni and Obi, and at the one in September with the Shell representatives, where it was decided to increase the offer to meet Obi's demands.

Pagano himself admits in his memoir to having participated at this dinner, while denying having addressed the Obi issue. On this point, we would like to refer to the findings previously made concerning the elements confirming that on that occasion, agreement to the increase of 85 million was reached. He participated at Scaroni's meeting with Jonathan at Minna on February 22, 2011, a risky meeting due to the place and time (at the height of the election campaign), but necessary to publicly show the closeness between Scaroni and Jonathan. And this took place precisely at a key moment in the negotiations for OPL 245. Also in 2011, after signing the resolution agreements, he continued to be informed about the fate of the money paid by NAE on the Nigerian government escrow account and of the failed attempts to transfer the money to the Petrol Service account at BSI Lugano.

German Burmeister's email of 6.22.2011 (Exhibit 127) has already been commented on, and from which it is inferred that Eni knew that the money was still on the government account. Attention. I just spoke to Giorgio. GMD[761] called Ciro for a meeting today to discuss 245. Both Ciro and Giorgio are away from Abuja today. GMD did not specify the purpose of the meeting.

Eni confirmed that the money is still in FGN's escrow. ENI's position is that they officially know nothing and any relationship between Malabu and FGN is none of their business. There is no doubt that the "Ciro" indicated in the email is Ciro Pagano.

Giorgio Vicini, admitting to having been aware of the problems related to the transfer of money, then confirmed that he had expressly discussed it with Pagano.

Nor are the arguments drawn directly and exclusively from Armanna's statements included, because they are completely unreliable and in any case lacking evidence regarding each individual.

Instead, the relevant passages of the video recording included in the record of the proceedings are reproduced:

"Enzo (Vincenzo Armanna): ...because the avalanche of shit that I am bringing along at this point in time...(he laughs).... Enzo: you'll see a strong river coming out, eh...." (p. 49) "Enzo: no, not before

[761] General Managing Director - acronym generally used for the head of NNPC see PM2 8, PM2 98 RDS 1154, RDS 1299, RDS 1309

the end of September, but that avalanche of shit that is coming, you will see it speeding up" (p. 53) "Enzo: Excuse me, but can we not change the boss of Nigeria?... Someone else instead of CIRO ANTONIO PAGANO?... Piero Amara: ...Sorry, is Antonio PAGANO on the board of directors?... ENI...then you're wrong...who is this.... Enzo: ...CIRO ANTONIO PAGANO is the interessor (phonetic) manager of Nigeria.... Piero Amara: I don't know him.... Enzo: he's a right-hand man of CASULA [Roberto CASULA, ed. note], like another named LUCA COSENTINO Piero Amara: Are they relevant in this operation?... Enzo: Yes!... They can create a real mess locally, if you have the company you're actually selling NAC GELIVEE FAITLANDER (phonetic) and the CEO of that company is against you...it's a mess.... Enzo: ...I mean, he must certainly put a person over Nigeria who he trusts 100%.... Andrea: I understand, but it's not a change...it's not like they change them just like that. Paolo: Change these two [speaking to the lawyer Amara, ed. note] Cosentino and.... Enzo: No, Nigeria is important, the Congo.... Enzo: ...for the time being we don't give a damn.... Paolo: Cosentino and CIRO ANTONIO PAGANO" (p. 54) "Piero Amara: (notes the two names) Eh, it's not that I propose anything. He's already official. Enzo: but not yet Nigeria...so the concept is this: You should use the lawyers saying that perhaps it's better that all those involved in 245 [referring to the OPL 245 oil concession] are no longer in Nigeria.... Enzo: So you take ANTONIO PAGANO and you remove him...where do you send him? To Kazakhstan.... Enzo: But I'm telling you that CIRO ANTONIO PAGANO is heavily involved in 245, okay?... DONATELLA RANCO's sister's husband is the head of the financial administration. Enzo: Donatella Ranco's sister, don't ask me what her fucking name is because I don't remember, he's the husband of...he's the head of finance...Donatella RANCO and Ciro Antonio PAGANO have been heavily involved in 245, I wouldn't rule out that they'll soon be getting a notice of investigation (he laughs)." (p. 55) 148 "Enzo: because they've been involved in 245 and I wouldn't rule out that they'll soon be getting a notice of investigation...I'LL DO MY BEST TO MAKE SURE IT ARRIVES...(he laughs).... Enzo: ...if we can't get Giraudi there, one that ANTONIO trusts 100%, we've completely secured the house we have to play in...." (page 56) 'Andrea: If you don't control the playing field...it's not secondary. Enzo: No, in fact, I...we're entering into the operational strategy, on the one hand we're moving to close the deal.... Enzo: on the other we're moving to reduce the problems that we could have in the area as much as possible...." (page 58) "Andrea: No, wait, but don't forget that I was in Nigeria for two years, CASULA'S MEN....THE BOSSES ARE HIS, THE ONES BELOW ARE MINE.... Andrea: Okay...yes, I understand, but when a top arrives who handles it? ANDREA: CIRO ANTONIO PAGANO.... Enzo: No, so we have to work...but now we have to eliminate...anything that could be a problem, okay.... Andrea: eh yes Enzo: ...so the man from Finance and the man... Enzo: ...because these two are a problem, because they can raise or lower the price of the asset."

13.3 The defense's discussion

The defense has demonstrated – an argument already accepted by the Court – the legitimacy of the entire phase of the long, complex negotiations for the acquisition of the rights to the OPL 245 license, highlighting how the management of the negotiations was handled by the competent central offices with the consequent marginality of Pagano's role, who was delegated to formally sign the offers and contracts as envisaged by the internal procedures of the Eni group, as confirmed by the witnesses Guido Zappalà at the hearing of February 20, 2019, Donatella Ranco at the hearing of February 27, 2019 and as also reiterated by Stefano Pujatti at the hearing of January 30, 2019: "These are non-recurring transactions, so non-recurring transactions are normally managed centrally at headquarters and not by the associate". Professor Manzonetto, on page 142 of his report, states: "The Eni anti-bribery procedure itself, the rules governing relations with the Public Administration in force at Eni since 2004, specifically prescribed that agreements had to be signed by a different individual from the one who had conducted the negotiations. This was prescribed in the Eni anti-bribery procedures and this is what happened even in the OPL 245 transaction."

The defense agrees on the reconstruction of the role played by Pagano in accordance with his corporate duties, highlighting the inconsistency of the prosecution's weak circumstantial arguments:
As we know from the trial proceeding, in December 2009 Pagano met Akinmade, who was a former NAOC employee, and who after retiring had started up a company that provided scouting services, in other words, he flagged opportunities in the oil and gas sector, and that this opportunity with OPL 245 had been flagged to him. The results of the trial proceeding have also proven that precisely on account of his technical expertise, Akinmade was not and could never have been the agent of Malabu in this transaction.
Pagano, after making this first contact with Akinmade, never participated in the negotiations for the OPL 245 deal, neither in the initial phase of the negotiations with Malabu or the second phase with the Government.

16.4 Relations with Emeka Obi

As further confirmation of Mr. Pagano's marginality in the transaction, it should be considered that all the court hearings clearly showed that he never had direct relations with Obi. This is irrefutably confirmed by the examination of all email correspondence, the text messages exchanged by Obi, as well as the numerous documents found in the “Obi briefcase." See also the deposition of the witness Giorgio Vicini, who states as follows (transcripts of the hearing of 11.20.2019, p. 42): “DEFENSE ATTORNEY RINALDINI - Okay. To the best of your knowledge, Ciro Pagano attended the negotiating meetings with Obi and his consultants? WITNESS VICINI
- No, never. Never. That is, as far as I know he never attended meetings with Obi and the consultants, which were mainly held in Milan, but as far as I know he never attended these meetings, "The Prosecution then made a vain attempt to reveal a connection between Obi and Pagano during the examination of defendant Agaev at the hearing on June 26, 2019. After asking Agaev for clarifications about his relations with Obi (transcripts, p. 27): “PUBLIC PROSECUTOR
- Who were the people from Eni that he mentioned? Who did Obi know at Eni?", the Public Prosecutor in fact leveled accusations against the defendant concerning the statements he made during the examination carried out before the same representative of the Public Prosecutor during the preliminary investigations, on March 30, 2016 (transcripts, p. 29): “PUBLIC PROSECUTOR - In addition to these...no, one more thing, you spoke...you said that he knew Romano, is it possible that this Romano is incorrect? Written...because we, excuse me, I don’t want to suggest anything because the facts may be delicate, but one of the defendants is called Pagano.... INTERPRETER - “It could be, it could be Pagano.” PUBLIC PROSECUTOR - Excuse me, who was this Romano about whom he spoke to you.... DEFENSE ATTORNEY RINALDINI - Excuse me, in the recording one clearly hears, then at minute...I refer to it, it mentions Armanna and it was incorrectly translated as Romano. If you want we can listen to the recording again. PUBLIC PROSECUTOR - No, but I.... DEFENSE ATTORNEY RINALDINI - No, because you asked a suggestive question with an incorrect presumption.... PUBLIC PROSECUTOR - Sir, I did not want all of these tangents, I agree with you, it is very probably Armanna, but I do not want to suggest the name that.... DEFENSE ATTORNEY RINALDINI - No, you suggested that it was Pagano. You suggested that it was Pagano, in the transcript it says Armanna. PUBLIC PROSECUTOR - Yes, but I don’t understand all this fun. That is, I wanted to obtain a series of names neutrally, that’s all. DEFENSE ATTORNEY RINALDINI - Let’s not ask suggestive questions but with an incorrect presumption. PRESIDING JUDGE - However, yes, it is necessary to stick to the procedural information. PUBLIC PROSECUTOR - We do not have any, what’s written is “Romano.” PRESIDING JUDGE - No, there is a transcript, Public Prosecutor? PUBLIC PROSECUTOR - There is no transcript, what’s written is “Romano” in the transcript. PRESIDING JUDGE - Yes, but in the recording if.... PUBLIC PROSECUTOR - I haven’t listened to it again, but I acknowledge...I certainly understand.... PRESIDING JUDGE - Alright, but

now if there is no...if the recording has not been heard, reference is made to the procedural records with one's own interpretations. PUBLIC PROSECUTOR - No, the problem is that what is written in the transcript is "Romano," that's why. PRESIDING JUDGE - Exactly, but assonance cannot be suggested. PUBLIC PROSECUTOR - Alright, we will not suggest any more assonance. DEFENSE ATTORNEY RINALDINI - At minute, exactly, after one hour and eleven minutes in the recording, you can clearly hear "Armanna," in reference to this phrase, after one hour and eleven minutes. PUBLIC PROSECUTOR - You can ask directly. Was a certain Armanna, Vincenzo Armanna mentioned? INTERPRETER - "Yes, I heard this name, Armanna." " The Public Prosecutor tried, in vain, through yet another suggestion, to have Pagano named as one of the people who had relations with Obi. Faced with the objections raised by the defense, the Public Prosecutor then admitted: "Sir, I did not want all of these tangents, I agree with you, it is very probably Armanna, but I do not want to suggest the name that.... The intent of the Public Prosecutor may also have been not to suggest the name "Armanna," but he suggested that of Mr. Pagano. Following the cross-examination of the Public Prosecutor, Agaev in any case clarified that at the time of the events Obi had given him the name of Armanna and not Pagano.

16.5 Relations with Falcioni

Now let's see what relationship Pagano had with Falcioni. Here again we have submitted Exhibit 274 of the joint brief submitted by the defending attorneys. It contains a whole series of emails between Pagano and Falcioni, emails from which an extremely formal relationship is inferred, they used the formal form ("lei") with each other, an occasionally conflictual relationship, a relationship whose sole and exclusive object was the work contracted out by NAOC to Falcioni's companies, named Alcon and EFTD (phonetic) Ltd. I immediately want to dispel any doubts and insinuations and make it clear that witness Giandomenico said on page 16 of the hearing on December 12, 2018 that he did not remember having ever seen Pagano at Falcioni's home: Public Prosecutor "Do you remember whether the people who were at Falcioni's home included Pagano and Pujatti in particular?", Giandomenico "I don't think that Pagano and Pujatti were at Mr. Falcioni's home." Again for the sake of clarity, I want to point out that unlike what I heard during the closing arguments, Armanna never said that he had spoken with Pagano about the connection between Falcioni and Bisignani, it suffices to go and re-read what Armanna said during the trial for confirmation of this. The merely formal relations between Falcioni and Pagano were confirmed by Stefano Piotti, Falcioni's partner in his companies, who was examined at the hearing on October 30, page 30. They were talking about the attempts to transfer money to Petrol Service. The Public Prosecutor asked, "Were Eni and Shell aware of these transfer attempts?", Piotti "Look, I don't think so," Public Prosecutor "But during that time, there were also relationships, including for other reasons, for example with Ciro Pagano," Piotti "No, those relationships were strictly tied to execution of the Idu project, which was a really difficult project, highly conflictual," the Public Prosecutor insisted and said, "No, I meant to say that there was a relationship. Maybe you talked about it," and Piotti replied, "Absolutely not, it would be a lot to say that I even saw Ciro Pagano twice, but they were all meetings strictly tied to completion of the Idu project."

So, not even this attempt by the Prosecution led to any result in favor of its case.

I also want to say a couple of things about the documents found at EMMGI, since, as we know, Eni documents found at this company can also be traced back to Falcioni's world. The due diligence memorandum, Circular no. 379, confirmation of the mandate given by Malabu to EVP, the TRAG 2010 report, and even the "Malabu-Eni GVEI submission March 2010" (phonetic). These documents were found attached to a somewhat strange email from ustates@yahoo.com sent to mauromacchi@emmgi.com and then sent again, in fact this time it's mauromacchi@emmgi.com. If the Court goes to look at Exhibits 112, 113 and 114 of the joint brief by the defending attorneys, it

can confirm that these documents are nothing else but the documents sent by Pagano on May 12, 2010 to De Rosa and Armanna. So, these were definitely documents available to Armanna, who, as I have already explained, already had personal relations with Pagano, and he was definitely aware of the company Petrol Service, as documented in the emails of 2011. Moreover, this system of anonymous emails has many analogies with the anonymous email transmission system of which Armanna has affirmed to be an expert at the hearing on July 17, 2019, when he told us how he allegedly sabotaged the Petrol Service transaction at BSI. It was he himself who told us that the anonymous emails were sent through the transmission of part of an anonymous email to an individual who then forwarded it to himself, and this is the same system that we find in the emails found at EMMGI, ustates to mauromacchi, which he then forwarded to himself. So, I am going to let the Court draw its own conclusions on who could have sent these documents to EMMGI.
In his brief, Mr. Pagano specified: “I categorically deny that I ever sent them or any person other than De Rosa and Armanna the documentation relating to "due diligence Circular memorandum 379' which said company was found in possession of, as I learned during these proceedings.”
Moreover, it should be noted that the method of sending emails found at EMMGI has many similarities with the mechanism of sending anonymous emails, which Armanna extensively discussed in Court, declaring himself an "expert” at the hearing on 07.17.2019: (transcript of the hearing of 07.17.2019, p. 142 et seq.): "PUBLIC PROSECUTOR - Yes, this action of disruption. So they are anonymous emails received by BSI. DEFENDANT ARMANNA - From addresses that for them are credible. PUBLIC PROSECUTOR - What does credible addresses mean? DEFENDANT ARMANNA - A BSI compliance officer, Ammann. PUBLIC PROSECUTOR - Ammann. You mean, Hamman received the information. DEFENDANT ARMANNA - Amman both sent and received the information. He didn't really send it, they were fake addresses. PUBLIC PROSECUTOR - But you said earlier, I don't know, he received it himself. Let me get this straight, otherwise this remains a mysterious statement. DEFENDANT ARMANNA - No, then how does it work? PUBLIC PROSECUTOR - Not that he received it, he sent it himself. DEFENDANT ARMANNA - Yes, now let me explain why. Anonymous emails, if they're not received by someone who has an interest in reading anonymous emails, are of no use, i.e., they're received and deleted. It makes sense to send an anonymous email or an anonymous letter when you want to protect the identity of the person who reported the activity, so to make sure that the...to warn of something wrong. But in reality, almost always when an anonymous report is used, it's because the person who received it already knows the content of the anonymous report and just wants a piece of paper to say where he got the information from. Not being able to say, for example, “I received it from Vincenzo Armanna,” – I'm giving an example – he says, “I received it in an email, I checked it out, it's true. It's true, it’s credible, so I'm starting a more thorough due diligence process.” Even in the case when ENI documentation (of which Armanna was in possession) was sent to EMMGI, it was sent from an unknown email address (uustates@yahoo.com) to Marco Macchi, who then forwarded it to himself. The total absence of relations between Mr. Pagano, EMMGI, Macchi, and Petrol Service was definitively confirmed by the fact that the extensive court hearings did not find even the smallest piece of evidence in this regard. The discovery of these documents at the company EMMGI cannot therefore be considered an evidentiary element linking ENI, Petrol Service, and Falcioni (contrary to what is implied in the brief of the Public Prosecutor, p. 144 and 263), as convergent court findings show that the only defendant to have had relations with Falcioni with respect to Petrol Service was Armanna, who acted in his personal capacity, with his personal email, to obtain “his” fees.

16.6 Relations with Petrol Service

Now we are going to talk about the relations with Petrol Service. I can say with absolute confidence that the trial proceeding did not reveal, since there never was one, any connection between Petrol Service and Mr. Pagano, just as there never was any connection between Petrol Service and Eni. We

know that Armanna has made statements concerning alleged meetings over Petrol Service with several of the defendants, and with several of the witnesses, with Pujatti and Vicini. But even these statements are absolutely unreliable and, first and foremost, they have been refuted by the reference texts.... The Public Prosecutor has repeatedly affirmed the following equation with regard to the relationship between Falcioni and Armanna: Armanna equals Eni. In reality, this equation has been thoroughly contradicted by the findings made during the trial, inasmuch as Armanna, and Armanna alone, as this trial has amply demonstrated, Armanna dances alone. The emails of June 2011, concerning the payment by the government to Petrol Service and Malabu, were sent by Falcioni to Armanna's personal address, and not to his corporate address. This is a highly important circumstance. These emails were never copied either to Pagano or to any other senior manager or employee of Eni, nor did these emails or others concerning Petrol Service ever get delivered to any senior manager or employee of Eni. The Prosecution again attempted to establish connections between Eni and Petrol Service...and how di Piotti respond? "No, they were not named." So, this is what has been found out from the questions about the relations with Petrol Service, and thus we may confidently say that the trial proceeding has revealed the complete absence of relations between Petrol Service with Pagano and Eni.

16.7 Participation at meetings with Shell executives at Casula's home

Even this charge reveals the Prosecution's clear acceptance of what Armanna claimed in the pre-trial investigation, when he said that that famous dinner had been held at Casula's home, where they allegedly discussed raising the price to 1.3 to pay Obi, and thus to raise it by $40 million. Well, Descalzi's defending attorney has given an excellent explanation of Armanna's method. What was Armanna doing? He started with a true circumstance, i.e., the fact that that dinner was actually held, and in fact that dinner was held, and then added untenable claims, in this case the object of the discussions held at that dinner, to make his lies appear plausible. So, even Armanna's statements about that dinner are unreliable and contradicted by the documents.... First, by the email sent on September 19, 2010 at 4:44 pm from Casula to Descalzi and others, which refers precisely to the topics discussed during the dinner in question (exhibit 81, doc. no. 163 ENI submission memorandum): "+ talked to Emeka Obi for a joint meeting with the seller. He will give us + confirmation: both will be in Paris in the middle of the week; + Emeka sent us a copy of a letter (from last June) signed by + Attorney General confirming to the seller the terms of the settlement + agreement of 2006 and the right to dispose of Block 245 as desired + once the bonus has been paid (USD 210 million) + data room at shell-houston. Pending the final report, the following emerged: Greater exploratory upside Greater complexity at the oilfield level (Shell assumes a recovery factor of 32% compared to our 42%); The average reserves seem in line (in the last memo for the bod we had indicated 360+80 of exploratory potential); Different project timing: development with fiat production profile, fpso sized for 120kbopd and first oil in 2017. Moreover, Shell hypothesizes export gas on bonny (this, if realized, would allow additional reserves to be recorded). + Friday night meeting with shell (besides me Pagano and Armanna): Agreements to be prepared JOA between eni and shell SPA between eni and Malabu Multiple signature settlement agreement (or multiple agreements) with: Attorney generai/Min Oil/Min Finance /Malabu /eni/shell.

In this settlement agreement, the main previous conditions referred to in the SPA would be met, namely: back in rights of nnpc, oil taxation of reference, exemption from transaction taxes, duration of the license, closure of all litigation between shell and Malabu and between shell and the federal government; Shell is already working on a draft of joa that will regulate our relationships but above all their participating interest in the block and their contribution; Price: for 100% of the block the offer could be about usd 1200 million including the signature bonus. Shell believes that the seller has expectations between 1.5 billion and 2 billion usd, but the short time left to close the deal could lead

to a lower closing value. We told shell that we had estimated the 40% at 620 million, which means that it becomes about 800 million for 50%. With a 2-to-1 contribution ratio between eni and shell (net of works) they should contribute about 400 million (of which: 210 bonus, 30 escrow interest and 160 balance). Shell has not taken a definitive position on this point, but we believe it would accept the logic if we were close to closure. Action plan: shell will send a draft JOA in the next few days, instead we should prepare the draft offer leaving the finalization of the price to the ongoing checks. A new meeting with shell is expected this week."130 In the email cited above, with regard to the price to be offered for OPL 245, it is stated that, although "the finalization of the price [will be postponed awaiting] the ongoing checks," "for 100% of the block the offer could be about USD 1,200 million including the signature bonus...." There is no reference to what Armanna said, namely that during that dinner it was allegedly agreed to raise the offer for OPL 245 by 40 million – from 1,260,000,000 to 1,300,000,000 – to pay Obi. Another denial of Armanna's statements can be found in the same "OPL Brief" memorandum, sent by Robinson to Craig on September 23, 2010 cited in the brief of the Public Prosecutor (p. 170-171), which does not mention any of the 40 million to be paid to Obi, and the price to be offered for the Block is still specified as $1,200,000,000 and not $1,300,000,000. The Public Prosecutor himself denies his own argument when he states, commenting on this memorandum, that "at that time (September 23, 2010), Eni and Shell were willing to fork out – all in all – just $1.2 billion" (PP brief, p. 171). Therefore the Prosecutor himself acknowledges that on September 23, 2010, six days after the dinner of September 17, 2010, the offer was still $1.2 billion and not $1.3 billion as Armanna says! Armanna's version also conflicts with SHELL's internal email sent on October 11, 2010 by Brinded to Robinson and others, cited by the Public Prosecutor (transcripts of the hearing of 7.2.2020, p. 61 and hearing July 21, 2020, p. 40; PP brief, p. 173), where reference is made to a very different figure (not 40 million, but 85 million) and no mention is made of the payment to Obi. Contrary to what the Public Prosecutor asserts (PP brief, p. 116), it is clear that the 85 million mentioned in this email cannot in any way be referred to the commissions to be paid to Obi, as neither the figures (40 million - 85 million) nor the reasons why Obi's fees – who, according to the Prosecutor, was ENI's broker – should have been paid by SHELL! In reality, the $85 million discussed in the aforementioned email was simply the figure that, in the context of the internal negotiations between ENI and SHELL, it was agreed that the latter should pay as an additional contribution to the price to be paid to Malabu (210 signature bonus + 25 related interest + 85 balance = 320 million). The email dated October 11, 2010 also shows that ENI had agreed to pay 980 million for the Block, a figure higher than the 800 million mentioned in the "OPL Brief" memorandum of September 23, 2010, drafted by Peter Robinson. The reason for this increase derives from the fact that, in the Heads of Agreement signed by ENI and SHELL on October 13, 2010, the two companies had agreed to transfer the operatorship on Block 245 to ENI and to pay SHELL a bonus for the exploratory upside for a total of 180 million (800 + 180 for operatorship and SHELL bonus for previous exploratory activities = 980 million). In his signed memorandum filed on January 29, 2020 regarding the dinner on September 17, 2010 at Casula's home, Mr. Pagano explained that: "It was a working dinner in which several topics were touched on, including the potential impacts of the planned oil industry reform law (PIB), at the time being discussed at the National Assembly and the situation of some disputes with NNPC in relation to the interpretation of the oil contracts of the Abo and Bonga oil fields. I remember that OPL 245 was also discussed on that occasion as the visit by the ENI team to the SHELL Data Room in Houston had ended a few days before. The terms of the discussion on OPL 245 made during that dinner are summarized in an email from Casula to Descalzi on September 19, 2010, at 4:44 pm. During this dinner we never talked about raising the price by 40 million (from $1,260,000,000 to $1,300,000,000) to pay the commissions to Obi in any way about commissions to be paid to anyone."

16.8 Participation in meetings with the President of Nigeria

The meeting, which was the third act charged against Pagano, the meeting with the President at Minna on February 22, 2011, was a different meeting from the one discussed by the other defending attorneys, different but similar, because it was again an institutional meeting. Moreover, Pagano, who was the managing director, also had the task of organizing the logistics for meetings between executives and heads of state. Furthermore, at this institutional meeting, just as in the other meetings, we again find the customary letter by the managing director, the thank-you letter that was sent afterwards, we have one here again, and it is Exhibit 222 in our brief in submission of evidence, which summarizes the topics discussed at that meeting. It is clearly inferred from that letter that OPL 245 was not even discussed, but instead other matters of interest to Eni were, about the Okpai electric power plant and the Bras (phonetic) project. So, they did not even talk about OPL 245, and here again, lawful acts cannot constitute conspiracy in international bribery.

16.8 Signing of the Resolution Agreement of April 29, 2011

The court hearings have clearly revealed that Pagano only participated at the meetings on April 28-29, 2011, because his signature was required on the resolution agreement at those meetings, and as I have already mentioned, Pagano was the person who was authorized and vested with signature authority for this document. The course of this meeting is very important, and I am now going to illustrate it to you, it is one of the many elements that are incompatible with a corrupt arrangement, insofar as there were major points of disagreement among the parties up to the very end, and there was absolutely no certainty that the resolution agreement would be signed. Giorgio Vicini and Pagano participated at this meeting on behalf of Eni. Vicini gave his testimony, we know that Pagano, we have submitted a brief signed by him, we are perfectly aware of the value of a brief signed by the defendant, however, what counts is that all the words written by Pagano are all confirmed by the submitted documents. So, what issues still had to be settled by the parties on April 28, 2011? There were at least three of them: the heads of agreement between Eni and Shell had still not been signed; the escrow agreement that was supposed to regulate the payments mechanism had not yet been agreed between Eni and Shell, and thus had not yet been shared with the Attorney General; finally, Eni and Shell still disagreed over the distribution of any proceeds resulting from exercise of the back-in rights. So, heated discussions were held on April 28-29, as Vinci tells us, who tells us on page 43 of the transcripts, “The meeting on the 28th was really long and tense, on the verge of breaking down completely.” But then there are some emails sent and received by Pagano during those two days, and I think that they are really important emails, as they specifically prove that Pagano had nothing to do with what has been charged against him. I am going to read them to you because they are really, really fast exchanges of messages. Ranco wrote to Pagano and Bollini on April 28, 2011, in Exhibit 241, “I have talked with Claudio and he says not to sign if there’s no escrow agreement.” Then, again on the 28th, we have an exchange of emails between Pagano and Casula, Casula asks Pagano “So, are you all going to sign?”, and Pagano replies to him, “I don’t know, I don’t think so, it depends on how the discussion about escrow goes with the Attorney General.” And then we have the last email dated the 29th, the signing date, where Pagano writes to Vicini, “We’re not going to get this done.” So, these emails exchanged right on the resolution agreement signing date, and on the day before, demonstrate that during those meetings, Pagano had no certainty at all that the deal would be closed and agreement signed.

The statements of the witness Vicini and Mr. Pagano on the various aspects that had yet to be negotiated and on the concrete risk of the transaction not being concluded are documented in the emails exchanged between ENI functions on April 28 and 29, 2011: - email dated April 28, 2011, at 14.12, sent by Ranco to Pagano and Bollini (Exhibit 84, doc. no. 241 ENI submission memorandum): "I spoke with Claudio, who says not to sign if there is no escrow agreement"; - Pagano's reply to the

email dated April 28, 2011, at 6:09 pm, sent to him by Casula "so will you sign?" (Exhibit 85, doc. no. 240 ENI submission memorandum): "I don't know, I don't think so. How the discussion on escrow goes with the AG depends on me": 135 - email on April 29, 2011 at 7:30 am, sent by Pagano to Vicini (Exhibit 86, doc. no. 243 ENI submission memorandum): "We're not going to get this done." The way the meetings of April 28 and 29, 2011 unfolded and the content of the aforementioned emails are completely incompatible with the existence of any corrupt arrangements. The content of the Escrow Agreement, the methods and timing of payments, and the issuance of the license had yet to be negotiated with the Attorney General. With SHELL, in addition to the Escrow Agreement, it was still necessary to agree on the percentage of distribution of proceeds if NNPC exercised its back-in rights. If there had been corrupt arrangements already concluded for months – as assumed without any evidentiary confirmation by the Public Prosecutor – there certainly would not have been – after, it is well known, a year and six months of very complicated negotiations – all these additional difficulties that, as shown by the testimony of Giorgio Vicini and the emails exchanged between the ENI employees, risked leading to a breakdown of the negotiations precisely during the meeting scheduled for the signing of the agreements. The emails above are clear evidence that at these meetings Mr. Pagano had no certainty about the conclusion of the transaction and the signing of the agreements. This demonstrates the total absence of awareness of the existence of alleged and unproven corrupt arrangements.

16.10 Conclusions

Noting that even the prosecution no longer supports Pagano's direct involvement in the corrupt arrangements, but only his participation in the negotiations with the knowledge of the unlawful arrangements of others, the Court agrees on the lawfulness of the role played by the defendant in the negotiations, corresponding to the duties deriving from the employment contract with Eni, underscoring that the reasoning used by the prosecution to prove his function as a conscious intermediary of unlawful arrangements of others is mere conjecture insufficient to consider proven the knowledge necessary to constitute the subjective element of the offense according to the case law of the supreme court set out in chapter 8, to which reference is made.

All the corporate documents signed by Pagano, and in particular the three offers of 2010, reflect absolute prudence and respect for the interests of the company and therefore do not offer any element, even circumstantial, to deduce his awareness of participating in the illicit arrangements of the hidden shareholders of Malabu, and specifically of Dan Etete, since the aforementioned offers are subject to the following conditions:

- completion of the due diligence on Malabu;
- the resolution of all pending litigation related to the Block;
- the approvals by the FGN and all the competent state authorities, including the President, the Petroleum Minister, the Minister of Finance and the DPR at the conclusion of the operation;
- the approval of the Boards of Directors of ENI and NAE.

Specifically, it should be noted that Pagano never even attempted to modify the contractual conditions relating to the offers that had been prepared and finalized by the relevant ENI functions of the headquarters, as confirmed by all the witnesses, none of whom were investigated, and by the consultant Manzonetto.

Moreover, the same conclusion of the Public Prosecutors recalls a liability for negligence consisting in the failure to react to company orders received in a generic context of illegality:

In summary, Pagano's responsibility rests on his formal role (he signed all relevant documents, both those with Obi and the FGN Resolution Agreement) and on his full awareness of the illegality of the context. He was an executor of instructions that came from the top executives of the group. Those instructions certainly did not reassure him, however he took great care not to object to them.

In reality, the hearings allow for the exclusion of any "culpable liability," taking into account the

results of the technical consultations and above all of the testimony of De Rosa, Head of the Anti-Corruption Unit at the time of the events:
“DEFENSE ATTORNEY RINALDINI: You reported that on May 12, 2010 you received from NAE's managing director, Pagano, all documentation in accordance with the anti-corruption procedure, so this due diligence memorandum, the TRAG reports, the Malabu mandate, and this questionnaire on Malabu. Do you remember if you then asked Mr. Pagano, managing director of NAE, for any clarifications regarding this documentation sent? WITNESS DE ROSA - Yes, I remember asking for a number of clarifications. DEFENSE ATTORNEY RINALDINI - And do you remember if NAE, in the person of the managing director, responded to these additional questions that were asked by the anti-corruption office? WITNESS DE ROSA - Yes, he answered me point by point, indeed quite clearly, because he answered every single question I had in red. Yes.”

CHAPTER 17
EDNAN AGAEV

17.1 Charge

Agaev Ednan, in his capacity as owner of the company International Legal Consulting (ILC),

- acting as a broker between Shell and Etete
- being tasked by Etete with providing assistance in the negotiations regarding the sale of Malabu's rights in OPL 245 and agreeing to a "success fee" of 6% of the agreed price;
- meeting with and discussing the terms of the relationship with Etete with Richard Granier Deferre, a fiduciary and formerly Etete's co-defendant;
- kept constant relations with Emeka Obi and agreed with him the approach to be taken towards Eni and Shell;
- meeting on several occasions with Peter Robinson of Shell, as well as John Copleston and Guy Colegate, former MI6 officers who had been hired by Shell as Senior Business Advisor and Strategic Investment Advisor;
- Meeting several times with the National Security Adviser, General Aliyu Gusau, and obtaining information from him about the financial expectations of President Jonathan and the other members of the government; putting Gusau in contact with Obi shortly before Scaroni's and Descalzi's visit to President Jonathan in August 2010;
- attending the meeting with Etete in Milan during the night from November 30 to December 1, 2010, at which Obi and Agaev were present, to settle the issues regarding the fees to Obi (EVP);
- keeping in touch with Etete up to the closing of the deal and thereafter.

In this case, from the reading of the specific conduct that the defendant Agaev is charged with, a precise reference to the conduct is cited (meeting on several occasions with the National Security Advisor, General Aliyu Gusau, and obtaining information on the economic expectations of President Jonathan and the other members of the government from him) in the form of conscious intermediation of the participation in the corrupt arrangements that allegedly led the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello to adopt the settlement agreements of April 29, 2011 in contrast with Nigerian law in order to benefit the oil companies in exchange for money.

In addition to this typical, specific conduct, the charges refer to actions aimed at promoting, supporting and deciding, on the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these acts fall within the activities of intermediation and consulting position held at the time.

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), but, taking into account the literal content of the specific charge, the latter must be considered prevalent.

Since the charge is ambiguous both forms will be addressed, that of having directly participated in the corrupt arrangements, and that of having acted complicitly, as an intermediary, aware of arrangements involving other parties.

In its closing brief the defense argued the extraneousness of the defendant to the direct participation in any corrupt arrangements, moreover based on mere conjecture.

As for the "spare" argument that he acted as a conscious intermediary, there is a lack of evidence supporting these alleged arrangements sufficient to constitute the materiality required by the appeals

case law cited in chapter 9 above, to which reference is made.
It would therefore be sufficient to refer to what has already been argued in order to satisfy the requirement to provide a motivation. However, for completeness, the most relevant passages of the discussion are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals.
Below are the passages of the concluding brief to highlight in underlined bold text how the active, direct participation in corrupt arrangements, i.e. the fact to be proven, is taken for granted at the beginning of the brief and then taken up again in the final conclusions, simply equating lawful negotiations and unlawful negotiations. However, this argument is already widely refuted by the proven lawfulness of the negotiations carried out by the oil and gas companies for the acquisition of the license, a lawfulness that clearly extends also to those persons, such as Agaev, who operated as intermediaries of one party, Malabu and its partner Etete, for the conclusion of the agreements.

17.2 Conclusions of the Public Prosecutor

PP: **He actively participated in the corrupt arrangements by acting as Etete's interface.** In that capacity, he constantly interacted with Obi, who in turn reported to Eni, and with Shell, especially with the "colleagues" Copleston and Colegate. To better manage Etete, he involved Richard Granier Deferre, Etete's co-defendant in the French money-laundering trial.
In OPL 245 Agaev is initially involved by the powerful General Gusau, the Head of Espionage in Nigeria, who, in order to facilitate the sale of OPL 245, introduced him to both Etete and Copleston of Shell.
In this position as mediator between the parties, Agaev collected and exchanged information with his contacts in Shell, Copleston and Colegate in the first place, constructing a privileged relationship with them that was definitely useful for the oil and gas company, which was provided with a set of confidential information on the moves, and the political godparents, of the "Vendor."
From Etete, also thanks to the good offices of Granier Deferre, he managed to obtain a mandate, issued in favor of Agaev's shell company, the ILC (International Legal Consulting) of the British Virgin Islands, allegedly to find investors but in fact made exclusively as a vehicle for communication with Shell.
Although he defined it in the trial proceeding, with an ex post rethink for obvious procedural convenience, "a crazy idea," he is the architect, with Obi, of the appropriation mechanism of agreed price and excess price, of which he would have been an immediate beneficiary.
He is closely associated with Emeka Obi, of whom he becomes the exclusive interlocutor in Shell's interest. For his part, Obi represents Eni for Agaev, he said so several times during the trial proceeding ("Yes, EVP was responsible for relations with Eni," hearing 6.26.19 page 19; "EVP brought Eni in" page 25)
In one case, commenting on a Shell document (RDS 568) containing very sensitive information about "highly confidential" discussions between Eni and the CEO of the entire Shell group, Peter Voser, Agaev explained that the expression "Ednan said he spoke to Eni" simply meant that he had spoken with Obi: "Yes, I received this information from Obi, but I had no contact with Eni staff, and therefore the information received by Eni (inaudible) was passed from me to Copleston" (hearing 6.26.2019 page 35)
Basically Agaev was for Shell what Obi was for Eni. They were interfaces between the unpresentable Etete and the respective oil companies. The emails on record, already highlighted several times, indicate that in addition to the official channels (Descalzi/Brinded - Robinson/Casula contacts), the oil companies exchanged information through Agaev and Obi.
In fact, Agaev was very active in contacting the parties and allowing exchanges of information and

requests:

- he was present at the meeting on February 4, 2010 at the Prince of Savoy with Etete and Descalzi;
- he made every effort for Etete to send Obi's mandate to Eni in April;
- he organized several meetings between Obi and Shell's representatives, for example on August 18, 2010 and September 20, 2010, following the meeting in Abuja at Casula's house where an increase in Shell's cash contribution to Obi's commissions is discussed;
- he continued to communicate with Gusau, facilitating meetings with Obi in August 2010;
- he was available to communicate with Jonathan through Gusau to send certain messages to Scaroni;
- he flew to Paris on November 1, 2010, the day after Eni's offer (see text message Obi no. 950) "to meet Richard and the Pope" (i.e. Granier Deferre and Etete);
- he was promptly informed of the outcome of the November meetings with the Attorney General;
- he was personally present during the trip to Milan that Etete made at the behest of the Nigerian government to meet [English in source text:] "the Italian top" [translation resumes:] and close the deal;
- he was next to Etete when the latter received the call from the Attorney General in which Adoke asked him to take over the payment of commissions to Obi.

Finally, once the negotiations were concluded with the signing of the resolution agreements, Agaev met with Etete in Russia ("Yes, he came to visit me in Moscow"). In early May 2011, provoked by a series of Obi text messages aggressively blaming him for keeping him in the dark about the deal closing (My friends and I will be OK but I would advise you to understand who you have relied on. You will be fooled), admits that he will have something only if "the government" – there is express talk of Jonathan, Adoke and the finance minister – decides to give something to Etete.

This is the summary of Agaev's role: intelligence in Shell's interest, discreet but constant control of the Chief, adherence to the excess price sharing project and, subsequently, the expectation of money tied to the successful outcome of the negotiations over OPL 245.

This series of reasons explains his presence at key moments in the affair. It also suggests that he should be considered one of the people who most consistently – albeit discreetly – cooperated in the success of the criminal scheme.

In detail:

- with reference to the letter of April 8, 2010 by which Malabu, signed by Seidougha Munamuna and Rasky Gbinigie, informed NAE, to the attention of Roberto Casula, that "there is an exclusive mandate" in favor of Malabu, it is significant that Agaev, on April 9, communicated to Obi: "I spoke with the Chief. He's getting ready to sign the letter. The Chairman of Malabu is in Port Harcourt. He's sending us someone to collect the signature. We will have the letter signed by Sunday." (Obi text message no. 206)
- Agaev organized the contact between Obi and Gusau between August 9 and August 11, 2010 in Abuja. Read: August 9, 2010 Obi text message to Gusau (no. 468) "Good evening Sir, our friend the ambassador asked me to see you. I'm available in Abuja anytime. Regards Obi."
- Agaev organized the meeting between Obi and "the Dutch" on August 18, 2010.

505	8/14/10 4:13 pm	Ednan Agaev	Incoming	I'm planning a meeting with the Dutch in London. Are you there Tuesday?
506	8/14/10 5:05	Ednan Agaev	Sent	Pls call when possible

	pm			
507	8/14/10 5:12 pm	Ednan Agaev	Incoming	I’m at the opera. I'll call you during the intermission in about an hour.
508	8/14/10 5:15 pm	Ednan Agaev	Sent	OK
509	8/15/10 3:07 pm	Ednan Agaev	Incoming	The Dutch will meet you in London.
510	8/17/10 11:41 am	Ednan Agaev	Incoming	Peter +31646382549. Guy Colgate (John’s boss) +447921684960
511	8/17/10 11:42 am	Ednan Agaev	Sent	OK
516	8/18/10 1:57 pm	Ednan Agaev	Sent	I just got here. Who am I calling, Guy or Peter?
517	8/18/10 1:58 pm	Ednan Agaev	Sent	I also have some interesting news.
518	8/18/10 3:16 pm	Ednan Agaev	Sent	Just let me know.
519	8/18/10 3:43 pm	Ednan Agaev	Sent	Guy or Peter?
520	8/18/10 3:43 pm	Ednan Agaev	Incoming	I'll call you in a bit.
521	8/18/10 3:43 pm	Ednan Agaev	Sent	Okay, thank you.
522	8/18/10 3:44 pm	Ednan Agaev	Incoming	Better Peter.
523	8/18/10 3:44 pm	Ednan Agaev	Sent	Okay, I'll call him right away.
524	8/18/10 4:10 pm	Ednan Agaev	Incoming	Call Peter first.
525	8/18/10 4:29 pm	Ednan Agaev	Incoming	If Peter doesn't answer (maybe he's already gone), call Guy.
526	8/18/10 5:19 pm	Ednan Agaev	Sent	I'm on my way to him now.
527	8/18/10 5:29 pm	Ednan Agaev	Incoming	Fine.

PUBLIC PROSECUTOR - The question is: why did Shell want to meet Obi?
INTERPRETER - “It is clear, because they knew that I did not have direct contact with Eni, but I told them that Obi did have contact with Eni, so it would be very easy to have a direct conversation with Obi, who could explain Eni’s position to them.”
PUBLIC PROSECUTOR - But did Shell doubt who was actually behind Obi?
INTERPRETER - “Yes, they always had doubts.” “Both of them, Colegate and the other one asked me several times whether I was convinced that Obi was actually representing Eni...that he had contact with Eni” (p. 39).

- Text message no. 570 of 9.1.2010 is extremely significant. In that message, which Agaev sent to Emeka Obi and which contains, probably, a text originating from others (someone from Shell) in fact refers to "Emeka” in the third person: As discussed, the presence of Emeka will not create any problems. At some point we can leave him alone with Peter [omitted Italian

translation] [English in source text:] to coordinate the Nigerian issues [translation resumes:] that are extremely urgent at the moment and we can continue our discussions. He is, however, a trusted person.

- Agaev arranged other meetings between Obi and Shell, one in particular on 9.20.2010 at a time approaching the Abuja meeting at Casula's house, where an increase in Shell's cash contribution to take over Obi's commissions was allegedly discussed.
    - Text message no. 625 from Agaev to Obi "Tuesday evening (September 21) I have a meeting in Paris John, Pete and Guy around 8 pm. It would be helpful if you could join us so we can discuss a few things."
    - Text message no. 634 from Obi to Martini Schwedler of Raiffeisen Investment AG on the 21st: "I have already met the Italians, I meet the Dutch in 30 minutes, then tomorrow I will come to see you."
- His discreet but attentive presence during the turbulent phases of the presentation of the offer of October 30, 2010:
    - Text message no. 914 of 10.28.2010 from Agaev to Obi: The situation is becoming dangerous for us. Papa just called me and told me that the Italians (or perhaps the Dutch) informed him that the Italians gave you the offer today and that you disappeared from the screen. Please call me, I have to calm this man down, otherwise the Dutch could use him to cause damage! Actually, they keep calling me to ask where the papers are and why nothing's moving. Just let me know. If I don't have enough information and I can't control Papa, he'll go to someone else and we'll lose control of the situation.
    - Text message no. 930 of 10.29.2010 from Agaev to Obi: I spoke with Pete – he is sending a note to Roberto in which he expresses all our disappointment for not having closed the SPA yet – he also points out that there are leaks of news regarding details of the agreement and therefore it will soon be impossible to execute it. Pete, like me, believes that it is absolutely essential to get the SPA to the Chief today so that the pressure from [English in source text:] AG [Attorney General] [translation resumes:] is successful, otherwise everything could fail by the weekend. When do you and Richard think you will cut the credit to the Chief?".
- AGAEV was informed of the November meetings at the Ministry of Justice.
    - Text message no. 1042 11.15.2010 from Agaev to Obi: The Chief will sign the agreement with the spaghetti on Thursday in Abuja. They agreed 1, 2. All this will be done in the presence of the Attorney General, Petroleum Minister
- AGAEV was present in Milan during the trip that Etete made on orders of the Nigerian government to close the deal. Read text message no. 1126 from Agaev to Obi on November 24, 2010:
    - They (his Nigerian friends) gave him a week's extension to meet the [omitted Italian translation] [English in source text:] the top Italian [translation resumes:] and conclude the deal. He's coming to Geneva Monday morning, ready to sign and close.

PUBLIC PROSECUTOR - Who are the Nigerian friends?

INTERPRETER - "They should be members of the Government, and he made no secrets of it, he said he was a friend of the Attorney General" (p. 58).

During Etete's trip to Milan, Agaev was present for Casula's short night outing, who joined the group late at night (Etete, Obi, Agaev) infuriating the Chief who would have liked to talk to someone more

important. In addition, the following day, he witnesses the call between Etete and Attorney General Adoke in which the latter asks him to take over the payment of commissions to Obi, quantified at 55 million:

"I only witnessed a telephone conversation.... Yes, I was very close to the chief at the time.... They talked in general about the transaction, and then Etete said that he would not pay [would pay] anyone, so I don't know what the Attorney General told him, but I think he told him,...that if he had made the commitments he would have to pay because if he did not pay they would chase after legal problems.... I did not hear what the Attorney General said, Etete told me that, and he said that he was in agreement. He agreed that he would not pay 80, but 55" (p. 62-63).

- After the agreements reached following the mediation of Attorney General in November, and the elaboration of the tripartite scheme, there are still traces of Agaev's presence. From a text message to Obi dated 1.19.2011, it is understood that Agaev is in contact with Etete and that he is trying to settle the Obi issue:
    - P [Pope, i.e. Etete] just called me. He has to meet the Attorney General today. He claims he is ready to sit with the Italians and with you and conclude the deal (text message no. 1453).

Prudently, remain discreetly close to Etete. He is informed of the conclusion of the deal:

PUBLIC PROSECUTOR - How did you find out that the deal had been concluded?

INTERPRETER - "Peter Robinson phoned me and the Chief informed me."

PUBLIC PROSECUTOR - And was the Chief happy or was he annoyed?

INTERPRETER - "The Chief was very happy."

PUBLIC PROSECUTOR - But did he then go to your place or with you to Moscow immediately afterwards?

INTERPRETER - "Yes, he came to visit me in Moscow" (page 90).

- After signing the Resolution Agreements, he was informed of how the money will go around and you know who is in charge of the operation. The exchange of messages with Obi on this point is extremely clear and directly touches on the issue of corruption of public officials, which is quite unusual in the text messages exchanged between Agaev and Obi, which are generally quite cryptic.

The first text message (no. 1571) is dated May 5, 2011. Obi writes angrily to Agaev (who does not reply):

- Ednan, you've known me a long time. You know I'm always linear and honest with you. You and Papa [Etete] should have listened to me and we could have worked together to make sure that everyone got what they wanted. You'll see what these guys have in mind for everyone. My friends and I will be OK but I would advise you to understand who you have relied on. You're gonna get ripped off. And you'll admit that I was right about most things, too. Regards

Obi writes again on May 8, 2011 (no. 1572)

- You and I have known each other long enough and well enough to know that when I say something, it's usually right. Let's see what happens now

Agaev finally responds, with a certain harshness (text message no. 1573 of 5.8.2011)

- I advised you to settle with the AG [Attorney General] a long time ago. It's all in his hands. Chief has not decided anything for a very long time.

Obi's response is characterized by extreme, perhaps exaggerated confidence (text message no. 1573 of 5.8.2011):

- I'm not worried. The situation is perfect. You know me, I anticipated the worst scenario from day one. Like I said, let's see what happens now. And EVP will still

have its money. I just didn't think you'd agree to fall into those people's trap.

At this point, a few minutes later, Agaev responds by clarifying a series of circumstances of great relevance (text message no. 1574):

- I had no choice but to be tied to the Chief. I do not like this situation very much, and that is why I tried to make an agreement with another consortium, but the Dutch insisted that the agreement be made with the spaghetti. Now, I will only receive money if the Chief does, and I am not sure how much and if anything will be received. Everything is in the hands of the FGN, and more specifically the Attorney General and the Finance Minister, and naturally the Big Boss. Tomorrow I'm in Geneva and then I'm going to Malta. Let's talk.

It should be added that in addition to the objective facts, and the documents, which undoubtedly demonstrate that Agaev acted as an active and informed facilitator of corruption, the extensive admissions of the defendant about the unlawfulness of the entire related operation must be taken into consideration.

After the examination of the conduct of the defendant that even according to the prosecution's line of reasoning does not rise to the level required, having only acted as a broker/consultant, the initial accusation of having actively and directly participated in unlawful arrangements shrivels to the mere facilitation of the corrupt arrangements of others. This conduct – legally different – in reality is based exclusively on the information reportedly shared by Etete himself, who, in June 2011 and therefore after the negotiations, justified his failing to comply with the obligation to pay the compensation for the lawful brokerage work done by citing the "excuse" of having to pay too many debts accumulated over the years with friends and public officials.

It appears evident that, even regardless of what the defendant himself believes to be an improbable justification by the debtor Etete, known for not wanting to pay others as promised, knowing this afterwards certainly cannot go back to the previous negotiations that are therefore devoid of probative value since the prosecution itself did not consider it necessary to pursue the reference to the information regarding bribes received from General Gusau, cited in the indictment. The prosecution's reversal is easily understandable because the reference is based once again on generic information told to Agaev, who in this case allegedly learned – it is not known when – that Gusau expected to receive lawful and unlawful proceeds for having been an advisor to Etete in a private capacity in the period when he did not hold public office.

Given the above, there is no evidence of direct participation in unlawful agreements, nor the conscious brokering of unlawful agreements with others, the preliminary investigation only having noted a possible generic awareness of the "dangerousness" of contractual relations with Etete. However, the circumstance has already been extensively examined in chapter 8, to which reference is made because this information is not sufficient to substantiate proof of the full knowledge of specific unlawful arrangements of others necessary for the participation of an extraneous person in a corrupt pact.

Moreover, the most evident proof that the Public Prosecutor does not believe in the merits of the accusations leveled at the defendant Agaev is the evident unequal treatment of the parallel figure of Granier De Ferre, another consultant intermediary of Etete who performed the same functions as Agaev only with less intensity, but certainly not in terms of the level of awareness of possible illegal agreements pursued by Etete since he knew his criminal background better than anyone, having acted as his consultant for the criminal case that had ended with his conviction in France for money laundering, so much so that he was included in the criminal group that substantiates the aggravating factor of transnationality. Even though Granier De Ferre received compensation of 6 million dollars from Etete without having to resort to a lawsuit, clearly drawn from the funds related to the OPL 245

transaction in exchange for the professional work performed, work that the Public Prosecutor considers intrinsically criminal conduct by Agaev, this other broker/consultant was never even investigated and the prosecution asked to examine him in court as a witness (see witness list)[762] for having declared during the investigations that he had organized a system of automatic payments to guarantee the "kickbacks" not only to Etete's consultants but also to Eni and Shell's managers. Given that direct involvement in kickbacks to bribers would be an indication of participation in broader illegal arrangements, we really do not understand the different role attributed to this consultant of Etete, except as an indication of the unreliability of the statements he made about kickbacks to the managers of the companies. Moreover, as already argued in chapter 7, this statement is only corroborated by Armanna's equally unreliable statements. On the contrary, the bank documents reveal how the equal division of the payment to Malabu into two different accounts (referring to what actually happened) coincides with the shares of the original hidden shareholders, Dan Etete and the son of General Abacha.

In any case, we include the conclusions made by the prosecution regarding the confessional value of Agaev's statements in order to highlight that, apart from unusable – or rather useless – suppositions, Agaev never confessed any precise knowledge of corrupt arrangements, as he had generically known that Etete had many other debtors to satisfy, including the public official Adoke, specifying that it was a debt deriving from previous legal consulting, and generic friends and senators of Parliament who had helped him maintain a high standard of living during the 12 years of negotiations for the sale of the license. It is clear that if Agaev is not reliable, as the Public Prosecutor himself rightly believes, his "confessional" statements do not take on evidentiary value even with respect to the awareness of specific unlawful arrangements of others. To achieve this result, it is necessary to force an interpretation of the statements, dividing those that are reliable from others that are evidently not considered reliable, once again without considering the obvious connection that prevents such an operation according to the established case law of the supreme court already cited for the Armanna position.

Despite contortions, linguistic misunderstandings and improbable references to pressure he had suffered, Agaev had to admit a series of points of great importance, already partially mentioned above, which are now summarized to facilitate their reading.

1. Agaev knew Adoke was close to Etete and Jonathan:

PUBLIC PROSECUTOR - ...But did you know that Adoke was close to Etete?
INTERPRETER - "That's what Etete told me."
PUBLIC PROSECUTOR - ...Etete also told you that he was close, that he was close to Adoke?
INTERPRETER - "Etete was close to Adoke, Adoke was close to the President" (p. 56).

And again: "he didn't make any secret of it, he said he was a friend of the Attorney General.... He told me that Goodluck was his children's tutor" (p. 59).

2. Agaev knew Adoke had worked hard to get Obi to pay commissions of several million dollars:

Etete didn't want to pay anything, then in the end he said 'fine 55.'"
PUBLIC PROSECUTOR - To whom did he say "fine"?
AGAEV - [English in source text:] He told Attorney General. [Translation resumes:]
INTERPRETER - "He told the Attorney General" (page 63).

3. Agaev knew Obi had connections in the Nigerian government environment:

Obviously he had contacts, but these contacts were not at the top level...he told me he had contacts, he had friends among the staff, among the staff of the Attorney General.

4. Agaev learned from Etete that he had had to pay Nigerian politicians who had helped him to

[762] At the hearing of March 6, 2019 (page 3) it was the Court that decided to examine him as a defendant for a related offense, noting the paradoxical position of a witness accused of being included in the criminal group on which he was supposed to depose.

keep ownership of OPL245.

PUBLIC PROSECUTOR - Did Etete tell you to whom he had to pay this 400 million?

AGAEV - He said that he had a lot of friends whom they helped over the years, he had a lot of friends in parliament, in the Senate, they also helped financially, and so he had to pay off his debts" (p. 67).

5. Agaev learned from Etete that he had to pay Adoke:

"I told you and I told the FBI that he was telling me that he had many people that he had to pay, however, precisely, when they insisted and asked me 'say the name, say the name,' then I said the only name I knew, Adoke. Obviously, when pressure is exerted, and then after several hours of pressure (page 68).

6. Agaev told the FBI that half of the 400 million in bribes he had to pay (see point 4 above) were for President Jonathan.

INTERPRETER - During the interview with the FBI, I told them: "if we assume that this had been true, if it were true that he would have had to pay 400 million, then he would have owed at least half of this to the President" was practically a metaphor (hearing 6.26.2019, page 70).

7. Agaev nevertheless considered it reasonable that substantial amounts had been paid as bribes.

[English in source text:] PUBLIC PROSECUTOR "Not the whole sum, because 400 is too much, but some hundreds million?",

SUSPECT AGAEV "10 million, 20, whatever." [translation resumes:] So you considered it probable that, for you, they would be paid not such a large sum, but something.

PRESIDING JUDGE - Enough, he already made an objection.

INTERPRETER - Again a mere speculation.

17.3 The defense's discussion

We share the defense's conclusions regarding the defendant Agaev with respect to the legitimacy of his work, initially as a broker in the interest of the company Malabu in search of potential investors, then, from the beginning of 2010, after the entry of Eni into the negotiations, as a consultant of Malabu until November 2010, when he was excluded from the negotiations being managed directly by the government by the will of the company Malabu. Subsequently, Agaev is a private individual who tries to remain informed of the outcome of the transaction to obtain the payment agreed to, so much so that he has to take legal action against Etete for his refusal to honor the agreed remuneration.

In any case, for the sake of completeness, we shall analyze all his contested actions.

17.3.1 Acting as a broker between Shell and Etete

The contested conduct has no intrinsic criminal value, relating to contractual relations between private individuals, and in the absence of evidence on the full awareness of unlawful arrangements of others, does not constitute a causal contribution even in terms of mere facilitation. Moreover, Agaev was expelled from the negotiations in November 2010, just when, according to the prosecution, the three central moments of the corrupt agreements materialized: regarding the price on November 15, the legal scheme on December 15 and the "cosmetic" moment on April 29, 2011.

Regarding the terminology used, it should also be noted that the prosecution does not correctly summarize the activity actually performed by Agaev, who acted in the exclusive interest of Malabu and certainly not as an intermediary between Etete and Shell, since in October 2010, when discussing Shell's financial contribution in the context of the joint offer of Eni and Shell to divide the rights of the license purchased from Malabu 50-50, or rather the fact that Shell did not want to add any increase believing that it had already contributed with the investments and the signature bonus, there is a text message dated October 4, 2010 with which Agaev writes to Obi "Do you think I need to call my big friend," identified as Gusau, "and tell him to tell Goodluck to recommend Paolo," identified as

Scaroni by the Prosecutor, "to ignore the Dutch if they don't pay?". In reality, the prosecution emphasizes an atypical role of Agaev as an intermediary between Malabu and Shell to highlight the difficulties experienced by the oil companies in dealing directly with Etete, stating that both Eni and Shell used two intermediaries (Eni using Obi and Shell using Agaev), reducing to pure formality the fact that both Obi and Agaev were consultants to Etete and not to Eni or Shell. This interpretation of the prosecution, which is based on an assumption that must instead be proven (Eni and Shell had delegated Obi and Agaev to perform illegal negotiations), is based on an acceptance of the opinions of Armanna, interested in discrediting his superiors to avenge his dismissal and to be able to better conduct his business with his partners, and who, at best, had a mere point of view within the Eni group.

The results of the investigation portray a different view of the role of these intermediaries hired by Etete to find investors, agreeing on compensation that was not then honored because Etete himself decided to deal directly with the government, excluding their work in the final phase of the agreements. The prosecution confuses the close relationships that Agaev was professionally obliged to establish with Shell's managers because the company had to be involved in any operation since in the arbitration proceedings against the government it claimed the right to dispose of the OPL 245 license, acquired with the 2002 public tender, to the point that in 2008, before the Eni group's expression of interest, the option of returning to the agreement of March 30, 2001 that saw Shell in 40% partnership with Malabu for the management of the license was under discussion. Given the above, it is obvious that Agaev had close contacts with Shell's managers and that he had maintained them even subsequently, always as Malabu's consultant, in the negotiation for the management of the entry of Eni, the investor found by Obi.

See the drafts and mandates exchanged by the company Malabu and Agaev as well as the final brief of the Agaev defense for an analysis of the emails that underscore the role played by the defendant, especially in the phase prior to Eni's entry into the operation, a role that Armanna could not have known.

The defense correctly showed that Agaev signed two separate letters of appointment, and in the second the assignment to identify investors was expunged, given the expression of interest of the Eni group, an investor “brought” by Obi and formally interested, with the subsequent natural evolution of the negotiations involving Agaev in terms of the necessary relationships with Shell. Moreover, Agaev's role as Malabu's consultant is also substantially recognized in the specific conduct discussed in the next section.

17.3.2 Being commissioned by Etete to assist in the negotiations over Malabu’s rights in OPL 245...agreeing to a “success fee” of 6% of the agreed price, meeting with and discussing the terms of the relationship with Etete with Richard Granier Deferre, Etete’s associate and former co-defendant

The legitimate conduct describes a professional relationship between private parties who contract a service for the benefit of Malabu, which agrees to pay for it.

This assistance with negotiations – certainly legal – developed over time, adapting to the events related to the transfer of the Malabu company's rights to the OPL 245 block up to the marginalization suffered during the months when the Resolution Agreements were conceived, negotiated, and signed, including the one allegedly resulting from a corrupt arrangement, so as to justify Etete's refusal to fulfill his obligation to pay an agreed percentage.

We do not understand the juxtaposition, clearly aimed at underlining the guilt of the perpetrator, between the term "trustee" attributed to Granier de Ferre, and the past as co-defendant in criminal events, as we have already had the opportunity to argue about the inexplicable difference in treatment between Agaev and Granier de Ferre, both directly involved together with Obi in working out the

payment methods that would guarantee the automatic payment of commissions to the brokers. The idea, better known as the excess price mechanism, originated with Obi, was graphically represented by Agaev, and sent to Granier-Deferre, who actively contributed to the work by adding handwritten notes. The scheme would then undergo subsequent modifications for the benefit of the EVP company of Obi, but the substance would not change. It has already been seen that this fact assumes a very weak circumstantial value because it is aimed at solving the problem of the compensation to the private brokers and the reputational issues of the oil and gas companies. Moreover, that these are not schemes prepared to give illegal donations to public officials is guaranteed by the handwritten notes that do not include any mention of payments to public officials, who, at the time (January 2010) had not yet assumed the public powers that were the object of the alleged bribery.
The absence of Granier de Ferre from the list of suspects, and above all the subsequent exclusion of the consultant brokers Obi and Agaev from the negotiations that led to the conclusion of the operation through the Resolution Agreements represent convergent evidence of the dual logical contradiction of the prosecution's reasoning.

17.3.4 Maintaining constant relations with Emeka Obi and agreeing with him as to the approach to take with the companies Eni and Shell

The constant relations maintained by Agaev with Obi certainly appear to be legitimate and contractually due, the latter introduced by Agaev in the first phase of the consulting with Malabu, searching for a potential investor to resolve the legal disputes that prevented the
10 industrial development of the OPL 245 block. The relations were always of a professional nature, respecting their distinct roles. Prior to Eni's expression of interest, Agaev had "had to" maintain relations with Shell's executives and operators as it was necessary for any agreement by virtue of the existing disputes with the government precisely regarding the ownership of the rights in question. Once the Eni group was introduced, Agaev continued to act as Malabu's consultant as per their contract and to earn the agreed fee, and Emeka Obi, as an intermediary between Malabu and the third party investor Eni, sought to maintain contacts with the executives of Eni, introduced to the deal by Obi himself.
The reference to the "approaches to be taken" is incomprehensible, so much so that the allusive circumstantial scope of the term is not clarified, even in the conclusions.

17.3.5 Meeting on several occasions with Peter Robinson of Shell, as well as John Copleston and Guy Colegate, former MI6 officers who had been hired by Shell as Senior Business Advisor and Strategic Investment Advisor

Evidently the prosecution refers to the relationships prior to the facts contested, given the reference to the subsequent engagement of Copleston and Colegate in the purely suggestive perspective of pursuing circumstantial reasoning based on the axis of spies that allegedly involved General Gusau in the context of imaginative hypotheses that are of little use in the context of the rigorous circumstantial method imposed by the established case law of the supreme court, as set out in chapter 8.
The defendant Agaev explained the legitimate reasons why he was initially put in touch with John Copleston, who in turn introduced him to Guy Colegate and Peter Robinson, consistent with the Shell group's internal email communications reporting on Copleston, Colegate, and Robinson's meetings with Agaev. We agree with the defense that the examination of the documents does not reveal any "axis of spies," just a normal – for industrial operations of this caliber and complexity – exchange of strategic information, moreover, limited to three precise phases of the negotiation, all prior to that which led to the agreements deemed to be criminal by the prosecution:

(i) The interest of an investor, Agaev's client, which did not then materialize, in 2008 and

therefore before the period of the facts of the case in question.

(ii) The offers of the Eni Group for 40% of the rights in the first half of 2010 - rejected by Malabu.

(iii) The offer of the Eni Group at the end of October 2010 for 100% of the rights, rejected by Malabu. According to the oral and documentary evidence, after November 30 there were no exchanges or strategic meetings, or in any case anything regarding the key moments, including illegal ones highlighted by the prosecution, of the conclusion of the agreements at the end of April 2011 between the Eni Group, the Shell Group, Malabu and the FGN because as it happens Agaev was excluded from the operation by Dan Etete, who in fact on December 1, 2010 engaged another professional, the lawyer Bayo Ojo, precisely to resolve the issues relating to the methods of payment of the compensation that Granier de Ferre, Obi and Agaev had dealt with.

17.3.6 Meeting several times with the National Security Adviser, General Aliyu Gusau, and obtaining from him information on the financial expectations of President Jonathan and other members of the government

In the period prior to the time frame of the accusation, Agaev had had contacts with Gusau as Etete's private consultant. It was in this context as a private consultant that the defendant Agaev reported that Gusau expected legitimate remuneration, but this is a fact unrelated to the contested unlawful agreement. Consequently, forcing and decontextualizing a statement made by a defendant considered reliable by the same prosecution when he confesses the information provided in confidence by Etete does not appear correct from an interpretative point of view, because it forces one to adopt the theory of the severability of connected statements in contrast with the established case law of the supreme court, as already argued for the Armanna position.

The most relevant part of the disputed conduct (the information channeled by Gusau on the financial expectations of the public officials) has no evidentiary support, so much so that it was not even pursued by the prosecution in the discussion phase relating to the position of the defendant Agaev.

With regard to the meetings with General Gusau, it seems appropriate to consider that in the period identified by the indictment, General Gusau held the public function of NSA for only six months – from March to September 2010 – when he resigned to run against Goodluck Jonathan in the election for the presidency. Believing that Gusau may have been an intermediary for his political opponent's corrupt deals right on the eve of the election campaign is an inference that is contrary not only to logic but also to common sense.

In any case, with regard to this temporal period, the email sent by John Copleston to Guy Colegate and Peter Robinson on July 9, 2010 confirms Agaev's statements regarding the fact that the only meeting between Agaev and General Gusau took place on July 8, 2010 and did not have as its object any unlawful gifts or expectations of Nigerian public officials or exponents of the FGN, but rather concerned a discussion of the danger of the entry into the negotiations of a potential investor, the Chinese oil and gas company CNPC, which in the mind of Gusau would have been able to inform President Jonathan of its interest in buying the OPL 245 license, the president wanting to close the deal quickly. Shell's comment was that the interest of the Chinese oil and gas company could be an expedient to put pressure on Eni to close the deal quickly.

We have already had the opportunity to comment that the interest of the government and of the president in an operation of strategic importance for the national economy had broader political objectives than the mere expectation of personal gain, which the comments of Shell's already analyzed emails refer to, and above all it was not an exclusive of Goodluck Jonathan but also the two previous presidents, and especially President Obasanjo, who no one – except Etete, again in the

rumors detailed in Shell's emails – had ever accused of wanting to collect bribes.
The defense also highlighted that in this period Shell had additional and different information channels than Agaev to access the strategic information of General Gusau.

17.3.7 Placing Gusau in contact with Obi close to the time of Scaroni's and Descalzi's visit to President Jonathan in August 2010

The meeting between Obi and Gusau on August 11, 2010, on the eve of the arrival of the Eni delegation, was explained by Agaev with Obi's legitimate need to obtain information on the security problems involved in the purchase of the exploration rights of a block in the high seas, problems that exist in Nigeria, precisely in that area, but not on the high seas, according to the Public Prosecutors, who from this meeting with Gusau infer his participation in the illegal arrangements and consequently also that of Agaev, who had facilitated the agreement.
Apart from the fact that even on the high seas there are obvious security problems and that in any case the security aspect is one to be considered in the assessment of the contractual conditions for an oil license, the argument of the prosecution is in any case based on the reversal of the orders of factors between the fact to be proven – the unlawful arrangement – which becomes a proven prerequisite for an interpretation of the actions aimed at achieving the objective to be proven. In fact, the prosecution uses Obi's chronology to attribute circumstantial value to words that is understandable only if one assumes that an illicit arrangement already exists. On August 11, 2020, Obi noted a request for help that Agaev needed to "forward" to Gusau: [English in source text:] "General meeting Etete help with the MOP" [Ministry of Petroleum], "indemnities confirmation letters of fiscal terms etcetera". [Translation resumes:]
The message does not refer to illegal aspects of the transaction, but rather to the contractual conditions relating to allowances and tax protections requested by the companies that evidently the Ministry of Petroleum was not willing to grant. To the contrary, if anything the message demonstrates that Obi's relations with the Petroleum Minister Diezani – famous for her "voracity" – were certainly not good from an illicit point of view, despite the friendly nickname of "auntie" upon which the prosecution builds circumstantial elements in the general part that in examining the individual responsibilities reveal the true legal nature of suggestive conjectures.

17.3.8 The absence of specific misconduct during the period September/October 2010

In reality this period is significant for the negotiations since Eni's offer was defined on October 30, including the agreement with Shell to purchase equal shares of the entire license from Malabu pursuant to the confirmatory measure of July 2010.
According to the prosecutor's reconstruction, Agaev played a crucial role in the parallel unlawful arrangements, but the oral and documentary evidence only reveals lawful conduct.
In the discussion the Public Prosecutor identifies text message no. 570 of 9.1.2010 as being extremely significant. In that message, which Agaev sent to Emeka Obi and which contains, probably, a text originating from others (someone from Shell) in fact refers to "Emeka" in the third person:
As discussed, the presence of Emeka will not create any problems. At some point we can leave him alone with Peter [omitted Italian translation] [English in source text:] to coordinate the Nigerian issues [translation resumes:] that are extremely urgent at the moment and we can continue our discussions. He is, however, a trusted person.
The Court maintains that the Nigerian matters that the prosecution automatically links to bribes may instead relate to other aspects that are lawful. First, the contractual issues with the Ministry of Petroleum, already examined, which required the intervention of Gusau through Agaev, or the fact that the government had to "consider acceptable" the valuation of the license – in the sense of considering it appropriate – because it was an operation that was strategic for the national economy, an argument that would be the subject of Shell's emails already examined in chapter 5 that do not

refer to private commissions claimed by public officials, but to the fact that they "favored" an operation that could not end up with the discounted sale of an asset that, while attributed to private individuals, was in the public interest.
In essence, in this period everyone was discussing the value of the price of the offer, each from their own point of view, including the government that had its interests in the commercial development of the operation. In the next meeting with Obi and Colegate topics consistent with that stage of the negotiation were addressed: the sharing of Shell's "data room" and possible repercussions on the valuations of the mutual contributions in view of Shell's non-negotiable position of remaining at least 50% owner of the block. On September 9, the companies operating in Nigeria signed the confidentiality agreement for access to the data room.
Agaev's involvement in the meetings prior to the meeting at Casula's house does not appear to assume any circumstantial value, since even the meeting itself, purified of Armanna's unreliable statements, becomes a normal discussion on the legitimate issues of the negotiation, as already detailed in the chapter dedicated to the defendants Armanna and Casula.
Precisely from this period is the aforementioned message of October 4, 2010 that excludes the parallel existence of corrupt arrangements, especially Agaev's contested alignment with Shell's interests. Agaev, identified by the prosecution as the intermediary of the corruption who represented Shell's interests, does not participate in the meetings of this period, and in particular those of October 8, 2010 between the Eni and Shell negotiating teams that reached the so-called heads agreements of October 13, 2010. Agaev is instead later contacted by Colegate, because rumors had spread about the possible interest in the block of the French company Total. In fact, it emerged that Etete had been approached by a former employee of Shell who had proposed a potentially more profitable agreement with Total, a circumstance that was considered to be a mere expedient to raise the price in a message that Agaev sent to Obi on October 21 saying "'Etete continues with his nonsense.' Total's presence...i.e., attempts to push the price up again." Agaev's interest is legitimate and certainly motivated by expectations of personal earnings, having agreed on a percentage remuneration. This is why Agaev sides with the demands of the companies and in particular of Shell to convince Etete to accept a price that he considered lower than his expectations.
In any case, Etete's refusal of Eni's offer of October 30, 2010 is evidence against the existence of underlying unlawful arrangements, to the point of pushing Agaev and Obi in early November to let Shell and Etete quarrel and seek new investors other than Eni. If Agaev had been involved in an underlying corrupt arrangement with the current defendants he would have tried to close the arrangement with Eni and Shell. Instead, on November 5, 2010, Agaev writes to Obi "The Dutch are very nervous, they want us to act. I replied that we are relaxing and I have no idea where you are. Let them both," the Dutch and Etete, "be desperate, we are in no hurry. Enjoy New York, I'm in Milan relaxing until Monday." "Agreed," says Obi.
And Agaev sent another text message, "I have a very good investor," this time from the Persian Gulf area, "who needs a major block, it is looking, please think about it. If we can approach someone who wants to sell, the investor has enormous financial resources and controls a major international oil company."
Negotiations resumed at the initiative of Shell's managers, who talked directly with the government, asking for a direct intervention to conclude the agreement with Eni since Eni was willing to give Shell 50% of the investments and rights, while with other investors they could have achieved less advantageous conditions.

17.3.9 Attending the meeting with Etete in Milan during the night from November 30 to December 7, 2010, at which Obi and Agaev were present, to settle the issues regarding the fees to Obi (EVP)

Agaev did not participate in any way in the negotiations that Attorney General Adoke Bello

personally arranged in November, and was only informed about the progress of the negotiations that also excluded Obi, to whom Agaev provided news learned from Etete, with whom he was in contact by virtue of his contractual link that prompted him to convince him to agree to the conditions proposed by the oil and gas companies.

The only episode that directly involved Agaev was the phone call that Etete received during a meeting on November 30, 2010 at the Four Seasons, when Adoke Bello tried to convince Etete to pay 55 million for Obi's brokerage to resolve the issue of his commissions, a matter that Eni, through Casula, correctly believed was a contractual problem exclusively between the two parties Etete and Obi, as already argued in chapter 15.

Given the lawful contractual relationship of consultancy, Agaev's presence at meetings with Etete does not assume any circumstantial value, especially since from this moment on Obi and Agaev were excluded from the negotiations by Etete himself, who had no intention of honoring the commitments agreed to, precisely because Agaev in particular had advised Etete to accept a price imposed by the threats of Adoke Bello to revoke the license to Malabu without compensation, a price that Etete considered lower than his expectations. Moreover, both Obi and Agaev would file suit against Malabu in court to have their work remunerated, and for this reason they did all they could to gather information and stay involved in the deal until its conclusion.

We share the legal implication illustrated by the defense in terms of counterfactual judgment of the non-existent causal contribution of Agaev and Obi precisely in the phase when the legal and illegal accords were concluded, as specified by the prosecution in the discussion phase: on November 15, 2010 the substantial agreement, on December 15, 2010 the legal agreement and on April 29, 2011 the cosmetic agreement.

A phase began in which, by admission of the Public Prosecutor itself, Agaev was expelled, he never took part in any other meeting, and he no longer even met with Etete. On December 15, 2010 Agaev was thinking of other possible investors instead of contributing to the corruption described by the Public Prosecutor, given that in his message to Obi he asked if there was any news because there were rumors that the deal was not going through. "Do you think I can turn to an alternative? If things don't change this week, I could think of an alliance with a new investor to join us."

17.3.10 Keeping in touch with Etete up to the closing of the deal and thereafter

Even the last specific conduct contested does not present aspects of intrinsic illegality, pursuing the defendant's legitimate objective of obtaining the agreed compensation, inquiring and maintaining relations with his contractual contact, aware of the fact that the definition of the agreements and therefore his compensation were linked first of all to the fact that Malabu and therefore Etete would collect the compensation for the transfer of the license, an event linked to the decisions of the government and in particular of the Attorney General, delegated by the President to directly manage the negotiation, and of the Minister of Finance who would make the payments to Malabu. We include a series of messages whose literal content very clearly demonstrates the non-existence of an underlying corrupt arrangement:

May 5, 2011 (3:51 pm) Emeka Obi writes to Ednan Agaev: "Ednan, you've known me a long time. You know I have always been straight and honest with you. You and Papa should have listened to me and we could have worked together to ensure that everybody got what they wanted. Now you'll understand what these guys have in mind for everyone. My friend and I will be fine, but I suggest you think about the people you have put your trust in. Now they're going to fuck you over. And then even you will have to admit that until now I was almost always right":

May 8, 2011 (2:28 pm) Emeka Obi writes to Ednan Agaev: “You and I have known each other long enough and well enough for you to know that when I say something it's usually right. Watch what happens now”;

May 8, 2011 (2:39 pm) Ednan Agaev wrote to Emeka Obi: “a long time ago, I advised you to settle

with the AG. It's all in his hands. Chief has not decided anything for a very long time";
May 8, 2011 (3:02 pm) Emeka Obi writes to Ednan Agaev: "I'm not worried, the situation is perfect. You know me - I have anticipated the worst scenarios from day one. Like I said, just watch what happens next. And EVP will still get its money. I just did not believe you would have allowed yourself to fall into the trap of those people."

May 8, 2011 (3:09 pm)[763] Ednan Agaev writes to Emeka Obi: "I had no choice but to be linked to Chief. I don't like very much this situation, that's what why I tried to make the deal with another consortium, but the Orange insisted on closing with spaghetti. Now I will only receive if the Chief receives, and I am not sure how much and if anything will be received. Everything is in the hands of the FGN, and more specifically the Attorney General and the Finance Minister, and naturally the Big Boss."

Following the signing of the agreements, Agaev met Etete, first in Moscow and then in Paris, telling him that Malabu's transfer of the license constituted his right to the agreed compensation as per the contract, a hypothesis that was rejected by Etete, who offered a mere reimbursement for the amount of 5 million. Agaev only accepted it as an advance, considering that he was entitled to the 6% that had been agreed to, and he then filed suit with the arbitration chamber, the outcome of which was to pay Agaev the amount that had been paid by Etete on the basis of two elements. The arbitrator acknowledged the appropriateness of the payment, first because the investor had not been "brought" to the negotiations by Agaev, and above all because at the end of the process Agaev had done nothing to deserve the agreed remuneration.

17.4 Statements about Etete's revelations made in confidence believed to be confessional

In the meeting of June 5, 2011 in Paris, Etete justified the reduction of Agaev's agreed compensation to only 5 million compared to the 65 million resulting from the contract, arguing that a good part of what he would have collected would have served to pay debts accumulated over the years. "I have to pay Adoke and all the other people 400 million." Agaev clarifies, "I never believed it, it was an excuse not to pay me." Given that these are statements made voluntarily to the prosecutors, there is no reason to split Agaev's credibility, once again regarding connected statements and therefore in conflict with the acceptable interpretation of supreme court case law. Moreover, Agaev, stimulated by the questions of the prosecutors, hypothesized a subdivision of the bribe of 400 million that appears to be the result of speculation and not knowledge, and therefore cannot represent evidence against any of the defendants, let alone Agaev himself. The language used – [English in source text:] "he would think Goodluck Jonathan got at least 200 million" [Translation resumes:] – is very clear because it translates into a double conditional that starts from the assumption that if what Etete said was true, but Agaev specified that he did not believe him because it was an excuse not to pay him, then it would be logical to believe that half might be destined for the president.
Agaev also points out that when referring to the fact that Etete had to pay Adoke, the reference was to the professional services that Adoke had provided to him in a previous period, because, again as told to him by Etete, Adoke had worked as his lawyer. If Agaev is credible he must also be credible with regard to the fact that Etete had only mentioned his name, but not in the context of the payment of unlawful donations, but of persons who he had to pay for lawful legal debts. We have already had the opportunity to comment on the impossibility of splitting Agaev's credibility with regard to clearly connected statements.
Moreover, this latter statement is also further confirmed and was in fact also mentioned by the prosecution during the closing argument of July 2, 2020, as already anticipated in the chapters of the

[763] File for the trial proceeding, page 3290, text message 1574.

general part.
Finally, asked to assess whether it was reasonable to pay bribes for this deal, Agaev first considered it necessary to drastically downsize the sums that Etete had hypothesized, specifying that, to the best of his knowledge, it might have involved a few tens of millions, specifying that, from his own experience in Nigeria, to conclude a deal one must pay. Agaev stated exactly what the witness Giandomenico had also said, thus introducing a kind of environmental malfeasance that the defense links to the private sector, but which, if understood as also referring to the public sector, does not allow Etete's words to be framed as evidence of the alleged crime of corruption, but at least that of the adjacent hypothesis of undue inducement, which at the time of the events was not even punishable for private payers of undue bribes.

CHAPTER 18
MALCOM BRINDED

18.1 Charge

Brinded Malcolm, in his capacity as Head of Upstream and Executive Director of Royal Dutch Shell,

- being constantly informed by Robinson, Colegate and Coplestone of the evolution of the negotiations and of the economic demands of representatives of the Nigerian Government and their sponsors;
- agreeing with his counterpart, Claudio Descalzi, on the price of the deal, namely, $1.3 billion and, thereafter, until the deal was completed, coordinating with Descalzi as to the position of the two companies, Eni and Shell and, lastly, requesting personal effort from Descalzi and Scaroni in assuring the success of the deal."

Defendant Brinded is charged with two specific acts.

The first includes a precise reference to the act (being constantly informed...of the economic **demands** of representatives of the Nigerian Government and their sponsors) in the form of conscious intermediation of the participation in the agreements that allegedly led the private individual Etete to comply with the undue requests that the public officials Goodluck Jonathan, Diezani Madueke and Adoke Bello demanded to adopt the settlement agreements of April 29, 2011 in contrast with Nigerian law in order to benefit the oil companies.

The second specific act concerns conduct aimed at promoting, supporting and deciding, on the operation that led to the acquisition of the license, an operation that has already been proven to have been lawfully conducted by the oil companies, with the consequence that these acts fall within the activities of the corporate position held at the time.

As anticipated in chapter 2, the charge is unclear because it is permeated by the confusing mixture of lawful negotiations aimed at defining the settlement agreements of April 29, 2011, but also parallel discussions aimed at remunerating the various intermediaries and illegal negotiations aimed at defining the amounts destined for the remuneration of the public officials. Furthermore, remember that in the general part concerning all defendants the tenor of the charge leads one to believe that all defendants are under accusation for their direct participation in the corrupt arrangements (it having been agreed), but, taking into account the literal content of the specific charge, the latter must be considered prevalent.

Since the charge is ambiguous both forms will be addressed, that of having directly participated in the corrupt arrangements, and that of having acted complicitly, as an intermediary, aware of arrangements involving other parties.

In its closing brief the defense argued the absolute extraneousness of the defendant to the direct participation in any corrupt arrangements, moreover based on mere conjecture.

As for the "spare" argument that he acted as a conscious intermediary, there is a lack of evidence supporting these alleged arrangements sufficient to constitute the materiality required by the appeals case law cited in chapter 9 above, to which reference is made.

18.1.1 Being constantly informed by Robinson, Colegate and Copleston of the evolution of the negotiations and of the economic demands of representatives of the Nigerian Government and their sponsors

However, this is obviously false: there are no emails of any kind (from Robinson, Guy Colegate, John Copleston or anyone else) informing or even hinting to MB of any financial demands by the persons indicated by FGN or their sponsors, and no witnesses have stated or suggested that they provided MB with similar information or even suggestions. Indeed, the evidence in the hearing record and the

uncontested testimony of Craig and Ruddock show that MB received only occasional updates regarding OPL 245. Moreover, there are no emails or updates to MB from Colegate, only one email from Copleston and only infrequent email exchanges with Robinson over the course of about two years. These emails naturally only included information on the progress of the negotiations for the agreement with ENI and Malabu, but never referred to illegal negotiations, nor to any financial demands by individual members of the Nigerian government or their sponsors.
Note also that, contrary to what is alleged in the accusation, MB practically never had contact with Copleston (Strategic Investment Advisor) or Colegate (a Business Intelligence Advisor mainly resident in London), two of the approximately 5,000 people at their respective level in MB's Upstream International, and very few communications with Peter Robinson, who resided in Nigeria and was two hierarchical levels below MB. Robinson was one of 120 Vice Presidents at his level at UI and reporting directly to Guy Outen (EVP, Business Development) and Craig. No Vice President reported directly to MB. As seen above, MB resided in The Hague, not Nigeria.

It would therefore be sufficient to refer to what has already been argued to justify the motivation, however, for completeness, the most relevant passages of the discussion are reproduced in order to demonstrate how the already underscored defects of the prosecution's argument are even more clear in the details of the criminal conduct alleged against the single individuals.

18.2 Legal issues

The literal tenor of the charge itself leads us to believe that the specific conduct of a third party intermediary aware of the demands of the public officials is not sufficient to constitute the crime contested, first of all because in 2011, at the time of the events, the undue action did not fall within international corruption and therefore the reference to the demands leads one to believe that, as for Brinded's position, the prosecution itself did not even contest his participation in a corrupt arrangement, but only his participation in the non-punishable action of Etete, unduly demanded by the public officials.
In any case, even if one wanted to consider – in light of the conclusions of the prosecution – that the literal content of the charge is the result of an improper action and therefore must in any case be linked to the scheme of the corrupt arrangement, established case law of the supreme court, already examined in chapter 8, set aside by the prosecution based on a personal interpretation of the theories of Professor Mantovani's manual, does not allow us to conclude any complicity of the defendant Brinded, as illustrated by the defense, both in terms of the subjective element and the atypical causal contribution.

18.2.1 Lack of the psychological element

Brinded brief: Even if we wanted to assume that the available evidence demonstrates – and this is not the case – that at the time the transaction was completed MB posed that Malabu/Etete could have used the funds received as consideration for the transfer of the rights to OPL 245 for subsequent further payments to public officials, such a statement would not be sufficient to support a judgment of liability against him.
The hypothesized form of "blurred" awareness is in fact far from constituting corrupt intent, since the object of the statement does not reflect the alleged crime, which – as was already mentioned at the outset – consists in a criminal conspiracy between a private and public official, that is, in the specific illicit agreement through which the public office is ceded in exchange for (the promise of) a benefit.
As case law has in fact clarified, there is no complicity where "the conduct of the third party, occurring after the conclusion of the corrupt arrangement between others and which does not imply a new corrupt pact but rather pertains solely to the execution of the arrangement, does not modify the structure of the pact already concluded, nor does it allow the addition of a new posthumous party to

the sole previous pact," in such case lacking the conscious involvement "from the beginning in the criminal plan."
The categories invoked do not legitimize any weakening of the coefficient of psychological intent, which, even in its eventual form, remains anchored to the existence of full representation of the offense. On this point, it is sufficient to recall the case law of the United Sections of the Supreme Court, according to which intent cannot lack a detailed, clear knowledge of all the elements of the historical act related to the legal model described by the incriminating provision, since "only in reference to an event so defined and outlined can the relationship of inner participation be established that allows constituting the imputed liability. In short, the event must be described in a characterizing way, and as such it must be the object of a clear, lucid representation as a cognitive prerequisite so that the attitude of choice of unlawful action typical of this form of imputed liability can be constituted with respect to it." There is thus the very clear feeling that the prosecution is seeking to condemn the defendant based on the (alleged) mismanagement of the inherent risks related to the operation. But such conduct is – undeniably – negligent in nature, and cannot therefore support an accusation that can only be based on intent, of which there is no trace. And in any case, given the robust and extensive guarantee procedures and the competent people he knew he could count on and rightly relied on, MB's conduct was neither negligent nor reckless.

18.2.2 Lack of causal contribution

Brinded brief: Objectively, the prosecution has not in any way reconstructed – or even substantiated – what the illicit contribution to the commission of the crime was that MB was complicit in. In other words, what was the conduct with which MB's alleged – and indeed non-existent – criminal intent was translated into action. It is not necessary to expand on the much-debated subject of the imputation of non-typical complicity. However, it must be remembered that the (potentially "ephemeral") category of facilitation cannot become the container for contributions that are merely "near" the crime, which would thus be criminalized in violation of the constitutional limit of the prohibition against liability for the acts of others.
On the contrary, criminally relevant participation can only be expressed as a material contribution that functionally aids or (at least) facilitates the commission of the offense (in the words of the best legal theory: “to the factual circumstances that constitute the concrete realization...of the offense," not the historical act in a broad sense). This concept also applies to the case law of the Supreme Court regarding corruption, which has specified that for the purposes of liability pursuant to art. 110 of the Criminal Code it is necessary to prove that the conduct of the co-participant “contributed to the conclusion of the criminal arrangement aimed at bartering for the functional activity carried out by the public agent or...contributed to the implementation of the arrangement itself," to the contrary it being impossible “to interpret the mere awareness of the existence of the criminal agreement between private and public agent...in terms of conspiracy in corruption, even where by virtue of such awareness the extraneus has engaged in conduct generically related to that agreement (or to the undue giving of a benefit to the public agent), that is, a conduct that is not in a strictly functional relationship with the implementation of one of the typical conducts of the crime. In light of these principles, the high charge against MB proves to be unfounded: the conduct specifically attributed to the defendant is – even as described in the charge – patently immaterial, as it corresponds to the normal activities carried out by MB due to his position. Nevertheless, the prosecution demands that the conduct itself assume relevance in the context of the complicity, as a result of MB's (alleged) awareness of the existence of "economic demands of representatives of the Nigerian Government and their sponsors.” Well. Ignoring that (i) the analysis of the evidence excludes that MB was aware of illegitimate claims made by public officials, and that (ii) this form of awareness does not constitute intent (§5.1), the prosecutor argues for a judgment against the defendant regardless of the existence of an effective contribution to the realization of the criminal conduct, to sanction mere collusion. In other words, the

charge against MB is apparently justified by his mere presence "on the scene," by his intervention (however limited) in the same historical context, in open and insurmountable conflict with the (inflexible) canons of personality and materiality that the system is based on.

18.3 Brinded's legitimate participation in the negotiations

Moving on to analyze the specific arguments used in the concluding brief to support the accusation, it should be noted that Brinded's participation in the negotiations has no circumstantial value given his official duties with Shell, recalling what has already been argued on the lawfulness of the negotiations:

PP: A top manager at Shell, he held the title of Head Upstream and Executive Director. In that role, he promoted and coordinated the negotiations on OPL 245 with Etete, Eni and the various representatives of the Nigerian government, making strategic decisions, collecting confidential information and directing the activity of the commercial manager in Nigeria Peter Robinson.

18.4.1 References to President Obasanjo and the Petroleum Minister in 2007/2008

PP: His activity in contact with the top officials of the Nigerian administration has been documented since 2007, when on several occasions he personally met with President Obasanjo and received guarantees of Shell's persistent rights to the block. This fact is stated in the letter that on 5.3.2007 Obasanjo himself sent to the Minister of Energy, reiterating the need for Shell to maintain contractual rights while the property rights would be shared between Malabu and NNPC: Today I met with Mr. Malcolm Brinded, Executive Director for Exploration and Production at Shell.... My meeting with Mr. Brinded today was a follow-up to a previous meeting with him on February 7, 2007 at which you were present. Between the two meetings with the president there had been the April 3, 2007 contact of Basii Omiy and Diezani Alison-Madueke – both Shell executives in Nigeria - with Dan Etete, in which the latter – according to Basii Omiy's report - declared that he wanted to make peace with Shell ("on the advice of mutual friends and especially of the President, with whom he claims to talk often"), expressing his desire to monetize the "rights" on OPL 245 by selling his entire share ("Malabu does not have the people or the skills to manage a partner. In short, they just want to be bought out entirely by transferring the deal they acquired in its entirety to Shell or any other party if Shell does not act quickly") and ultimately emphasized that he had spent a pile of money ("he mentioned a figure of $500 million") to defend his rights to OPL 245. Etete's message – peace, but I want money and now. The President is with me - as commented by Brinded – "perhaps not surprising but very unpleasant." (Exhibit 31)

Brinded proceeded with a Proposal to Commence Negotiation (PCN) on this basis from June 2007. It would be subsequently modified as the negotiations progressed. Brinded was functionally at the top of the negotiation chain, and was consequently updated on all significant changes on which he had to express his approval.

For the above reasons, the Court disagrees with the assessments of the prosecution regarding Malcom Brinded's knowledge of the need to pay bribes based on the aforementioned comments in 2007, since the generic expression "expenses for 500 million" does not contain any specific reference, and the same is true for the subsequent email of 24 June 2008, sent by Ann Pickadr in June 2008. In this regard, the Public Prosecutor affirmed: In contacts with the highest levels of the Nigerian administration, Brinded was immediately aware of the need to pay bribes to public officials. The communication that Ann Pickard sent him directly on 6.24.2008 was explicit on this point, informing him of a meeting with the leader of NNPC and the attitude of the Minister of State for Petroleum (MOSP). On 245 he said the President does not want Etete to take anything, but MOSP is "involved" (id est must take bribes) and in debt (adopted son) to Odili, who told him that Etete must be satisfied. So MOSP can't make a move.

First of all, the aforementioned documents do not indicate knowledge of any specific corrupt arrangement, but only, at most, the awareness of a different approach to the problem by two different public officials, the President of Nigeria and the Petroleum Minister.

Note also that a correct interpretation of the email of June 24, 2008 leads one to believe that Etete did not need to pay bribes because the Petroleum Minister at the time was in debt to him.
In any case, these are uncontested unlawful agreements as they predate the scope of the indictment and in any case concern other public officials that were never criticized by the prosecution, which to the contrary, presents President Obasanjo as an opponent of the corrupt dictatorial regime.

18.4.2 References to President Goodluck Jonathan and the Petroleum Minister in 2010

The following allegations of the prosecution do not reveal any circumstantial evidence, as the involvement of the Nigerian government was perfectly legitimate since the negotiations concerned an exploratory license issued following a government concession, particularly since the title was subject to disputes (at the time the arbitration filed by Shell was still pending).
PP: As the months go by, the government leadership changed, but the involvement of the political world was always a constant feature of all negotiations. On February 25, 2010, Ann Pickard's email informed Brinded of a meeting with the Petroleum Minister in which OPL 245 and Etete's requests were discussed, stressing the role of the new Acting President Jonathan: the Acting President is from Bayelsa, as is Etete, and Etete is lobbying the Acting President very hard.

18.4.3 Relations with Descalzi and pressure to conclude the operation

Equally lawful and indeed appropriate are the aforementioned discussions with Descalzi in consideration of Eni's entry into the negotiations and the aforementioned insistence by Brinded to close the agreement that represented an advantage for Shell, compared to the alternative of having to face the outcome of an arbitration judgment with all the difficulties of then having to execute it.
PP: In March 2010, together with the increasingly important role of the Acting President, Eni's interest and role became apparent and so direct talks between Brinded and Descalzi began, which would continue periodically throughout the negotiations and consolidate the agreement between the oil companies. The relevance of the memos transposing the contents or instructions for these discussions has already been highlighted. It should be noted again that the April 21, 2010 document Telecon between Claudio Descalzi ENI/Malcolm Brinded provides relevant information on Malabu's role, on the potential of the block, on the role of the government in naming Eni as a partner, and on Descalzi's proximity to Jonathan. The agreement between Brinded and Descalzi was finalized in October 2010. The information contained in the aforementioned email sent by Malcolm Brinded to Robinson, Craig, Wetsalaar and Ruddock on October 11, 2010: Ian, Peter, I agreed with Claudio and then clarified with Peter (and asked Claudio again for confirmation) the following agreement: Title: $1.3 billion offer, Eni puts up 980 million, Shell puts up $210 of signature bonus plus $25 million of interest on the signature bonus and an additional $85 million in cash. Shell retains 100% of cost recovery. Eni will be the operator. We have not agreed anything in the event that the necessary amount goes above $1.3 billion. It thus became possible for Eni to submit the 10.30.2010 offer via EVP to Malabu, in which the future partnership with Shell is expressly envisaged at point 7 of the "Completion of the Transaction" section. Verbatim: "the reissue of OPL245 jointly in favor of NAE and SNEPCO." Three days earlier, on the basis of a new GIP (Group Investment Proposal) signed by Brinded on October 27, 2010, Shell had given the green light to the initiative, expressly acknowledging that: - [English in source text:] "Shell and NAE have agreed to split 50/50 the equity rights in the block" [translation resumes:]. After the rejection of the offer, as already mentioned, Shell would find that the Attorney General was a privileged contact. According to Descalzi (page 11 of the questioning), Shell takes command of the operation and manages to exert a significant influence on the government. These statements cannot be used as evidence against Brinded but they effectively describe facts resulting from the documents and their actions. For his part, Brinded continues to demonstrate to Descalzi the need to go ahead and finalize negotiations with Etete and the Government. This is confirmed on December 4, 2010, when Descalzi expresses his concerns deriving from Abacha's claim, to which Brinded responded in a proactive manner: A tough week last week for

245, but I still think if we stick together, we'll have a chance to get there. Despite what happened to my MD and various other issues... I'm sure you're still pushing with your Board. Let me know if we need to discuss! Similarly, on March 1, 2011, after the findings of NNPC had hindered the rapid definition of the agreements already reached with the Attorney General, and they had finally been silenced also by intervention of Big Chief Bison (above page 181), Brinded pushes again: "I heard good news from Abuja, that all the issues that had been raised in relation to the Resolution Agreement (such as back-in rights) were successfully resolved yesterday. It seems that Malabu's corporate documents and the second escrow agreement are all that stands between us and the execution of the agreements. If we move fast we can finally get this deal done without another problem that derails the hard work done.... "And he pushed very strongly, with tones of veiled reproach, in the last message sent to Descalzi, in which he implored for an [English in source text:] "urgent and wholehearted sponsorship and push" [translation resumes:]. Claudio

Two things before we talk tomorrow. The impression we get about 245 from your staff is that Eni is no longer committed to doing this deal urgently. Frankly, after the initially excellent cooperation, they now seem more focused on difficulties rather than finding solutions. I also realize that you are personally occupied to the ears in Libya and Kazakhstan but I believe that if this is to be done with Eni on board, then we need an urgent and unconditional recommendation and push from you and Paolo. The next day Brinded informed Robinson and Craig that he had spoken to Descalzi, who on 245 told him: "yes, he wants this thing done." Brinded commented: [English in source text:] "I said great." [Translation resumes:]: Two additional observations must be added to this sequence of acts that characterize Brinded's leading role and his personal initiative in strongly pushing for the success of the operation. The first observation concerns the awareness, widespread in Eni, of the fact that Brinded "had to" complete the deal, at any cost. Even if the statement can only be used against the declarant, Descalzi's recollection of the fact that "Shell was insisting unnaturally" has already been commented on. Armanna's recollection is more analytical and anchored to factual data: I spoke to Peter Robinson about the fact that they had an objective risk, that Malcolm Brinded was at risk of having serious problems making investments without having any formal and contractual cover in a block that wasn't theirs, so in fact we understood that Shell.... Shell's true exposure to their shareholders was significant. They had invested nearly half a billion, 400 and a few million dollars without any legal ownership, so they really did have a weak negotiating position (hearing of 7.17.2017, p. 96). Even Obi notes in the report of his meeting with Descalzi at Eni headquarters (San Donato) on November 4, 2010 (see chrono unprotected.xls): [English in source text:] "Shell desperate to do deal." [Translation resumes:]

The following considerations of the defense are also acceptable: As we will see below, MB had only limited contacts with Claudio Descalzi. Their relations focused mainly on other issues, first and foremost the major joint Shell/Eni project in Kashaghan. However, the discussion of the terms of the high-level deal for OPL 245 with its counterparty in ENI was entirely predictable and represented normal business practice, and indeed it would have been unusual if MB had not held such discussions. Moreover, the discussions between MB and Claudio Descalzi regarding OPL 245 do not denote the existence of an intimate relationship, but rather the solid, normal "market" relationship that would be expected between two major commercial counterparts competing in the oil sector. Their interests with respect to OPL 245 were partially but far from fully aligned given that each wanted to maximize their share of the block while minimizing the amount they had to pay. Both MB and Descalzi were mainly concerned with promoting the specific interests of their respective companies....

The direct discussion between MB and Descalzi took place between October 9-10, 2010, and on that occasion the essential conditions for the offer that would subsequently be sent to Malabu 44 were precisely outlined. Again, it is interesting to note that – as is reasonable to expect – MB conducted the meeting with Descalzi based on the information provided by the deal team (Robinson sent MB a

summary of the bases of the discussions on October 8: [English in source text:] “Malcolm, below is a summary on basis of discussions with ENI today”; [Translation resumes:] the next day MB asked [English in source text:] “Any more good ideas/arguments?" [Translation resumes:]), he dealt exclusively with the essential/basic conditions of the deal yet to be defined, and then let the rest of the discussions be conducted by others who were more involved in the negotiations, Robinson and Craig ([English in source text:] “I leave you two to determine tactics" [Translation resumes:]). Moreover, it is clear that the financial discussions between the parties evolved according to a recognizable financial logic: Shell declared its willingness to sell the operation to ENI (both parties committed to valuing it at $100 million) and to share with ENI – on substantially equal terms – the additional economic commitment necessary to reach the $1.3 billion headline (of the remaining 165 million, 80 would be borne by ENI and 85 by Shell), maintaining the additional benefit of the option to recover some of the historical costs related to Shell's exploration ([English in source text:] "Shell keep 100% of the cost recovery" [Translation resumes:]). It follows that there is nothing unusual about the $85 million Shell agreed to pay for the deal. On March 31, 2011 (and more than three months after the last communication between the two 146), MB sent an email to Peter Robinson, Ian Craig, Mala Ramkhelawan, Marteen Wetselaar, Guy Outen and Keith Ruddock, briefly reporting on the terms of a discussion with Descalzi, stating that [English in source text:] "he [Claudio Descalzi, ed. note] did not want us to miss the deal with them and go to the Chinese. [Translation resumes:] It is clear that considering abandoning the negotiations to conclude an agreement with a potential third partner at this point in the negotiations confirms beyond any doubt the normalcy of the interaction between the top players of companies competing in the same market, and is (to the contrary) incompatible with the hypothesis of two competitors sharing criminal intentions.
Third, it was stated that **MB requested “Descalzi and Scaroni's personal commitment to the success of the deal**." It is clear that there is nothing wrong or unusual in this statement.... Seeking the commitment of senior executives of a commercial counterpart is normal, routine behavior....

In any case it is evident that the pursuit of the commitment of the top managers of a commercial counterparty is normal, usual behavior. The fact that MB urged a response from Eni in this case cannot be surprising given that Eni had insisted on entering into the deal, and after months of complex negotiations the operation was about to be concluded. Moreover, this also illustrates the fact that Shell was in a different position from Eni by virtue of the long-standing disputes over the assignment of the license and the ongoing BIT proceedings. Moreover – and most importantly – MB's desire to find other partners, even at this advanced stage, is not complicit behavior.

18.4.4 Comments on the political contributions arising from the OPL 245 operation

On the other hand, the prosecution's assessments of the circumstantial nature of the following comments are not acceptable, since it is necessary to recall what has already been established in terms of proof of corrupt arrangements, underscoring here not only the alternative interpretation given by the witnesses Craig and Ruddock, but also the fact that the interpretation more in line with the letter of the documents and the context in which they were drafted leads us to believe that we are faced with circumstantial elements of another and different corrupt agreement of a “political” nature between Etete and the President of Nigeria, aimed at favoring Etete in exchange for his support in the electoral campaign that was imminent in the first email and already started in the second.
PP: Also in the document entitled “OPL245 Brief for ECMB Call with Descalzi - 23rd August 2010” are the comments of the meeting held by Eni management with President Jonathan on 23 August 2010: The in-country view (reinforced by the Eni comments cited above) is that the President is keen to see 245 closed quickly **– driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence –** reinforcing the need to find a solution quickly (RDS 578).
On the other hand, consider that only at the Brinded - Descalzi level had it been possible to establish

the agreement on Shell's contribution of 85 million (the figure indicated with Y) in order to obtain the figure corresponding to **Z**, that is, the **payment to Etete that would be acceptable to all the "players" in Abuja** (Exhibit 173 and see extensively above, page 159). This is what Peter Robinson clearly says in the previously highlighted email of 9.23.2010: "it is clear that the discussion about Y can only be closed at the MB/CD level, and CD he plans to speak with MB at the beginning of next week" (RDS 590).

Frankly, from a logical point of view the following considerations are incomprehensible, taking into account the failure to incriminate the other parties involved: Craig, Rudduck, Outen, Burmaister, Klusener.

PP: The second observation concerns the chain of command in Shell and the role of Brinded. Colegate and Copleston's emails where they explicitly speak of money movements in favor of public officials that will derive from the deal are always addressed to Robinson. Robinson was reporting to Ann Pickard and then to Ian Craig at some point. In some cases the audience of the recipients of the peppery comments by Copleston and Colegate was wider including Pickard, and then Craig, Outen, Upstream sales manager in The Hague, Burmeister, Klusener, Bos and many more. Many of these executives – most notably the sales directors Pickard and Craig – sat on Shell's Upstream Business Leadership Committee. Malcolm Brinded was the head of Shell's Upstream and led the Leadership Business Upstream Committee. He was also a member of the Board of Directors of Royal Dutch Shell. In such a situation, to think that the direct superiors of Brinded (Pickard and Craig) and his other colleagues on the Leadership Business Upstream Committee kept secret sensitive information on a deal of enormous importance, with great political and reputational repercussions, from one of the most eminent, and highly operational, figures of the Shell group is beyond logic. Outside the common logic and outside the logic of the world of large multinational companies, which poorly tolerate loose dogs and heads blissfully kept in the dark (except, of course, when they claim ignorance, or even carelessness, if this can be useful in criminal proceedings).

The following defensive arguments are reproduced here because they can be fully accepted.

First of all, it is worth mentioning the position held by MB at Shell, at the time ranked by Fortune as the second largest company in the world. In 2011 Shell's turnover was over $470 billion and its profit after taxes was over $30 billion.

The scope and responsibilities of MB's role within Shell were enormous. At the time of the events, MB was a member of the Board of Directors of Royal Dutch Shell ("RDS"), and together with the CEO and CFO he was one of only three Executive Directors.64 The Board was collectively responsible for the entire business, defining strategic objectives and corporate principles, monitoring performance, making the main strategic and commercial decisions, and establishing the related measurement criteria.65 MB was also a member of the Executive Committee, to which the Board had delegated the management of RDS under the direction of the CEO, and which was therefore responsibility for the effective implementation of the strategies and the achievement of the objectives set by the Board. From March 2004 (and until 2012), MB was in charge of the RDS Division of Global Exploration and Production and its successor Upstream International ("UI"), and was therefore responsible for exploration and production worldwide after 2009, with the sole exception of the Americas, and since then also for the entire global integrated gas business (the world's largest liquefied natural gas business in the private sector). Nigeria was therefore (only) one of many countries (about 30) that the UI department operated in through the legal entities established in those countries.

MB had only high-level strategic oversight, and necessarily relied on:

(i) the communication of key strategic information and the reporting of any red flags by those who were subordinate to him in the hierarchical structure. With regard to block 245, these persons included Craig, as Decision Executive (whose role will be explained in full below), as well as Ruddock and

Wetselaar, as Legal Manager of UI and EVP Finance, respectively, all three with specific compliance assurance responsibilities within the Shell structure (while Ruddock reviewed the bribery risk proposal, Wetselaar, EVP Finance for UI, was responsible for Anti-Money Laundering Controls ("AML").

(ii) the operation of the governance rules applicable to investments and other financial commitments, as set out in the Royal Dutch Shell Pie Investment Decision Manual ("IDM"). Updated versions of the IDM were published in August 2009 and November 2010. Martin Ten Brink explained that all investment proposals that required MB's approval had to be formally presented first in a Proposal to Commence Negotiations ("PCN") and then in a Group Investment Proposal ("GIP"), that "it had to articulate the value proposition, including the risks and related uncertainties"73 and that it required an explicit functional support – including ensuring conformity with all aspects relevant to compliance.

Regarding the ABC risk assessment, and in particular the involvement of Etete and Malabu in the negotiations, it was normal that MB, in accordance with Shell's governance structure, relied on the expert Legal and Finance functions within Shell, as well as the EVP for sub-Saharan Africa and OPL 245, i.e., the "Decision Executive" Craig and the President of the Nigerian subsidiary, Mutiu Summonu. Shell's policies and procedures required that any operation or transaction that it had to approve anywhere in the world first be carefully reviewed/evaluated and approved by these highly qualified, experienced, and adequately resourced departments. In the case of operations related to Nigeria, the functions involved include a Nigerian legal office composed of 45 people, including over 30 lawyers 204 and a Nigerian financial department with about 300 workers (out of a total of 5,000 employees belonging to Shell's staff in Nigeria). No red flags were ever reported to MB, not even in the PCN or the GIP (one of whose main purposes was to identify any risks of corruption). Furthermore, MB never received any signal of concern from those reporting to him (and in fact there is nothing to suggest that these people felt that there were any warning signs), nor from others. For example, when asked before the Court if he had ever discussed with MB the existence of "illegal payments" for a "dark role in Malabu," the witness Craig responded negatively. Moreover, as explained elsewhere and summarized in §3.1, MB had many reasons to rely on the legitimacy of the transaction, as well as on the effectiveness of Shell's processes and guarantee systems.

From MB's perspective, the signing of the Resolution Agreement of April 2011 ended a long-standing and troubled stalemate on the OPL 245 block, in the rational, legitimate interest of all parties involved.

i. The interest of Shell that had obtained the rights to the block following an international tender back in 2002, and, following the reassignment to Malabu as a result of the 2006 operation, considered that it had been "an expropriation of a precious asset without compensation and without just cause."252 Shell initiated arbitration proceedings before the TCSID against the FGN under the Bilateral Investment Treaty between the Netherlands and Nigeria, seeking compensation for losses caused by Nigeria's wrongful expropriation of property and the reassignment of the block. As clearly demonstrated by the evidence, MB considered Shell's victory in arbitration to be highly probable, but was equally aware of the difficulties that would make it almost impossible to execute the expected favorable decision: As MB wrote to Peter Voser and Simon Henry on October 8, 2010, [English in source text:] "we are heading for a BIT settlement that will probably be enforceable and certainly relationship-damaging with the FGN" [Translation resumes:];

ii. interest of the FGN that would have benefited from resolving the impasse through the abandonment of the arbitration procedure and the initiation of activities on the block to restore its reputation (with respect to the international investor market) and make positive political and financial progress. Specifically, and as described in detail in § 3.15.1, through significant future tax revenues, an increase in foreign direct investment and employment, and the positive reputational and political

repercussions resulting from a major new Deepwater development (and the wider benefits deriving from it), as well as Etete's support for amnesty, which would have provided further significant benefits to the Nigerian people.

iii. in the interest of Malabu, whose involvement was necessary because Malabu had seen its position as holder of the block rights legitimized by multiple decisions of different administrations (§ 3.12.2). Therefore, Malabu should have received adequate financial compensation for the waiver of its claims and the definitive transfer of the rights to OPL 245.

In fact, the 2011 agreements were the result of real, intense, long negotiations, conducted essentially by Shell's deal team operating in Nigeria, in compliance with the normal operations of the UI department, and only occasionally by MB himself when it became necessary to define certain essential conditions of the operation directly with Descalzi.

Specifically, Craig – who resided in Nigeria, and, as Executive Vice President ("EVP") for the sub-Saharan Africa region, was the highest Shell executive in the country and was the sales manager of the Resolution Agreement of OPL 245 as Decision Executive – and Keith Ruddock – Head of the UI Legal Department, holder of functional responsibility for overseeing the legality of the Resolution Agreement) provided detailed, comprehensive and highly credible testimony regarding OPL 245 and MB's role in the operation. This includes undisputed evidence that

(i) the aforementioned witnesses were not aware of red flags related to the agreement;
(ii) consequently, they did not warn MB of any red flags;
(iii) MB never did or said anything that was in itself a red flag; and
(iv) MB would have reacted properly and promptly to any red flags if he had learned of them.

It is crucial to note that Craig and Ruddock were in fact the two most important people in Shell's facility at the time that MB could rely on for the deal to be lawful and ethical:

(i) Craig was responsible for the structure and terms of the operation, its intrinsic integrity and respect for the law and Shell's business principles, as well as the political and security environment in the country, and

(ii) Ruddock was responsible for independence and full legal compliance and was permanently based in The Hague but led a highly sophisticated legal team in Nigeria (responsible, among other things, for examining anti-corruption proposals ("ABC"). Craig and Ruddock were necessarily more involved than MB, were closer to the activities of the deal, and were tasked with identifying any red flags for MB, and alerting him if necessary. Moreover, as will be seen in § 3.3. below, due to his knowledge and previous experience with such persons, MB had reason to trust that Craig and Ruddock would fully and diligently discharge such important compliance assurance responsibilities.

RDSN 283, June 24, 2008

With this email, Ann Pickard provided MB, Outen, Henry and Robinson with an update regarding a meeting with the Nigerian National Petroleum Company ("NNPC"). Mohammed Barkindo was the head of the NNPC (Nigerian state-owned oil and gas company).

According to the prosecution, the document – and in particular the reference to the fact that [English in source text:] "mosp is involved (i.e., on the take')" [Translation resumes:] - is important as it is allegedly indicative of what "Shell's expectation at this time" was.

However, the communication comes almost three years before the signing of the Resolution Agreement, when the actors of the FGN were different from those involved between 2010 and 2011 (and, more importantly, unknown to the defendant) and at a time when there was no prospect of resolving the dispute relating to 245 (as indicated in the email), which deprives the document of the meaning that the Public Prosecutor tries to attribute to it. Regarding the content, these are not assessments made by Anne Pickard, who is instead transmitting what was reported to her by Barkindo, the head of the NNPC who was a rival of the then MOSP (Minister of State for Petroleum),

Henry Ajumogobia. In Nigeria, false news or rumors of this kind spread by rivals were the order of the day and not unexpected. As a result, little if any reliance was placed on these comments. As already explained, Shell had put in place strict ABC controls to deal with these risks, and MB never had reason to believe that when the issue of OPL 245 was finally resolved (almost three years after the email under discussion, with a different petroleum minister, and no minister of state for petroleum) there were still unresolved ABC issues.

RDSN 474, March 29, 2010

MB provided answers prepared by Peter Robinson to questions posed by Simon Henry in relation to the PCN to Simon Henry, Peter Voser and Beat Hess, copying Wetselaar and Ruddock. One of these questions was: [English in source text:] "Will Govt try to back in once they realize no revenues for them at all." [Translation resumes:] Robinson underscored that according to the proposed structure the FGN would obtain taxes, estimated by Shell's technical consultant at about $4.5 billion at NPV (see paragraph § 3.15 above: total revenues over $30 billion over the duration of the project on an undiscounted basis), in addition to the signature bonus (i.e., the balance of $208 million). Robinson then explained: [English in source text:] "Of course there is a straight Govt NPV loss of the S800mln by giving up their equity value to Malabu, but that's effectively what their 2006 settlement with Malabu already did". [Translation resumes:]

According to the Public Prosecutor, from this communication it appears that within Shell and ENI there was a "very clear awareness...that what they were doing would cause damage to the Nigerian Republic." This isolated deduction comes at the conclusion of the closing argument of July 2, 2020, and seems to have been made suggestively to support the charge of direct corruption.... The document invoked – read in its entirety and contextualized – does not support the evidence of the deduction offered by the prosecution.

First of all, it is necessary to draw attention to an obvious fact (and yet omitted by the Public Prosecutor): the exchange in question – which is part of the process of functional dialogue for the approval of the PCN (§3.11) – dates back to March 2010 (it is therefore more than a year away from the Resolution Agreement), and therefore reflects an approach to the operation that is quite different from the posture taken at the signing of the Settlement Agreement in April 2011. Indeed, the response prepared by Robinson was based on the assumption that the [English in source text:] "settlement agreement as drafted requires waiver of any NNPC/FGN back-in rights." [Translation resumes:] However, the settlement agreement – following extensive and further multilateral negotiations – would have provided generous back-in rights of up to 50% that would allow the FGN (through the NNPC) to profit from the oil in due course. These back-in rights could be exercised after the site had been completely freed of risks by Shell/Eni by undertaking all necessary assessments, pre-development planning, design, construction, commissioning and initial production – all financed by Shell/Eni, which would be reimbursed from NNPC's income streams only at a later time, if the latter had exercised its option. As Peter Cameron said, the fact that the FGN could exercise the back-in rights "at a later time, meant that it could wait to see the costs and possible risks of bankruptcy, that's why I said that the time for exercising the back-in option has a value, because if you are a government the top priority is to avoid commercial risk as much as possible, so that public money can be spent on other expenditures such as hospitals, schools and education, and not on commercial activities."

Even ignoring this aspect, the FGN's Petroleum Contract experts at the time undoubtedly held that the FGN would earn a lot from the final agreement, maximizing the possibilities of developing the block, thus giving the FGN immediate positive consequences, significant medium-term benefits for investment and employment, and much longer term revenues, considering the significant oil tax (4.5 billion NPV- over 30 billion dollars not discounted) that it would receive.

Second, the email confirmed that the alleged loss of NPV to the FGN was nothing more than the

direct consequence of the FGN's waiver of its rights to the block in favor of Malabu as a result of the transaction entered into with Malabu in 2006 271 [English in source text:] ("that's effectively what their 2006 settlement with Malabu already did') [Translation resumes:] to resolve the various disputes arising from the award of OPL 245 of 1998 to Malabu and the subsequent revocation of July 2, 2001. It follows that this email clearly does not support the arguments of the Public Prosecutor. MB did not cause any damage to the FGN by reaching a solution for OPL 245, nor was any damage even imagined when discussing the settlement hypothesis in March 2010. To the contrary, and as explained above in § 3.15.1, the evidence collected shows that MB had full and reasonable belief that the conclusion of the negotiations was in the best interest of the government as well. The evidence gathered in the trial dossier, including the communication referred to in the closing argument, therefore demonstrates that MB acted in the strong belief that the solution of the OPL 245 saga was consistent with the public interest of the Republic of Nigeria and would not have "caused damage to the Republic of Nigeria" as insinuated by the Public Prosecutor.

RDSN 522, April 22, 2010

This is a brief memo with which MB summarizes the content of a conference call with Descalzi. The Public Prosecutor referred to

(a) the instruction [English in source text:] “not to be forwarded" [Translation resumes:] at the beginning of the memo,

(b) a passage in which reference is made to the "challenges” linked to the presence of Malabu,

(c) a passage indicating that Descalzi and President Jonathan naturally refer to the FGN-Malabu settlement agreement of November 30, 2006. [English in source text:] "7 said I would welcome ENI as a potential player in the mix, as long as they play straight and recognize the challenges of their potential partner M.” [Translation resumes:] they had known each other for a long time,

(d) the reference to [English in source text:] "Chief E's needs for cash and a stake in future upside.” [Translation resumes:]

Despite the emphasis with which it is evoked, the document in question in no way supports the arguments of the Public Prosecution.

“Not to be forwarded" The first indication is clearly meaningless, as

(i) “not to be forwarded" is a standard phrase in commercial contexts to indicate the confidentiality of a document for legitimate commercial reasons.

(ii) The reason for the need for confidentiality in this case is clarified later in the memorandum, which stresses the importance that Malabu not become aware of the direct contacts between ENI and Shell until much later in the process." Without forgetting that, as also clarified by the witness Ruddock, the memo in question related not only to OPL 245 but also to “other points of strategic interest in Nigeria.”

“Challenges" As regards the reference to the “challenges" linked to the presence of Malabu, this is entirely legitimate as it was the main (and indeed very challenging) obstacle in the way of resolving the OPL 245 affair. It had proven impossible to ascertain the corporate structure of Malabu with certainty, and consequently execution risks remained as it was feared that Etete could not (fully) "commit" Malabu (which he claimed to represent). In this regard, there is no need to remind the Court of the legal action brought by Abacha at the end of 2010: an action that confirmed the validity of the doubts and concerns that were never resolved by ENI and Shell (and at the same time provides a completely rational explanation for the reconfiguration of the agreement with which the FGN was directly involved in the Resolution Agreement: § 3.12.2).

- “Note that Claudio is personally very close to Jonathan Goodluck – since Jonathan and Claudio met in Bayelsa in 1795/6 when they were both much more junior, and have stayed close as they’ve developed their careers over the years. This is clearly a privileged relationship and Claudio is hence

able to give direct messages to the AP in a way which I doubt we can match. Claudio will see the AP week of May and will have dinner with him “as a friend.”

Relationship between Descalzi and GLJ Then, there is nothing problematic with the good relationship between Descalzi and President Jonathan and the hope that this circumstance could facilitate a change in the point of view of the international oil companies engaged in the negotiations. On this point, the contribution of the witness Craig is clarifying: “The fact that Descalzi had built trust between himself and the acting President was also seen as positive, a positive aspect, because it was something that could help ensure that the point of view of the international oil companies was listened to."278 The fact that the President could hear Shell/Eni's point of view directly could be potentially valuable in several respects: i. Malabu/Etete had tried several times in the past to gain advantages through a misrepresentation of the facts: a direct explanation to the President could reduce this risk;

Etete's "need for cash." Finally, the extract of the liquidity needs of Chief E [English in source text:] (“I could see that ENI should be able to help meet Chief E's needs for cash and a stake in future upside") [Translation resumes:] simply shows that Etete had long wanted to sell his stake in OPL 245, and since Shell was not willing to make a significant financial offer to Malabu/Etete, the possible involvement of ENI could have resolved the stalemate. The reference to a "stake in future upside" refers to the possibility that Malabu would reduce its stake in 245 rather than selling it in full, and therefore continue to hold a share – and to benefit – from any development (the March 2010 updated PCN assumed that Malabu might obtain such a stake). Here again, the use of the word “cash” is only an industry keyword for the financial element of any transaction – used primarily in a transaction where assets and money are present and does not suggest in any way that such “need for cash" was required to pay bribes or to be used for criminal purposes. This conclusion is acceptable (as well as logical) in light of further references to the term "cash" found in documents belonging to the Shell file. For example, the first page of the GIP refers to the [English in source text:] "contribution from Shell of $85 mln in cash and $235 mln in signature bonus and interests, 280 held in escrow," [Translation resumes:] in the description of the 279 Report of the Technical Consultant relating to some provisions of the FGN Resolution Agreement, signed by Professor Peter Cameron, May 27, 2017 (dep. June 1, 2017), para. 36, p. 24. 280 Document RDSN 0000693 produced by the Public Prosecutor of March 22, 2017, filed in the trial dossier on April 3, 2017, contribution of Shell in the context of the Resolution Agreement. Chief Etete was said to be heavily indebted, hence his need to obtain significant sums as part of any settlement of the dispute rather than maintain a share of the asset (which could have been an obvious alternative solution to a dispute over ownership of the asset, but with a much longer term benefit, and less certain). The existence of Etete's significant debts to third parties was acknowledged in the document "OPL245 Status Update - October 27, 2010,"281 attached to an email dated October 27, 2010 that Peter Robinson sent to Wetselaar and MB (with Bernard Bos and lan Craig in cc), which stated that there was [English in source text:] “increased pressure on Etete to accept offer including discontinuing his and others' financial support to Etete, who currently owes in excess of $20mln."282 [Translation resumes:]

A brief aside, to close. The full reading of the document in question also very clearly conveys MB's awareness of the robustness of Shell's position – i.e., of the firm belief that Shell had been defrauded of the block rights – and the prospects of success in arbitration. As MB stated in the document: [English in source text:] “I explained our determination to get fair value and willingness to pursue any and all legal means to ensure this, hence why we had triggered the BIT arbitration in 2007 and are still pursuing it."283 [Translation resumes:]

RDSN 577, July 18, 2010

An email from Robinson sent to MB, Craig, and Ruddock, with cc to Wetselaar) stating that a [English in source text:] “back channel to the president will work better than formal channel." [Translation resumes:] This email followed the news that the President had assigned Malabu 100% ownership of OPL 245. The Public Prosecutor often suggested that the use of the term "back channel" describes an improper mode of communication, or worse a mechanism used to transfer illegal content. This is not true. The term "back channel" is commonly used in political and business language, and corresponds to a [English in source text:] "method of communication or discussion that is not direct or made public" (Cambridge Dictionary). [Translation resumes:] As Craig noted, "in diplomacy the term back channels is very often used, which indicates an informal communication that allows us to explore issues in a more constructive way in order to avoid a confrontational situation and avoid someone having to backtrack. And so it is a term that is used both in diplomacy and in business." Similarly, Ruddock also identified the "back channel" as an "absolutely normal and legitimate approach, which is followed in many countries where I have worked. And generally it allows achieving a much better result than that of triggering a conflict." Again, a proper contextualization of the document provides a reason for the words used: Robinson suggested using a back channel, indeed against MB's initial opinion to intensify discussions with the FGN 287 following the reassignment of 100% of the rights to OPL 245 to Malabu. The news of this event – as Craig recalled in his testimony – had an impact on Shell that was "devastating because the three parties negotiated on the basis of a given principle, and the news of this letter that intended to assign 100 percent of the license to Malabu undermined the fundamental principle, the basic principle. And until then we had negotiated with the Nigerian government with the belief that it was acting in good faith, and this letter had undermined our trust."288 In light of this, what Craig intended to say to Peter Robinson in his email of July 18, 2010 was: "let's see what this alleged decision is and the reasoning behind it by getting in touch with the people close to the President rather than challenging the President directly."

RDSN 578, August 22, 2010

During the closing argument, the prosecution forcefully recalled the document produced as RDSN578. This is a brief briefing note, and "briefing note" means "informative note" not "instructions", as suggested by the Public Prosecutor, and Robinson was much less senior than MB and therefore could not give "instructions” to MB. This briefing note was sent by Robinson to MB, with Craig and others in cc. The briefing note was prepared by Robinson for a phone call MB allegedly had with Descalzi on August 23. According to the Prosecution, the document in question reflects the information learned by Robinson about the meeting between the ENI delegation and Jonathan on August 13, and provides evidence of the awareness that President Jonathan himself had the expectation of receiving bribes (as stated by PP Spadaro: "Shell's representatives knew it, Eni's representatives knew it well"). More specifically, the passage in the document that the Public Prosecution is referring to is [English in source text:] "in country view is that the President is motivated to see 245 closed quickly – driven by expectations about the proceeds that Malabu will receive and political contributions that will flow as a consequence.” [Translation resumes:]

The analysis below will demonstrate that the interpretation of the document provided by the prosecution is contradicted by the available evidence, that it is (intentionally) offered regardless of any consideration regarding the usability of a piece of evidence that – clearly – is based on current public rumors ("in country view..."), and which therefore clashes with the provision of art. 174, para. 3 of the Italian Code of Criminal Procedure.

Contrary to these statements, a reading of MB's briefing note reveals no indication that President Jonathan expected to receive bribes, of which, to be clear, there is no evidence. Instead, the memorandum confirmed that following the resolution of the disputes over OPL 245, the President expected a very important political return.

In this regard, it is first of all useful to note that in English the term "contribution" is not equivalent

to "payment," and is very often used to indicate non-financial forms of "assistance." The Cambridge Dictionary defines the word as follows: [English in source text:] "something that you contribute or do to help produce or achieve something together with other people, or to help make something successful." [Translation resumes:] Indeed, in English, the word "contribute" is commonly used to connote the idea of helping to produce something, in a way that does not involve any financial support. Moreover, Craig's statement is very clear on this point.293 It also has a particular evidentiary weight because Craig had a profound understanding and a direct view of the Nigerian context because of his position. Craig explained that he understood the reference to "political contributions" as the legitimate political support that was expected from southern Nigerian voters if President Jonathan had succeeded in resolving the OPL 245 affair. These political benefits were expected to occur due both to the expected benefits to Nigeria of developing OPL 245, and to the expected benefits of Etete's potential influence in increasing the support of Niger Delta communities for Amnesty. Ruddock explained the vital importance of the Amnesty in the following terms: "In the southern states of Nigeria, which are among other things the oil-producing states, there had been a long history of violence and disorder that caused interruptions and violence in the oil production of Shell as well as the other oil companies. Acting President Jonathan, who came from the southern states, had proposed an amnesty as one of the key points of his policy and had followed through, I believe in 2009. Etete also came from the southern states, from the state of Bayelsa, and was considered a senior figure and very influential, so from the point of view of the Nigerian government it was important that Etete supported the amnesty."

The Public Prosecutor also acknowledged this in his remarks ("There were many revolts in the Niger Delta, there had been attacks by armed groups, the MEND, etc., the President had proposed a peace based on forgiveness for those who had surrendered their weapons. And the Niger Delta region is the Dan Etete region, and therefore this project could not be successful without the political support of Dan Etete," hearing transcript of July 2, 2020, Closing argument of Public Prosecutor Spadaro, p. 9.), and it had long been clear (also) to MB that the FGN was [English in source text:] "prepared to consider a more generous position for Etete as it is in their interest to have a high-profile Niger Delta individual actively supporting the amnesty"297 [Translation resumes:] (situation also clarified by Ann Pickard 298).

On February 27, 2010 MB sent an email to the CEO, CFO and Legal Director explaining that [English in source text:] "there may be a window to settle 245 (...) background is political manoeuvring which means that Acting Pres, MOSP and others want to get Etete on side esp also to get his contd support for the Amnesty." [Translation resumes:] It is worth noting that this phrase used by MB – "political manoeuvring" – helps explain the meaning of "political contribution ", very different from what was suggested by the prosecution.

Finally, to conclude. In the record there is another document that clarifies beyond any doubt what the attitude of President Jonathan was according to MB (and Shell). It is a document created shortly after the brief which – here, yes – reflects the information provided by ENI following the August meeting with the President 300 [English in source text:] ("in country view (reinforced by ENI comments above)"). [Translation resumes:] It is noteworthy that there is no reference to President Jonathan expecting bribes. Instead, President Jonathan simply wants [English in source text:] "to see this resolved ASAP. Wants the production; (has been stalled since 1998-2000) and said that this was a "normal commercial Issue between you (ENI), Malibu and Shell" (Indicating he doesn't want to be involved directly)." [Translation resumes:]

RDSN 602, et seq., September 25, 2010.

The last of the documents cited by the prosecution is the memorandum "OPL245 Brief," included in the record as RDSN 602 et seq. and sent by Craig to MB on September 25, 2010, with Peter Robinson in cc.

Despite the emphasis placed on the memorandum in the Public Prosecutor's statements (it is even defined as "the memorandum that most directly deals with what can certainly be defined as the formula of the bribe"302), it is evident that when considered in its entirety this memo does not provide any evidence to support the argument of the Public Prosecutor.
The memo contains a wealth of information on OPL 245 and reflects the state of discussions between ENI and Shell in September 2010. Understandably, the parties' positions were influenced by the differing perspectives of the two companies: while Eni was ready to acquire a share of the rights (equal to 50%) of the block [English in source text:] ("ENI is keen to step into the block"), [Translation resumes:] with the concurrent desire to make new and significant funds available to achieve this objective, Shell's assessments were conditioned by the solid prospects of success in the pending BIT arbitration [English in source text:] ("We believe we will be successful (70°/o POS [probability of success, ed. note]") [Translation resumes:] as well as by the desire to recover the costs already incurred in the past for exploration and development of the block [English in source text:] ("How do we recover (in some way) past cost") [Translation resumes:] in light of a general desire to resolve the longstanding dispute without the uncertainties – and the probable disadvantages – of a legal decision from the BIT.
Far from suggesting (or concealing) anything illegal, the formula that caught the attention of the prosecution ("X + SB + Y = Z") summarizes the terms of the status of commercial negotiations with ENI, which had declared itself [English in source text:] "prepared to pay USD 800 million (X) to acquire 50% interest in 245" [Translation resumes:] and had indicated a potential increase in its costs only [English in source text:] "if change of operatorship would be agreed." [Translation resumes:] The equation therefore contemplates the hypothesis that in order to make a "'final" offer Shell should offer another payment ("Y") in addition to the SB (equal to 209 million dollars, originally paid and still in the escrow account) and related interest.
The scenarios examined in the memorandum are not based on any criminal assessment (as claimed by the prosecution), but rather involve in-depth financial analyses, as shown by the annexes to the briefing note 303 (which – not surprisingly – the Public Prosecutor did not address, just as he did not address the content of the technical consulting included in the record dealing with the calculation of the price). In fact, the Prosecutor's point of view is based exclusively on the interpretation of the passage [English in source text:] "Z is the payment to Etete that will be acceptable to all players in Abuja," [Translation resumes:] which according to the prosecution should be understood as "the bribe that will be considered acceptable to all players in Abuja." The deduction, aside from being prima facie highly contrived, is contradicted by evidence in the trial dossier. First of all, we refer to Craig's testimony, who received the document from Robinson and subsequently shared it with MB. With regard to the wording used in the memorandum, the witness remembers that "My interpretation is that Etete is actually the way to say Malabu, so it should actually be written Malabu. Abuja is our normal way of referring to the government, so when we talk about all the players, all the players in Abuja, we mean all the important representatives of the government" 305 (in other words the DPR, NNPC, the office of the Attorney General and all the other officials of the government that needed to approve the agreement). The reason why the payment had to be acceptable to all players in Abuja/FGN was related to (i) Malabu's status as an indigenous company, (ii) the status as mediator of the longstanding dispute between Shell and Malabu, (iii) the potential significance of a new offshore development with all the public benefits that could derive therefrom in the event of success, and (iv) the intention to resolve the BIT arbitration that the FGN was a party to. It was politically important that the payment (which would become public knowledge) be considered fair and not overly favorable to the IOCs or Malabu. As Craig noted, given that "all this would become public knowledge, and therefore the government had to prove that the agreement was fair, right. And of course it was a trilateral negotiation, so to speak, with Shell and Eni on the one side, the federal

government on the other, and Malabu in the last corner. For many months, many years, Malabu had had exaggerated expectations regarding the value of the block. And the federal government realized that these exaggerated expectations were unrealistic. But it didn't want to put pressure on Malabu to accept an offer that was wrong, unfair. (...) It was a question of fairness more than anything else, because if the price offered had been too low compared to the other benchmarks it could have been said that Malabu had been under pressure from large international oil companies to accept a price that wasn't really right, that wasn't fair."306 Moreover, the FGN would not have wanted to accept a price that was too low, as this would have affected how much other oil companies would be willing to pay in the future for other Nigerian blocks.

Where further evidence is needed, there are two documents shortly thereafter that provide consistent confirmation of the "lawful" and entirely rational interpretation of the language used in the brief. Specifically:

i. an additional memo – OPL 245, dated October 1, 2010, sent by Robinson to Craig and others not including MB – which, after referring to the equation ("X + SB + Y = Z"), provides a more detailed description of the variables, with Z defined as the [English in source text:] "acceptable price to Malabu/FGN to settle rights to the block and enter into a full and final settlement Agreement, whereby clear title to the block is obtained shared 50:50 between ENI and Shell" 307; [Translation resumes:]

ii. a summary report prepared by Robinson and sent by MB to the CEO and CFO of Shell when the GIP was sent, stating that [English in source text:] "FGN think the offer 'fair.'" [Translation resumes:]

The evidence therefore confirms what is immediately suggested by logic: (also) according to MB, the "Abuja players" were certainly not recipients of bribes, but the representatives of the government whose support and (crucial) approval were necessary to resolve the OPL 245 affair. Finally, as is evident from the detailed technical analysis referred to in the GIP itself, it was a briefing note that was the product of a considerable internal review and expert analysis and that was extensively reviewed at a senior level in Shell. It is unthinkable that such a document contained a detailed formula to describe – as the prosecution suggests – the mechanics of a bribe. In conclusion, far from supporting the severe allegation against MB, all the evidence gathered at the trial – including the documents referred to by the prosecution as critical in its support of the accusation – clearly paint a very different picture.

CHAPTER 19
GUY COLEGATE and JOHN COPLESTON

19.1 Charge

Guy Colegate and John Coplestone, former MI6 officers who were subsequently hired by Royal Dutch Shell Plc respectively as Senior Business Advisor and Strategic Investment Advisor;

- communicating with Gusau and other sponsors (ABC Orjiiako; Emmanuel Ojiei) to help Shell with the transaction;
- gathering information about the financial demands of Diezani Alison-Madueke - a former Shell Executive and Minister of Petroleum - and of President Goodluck Jonathan, to conclude the deal
- maintaining operating contacts throughout the course of the negotiations with Ednan Agaev
- coordinating with Robinson and other Shell executives

19.2 The credibility of the accused as former secret agents

The Public Prosecutors claim that: John Copleston had the formal position of "Strategic Investment Adviser" of Shell Exploration & Production Africa Limited. Guy Colegate of "Senior Business Advisor of Shell International Exploration and Production".

Copleston was deeply rooted in Nigeria, having served for years as Political Counselor at the British Embassy in Abuja. It is a powerful embassy like all British embassies in Commonwealth countries (in these countries ambassadors are "senior diplomats" and have the status of "High Commissioner"). Agaev calls Colegate "John 's boss" (cfr. sms Obi no. 510) and he mainly worked in Europe. This explains why many communications between the two could not take place "in person" and had to be exchanged by email.

As mentioned above, both have a developed professionalism in intelligence services, since Copleston was responsible for MI6 (UK Secret Intelligence Service) in Abuja, while Colegate had been head of intelligence in the Hong Kong police.

Their role in the OPL 245 affair consisted first of all in collecting sensitive information from qualified sources and transferring it to Shell's decision makers. The main object of the information found by Copleston and Colegate was the positioning of the various politicians involved in the different phases of the negotiation, and their economic aims, so that the refinement of the corrupt strategy towards Nigerian public officials - in a situation, among other things, in which there are [English in source text:] "lots of shark circling" [translation resumes:] and people who vaunt influence that they do not have, or no longer have (the [English in source text:] "bullshitters") [translation resumes:] - was based primarily on their careful and professional spying activities.

This is an interesting argument, albeit one that cannot be shared because, unlike the method of collection of information that may be used in criminal proceedings, based on the transparency and reliability of the sources of such information, companies are interested in gathering as much information as possible, without worrying too much about the sources of such. The witness Craig made this very clear when he stated: "If there's one thing worse than having unreliable or unsubstantiated information, it's not having any information at all. Because in that case you are totally blind with regard to what might happen." "And so the choice is obviously to get some information, to filter it, to triangulate it, to verify it, to at least get an idea of what might be going on in the country." The information collected by the witnesses Colegate and Copleston was needed by the Shell Group's managers for the purpose of directing the company's commercial management.

In the proceedings, the evidence does not serve to guide the decision, but must be examined to ensure its credibility - in the case of oral evidence - and to ensure its reliability - in the case of written evidence, since this evidence must form the basis for a decision which, in establishing a person's

liability, must possess the rational certainty illustrated in Chapter 5.
The difference is clear, and it thus hinders automatisms such as those proposed by the prosecution, which attributes a kind of special credibility to information which, on the contrary, is acquired from sources which in the main remain anonymous (the Delta guy... the source) or derives from public rumors (from the country perspective) or from open sources (the radio, newspapers...).
That said, the following are the shareable defensive arguments, which once again show how "weak" arguments lead to the unjustified unequal treatment of situations which are most definitely very similar, such as those pointed out by the ENI Group's external advisors (Risk Advisory Group).

Therefore, the trial hearings have allowed us to ascertain that the role, the duty of Colegate and Copleston was to collect the rumors and speculation existing in Nigeria on issues of social, legislative and even political significance. Why do I say rumors rather than speculation? I'm not using the word rumors in support of the defense, but merely because the intelligence gathered was not information in a technical sense, so even if I use the word "information" I will use it to mean information in a non-technical sense, consisting precisely of rumors, speculation, issues that were reported to Colegate and Copleston by other parties. This information was never first-hand information, it consisted of relayed second, third, or even fourth-hand information, as we will see with specific reference to an email, the so-called delta email.
I have provided to you document number 14, which belongs to those filed by the Public Prosecutor on April 16, 2019. It consists of an email dated March 17, 2010, in which a source who remained confidential reported to Witness Leslie on a meeting he had had with Etete. Please note that the meeting reported by the anonymous source had certainly had as its subject, to use the words of the Public Prosecutor again, extremely important sensitive information. Why the Public Prosecutor... although the Public Prosecutor has always maintained that Goodluck Jonathan saw Mr. Etete a bit like his Oga (boss), the confidential source reported, "Alex, I had a brief conversation with Etete yesterday, he does not have a very good relationship with Jonathan and he feels frustrated about some issues. However he feels that the DPR may have the upper hand in reinstating his license, that would be interesting. He is currently in Paris, he has been there for 3 months, and he has had contacts with Eni but has not received a formal proposal". Therefore, it is perfectly clear from this document that the source said that Goodluck Jonathan's position was at odds with that of Mr. Etete. But even more significant is the fact that the Public Prosecutor realized the importance of this part, and asked the witness Leslie this question: "I would invite you", says the Public Prosecutor, "to jog your memory, because if you think about it you might be able to recall this person's name". The Prosecutor then asked, "did you have many contacts in Nigeria who spoke directly with Mr. Etete at that time?", and Leslie replied, "Actually there were several people who had relationships with Etete, so I might be able to recall one of these four or five people", but he wasn't able to recall any. So frankly I don't understand in what way the fact that Copleston or Colegate reported what they had learned on Etete's intentions or movements from Agaev, or from a source they kept confidential, calling him either "deltaman", "source", or "our man", could constitute participation in the offense. While if the same identical activity is carried out by an external professional, this is considered to be a professional service, the gathering of information for business intelligence purposes, which involves no criminal liability.
I have been authorized to tell this Court that both my clients have been heard as witnesses by the Dutch Prosecution Office. Why do I take the liberty of bringing this fact to the attention of this Court, which of course has jurisdiction in the territory of the Italian Republic? Because the Dutch Public Prosecutors examined the same evidence that is now available to this Court, and I know this because I have the transcripts of the witness statements...I have the transcripts ... and I' have...which were supported by all the individual emails that have been submitted to my clients. This Court is, of course,

absolutely free to judge as it sees fit, but I believe that the fact that, on the basis of the same record of evidence, my clients were heard by the Dutch Prosecutors as witnesses and having been heard were not charged with any offense, is quite a significant fact, and therefore I have taken the liberty of reporting it to the Court.

19.3 The information gathered prior to 2010

Moreover, that the information gathered by the defendants does not constitute reliable proof in regard to the prosecution's claim of the existence of corrupt agreements, is demonstrated by the fact that, although concerning bribes, demands for money or simply expectations on the part of public officials within the context of the OPL 245 transaction, the information available prior to the spring of 2010 was not included in the charge, and as already observed in chapters 2 and 6, said information concerned other Governments, and therefore other public officials, and represents alternative hypotheses to that submitted regarding the real destination of the 500 million dollars transformed into cash, as already argued in chapter 7. This information, together with, and superimposed on, subsequent information, helped create the belief in a generalized, and thus generic, corrupt environment; this cannot be evidence representing the intent required to constitute the subjective element of the third-party intermediary participating in the offense, as argued in chapter 8.

The following are the conclusions of the Public Prosecutor and of the defense counsel in this regard.

PP: There are many e-mails, already examined, referring to the position of public officials, in which Copleston and Colegate describe the Nigerian politicians involved in OPL245 as individuals essentially motivated by personal economic interests and in general paint a situation of serious moral degradation of the public officials involved in OPL245.

It can be reiterated here that these indications are already found at the beginning of the intelligence activity of Copleston and Colegate: see the exchange of emails on January 4 and 5, 2009 (RDS 318), in which Copleston reports to Pickard and Robinson that he found out (from Etete's wife) that Etete claims that only 40 million of a 300 million offer that Shell would like to make would remain in his pocket, [English in source text:] "rest goes to pay people off". [translation resumes:] Copleston also talks about the position of Minister Lukman who took the job "because he needs money", a communication to which Colegate replies by suggesting that he help Lukman in his new role as well as think of something for all the other "key players".

The defense's discussion: The Public Prosecutor has emphasized, again from the point of view of the time sequence, I think this is quite an important passage, that "from 2009, 2010, 2011, the people, I am speaking especially of the Public Officials, were largely always the same". This approach tends not to judge individual governments, individual ministers, that is, who did what and when. And I would argue that evidence of this can be found precisely in the form of an email mentioned by the Public Prosecutor. It is the email written by Copleston on January 5, 2009, which is the second document, and so dated well before the resolution agreement. It is the so-called delta man email. Why? What does the Public Prosecutor say? "We learn from this email", from Dan Etete's wife, but we will see this, "that Etete will only get 40 million of the 300 we are offering, the rest goes in paying people off",

he will only keep 40 million, the rest will all be used to pay people off. The Public Prosecution also points out another passage that makes reference to Lukman, the Petroleum Minister of the time, and says "he took the job", "he took the job because he needs the money". But the important thing, which I would like to underline, is the legal consequence that the Public Prosecutor draws from this email, because he says that this email provides "evidence that Copleston and Shell's representatives knew that Etete would use most of the money he would receive for OPL 245 to pay bribes" because "the Petroleum Minister could not do anything, the Petroleum Minister was not yet Diezani, it was a person called Lukman, but it is already important to understand what Shell's expectation was at that time"," I disagree with the Prosecutor's interpretation for these reasons: first of all it is, as I said in the opening, this was fourth-hand hearsay, because Etete told his wife, his wife told the deltaman, and

the deltaman reported it to Copleston. But mainly because in English the phrase “pay people off” does not necessarily or exclusively mean paying bribes. When I have to pay “people pay off”, so when I need to pay people other than me, it means that I owe money to those people. But of course, the Court will ask me: “But excuse me, do you have any evidence to support your interpretation? Yes, thankfully, I have several pieces of evidence. The then country chair for Nigeria, Basil Omiyi, has reported about a meeting he had with Etete on April 3, 2007, almost two years before this email, during which Etete told him that he owed a lot of money in legal fees. This is PM2-115, 117, I don't know if I have attached these documents, Your Honor, concerning legal fees incurred, if you look at the case, “fighting the OPL 245 case with Shell and Government”. The document refers to this astounding figure of $ 500 million in legal fees. Whether the actual figure was $ 500 million or not, he did have a considerable debt, which he spoke about two years prior to these emails. And in addition to the debt for legal fees, Etete also incurred a debt towards Agaev, as evidenced by RDS 483 of March 22, 2010, which Agaev quantified at $ 2 million. So much so that this would be one of the reasons for the strategy that I will describe later. Moreover, with regard to the sum of $ 300 million, not only was the Minister of Petroleum Diezani not concerned, but the sum referred... in the draft contract, referred to repeatedly, this sum related to the farm-in, 40 per cent... the purchase of 40 per cent of Malabu by Shell. So a contract, a contractual matter completely separate from the resolution agreement. But above all, the central point of my objection to the Public Prosecutor is that when Copleston wrote this email, none of the persons named in the count of indictment held the office of Public Official. None.

19.4 The information gathered in 2010

It has already been pointed out in chapter 5, the documentary evidence mentioned by the prosecution and of importance also for the purposes of the present chapter, since it originates from the defendants Colegate and Copleston themselves, despite regarding the accused public officials, not only is characterized by the patently obscure sources of the information contained therein, but it is also flawed by the ambiguity of the evidence-based reasoning, since this concerns what are clearly different illegal agreements from the one covered by the indictment, first and foremost because the former do not concern the oil companies’ managers, and certainly not those of the Shell Group, the other party to the proceedings.

The Public Prosecutor states that “these indications become even more important, for what is of importance here, with the advent of Goodluck Jonathan as Acting President.

See, for example, the following emails”.

“Abuja Sitrep”

Sitrep is a military acronym for Sit(uation) Rep(ort). On March 10, 2010 Copleston wrote to Robinson and his boss Craig: “The struggle for ministerial positions remains intense, with many aspirants offering substantial sums to buy public offices. A well-known figure is said to have offered 2 billion naira (approximately 15 million dollars) to become Minister of Oil... Meanwhile, NSA Gusau has taken control of the Villa and replaced all security personnel with his own people, effectively taking out Turai [wife of President Yar Adua] and the old gang. "

The email contains observations and not news, and although clearly referring to Diezani Madueke, it does not concern illegal agreements directly related to the OPL 245 affair.

The subsequent emails contain observations that cannot be interpreted with any great certainty, and they even lead the Public Prosecutor to reason in terms of mere plausibility.

“Milanese Movements”

The subject is “Milanese movements”. The email was sent during a “heated” phase of the negotiations, on June 13, 2010, at a time when there was fear that the government would reconfirm

Etete's 100% interest in OPL245, as it then did. From a careful reading, it is clear that this is information provided by the "friend" Agaev who speaks of the "Milanese" by referring to them in code as "his client" or "his clients". The email is full of codewords and abbreviations.
"Our friend told me that his clients are in contact with our former employee and her alleged lover - so there's movement in the capital". The email goes on to say that even "his clients" do not want a situation in which the Chief has 100%. They're thinking of a "nuclear option" against the Chief. "However our friend says that all the pieces are in place - the gov(ernment) is on board, his client and us - he says that only the Chief can sink this thing - and he does not rule it out. His client wants the Chief out of the picture - inc(luding) all documents for each transaction - the Chief's rep(utation) would cause them problems if his name appears in the paperwork directly related to the consideration. So the other shareholders/directors will sign...
Final - the Milan gang is not trying to find shortcuts on this in any way - they want everything clear with all the parties.

Of extreme interest, also to understand how this information was actually used within Shell, is the fact that the same day Colegate forwards the email to Guy Outen, Upstream sales manager in The Hague. Equally interesting is Colegate's explanation to Outen: FYI (For your info) Our former employee is Dezani. Her alleged lover is the President.

The Court des not agree at all with the identification of the friend as Agaev, insofar as the reference to clients leads to the exclusion of this hypothesis, also because the person who wrote the document is a Shell employee. In this regard, let us not forget that Agaev's ties with Shell lead the prosecution to deem him to be Shell's "actual" intermediary.
However, regardless of the identity of the friend in question, the email concerned only contains observations that do not refer to one single, specific corrupt agreement, given that the prosecution mentions it with regard to the voracious Diezani, in such a way as to relate her to the subsequent email, while Colegate refers verbatim to an illegal agreement with the Attorney General, Adoke Bello: "the Chief bought the Chief of Justice.

"Chiefly Tourism"
The "chiefly tourism" email is dated June 16, 2010. Colegate reports to Copleston and Robinson about a call from "our friend." He says that "he has just received a call from Diezani - she wants to meet him in Saint Petersburg next week about the issue of our favorite block. He is undecided about whether to go or not. "This email as well was forwarded by Colegate to Guy Outen, sales director in The Hague. Accompanied by the following comment: FYI - the glacier is melting - Diezani is looking for a favorable solution - I will let you know the results. Our source is unsure about the value of the meeting - he knows that **Dezani is trying to produce the margins on behalf of her boss** - this and the XOM issue all indicate what his priorities are now in the run-up to the election.
"245/Diezani"
Mail dated July 13, 2010 from Copleston to Robinson and Colegate:
P(eter), I find it hard to believe that Diezani's visit to the UK later this week is really for R&R [rest & relaxation] with the family…**It sounds more likely that she** has some urgent private business to attend to and, coincidentally, she has to leave on Thursday, when Etete will be in Paris to meet Ednan/Eni (and Ednan then meets Guy). So I wonder if this is an offshore meeting with Eni. **Maybe I am making 2+2=5, but it's a thought.** I have the team here working on D [Diezani] 's itinerary - if there is an additional trip to Paris, QED [acronym for: quod est demonstrandum]. But Eni could still come to London, Friday, after Paris. July 13, 2010 is a Tuesday and Copleston's information refers to a trip that should be made by Diezani Alison-Madueke on Thursday the 15th, "when Etete will be in Paris to meet Ednan/Eni (and Ednan then meets Guy)".

Obi's text messages show that at 09:06 a.m. on the 14th he wrote to Agaev: “I am leaving Milan, travelling to Paris” (sms 305). Immediately after Agaev replied, “When do you think we'd better see the Chief? Around 11? I have a lunch with the Dutch at 12:30. Or rather after the meeting with the Dutch? Let me know (sms 305). On the morning of the 15th, Obi was at the same hotel as Agaev (sms 321 - Agaev wrote: “Where are you? I'm at the bar”).

Obi's subsequent texts to Agaev (323 and 324) were both sent on Thursday the 15th. Significantly, in the first (323) Obi, at Agaev's request, explained that the settlement agreement being worked out was only between “FGN and MBU” [MALABU] and did not involve “S”, because Malabu and Shell had no contractual relations. The second sms (324) contains the following statement: “you know that our friends in the jungle sometimes do not think or act rationally”.

In essence, almost all of the information in the email is accurate. They met in Paris and the discussion, which involved “the Dutch” and Agaev, concerned OPL 245. Even the behavior of “our friends in the jungle”, a racist code used to designate Nigerians, is also commented on, **so it seems likely** that either Diezani or her emissary participated in the discussions. It is worth noting that it is further confirmed that, for Colegate, Obi is Eni.

The emails refer to Diezani Madueke, known for her “voracity”, and although concerning the matter in hand, they reveal the limits of this “information” gathered second-hand from unauthenticated sources. Indeed, said information, or rather these comments, contrast with other items of documentary evidence which reveal that Etete himself had direct relations with the Minister of Petroleum, by sending the request for confirmation of the license to the Attorney General rather than to the voracious Minister Diezani. In the email dated October 14, 2010, at point 3...., one item of information reported by Colegate, concerns the Chief’s refusal to respond, despite being called by the Minister of Petroleum asking him for news about events. Etete had broken off relations with the Minister of Petroleum and was not providing her with any information.

Furthermore, as has already been argued with regard to Agaev’s position, the intermediary Obi, despite enjoying “Auntie” Diezani’s confidence, did not contact her, but rather Agaev, in order to have a meeting with Gusau so as to resolve the problems he had getting the appointed offices of the Petroleum Ministry to accept the contractual and fiscal conditions of the oil companies’ proposal.

See also the shareable defensive arguments, the following passage of which is reported here because of its key importance in regard to the reliability of the information provided by the two defendants, Colegate and Copleston, so much so that the company was led to check the information, reiterating the Shell Group’s total opposition to any agreements concerning confirmation of the license granted to Malabu.

The defense counsel’s discussion: what did the senior managers of the Shell group for Nigeria do? They sent Mutiu to verify the information. Because Mutiu, 4 days later, on July 20, and you have the email, had a meeting with General Gusau. And why did he have this meeting? Because Mutiu, as stated in the text, turned up and told to him, “Look, regardless of the meeting you may have had with the President or the Minister of Petroleum, remember that Shell's official and real position is that Shell will never accept the 100 per cent reallocation”. This is stated expressly. Why would Shell never accept it? Why? Because the block was under litigation. Again, the same position. But above all, I repeat, even if one doesn’t want to believe our defense claims, this email ends with a series of exit strategies, suggestions, from the advisor. The first suggestion is to go back to the business deal structure based on 40 percent. The second suggestion is to check whether the hypothetical interest of the Chinese state oil company was true or was yet another hoax. And the third, and perhaps the most obvious option, was to do nothing. Colegate had said, “we must not send Etete even one letter, we must do nothing”. And here he reiterates that the third option is to do nothing, let's wait and see what happens, let's go ahead with the arbitration, it's written in black and white.

PP: “Block”
An important message from Colegate to Robinson and Copleston concerns the letter with which the government reconfirmed that Etete held 100% of OPL 245. Long meeting yesterday in Paris - salient points
1) Etete claims to have and has shown (although it has not been copied) a letter from the President reiterating the assignment to Malabu of 100% ownership and contractual rights;
..6) **the source** said that he met GLJ in Abuja last week, also present Diezani and Aliyu. The source reported that GLJ said that the Italians had to act quickly since ‘the Chinese were very interested and Prime Minister Hu Jintao had discussed the block personally with him' - it could be a GLJ/Etete bluff but clearly the motive is to put money into the system as soon as possible.
...8) was informed today that Credit Suisse London have been approached to manage a transaction on 245...
It is difficult to argue that this message leaves room for doubt about the horse trading between Etete and Jonathan to confirm ownership of OPL245, and about the urgency of spinning money (“the motive is to put money into the system as soon as possible” - and Credit Suisse had already been alerted “to handle a transaction on 245”).
An “authentic” interpretation was provided by Shell's defense expert, Homer Moyer. Moyer is an authoritative figure in the academic and legal world who has long been dedicated to anti-corruption issues, especially with regard to the U.S. Foreign Corrupt Practice Act of 1977 (FCPA). PUBLIC PROSECUTOR: GLI are the initials of the President of Nigeria, so he is not an agent or a business partner, he is a public officer. INTERPRETER: "Here it is implied that you could receive funds from someone”. PUBLIC PROSECUTOR: "but does this point to a risk of corruption here? ” INTERPRETER: "I believe that for the person who makes that payment... I think so, for that person it would constitute a risk of corruption” (hearing 12.11.2019 p. 50).

Once again, in addition to the anonymity of the source of the information, it should also be noted that the information itself is nothing more than a mere observation, so much so that the Public Prosecutor identified the document not as proof of a corrupt agreement, but simply as a red flag, which is a very different concept, and one related to the company’s internal administrative procedures, and not comparable to the evidence required in a judgment of criminal liability.
In the subsequent email, the exploratory nature of the information, or rather the observations regarding contractual strategies, including the divulgation of news deemed false, designed purely to condition the counterparty’s conduct, became apparent.
In any case, even if one wanted to argue for the acceptability of the accusations, the clear reference to public officials described as sharks circling in search of prey, represents a tangible image pointing more to extortion than to corruption.
PP: “Usual”
It is an email dated 10.14.2010, a time close to the presentation of the offer of October 30 and therefore very sensitive. Colegate comments with Copleston and Robinson on the possibility that unspecified “Chinese” can try to insinuate themselves into the affair with their own offer. However, he reports, as an element of reassurance, that "the friend” (Agaev) says that “he had spoken with CNPC, SIPC, CNOOC, OXY, PERENCO and NEXEN at the beginning of this year before he was directed to Milan - none of them wanted to do the operation”.
There is also talk of an individual who is trying to propose himself to Etete as a link with MB (evidently Malcolm Brinded) but the thing is liquidated as “nonsense”.
At a certain point, Colegate passed on some very precise information: ”Chief was called by the office of the Minister (Dezani) early this morning asking if he had signed and what exactly was the consideration, he avoided answering; Colegate adds that “there are a bunch of sharks circling, OJ(ei),

Dez(ani), Gusau plus all the cocksuckers in between. The friend says he can fight them but needs time to keep Chief under control because he is an unstable person... the Italians (Claudio) called the friend last night and gave him the strong message that this is a final offer, not to expect room to negotiate upwards".
The following are a series of acceptable defensive observations:
but the strongest evidence that my clients had no awareness of any unlawful activity is found in the email sent on October 14, 2010 by Colegate to Robinson and Copleston. Now... it's the famous email from which the Prosecution keeps quoting the phrase "a lot of sharks circling", to claim that the both the author and the recipients of the email were aware of the fact that the Nigerian politicians and consultants indicated saw an opportunity for profit in concluding the negotiation for the OPL, and for these reasons they were swimming around the deal negotiations like sharks. We find this on page 17 of the transcript of the hearing of July 21, 2020. But if we read the entire document properly, we come to the opposite conclusion. Why? To begin with, the Public Prosecutor never mentioned, for example, the sentence immediately following the words he quoted, at point 4. Here, after saying that there were sharks circling, Colegate reported that the "friend," who is Agaev, "thinks he can fight", thinks he can fight them, "but he needs time to manage", i.e. to control the Chief. "He's a lunatic, because he's a raving lunatic". Therefore, the message, the first message sent by Etete's true consultant says, "even if there are circling sharks, I want to fight them, I want to keep them as far away as possible, because otherwise I can't close the deal and I can't collect my share. I want to fight them", not "I want to reach an agreement with them". But the same email, which has never been fully read, reads as follows. At point 2, Colegate mentions the so-called... see the first three words "Floris non-sense (inaudible)", I'm not going to read the whole thing, you can read it yourselves if you wish. Anyway, Floris was just another of those individuals, of those intermediaries who tried to get involved. In this case too, Colegate defines him as purely opportunistic, dangerous, someone to keep away from. Exactly, you keep away from chancers like you stay away from circling sharks. But, again, then you'll see that in the chain of emails, Copleston joins in and says, "I've spoken to Guus". Guus Klusener was the head of the legal department, who as a lawyer said, "Excuse me a moment, let's do something, let's send a desist letter to Malabu", "let's send a desist letter to Malabu to discourage him from playing with Floris", etc.. So the attorney says, "Alright, this situation bothers us, it's terrible for Shell, we don't understand anything anymore, we don't know who to talk to, let's start by sending a desist letter, like we sent the formal notice to Etete's company". But Colegate, i.e. the person alleged to have conspired in the bribery with Etete replied, "We must not send anything to Malabu, we must not send anything to Malabu, because the Chief hates us, he hates us. The Chief hates us, we must have no contact. Does this sound like a person who is aware that he is taking part with Etete in committing the crime of international bribery?

19.5 The causal contribution of the defendants Colegate and Copleston

In any case, the other objection to the evidentiary significance of Shell's emails in regard to the position of defendants Colegate and Copleston, concerns their causal contribution to the crime, given that said defendants went no further than gathering information and thus carrying out the work contractually required by their dependent relationship with the company. The prosecution also raised the question, as it pointed out, in fact, that said defendants did not only convey information, but also took a direct part in negotiations, participating in the illegal agreements and thus contributing towards the commission of the crime. The good intentions are thwarted in the first example cited above which, regarding different agreements, and in any case a period prior to the period in which the alleged crime was committed, reveals the inconsistency of the prosecution's reasoning, which is incapable of demonstrating the causal contribution of the defendants' actions to the commission of the crime in question. On the contrary, paradoxically the defendants, in notifying their superiors of possible illegal agreements underlying the transaction, had triggered red flags and thus rendered any involvement in the illegal agreements more unlikely, as pointed out by the defense in the passage of the arguments

reported here, because shareable.
PP: It should be noted that on many occasions the activities of Copleston and Colegate are not limited to the collection and transmission of information, but have a direct impact on negotiations. Consider that it is precisely John Copleston, together with Robinson, who resumed the negotiations with Etete on October 15, 2009, in the important meeting where the Chief is escorted by the intermediary Orijako and by the National Assembly member Bature, one of Gusau's men: "Peter and I met Chief Etete on October 15. Etete was accompanied by Bryant Orjiako (Green) and Umar Bature (who will report to Gusau) "(PM2 2)
An operational role is also derived from the aforementioned email "Block" (PM2 34), in which reports a Colegate meeting with Etete in Paris: "Etete proposed to Shell to buy back his 'block' - I kindly suggested that this could be a bit unrealistic given his current legal situation. I said that besides our valuation of our block that we expected to realize there was also the question of the exploration costs incurred thus far".
The defense's discussion: The Public Prosecutor has pointed out, as has my colleague Calleri, that some of the emails could, in theory, be interpreted as red flags, i.e. signals of danger for Shell. But if we want to go down this road, we have all the more reason to conclude that there was no conduct on the part of Colegate and Copleston that could suggest criminal liability, precisely because my clients disclosed all the information and second, third or fourth-hand hearsay that they had obtained. They did not make any kind of selection of that information. This means that the Prosecution's theory would stand if Colegate and Copleston had realized that those were red flags and had not disclosed them. If that had been the case, they might have been guilty of some form of complicity. But since my clients received questions and information and passed them on exactly as they were to the decision-makers, where is the causal contribution? Firstly, we have seen how the task.. the lawful task, carried out by Colegate and Copleston, of conveying information to their superiors, may also be carried out by external consultants. In this process, the Eni Group entrusted the Risky Advisory Group with the job of gathering information regarding Malabu and Etete. And witness Leslie Alexander, who introduced himself as the manager of the business intelligence unit, which is the same activity for which the Prosecutor has indicted my defendants, has said to this Court that, "My work was to provide my client with information about the counterparties with whom it was doing business. The information could be taken from open sources, or communicated by email or telephone from confidential sources. As regards the intrinsic value of such information, the witness repeated several times, in response to a specific question from the Public Prosecutor, that it was "speculation" or "pure speculation". Moreover, while Colegate never met or spoke with Etete at any time, the Prosecutor considered as evidence for the Prosecution the mere fact that Copleston met with Dan Etete. In his closing argument, the Prosecutor mentioned the meeting that took place on October 15, 2009 between Copleston, Robinson, Etete, Orjiako and Umar Bature. Copleston reported to his superiors about this meeting in his email of October 17, 2009, which I have provided to you. As I have already noted and as has often happened in this trial, the Public Prosecutor has failed to state the specific relevance of this email to causation or criminal liability, and indeed there was none to find. This is because the email clearly states that the contact was held informally and without prejudice, i.e. without any binding effects. Moreover, the meeting, given the date on which it took place, referred to the famous farm-in agreement. Witness Bature has told this Court that during that meeting no agreement was reached with regard to OPL 245. But above all, both Bature and Etete himself knew very well that Copleston had no negotiating power on behalf of Shell. Why? Because Copleston himself had also reiterated this to him, also over the phone, the last time on January 13, 2009, see the document I have provided to you, RDS 320, 322. During the call, Copleston informed his superiors (Ann Pickard, at the time, Robinson, etc.), and told them, "I received a phone call from Mr. Bature and explained to him again why Ann or Peter must be there. Then Mr. Etete picked up the phone and I stressed again....

to Etete I stressed again that I'm only an advisor, and I needed to have someone at the meeting with executive authority. So they knew that very well. Moreover, Copleston could not attend a meeting with Etete without informing his superiors in advance. And so he did in an email dated October 5, 2009, which you have, in which he first of all informed them that the meeting had been arranged, then that in the meeting he would discuss the OPL but not only: he would also ask Etete about the PIB, the role of the Chinese, the Chinese oil company, the run-up to the presidential elections, etc. But above all, and this is what I want to stress and why it is important to read the emails in their entirety, he specified two points... to justify the meeting before it happened: Copleston writes, "from a heart and mind viewpoint we need to show that we see him as a potential partner rather than an intractable rival. And someone with whom we can, at least potentially, do business (I know it's difficult, but I think this kind of approach is essential if we are to have any chance of moving things forward)". This point was written in October 2009, and I ask you: does Copleston sound here like a person that, as the prosecution claims, was aware that Etete had already bribed or would bribe the Nigerian Public Officials who would sign the resolution agreement more than a year and a half after this meeting?

In order to overcome the objection, the prosecution extends the defendants Colegate and Copleston's contacts with Agaev and Obi; however, once again the argument is not decisive because the examples given do not concern illegal agreements, but rather lawful negotiations, and thus the defendants remain within the sphere of the performance of their contractual duties.

PP: Copleston and Colegate's contacts were at a high level, as evidenced by Copleston's proximity to General Gusau, called "grey eminence" in the long introduction email of March 10, 2010 (PP "8), whom he met on several occasions, including together with the member of the House of Representatives Umar Bature.
However, the privileged interlocutor with Etete remained Agaev [English in source text:] ("Our Friend Ambassador"), [translation resumes:] with whom Colegate and Copleston continued communicating from the end of 2009. But there are also direct contacts with Eni through Emeka Obi, introduced by Agaev himself, and with which interesting "exchanges of views" occur: see for example Obi's handwritten note (DIB 1308) in which the meeting of 9.13.2010 with Colegate is noted (point 10) and who wants access to our "sponsors" ("sponsor" in quotation marks in the original).
As already explained, this is not idle chat about news found on open sources, but precise information collected from qualified sources (Gusau, Bature, Agaev, Obi, Etete) on extremely sensitive topics. It is no coincidence that all communications exchanged between Copleston and Colegate are protected by specific encryption codes (PKI and S/MIME) that prevent them from being read from the outside, so much so as to suggest particular caution when encryption is not usable for some reason: see the email "Re: OPL 245" in RDS 483 "there is background to ENI's involvement - I will send a PKI from home" [English in the source text:] (will pki from home). [translation resumes:] "More when I can pki."
The recipients of the information flow were Shell's front-line executives in the OPL 245 deal: Pickard, Craig, Robinson, Outen, Burmeister, Klusener, Bos and many more. These were representatives of Shell who, on the basis of this information, conducted the negotiations and defined the agreements for OPL 245. The information provided is fundamentally correct and often made in advance of the dissemination of the data.

With regard once again to the relevance of the causal contribution to the alleged illegal agreement, , the one specified by the prosecution at the defining moments of the substantial agreement of November 15, 2010, of the legal adjustment of December 15, 2010, and of the cosmetic agreement of April 29, 2011, the present defendants stand out by their absence; indeed, the prosecution, in stating

their constant presence during the negotiations, only managed to cite the email of February 28, 2011, which moreover reveals that the present defendants went no further than simply reporting information which, in truth, was merely someone's opinions which, in the case in question, do not represent the actual facts, given that the obstacles created by the governmental offices to the contractual conditions, were to lead to Eni deciding, in March 2011, to pull out of the negotiations. The problems were only overcome just prior to the agreements of April 29, as the witnesses called by the prosecution themselves stated, and as already discussed in the chapters dedicated to the positions of Descalzi and Pagano in particular.

PP: Finally, it should be noted that Copleston and Colegate continued to work on this for the entire duration of the negotiations, as documented by the aforementioned email "Big Chief Bison" of 2.28.2010, which announced that Etete's intervention with Jonathan and Adoke made it possible to overcome the obstacles arising from the findings of NNPC. (RDS 855)

The shareable defensive arguments regarding the absence of any causal contribution on the part of Colegate and Copleston during the period in which the alleged corrupt agreement was firmed up, as specified by the prosecution in its closing argument, are set out below.

The defense: This is confirmed by the fact that once the negotiations started being conducted at the highest government levels, the top managers of the Shell group no longer had any interest in receiving information on issues, rumors or conjectures from my clients, precisely because the negotiations were at that point being carried out directly in the Attorney General's office. What I'm saying is confirmed precisely in the trial dossier, because as you can see, once the Attorney General got involved, and at the same time my clients' main source of information, Agaev, was gradually removed, my clients' email correspondence decreased drastically. And those emails that were still sent concerned minor issues, and they were so few that I will examine them with the Court.
In the first email, dated November 4, 2010, which I have submitted, Colegate relayed to Copleston and Robinson the information he had received from Agaev. Agaev had reported on the strategy, the consequences of the decision that had to be taken since Etete had rejected the offer. We find here one of the proposals made by Agaev and relayed by my clients to the managers for Nigeria; the proposal was to "cut the credit line", that is, to stop paying Etete's expenses. Please note that this is shared by the Prosecutor, because the strategy outlined by Agaev was diametrically opposed to any alleged attempt at bribery, as it was based, to use the words of the Public Prosecutor, "on the concept that we have already mentioned", says the Prosecutor, "perhaps because it is a concept expressed by Agaev. The message must be block revoked, the block will be revoked". You can find this on page 58 of the transcript of the hearing of July 21, 2020. So the first thing Etete's legitimate consultant does is to protect and try to protect the whole situation. But above all, the evidence that my clients were completely unaware can be found in the last few words of the email, in which Colegate reported what he had learned from Agaev, namely that Agaev was so concerned about this refusal that he said, "Look, you need to liaise and check if the Italians still want the deal". Because the refusal was so unexpected, it was so strong, as we will see, that Agaev also wondered, "What will happen now? Will the deal go ahead or not?", and he suggested contacting the other party to check what their position was. Allow me to note that this paragraph was never quoted by the Public Prosecutor. We then have subsequent communications, that I put together up to November 11, in which Orjiako, who we will talk about later, Etete's consultant, gave indications as to his principal's thoughts, what Etete thought, but that was clearly a preliminary phase, because they were all still waiting to talk to the Attorney General. The next communication was on November 26, 2010, and has to do with the lawsuit filed by the son of the deceased Sani Abacha, the deceased General. Suffice it to say that there are emails

about this lawsuit. This was not a joke, with all due respect, Public Prosecutor, because the question was not whether or not to join the legal action, the question was to understand who was really behind Malabu and who held the actual rights over the blessed license. Indeed, the lawsuit was so far from being a joke that it would trigger the change in the structure of the entire agreement. I will need a few more minutes to discuss Colegate's subsequent email, which I believe proves what I told you earlier, namely the fact that he merely relayed unconfirmed information on matters which had to be verified, and which in actual fact in most cases did not eventually lead to anything. On December 12, 2010, RDS 771, Colegate begins by saying "Gents it's all agreed", it's all done, all closed. Now, first of all, as you see from the text, Colegate was reporting what he had heard from his source, so it's always second-hand news. But the information was totally wrong, nothing had been agreed, absolutely nothing. This is confirmed by the Public Prosecutor, who says that it was only later precisely on December 15, that the new arrangement was set up, that is after Colegate's email, a new contractual arrangement was put in place, which provides no longer for direct purchase from Malabu, but revocation of the OPL license and a new award. But Colegate wrote that everything had been agreed, whereas as was pointed out by Professor Severino in the hearing of October 14, 2020, pages 43 and following of the transcripts, the issues under discussion, such as the structure of the contract or the confirmation of the tax terms, would only be defined much later, only in 2011. And this only after technical discussions with the Petroleum Ministry and with the Department of Petroleum Resources, which was the party having authority. Thus, nothing had been agreed. Moreover, the new contractual arrangement was so important that it was certainly not communicated by Colegate and Copleston, because it was not their responsibility, they were not at that level. It was communicated by manager Klusener, directly to Shell's senior management in The Hague, in an email dated January 20, 2011. This is one of the documents that I have provided to you. The next email is dated February 28, 2011 from Colegate, but this was simply to report that there had been a meeting, with the Attorney General and also with the entire NNPC, to discuss a number of specific aspects of the resolution agreement. Lastly, I would like to ask this Court to check the defense arguments I have submitted so far. I ask the Court to verify that what I told you is backed by supporting documents and is true. The last communication from Copleston is dated... I have attached it, it is RDS 1010, it is an email dated April 29, 2011, the day of the resolution agreement. Why, what had happened? Agaev had informed Copleston, and since Copleston, just like Colegate, passed all the information on, the first thing he did was to pass it on to Robinson. And Robinson replied to "John" Copleston, "245 was signed yesterday". So Robinson said to Copleston, "yes, don't worry, it was signed yesterday, I know it's your job to pass on all the pseudo information to me, but it was already done yesterday"; all that was missing, as it were, was a pat on the back. This goes to show the extent to which my clients were kept out of the loop with regard to the entire process and the resolution agreement. Indeed, when Robinson later communicated that they had fully executed the agreement in place, all of the agreements, by the email he sent on May 5, 2011, who did he send it to? He sent it to the senior management in The Hague, and he sent it to the first-level managers in Nigeria. He didn't send it to Colegate or Copleston. He did not send it to them, because it was not a matter within their competence. They had played no part in the negotiation process. Therefore, I am aware of the enormous effort made by the Prosecutor and also by the Civil Party, but you should note that the vast majority, if not almost all, because unless I'm mistaken there are just these four or five emails that I have shown to you, there were no other communications from Colegate and Copleston after Malabu's rejection of the offer on October 30 and November 1, 2010. Because all the communications sent by my clients refer to a very long but earlier period, precisely from 2008 to the time when the joint offer was rejected.

PP: In summary, Colegate and Copleston:

- collected and communicated all information relating to each confidential aspect of the negotiations;

- in particular, they gathered information on the economic demands of the public officials;
- they had constant contact with the other "antennas", i.e. "friend" Agaev and General Gusau, important [English in original text:] "back channels" [translation resumes:] through which to speak to Jonathan;
- they made it possible, through this activity, to overcome uncertainties and difficulties in the definition and finalization of the bribery agreement.

Defense. It therefore seems increasingly evident to me that the Public Prosecutor has submitted to this Court a generic characterization of any company activity pursued by my clients. I cannot otherwise understand how he could charge my clients with an activity, the first one, that consisted in "coordinating with Robinson and other Shell executives". Nothing is specified. Robinson reported directly to Copleston and it was their duty to communicate speculation, rumors, gossip, and that's what they did. Therefore, their conduct was absolutely neutral. The second thing they are charged with is having kept "in operating contact with Agaev throughout the entire course of the negotiations". Here I will try to be brief because this aspect has also been examined by the Professor. I will summarize by points: Gusau introduced Agaev to Etete, who would help him as a consultant; Gusau put Agaev in touch with Copleston and then Copleston presented to Colegate and Robinson; the operating contacts concerned the interests of business groups in Russia; there was a specific interest on the part of Shell to know what was happening on OPL 245, because the block was under litigation and Mr. Agaev had an interest in telling him so in order to avoid what had happened with the letter of formal notice against the United Oil Company. I'll move on very quickly. Mr. Agaev confirmed that he had kept this relationship up after Eni's entry. I've already said that for most of 2010 they were communicating fake news to keep Eni's entry a secret. And I'll stop after all these points because I wonder: do we have any evidence for our defensive arguments? Yes we do. The first and most important piece of evidence comes from the Prosecutor himself, who points out "that Agaev was a crucial point of contact for Shell as, over a certain period, much of the information came from him"; this was said at the hearing of July 21, 2010, page 23 of the transcripts. But this time the Civil Party also helps us, because for the Civil Party too the arrival of Agaev was seen "as the possibility that Etete would appoint him as his intermediary. There is the issue of a possible feared Russian partner, a Russian oil company", a situation to which the email written on March 9, 2010 by Colegate refers. The Civil Party, however, commenting on the email, confuses the content of the real document and then adds that, "after all, it is a huge amount, he did not spend anything to obtain this license", this is a comment of the Civil Party, it is not in the document. The fact that Etete may have reported, even in 2011, therefore after the signing of the resolution agreement, to Agaev with regard to an alleged corrupt agreement that you know well, has no bearing on my clients' position. Firstly, because Agaev denies ever having told Colegate or Copleston anything about the money that Etete allegedly would have to pay to Public Officials. Secondly, there is no direct or indirect reference to an agreement of a corrupt nature between Agaev and my clients n any exchange of information, emails, or other means. Thirdly, Etete hated Shell, and let me say that it is quite logical that he wouldn't tell his enemy that he had bribed someone else. And therefore it is not clear why the information disclosed by Agaev to Colegate and Copleston, and in turn by them to their superiors, could have constituted a functional and suitable contribution, as stated in the count of indictment, to Shell's acquisition of block 245. I will now briefly address the third conduct for which the defendants are charged, which is more interesting, namely having liaised with Gusau and other sponsors, Orjiako and Ojei to help Shell in the transaction. First of all, let me make it clear that Colegate never met Gusau, nor did he meet Ojei or Orjiako, and never communicated with them in any way, not even in writing, with reference to OPL 245. Nothing. As concerns Ojei, he was the owner of a Nigerian oil company, with respect to which Bature allegedly told Copleston that he had witnessed the signing of a memorandum between

Etete and Ojei, whereby Etete named Ojei as a consultant. Copleston's email is dated January 12, and the memorandum is supposed to have been signed at a much earlier time. But Copleston only met Ojei one other time and discussed not only OPL 245 but also the “shallow waters” project. On this point, the Public Prosecutor has not provided any evidence that Ojei ever played any active role in the 245 negotiations, nor that he ever provided Copleston with any information about an alleged corrupt agreement made by Etete. As to Orjiako, he was the owner of Seplat. And the Public Prosecutor has emphasized, in an obviously negative way, that Orjiako was present at the meeting in 2009 that we have already discussed, and also sat at the Attorney General's table. However, fortunately for this Defense, it is also clear from the procedural file that the business relationship between the Shell Group and Mr. Orjiako and his company, Seplat Petroleum, had originated much earlier and had as its object the divestment of certain onshore assets by Shell, which were very important, under a project called Green. We have confirmation of this specific circumstance from witnesses Ruddock and Craig, and we also find documentary evidence in a note sent by Robinson to Brinded in which the Yellow and Green projects are specifically mentioned. Orjiako acts as Etete's consultant, with reference to many different matters, including OPL, Yellow, Green and Shallow Waters. Again, it is not clear in what sense the Public Prosecutor classifies Ojei and Orjiako as sponsors, it is not clear in what sense they are considered to be sponsors and what exactly they are alleged to have done to help, through Colegate and Copleston, the Shell group to acquire OPL 245. Since they were Etete's consultants and since, at best, the relationship between Copleston, Ojei, Orjiako and Etete as Orjiako’s principal, was a relationship solely between private parties. They were all dealing with specific business activities, and they were private parties. But above all I believe it is necessary to make one thing absolutely clear, and that is that the presence of all these consultants around Etete was an entirely negative circumstance from Shell’s point of view, because it made it very difficult for Shell to verify who Etete's real consultant was, as opposed to those who merely pretended to know him. And here again we have documentary evidence, because Copleston, in a different point of the email we have mentioned, the email of October 5, RDS 340, wrote, in preparation for the meeting with Etete, “what we want to avoid at all costs is another round of elaborate negotiations conducted through third parties, where every time we make a step forward other people enter the equation and fill him with doubts”. These consultants. Something similar was written by Colegate, I’m not sure if you can read it on the printout, it’s easier to read it on screen... anyway it is document RDS 647, in which Colegate, with the language style he sometimes uses, wrote… “we need to put a stop”, get a grip. Here the English phrase is, “there is a need to get a proper grip”, “We need to put a stop to all these chancers”, and you see that chancer is written with an H, with a disparaging connotation, a cancer in a disparaging sense, “every time the door opens a little then another idiot tells Etete that he can get him a better deal than the one we're working on. All of this is counterproductive at this point”.

the Public Prosecutor has built quite a few of his arguments, namely that of General Aliyu Gusau. Why? Because according to the Public Prosecutor, Etete promised a part of the money also to Gusau, to do what? The count of indictment describes Gusau as “Having the power to influence President Jonathan and other members of the Government. It is unfortunate, however, that the Prosecutor does not provide evidence: first, of what this influencing power consisted of; second, what predetermined effect it was designed to produce, because if I influence you it is because I want you to go there or I want you to do this or I want you to do that; third, the Prosecutor does not raise the issue of why Etete, who was a man of extraordinary power and we saw that at the beginning, would need Gusau to pressure Goodluck Jonathan, when Goodluck Jonathan himself had been a teacher of Etete’s children. This does not seem logical to me, but once again the Prosecution itself helps the Defense’s cause. Because on page 28 of the transcripts of the hearing held on 2 July 2020, the Prosecution on the one hand affirms, in an unsubstantiated way, that “Gusau had this power, had this very strong

influence on Goodluck Jonathan", and on the other hand, however, is forced to admit that "we don't know... we don't know if there was this recommendation. Eventually, an agreement on the figures was reached". Therefore, the Public Prosecutor starts from the idea that since the agreement had been concluded, there must have been a recommendation. But he does not know whether this recommendation was actually made. However it is quite logical to conclude that no recommendation was ever made, no pressure ever exercised. But for a fundamental reason, for the reason that Gusau and Goodluck Jonathan were political rivals first and foremost. Because Gusau resigned as National Security Advisor in September 2010 in order to compete against Jonathan Goodluck in their PDP party primary elections, where Gusau was the northern candidate and Goodluck Jonathan was the southern candidate backed by Etete. So what recommendations could there be, since the two men were, above all, strong political rivals? Besides, if the Prosecution does not know whether this recommendation was made, this means that the Public Prosecutor does not even know when, and in what terms, Gusau might have informed Copleston that he had exerted this alleged influence. And this means that the Prosecution does not even know when, and in what terms, Copleston could have informed his superiors about this alleged recommendation to enable them to use it to their advantage for the purposes of the acquisition of OPL 245, because otherwise what was the point of this pressure? What would the use of this recommendation be if not benefitting from it from a business point of view? there is no evidence of a corrupt agreement between Etete, Gusau and Bature; there is no evidence of money having passed from Etete to Gusau or Bature, some of which should have gone to Tesler; there is no evidence that this money came from OPL 245, and of this I am sure because I have read again Tesler's transcript very carefully, also because Tesler had been an intermediary for Etete in the other bribery affair concerning Bonny Island, for which Tesler himself had been investigated, and therefore it is quite logical that Etete owed him money for other matters that have nothing to do with OPL 245; but more than that, with regard to the negotiations for OPL 245, Gusau only held the position of National Security Advisor from March 8 to September 18, 2010, and that was it. Before and after that short period, he was a private individual. When Gusau introduced Agaev to Copleston and Colegate, he was a private individual. The Public Prosecutor tries to find evidence of criminal liability in these emails, which I provided. In email RDS 338, Colegate reported the information he got from Agaev, namely that Agaev had received a phone call from Gusau, who called him a traitor because he was working for Shell. Colegate adds his personal conclusions about where Gusau hoped to gain money from. But Gusau at that time was a private individual and he was trying to clinch a business deal and make money in a perfectly legitimate way. Therefore, confronted with this material evidence, the Prosecutor has no other choice, at least according to his line of reasoning, other than to suggest that the relationship between General Gusau and Mr. Copleston was a shady one. But it should be absolutely clear that theirs was a professional relationship that had been ongoing for many years, an absolutely lawful professional relationship, a professional relationship cultivated over the years by Copleston from when he was an MI6 agent in the British High Commission in Nigeria. In that capacity he had a professional relationship with Gusau, who at the time was indeed the Head of the NSA. But, being short of arguments, the Prosecutor attached importance to a memo written by Copleston, essentially for Craig, on March 10, 2010, that is two days after the General had been appointed as Head of the security services. At the time, Craig had just been appointed Executive Vice President, replacing Ann Pickard, and he asked Copleston for some context information. On this point Craig, when questioned, stated that, "Copleston gave us this information", i.e. that Gusau would become the new National Security Agent, and this referred not just to Gusau, any company operating in a country needs to know the political agenda of that country's Government, its program and its future priorities. And this is true anywhere in the world. To run a business you need to know the future objectives of the host country's Government, and so since Copleston had such a major contact he mentioned it to Craig who had just been appointed, he told him, "Look, I have been in contact with

General Gusau for ten years now". Let me be clear, and here again you have the evidence that I will put in the... for example PM2-15 17, etc. Copleston didn't just go to General Gusau to talk about the OPL, he got information about the PIB, about the Santa Ana project, he also gathered information about Gusau's own presidential aspirations, which he would later fail to achieve. On other occasions this information was provided by Bature. But even Bature himself, before this Court, said that this flow of information stopped in April 2010. Why? Why did it stop? Bature explained why. Because Eni's offer was already in the public domain, and therefore there was not... it was a matter that concerned Eni. General Gusau had a direct relationship with Agaev, with Obi and with Mutiu. And therefore, frankly, none of the information disclosed or gathered by General Gusau can be remotely deemed to be of an unlawful nature. The last act for which the defendants are charged is having gathered information about the financial demands of Diezani Alison-Madueke, a former Shell Executive and Minister of Petroleum, and of President Goodluck Jonathan, to conclude the deal.
I would like to respond on this issue and to point out that the Prosecution has totally failed to consider a key aspect of this trial, namely that the information gathered by Colegate and Copleston, precisely because of its very nature, was not conveyed to the headquarters in The Hague, was never conveyed to the headquarters in The Hague, which was responsible for the decisions regarding the conclusion of the deal. There is no email from Colegate, and there is only one email from Copleston, dated March 29, 2010, which I submitted, and which was also forwarded to Copleston, which concerned speculation about the political future of Nigeria due to the failing health of President Yar'Adua, who would die shortly thereafter. This was political speculation, most of which did not come about at all, as witness Craig expressly told you, see page 39 of the hearing of September 11, 2019. Indeed, Copleston himself emphasized that, "the situation was not understood to be final as things were changing all the time". Now I would like to understand how it is possible to claim that the information gathered by Colegate and Copleston was essential to the deal when it was not even forwarded to the people who had to decide on the deal. The Prosecution's allegation is therefore contradicted first of all from an objective point of view, because this information was never relayed to those persons. And therefore the non-transmission of the information breaks, in my humble opinion, the link that binds the specific conduct which my clients have been charged with. Regardless for the moment of its nature, regardless of the what, how and when, their conduct is not linked to the alleged criminal act, i.e. the signing of the resolution agreement. There is no documented causal link. The key condition for participation in the criminal offense is missing, because not even the material conduct was transmitted. So the question is: how could Colegate and Copleston have aided and abetted, or even merely facilitated the commission of the offense when the information they collected was not even brought to the attention of the senior management in The Hague? And this fact is documented, especially with reference to the law in force at the time of Article 322 bis, which the Court knows better than me, which binds the private bribe-giver to very specific purposes. But how can you pursue a purpose, whatever it may be, if you have never received from my clients the information on the basis of which you have to come to a decision? How can a causal link be established? I would thus argue that the Prosecutor should not only have indicated what actions were taken by Colegate and Copleston to facilitate or ... merely to strengthen or facilitate the Shell group in the acquisition of the OPL 245 license. He should also have proven that my clients were aware of the involvement of others, that is, that their conduct would have helped the Group's top management to acquire block 245 as a direct result of the bribery of Nigerian Public Officials. The Prosecutor should have provided this evidence, which in my humble opinion is totally missing, beyond all reasonable doubt. The Prosecution's argument also fails from a merely logical point of view, which is that the Shell Group had persons appointed to deal with Public Officials in Nigeria, and those persons were not Colegate or Copleston. The Prosecution itself has referred to Shell documents concerning the phase of negotiations subsequent to the re-assignment of 100 percent, which clearly identified those chosen to

liaise with the aforesaid public officials. In particular, the country chair for Nigeria, Mutiu, who met with the Nigerian President to discuss OPL 245 and other matters. Mutiu was also in direct contact with General Gusau, and relayed information about this contact to his superiors and certainly not to Colegate and Copleston. On this point, as shown in page 31 of the transcripts of the hearing of November 13, 2019, witness Ruddock recalled that Mutiu "had recently become the country chair, he had replaced Basil Omiyi, and in that capacity he acted as the main contact point with the authorities". This is so true that in the documents you will find that it was the country chair Basil Omiyi - and not Colegate and Copleston - who met with Petroleum Minister Diezani on August 13, 2010. Or it was the then Executive Vice President for the Sub-Saharan area, Ann Pickard, who met with the NNPC President. Or, to mention a point also highlighted by the civil party, it was certainly not Colegate and Copleston who dealt with or analyzed the tax impacts of the P1B under discussion before the Government ....in the Nigerian Parliament. The possible tax impacts of this bill, and hence the need for a stabilization clause in the resolution agreement to take them into account. It was not Colegate and Copleston. Actually, of the two men, the documents mention only Copleston only to say that he met with Emmanuel Ojei, not alone but together with Mutiu. Which, I would argue, is the best way to triangulate the source immediately. Let's proceed together so we can compare notes. The first thing to be noted is that Ojei, who was Etete's consultant, is a private individual and therefore has no bearing on the Prosecution's arguments. Therefore, these objective elements allow us to identify an official information channel between the Shell group and the Nigerian political leadership, that is completely separate and different from the information gathered by Copleston or Colegate. However, to complete the discussion of this second point, and to cite a striking quip by my fellow attorney De Castiglioni: once again it is the Public Prosecutor who dramatically comes to the aid of this Defense when its brain power fails it. Why? Because it is the Public Prosecutor who clearly distinguishes the information gathered by Colegate and Copleston from that included in the documents indicated in his closing argument on July 21, 2020 when he specified, "This", with reference to the documents he had just finished listing, "is not the hearsay of Colegate and Copleston", page 39 of the transcripts, "these documents are not the hearsay of Colegate and Copleston, in these documents even the Italian governmental level is mentioned in a very direct way, and apparently not in jest, because this document does not contain idle chat, but a very precise set of business instructions". You can find this on pages 38 and 39 of the transcript of the hearing of July 21, 2020. So let me repeat that there is absolutely no evidence that Colegate and Copleston intended with their actions to contribute to the commission of the action, i.e. to the signing of the resolution agreement. And such intention is essential for participation in the offense to be alleged. Intention is necessary for all the parties to be considered jointly criminally liable for the activity that originated the offense. These wonderful words are of course not mine but those of Mr. Antolisei.

CHAPTER 20
PETER ROBINSON

20.1 Charge

Peter Robinson, in his capacity as Royal Dutch Shell's Commercial Vice President for Sub Saharan Africa

- keeping in touch with Colegate and Copleston throughout the course of the negotiations and receiving information from them about the economic demands made by the representatives of the Nigerian Government
- met Obi on several occasions, in particular in the run-up to the August 2010 meeting between Scaroni and Jonathan
- maintaining constant contact with his counterpart Roberto Casula;
- attending meetings at the Attorney General's office from November 18 to 25, 2010, at which Attorney General Adoke and Alhaji Abubakar were present, where the financial terms of the deal were agreed to (1.3 billion)
- reporting to Brinded

The literal wording of the objection, having excluded any relationship between lawful negotiations and unlawful negotiations, as argued in full in particular in chapter 3, leads us to conclude that the specific actions of knowing intermediation cannot qualify as the alleged criminal offence, in the light of recent supreme court rulings in this regard, as the defense has duly observed, and as already shown in regard to those positions examined in the preceding chapters, specifically those relating to Colegate, Copleston and Brinded, to which reference should be made.

20.2 Having liaised with Colegate and Copleston for the entire duration of the negotiations, and having received information from them regarding the economic demands of the representatives of the Nigerian government As the defense has pointed out, the fact that Robinson had received "business intelligence" reports from Colegate and Copleston, was part and parcel of the professional duties agreed on with Shell, and thus in itself cannot assume validity as circumstantial evidence, given the arguments set out concerning the generic, contradictory, random nature of the information, comprising comments based on information from anonymous sources in the main, and moreover certainly not limited to the OPL245 transaction, but also regarding other contractual matters concerning the Shell Group. Moreover, Robinson merely received the information in question before forwarding it, thus confirming the witness statements submitted during the hearing, and in particular that of Craig who perceived everything as constituting the normal gathering of information which oil companies carry out as standard practice in order to better develop their commercial strategies. The defendant Robinson's only proactive involvement consisted in his proposal to activate the "back channels" with the Nigerian President, in order to get a better grasp of, and to be able to better deal with, the procedure for the re-awarding of the license to Malabu, which in June 2010 was rightly held to be contrary to Shell's interests, and the result of personal ties which saw the Nigerian President possibly influenced by the "tribal chief" Etete, whom the President described as his "oga" [a Nigerian term for "chief"]. In this regard, in order to substantiate Craig's interpretation of Robinson's actions, the defendant needs to play down the opinions of Colegate and Copleston in specific regard to the procedure for the re-awarding of the license, by linking those leads to alleged corrupt agreements with mere favoritism connected to prior personal relations or expectations of political benefits in view of the presidential elections.

It is the very intensity and timing of the contacts between Robinson, Colegate and Copleston that point to the transparency of their professional relationship. The communications between said

individuals document the greater frequency of news regarding possible generic corrupt agreements contrary to the interests of the Shell Group, in the period prior to confirmation of the award of the license to Malabu, and thus Shell is the opposing party to the proceedings. During the subsequent period there were no communications deemed of interest by the Prosecution which, in fact, with regard to the establishment of the lawful agreements leading to the settlement agreements of April 29, 2011, indicates two relevant emails.

The first email, dated November 4, which is cited in full in a note [764] since it points to compliance with the government's strategy of exercising threatening pressure (revocation of the license without indemnity) designed to get Etete to accept the oil companies' proposal, deemed unacceptable by the person who was supposed to be the instigator of corruption. We have already had the opportunity, in particular in chapter 5, to analyze the alternative courses to the said strategy which, together with the additional element of pressure represented by the cutting of credit lines by the intermediaries Agaev and Granier Deferre, result in a knowing involvement in legal structures such as extortion, to date not punishable, or undue inducement, at the time not punishable, not even from the perspective of third-party intermediaries, of the private individual Etete who was led to pay undue bribes to public officials.

The second email, dated December 12, 2010[765], points not only to the usual secrecy of sources of information, but also to the information's further validity as evidence, at odds with the prosecution's claim, insofar as this information regards the fact that the entity of Obi's fees hindered negotiations, whereas the prosecution's claim sees Obi's involvement, as a key figure in the illegal agreements and the vehicle for public and private bribes, as an essential logical step.

Therefore, the very absence of any significant contacts with Colegate and Copleston during the period in which, according to the prosecution, the illegal agreements were entered into (November 15, 2010, December 15, 2010, and April 29, 2011), confirms the logical inconsistency of the prosecution's evidence-based reasoning, which in this case appears particularly weak.

If we then observe that during the phase in which the payments were made, which is the most important for the purpose of demonstrating the alleged crime, in July 2010 Robinson was transferred from Nigeria to a new post in The Hague, then not only is the defendant's complete non-involvement in any illegal agreement clear, but so is the non-existence of such illegal agreements, which according to the prosecution's argument, would certainly have been channeled through the defendant Robinson, who was present at the meetings with the Attorney General Adoke Bello. More specifically, if the prosecution's argument were valid, then it would have been illogical for the Shell Group to have transferred Robinson from Nigeria to The Hague, to do a completely different job, at the very time it became aware of the problems relating to the Government's difficulty in paying compensation to

---

[764] November 4, 2010 (18:23): Guy Colegate writes to John Copleston and Peter Robinson to describe the strategy designed to convince Dan Etete to accept the offer. It is envisaged that Granier Deferre cut the credit lines and that the AG send him the message that the block will be revoked:

"I talked to Ed - we agreed on the following steps:

1) He is cutting the lines of credit
2) He will think this afternoon about how to communicate with Richard GD in regard to the block. He supports our talking with Richard but wants to find a way of communicating.
3) he agrees on the AG's option for Monday - he said that if it were done beforehand it would be fine all the same - the message consists of the revocation of the block.
4) he agrees with the failure and says that he will do the same if he is not paid at the end of the game, which will happen after the final pressure applied by AG, R, GD and the cut credit lines.
5) He will call me tomorrow with the final game plan - he says that the Italians are emotional and pissed off and need to calm down - he says that we have to liaise with them to check to see whether they still want to negotiate".

[765] On December 12, 2010 Guy Colegate wrote the following to Peter Robinson, John Copleston and German Burmeister: "It's all agreed - SPA initialed and all on side in principle - hold up is over broker fee on other side - the boy is being difficult and tied Italians in a legal knot - that's the wrangle. Source says MB should call Claudio and ask "why no prog - we hear it is all agreed vendor/FGN side - do you still want it?". Source says no need to go into any more detail - lots of middle men - I got the full download - source says a small shunt on Italians will see it closed... ".

Malabu.

20.3 Met Obi on several occasions, in particular in the run-up to the August 2010 meeting between Scaroni and Jonathan

On this point, based exclusively on the unreliable statements made by the co-defendant Armanna, reference should be made to the shareable observations of the defense, whereby until August 18, 2010, Obi did not possess the telephone number needed to contact Robinson who, on March 22, 2010, showed that he did not even remember who this person was, having only met him on one occasion, on January 2, 2009:

I shall now come to the second element of the indictment, that is, now this part of the indictment has already been rebutted in the trial hearings. Actually, the latest evidence provided by the Prosecution on this point has not only proved that the correspondence between Robinson and Obi was infrequent, but it has also excluded any suspicion of any significant ties, even just in a professional capacity. In particular, from studying the contents of Obi's briefcase, we have neither any trace of exchanges of SMS or emails between the two. Moreover, to ensure that all conceivable angles are covered I have meticulously studied all the SMS exchanges between Agaev and Obi to see if Robinson was somehow mentioned anywhere in those messages. There is just one reference between August 17 and 18, 2010, SMS 756... no excuse me, 788, in which Agaev sends Obi the phone numbers of Robinson, "Pet", let's presume it is Robinson, and Guy Colegate, talking about a possible meeting that could be arranged between the two by Agaev. However, none of the subsequent SMS confirms that any meeting actually took place. Actually, we can rule out that any such meeting was held by checking what the Prosecutor called "a precious mine of information", the Unprotected Chrono File, in which Obi is said to have scrupulously recorded all meetings and phone calls he had in connection with the OPL 245 deal, in which there is no reference at all to a meeting in August 2010, but there is mention of a meeting between Agaev, Copleston and Robinson held on January 2, 2009. And we are also lucky enough to have the agenda for that day, "contractors right", "equity", "valuation first discuss". So all elements that were absolutely within the scope of lawful negotiation. Obi introduced himself as an advisor to Malabu, from Eni. As did Agaev. Not only that, but let's dig a little deeper into this topic, which has already been highly scrutinized by the Public Prosecutor. There is an email... so we already know that this was the first meeting noted by Obi, in 2009. There is an email dated March 22, 2010, sent by Berman to Robinson, in which he refers to Energy Venture Partners and to Obi. What did Robinson do? He immediately forwarded it with a telling question mark and exclamation mark. Copleston realized that Robinson did not even know who he was talking about, so he tried to jog his memory by recalling a meeting they had had with Obi in November 2009 at a restaurant in Abuja. So we can conclude that Robinson and Obi had hardly ever met, if at all. Robinson did not even remember who Obi was, or who EVP was. On the other hand, we find a precise reference in document OPL 245 of October 27, 2010, written by an unknown individual, numbered RDS 673, which is practically a summary of the state of negotiations. In the paragraph entitled "Eni LED S.p.A./offer to Malabu", we can also see "EVP/P.R. meeting October 27" in brackets. So even if we assume that the initials are the initials of a name, i.e. Peter Robinson, it is clear not only that this meeting is quite unlikely to indicate habitual meetings, but also that this meeting was fully traced at company level and its content is clearly identified and falls within the scope of lawful negotiations. Indeed, the document also outlines Eni's position towards Malabu at the time. Thus, we find that the only allegation made by Armanna, of excessive professional contacts between Robinson and Obi which might be construed as doubtful, suspicious or sinister, is wholly unsubstantiated.

20.4 Maintaining constant relations with his counterpart Casula

Once again, the acceptable precise observations made by the defense are reported here:

This element too, is in itself neutral from the point of view of the fitness of the offense, but requires a brief preamble. We have an email dated April 2010, I mean April 22, 2010, filed as RDS 521-524, in which the Head of Upstream International clarified the rules of engagement. Negotiations are to proceed along those lines. Craig and Robinson will deal with Casula, while Ruddock, Keith Ruddock, will deal with Bollini. So the basis of the relationship between Robinson and Casula was established by lawful corporate instructions. In reference to this email, Craig himself explained that "Casula's role was not comparable, as he had a wider range of responsibilities, he dealt not only with commercial matters, as Robinson did, but also with matters related to operations, to activities", and explained that his involvement together with Robinson was a gesture of diplomacy and professional courtesy, precisely because Robinson did not enjoy the same standing as Casula. But let's analyze the nature of their relationships, and in this case too, this nature is recorded in full. It is documented in all the emails exchanged between Robinson and his superiors and the other departments, on what happened in these chats, in these calls, in these meetings. Everything was clearly within the bounds of lawful negotiations. But what further proves the lack of the utter lack of any criminally relevant conduct, is that the same facts, the same circumstances can be found in the updates that Casula sent to his contacts. It is sufficient to consider the email of September 17, 2010 or those of October 2010, aimed at moving the negotiations forward, or the exchange of the draft of the Annex to the first draft of the head of agreement of October 13, 2010. I will now move on to the element of the indictment which is very dear to the Public Prosecutor, in any case to the Public Prosecutor's theory. Namely the participation in the meetings held with the Attorney General from November 18 to 25, 2010 in the presence of Attorney General Alhaji Abubakar, where they agreed on, I'll quote, "the economic conditions of the deal, $ 1.3 billion". On the one hand, it has been said again and again that the involvement of the institutional function of the Minister of Justice was absolutely essential to reach any settlement agreement. So much so that the involvement of the Government representatives was certainly not something new that came about in 2010 or with the appointment of Adoke Bello. But let's focus briefly on the background to these meetings. At the beginning of November 2010, we know that Malabu had rejected Eni's offer, and there were fears of a possible Chinese competitor starting its own negotiations. Thus on Thursday, November 4, 2010 Robinson wrote to Brinded, Craig, Guus Klusener, German Burmeister and Bernard Bos, in other words, all the departments involved, saying that if there were no news, it would be appropriate to speak with the Attorney General to tell him clearly that Malabu had rejected the offer and the negotiations were deadlocked. In light of this, the first meeting with the Attorney General was held on November 15, 2010. On the same day, November 15, 2010, Robinson updated Brinded, Craig and all the functions involved, giving them an exhaustive list of all the negotiating points discussed. We have multiple direct evidence of the subsequent meetings and of the fact that they perfectly followed a neutral negotiation scheme, including the witness statements of Caligaris and Zappalà and the references we find in the internal update reports of both IOCs (Shell and Eni), whose contents match perfectly. The data matches also with regard to the price, which I won't discuss in detail, because these issues will be further investigated later by the Defense Attorneys for corporate liability under Italian Legislative Decree 231, and also by the Defense in the Civil Damages action. Several times both Mr. Caligaris and Mr. Zappalà, just not to mention only former Shell employees, have confirmed that in those official meetings the price was no longer discussed, other important negotiation aspects were discussed but not the price.

20.5 Attending meetings at the Attorney General's office from November 18 to 25, 2010, at which Attorney General Adoke and Alhaji Abubakar were present, where the financial terms of the deal were agreed to (1.3 billion)

The opportunity has already presented itself, in section 20.2 to which reference should be made, to point out the fact that the absence of any exchange of confidential information with Colegate and

Copleston, during the topical period of the illegal agreements, demonstrates the groundlessness of the prosecution's claim, based as it is on the circulation, within the Shell Group, of corrupt arrangements. Robinson's transfer to take up a completely different post in June 2011, shows the defendant's lack of involvement in any corrupt arrangements which, in order to be put in place, during the phase of the payments handled by Abubaker, would have benefited from the presence of the defendant, who had met the great bribe-giver, in truth, during the official meetings held with the Attorney General. The absence of evidence constituting powerful indicia, which may be represented by contact between Robinson and Abubaker during the phase in which the fees received from Malabu were converted into cash and distributed, is remedied, from the prosecution's viewpoint, by the legally-permissible contacts compliant with the duties contractually undertaken as Shell's Commercial Manager.

20.6 Reporting to Brinded

The specific conduct, which moreover has been implicitly analyzed with regard to the position of the defendant Brinded, to which reference should be made, representing the due fulfillment of those contractual duties taken on in regard to Shell, cannot be considered of any evidentiary worth.

20.7 The prosecution's arguments set out in the final pleadings

Moving on to an analysis of the specific arguments set out in the final pleadings, we agree with the prosecution that Robinson took part in negotiations in view of his contractual duties to Shell, and reference should be made to the preceding examination of the legality of the negotiations, in particular in chapter 3, even though directly involving the person of Dan Etete, considered Malabu's advisor, and in any case, directly encountered during a period prior to the period in which the alleged crime was committed:

PP: Head of Shell's commercial department in Nigeria, he held the position of Commercial Vice President for Sub-Saharan Africa. A protagonist for Shell throughout the negotiations, he played a key role in the most important points of the negotiations, in relations with the politicians and with Eni. From the beginning, Robinson moved around in the field and also directly met Dan Etete. It was on January 29, 2009 (RDS 324), when he and John Copleston met Etete and Umar Bature to assess the possibility (rejected) of an agreement. Again on October 15, 2009, Etete, accompanied by ABC Orjako and Umar Bature, explained to him and Copleston the situation of Malabu and the need for Shell "to come up with the amount that it is willing to pay" (PM2 2). From then on, almost all of Copleston and Colegate's communications were principally addressed to Peter Robinson, who on the basis of this privileged information arranged the negotiations. Officially, within Shell, his direct superiors are first Pickard and then Craig (in Nigeria) and Outen (in The Hague). However, there is also a very important direct relationship between Robinson and Malcolm Brinded, to whom Robinson conveys the information in his possession and with whom he shares news of the ongoing negotiations. It is Robinson who reminds Brinded that the 100% reallocation of OPL 245 to Malabu stems from the fact that Jonathan still sees Etete as his "oga" (Annex 24) and that it would have been better to use [English in source text:]

"back channels" [translation resumes:] rather than formal channels to get to the President. Robinson drafted for Brinded the document "OPL245 Brief for ECMB Cali with Descalzi - 23 August 2010" (Annex 153) containing information about the waiting for "political contributions". Robinson also prepared the memorandum "OPL brief" (Exhibit 173) on September 23, in which he wrote the formula "X + SB + Y = Z", where Z is the "payment to Etete that is acceptable to all players in Abuja". In the same brief, Robinson writes that "the demand from Abuja is that the price for Etete is $ 2 billion. However, in view of the elections, we believe that a figure of between 1-1.2 billion dollars will be accepted"; however, "once the offer is made, you can clearly test Abuja's appetite for [English

in source text:] short term cash " [translation resumes]. Consider that the brief, which reflects the state of negotiations with Eni, was prepared in conjunction with the dinner at Casula's house, where it was allegedly decided to increase the offer by Shell to meet Obi's claims. If Pagano merely mentioned in his brief that "representatives of Shell were also present" at the dinner.... Contact was definitely made with Obi, probably starting at the end of summer 2010, as documented, for example by sms no. 570 of 9.1.2010, in which Obi wrote to Agaev to tell him that "as discussed, the presence of Emeka will not create any problem. At some point we can leave him alone with Pete to discuss the Nigerian issues extremely urgent at the moment) and we can continue our negotiations. He is, however, a trusted person" (our underlining. In the original text: "Nigerian issues" with the adjective "urgent" in the singular). It should be noted that on February 14, 2011, Robinson informed Craig (Exhibit 95) that "We have been told for some time that there is an additional issue for ENI which relates to a company EVP (Energy Venture Partners). I asked Roberto about that. Anyway, others told me that EVP is not an agent for the chief and that ENI has to pay EVP $ 55mln, which they do not want to do, and not even Etete wants to pay $ 55mln". In short, as Armanna reported, Robinson is well informed about Obi's affairs. Still on the negotiating front, Peter Robinson's role as Shell's counterpart to Attorney General Adoke Bello should be emphasized. The latter had already been engaged by Shell prior to the submission of the offer of October 30, 2010 (Exhibit 47, email of 10.27.2010: Last night Shell met informally with the Attorney General). Following Etete's refusal, Robinson communicates to Brinded (Exhibit 156) "Unfortunately, Malabu has officially rejected the offer made by Eni. They gave no reason but the door remains 'open' in their response. ...If there is no news by Friday, I think our best move would be to go back to the Attorney General and make it clear that the offer has been refused and what the consequences of that are." Later, on November 8, 2010, Robinson personally met with Adoke Bello, as can be seen from Orjako's email to Copleston [Exhibit 197]: "Meanwhile, another meeting between AGF and Peter this afternoon". Analogously, Robinson attended the November 15, 2020 meeting with the Attorney General and Eni, represented by Casula and Armanna, where the final agreement on the price was reached (Exhibit 49): "After an intense discussion lasting two hours, and several telephone calls to the seller, the seller agreed to close the deal at $1.3 billion. Thursday, at 2:00 p.m., the AG wants all of us to return to finalize the documents. As well as me, Armanna was also present as was Peter Robinson on behalf of Shell." Robinson also participated at the meetings held at the Attorney General's office over the following days, attended by the "advisors" of Malabu ABC Orjiako and Alhaji Aliyu Abubakar (PM3 319)..... Again, Robinson is the most assiduous representative for Shell, together with the lawyer Nike Olafimihan, at the institutional meetings held between February and April 2011 with the Attorney General, Malabu and Eni and which made it possible to draft the resolution agreements of April 29, 2011, with the broad concessions to the wishes of the oil companies. Subsequently, Robinson remained at least informed of the outcome of the payments, as he was among the recipients of the aforementioned Burmeister email of 6.22.2011 (Exhibit 127), which states that "Eni has confirmed that the money is still in FGN's escrow account. ENI's position is that they officially know nothing and any relationship between Malabu and FGN is none of their business."

Therefore, in summary, Robinson:

- was one of Shell's most active and knowledgeable executives working behind the scenes of the deal;
- had direct contacts with Etete and his advisors;
- was in constant contact with his former MI6 colleagues, Agaev and Obi;
- provided instructions to Brinded for direct discussions with Descalzi explaining Jonathan's rush with the expectation of a [English in the source text:] political contribution (OPL brief); [translation resumes]
- was party to the decision to use the Attorney General to bring the various demands into line;

- represented Shell at the meeting on November 15, 2010 where the final price agreement was reached;
- attended the meetings at the Attorney General's office over the following days, when Alhaji Aliyu Abubakar was present;
- represented Shell at meetings at the Attorney General's office in February 2011 to find solutions acceptable to Eni and Shell with respect to the findings of NNPC.

The equivocal nature of the expressions used in the emails concerning Robinson, and thus the neutral character of such as evidence, has already been commented on, as they are similar to those already analyzed in regard to the positions of Agaev, Descalzi, Casula, Pagano, Colegate, Coplestone and Brinded.
We cannot accept the assessment of the circumstantial nature of the aforesaid comments, and specifically of the fact that Robinson is indicated as the mover of the corrupt arrangement, having proposed to Brinded the "bribery formula", since it is necessary to recall what has already been established in terms of proof of corrupt arrangements, underscoring here not only the alternative interpretation given by the witnesses Craig and Ruddock, but also the fact that the interpretation more in line with the letter of the documents and the context in which they were drafted leads us to believe that, as Robinson and Brinded have stated, we are faced with circumstantial elements of another and different corrupt agreement of a "political" nature between Etete and the President of Nigeria, aimed at favoring Etete in exchange for his support in the electoral campaign that was portrayed as imminent in the first email, and as already begun in the second.

20.8 The defense's acceptable conclusions
In this regard, the statements of not only Craig but also of Lawyer Keith Ruddock, who at the time of the events was the General Counsel for Upstream International, have first and foremost confirmed that Robinson had no decision-making or spending powers with regard to the OPL 245 deal. But I'll deal with this aspect, which after all is inherent in Robinson's purely commercial role....namely that one of Robinson's specific duties, set out in his terms of engagement, was to participate in and attend meetings and workshops with local Public Officials. Therefore, his participation in official meetings and even in informal meetings with representatives of the various government departments responsible for the oil and gas sector, far from being circumstantial evidence of his involvement in the corrupt act, was unquestionably part of his duties. Likewise, his official duties also included liaising and interacting with the parties selling the commercial deals for the oil fields. And hence also with their advisors. On this point, I should make a comment. As early as April 2008, Robinson's direct contact, Guy Outen, exchanged emails with, I'll come straight to the RDS... with Bituballa. I'm referring to an exchange of emails on April 10, 2008, in which Bituballa confirmed to Guy Outen that he was acting as legal advisor to Malabu, but also specified that Etete continued to represent Malabu [English in the source text] under a power of attorney issued by Malabu [translation resumes];
we have an example of the transparent flow of information between all the relevant company departments about the lawful position taken in negotiations by Shell in general, and by Robinson in particular, and of compliance with the reporting line at all times. This example is an email dated December 16, 2010, RDS 773 to 776, which was sent by Nike Olafimihan and reports on the official meeting he had with the Attorney General. He sent this email to Klusener, in the legal department, Robinson and Burmeister, in the commercial department, and Keibe Atemie. We see from this email exchange that Klusener responded immediately and CC-ed in his reply Robinson's indirect contact, and forwarded this correspondence to his direct contact, Lawyer Ruddock. Ruddock himself has given witness statements on the content of this email, clarifying that it had no criminal relevance at all with respect to the offense of bribery. However, from various other documents and correspondence

exchanges... we can conclude that all the documents produced in preparation for the negotiations, as well as the documents produced by Shell to finalize the resolution agreement, were drawn up and reviewed under the technical expertise of all the departments involved: legal, finance, commercial and compliance. This is also seen in an email sent by Craig to Brinded on 17 March, 2010, RDS 453 to 456, in which the very first line states that, "the attached draft is the result of technical discussions held at all levels of the company". Indeed, Craig, when heard as a witness, specified that several departments were involved, for example the Commercial Department, at the time headed by Peter Robinson, the Finance Department, at the time headed by Bernard Bos, as an economic analysis was required, the Legal Department for the legal issues of compliance, said department at the time being headed by Guus Klusener, and also the technical sector, to provide the technical basis for the valuation supporting that proposal. Craig also said, "When I mention these people, when I talk about these people, I don't mean directly the people themselves, but the departments they headed". Moreover, discussions, including those held with Shell's top management, had also made it necessary to carry out further assessments and further reviews before the PCN could be approved. But the sharing of lawful and incomplete information on the state of the negotiations is also found in the infamous OPL 245 brief, the content of which I will not dwell on further because not only has it been well illustrated by the Defenses that have preceded me, but above all because there is a direct statement on it, from someone who not only received that document but also reviewed and shared it. As I have already said, this framework of evidence has been confirmed by a number of Eni employees, in particular Mr. Caligaris and Mr. Zappalà. More importantly, however, a clear definition of the limits of Robinson's power and of his compliance with these limits was provided by Mr. Vicini, both in his testimony, and in the documentary evidence, namely an email he sent on the night of April 28. In the email, Mr. Vicini explained, talking about the meetings with the Attorney General, that the Shell delegation, which included Robinson, had stood its ground reiterating that they would not change the planned allocation of rights if the back-in rights were exercised, because the allocation had been set by Brinded and none of them had the power to change it. So any proposed change had to be discussed by Eni's CEO with Brinded himself. Indeed, Mr. Descalzi then asked his team to prepare an email to be sent to Brinded in order to overcome this deadlock in negotiations. Robinson's professional correctness and compliance have also been confirmed by co-defendant Agaev, who, when questioned on this point stated that he did not meet Robinson frequently as he was involved in the oil business, he was "an oil man", someone dedicated to oil production and exploration. It is no surprise that he was hired by that company. But Agaev certainly tells us Robinson was not a top manager, and I think that between Robinson and Brinded there stood many other managers. But Agaev also ruled out that in their very few conversations any reference was ever made to possible financial demands by Nigerian Public Officials.

Even if we were to test Robinson's behavior, as shown by the emails, the documents, and the witness statements, not even by applying the three different criteria for the participation in a crime would such participation be proved. Should we apply the conditional theory of causal efficiency? Or should we apply the criterion of the increase in the risk of occurrence of the event, based on a post-hoc prognosis? We may also try to apply a very recent theory, which is just one among others in legal scholarship, but which is very interesting, namely the alternative theory of instrumentality. Even if we choose to apply this very broad interpretation of the concept of causal contribution, which does not ask "Who caused what?", but "who served what?", even in this case we would find no element indicating Robinson's liability. To complete the analysis of this aspect, I ought to mention a further circumstance. As I said at the beginning of my argument, the role of.... Peter Robinson took up this position on December 2, 2007 and left the job in June 2011. It is therefore paradoxical to argue that there could have been even an ex post awareness of the money flows identified by the Public Prosecutor following the payment made to the FGN on May 24, 2011. That was the only payment

that Robinson had to and could know about. The only one. The later payments were made after he had left the role of Commercial Vice President, indeed after he had left Nigeria and that business environment.
In other words, the Public Prosecutor, in my opinion, has tried to use the lens of this really unstable subjective element of the context, generalized and generalizing, in order to paint perfectly lawful conduct as being criminal in nature. The flaw here is obviously not only a methodological one, that of starting from a subjective element as the key to the characteristic element. This is not only a methodological flaw but a material flaw. Because these overly hasty conclusions are precisely those cognitive distortions that we find over and over again in the Prosecutor's interpretation, not only of the Shell emails, but also of other documents. I shall only mention one of them. Thus the back channel has been turned into a black channel, a financial economic formula has become the formula of corruption, and business intelligence and rumors have became self-accusatory statements, confession statements. And official meetings have become, of course, criminal meetings. And to understand this, and I will not dwell further on the emails, I have only mentioned them, we know all the references, but there is also another documentary element which has been affected by this cognitive distortion. I am referring to the handwritten notes seized from Granier-Deferre's home by the Swiss authorities on October 7, 2018 and included in the trial dossier. I am referring in particular, we all know it, it is difficult to explain and to describe it, to the document which includes M M1 M2 and under management under the letter M. A document that is especially interesting in the eyes of the Prosecution. According to the Prosecution, this document is especially interesting because it is alleged to prove the payment of bribes to Shell and Eni managers. But given that the graphic signs and words in this document make no reference to either Shell or Eni , or to their specific managers, what is this claim based on? It is based on Mr. Granier-Deferre's questioning pursuant to Article 210 of the Code of Criminal Procedure. And what did Mr. Granier-Deferre say when questioned at the trial hearing of March 6? He said that M means Malabu, knowing that Malabu had no management and if the idea was to open two accounts for Malabu he called them M1 and M2, Malabu1 and Malabu2, this is what M1 and M2 mean. Nothing to do with Shell and Eni. He also said that "Shell and Eni have nothing to do with this scheme". Obviously, this statement was challenged by the Prosecutor, who claimed that the statements made in the trial were nothing more than, I quote from memory, a "retraction to serve personal interests". But this claim is not supported by any logical or factual element. Indeed, the possibility of payment of the alleged bribes to Shell managers has not even been formulated in the indictment. It does not appear in the indictment. No evidence of such bribes has emerged from statements or documentary evidence in the trial dossier, none whatsoever. Moreover, the allegation of bribes paid to Eni executives, which has been indeed formalized in some counts of indictment, is also unsupported by evidence. Not only that, but even if we accept the Public Prosecutor's claim that Mr. Granier-Deferre is unreliable on this point, then we have all the more reason to conclude that his statements during the investigation will never stand up to scrutiny under the third and fourth paragraphs of Article 192, because we would be faced with an unreliable, intrinsically unreliable co-defendant. I will now come to my closing remarks.
We have, I believe, a truly exceptional wealth not only of case-law but also of legal scholarship and science, starting from Poincarè, on the strict methodological criteria to be applied in order to consider a fact to be logically proven, and I will certainly not go over it. I would merely point out that these strict criteria, which are closely linked to the principle of the Judge's independence of judgment and reasonable doubt, all reflect the need to achieve what should be optimal certainty. The certainty of criminal liability. Not the probability or the plausibility of such.
What I find perplexing, in terms of logical evidence, in terms of the gnoseological procedure followed by the Public Prosecutor, is not so much, and not only, that he made assumptions based on other assumptions, thereby setting in motion a chain of conjectures. It is not only the fact that he started

from an assumption that originated many others. What I find perplexing is the fact that the main premise is not based on an unknown fact, it is based on no fact. What we have are value-based indications. In my opinion, the Prosecution's view is all centered on a sort of risk assessment of certain elements which would suggest the plausibility of the alleged bribery: the socio-economic background and reputation of Etete, Diezani, Abubakar; the prevalence of criminal activity in the geopolitical area where the deal was concluded; the criminal records, although not specific, of some individuals; even their lifestyle, even their family relationships, even the nicknames given to them by the press, "Mr. Corruption". So the criminal status of Etete and of those individuals who gravitated around him in the Nigerian context, the very heart of Nigerian corruption that pervades all the representatives of the institutions from 1998 onwards, of those who have dealt with OPL 245, would attract in their orbit, in their criminal scope, also this resolution agreement. And those who were involved therein n a professional capacity, such as Robinson. And so if the Court allows me, I would like to make a brief observation, because all these elements remind me a lot, it is a highly topical issue, of those used in the predictive policing and profiling of the author of the crime, which are addressed through the famous machine bias, which when processed by means of algorithms promise a predictive criminal justice that is more accurate, better, more reliable than that based on human bias. But if processing these risk factors, with or without the aid of artificial intelligence, already poses, and will increasingly pose, major issues with respect to their compatibility with the modern principles of criminal law, in terms of their use in investigations and prevention, introducing them into the judicial assessment of the criminal offense would border on ex post divination and clairvoyance.

So if we were to use this methodology to affirm Robinson's criminal liability, we would be dangerously distancing ourselves from the assessment of the facts and moving closer to that of the profiling of the criminal offender. A sort of revival of the Tätertyp (criminal type), a post-modern reformulation of the criminological type. In other words, an unacceptable form of criminal determinism would open up in which the likelihood of offending, the criminal profile, is inferred from mainly value-based assessments, in any case certainly not from reliable facts linked to the specific alleged criminal act. Most importantly, these value-based assessments would become evidence that the criminal acts have in fact been committed and therefore evidence of participation by others in the offense.

CHAPTER 21
CHIEF DAUZIA LO VA ETETE otherwise known as DAN ETETE

21.1 The lack of jurisdiction

Having given its reasons for the decision on the lack of certain, reliable evidence of the existence of the alleged corrupt arrangement, and having excluded the involvement of the other defendants, the Court deems that it does not have any jurisdictional power to decide on the liability of the defendant Etete, since details have emerged regarding crimes committed in Nigeria, which go beyond the jurisdiction of this Court or of any other Italian court, it having been established that also the crime of international corruption has to be committed, at least partially, on Italian soil, under Article 6 of the Italian Criminal Code, as it does not come within the list of cases provided for by articles 7 and 10.

21.2 The multiplicity of corrupt agreements

In any case, for the mere sake of thoroughness, and bearing in mind the arguments set out in chapters 3, 5 and 7, the following conclusions have been by the prosecution in regard to other, diverse corrupt agreements which, superimposed in an ambiguous manner on the case in hand, in the event that the jurisdiction of the Italian courts be confirmed, make it difficult to understand the Court's decisional scope, which in any case is restricted to the alleged facts on the basis of the aforementioned Article 521 of the Italian Code of Criminal Procedure.

PP: The word "bribes" characterized the entire history of negotiations concerning the OPL 245 license, so much so that everyone knew that the sale by Malabu would involve the need for an unlawful agreement so that Etete and the officials who helped him would receive unlawful compensation; 2002 Etete spoke of bribes to senior officials and electoral contributions paid by Shell for the allocation in the 2002 tender and addressed the House of Representatives, which stigmatized the transfer of rights to a non-Nigerian oil company;

PP: "Why was this license re-awarded on November 30, 2006? Oh well, because 2001.... 2006 is not 2001, Obasanjo is Obasanjo, but 5 or 6 years have gone by, Obasanjo has served two terms in office, he was planning to do a third term. To serve a third term he needed to amend the constitution, to amend the constitution he needed political support. His Vice President Atiku Abubakar, who we've talked about before, I hope you remember his role, was very much against this third term. Obasanjo needed Dan Etete, this is what the Risk Advisory 2007 says. Why do I like to emphasize, why do I feel it is necessary to emphasize this aspect? Because Dan Etete is not only the former Minister of Justice, Dan Etete... of Petroleum. Dan Etete is the person who, throughout the 2000s, at least up to the years we're talking about, retained exceptional effective, even political, power. He was a player on the political scene, and in several circumstances we have heard him referred to as "a key decision maker". And it's so important that the President needed his support, and so this was a reward for his support".

February 3, 2007, only a few days after the ruling.. regarding ..the legitimacy of the restoration of Malabu's rights on the OPL 245 block following the 2006 settlement agreement, a letter from the Minister of Energy expressing President Obasanjo's wish to build a partnership between Shell, Malabu and NNPC for the exploitation of the OPL 245 block, mention was made of a meeting with Malcolm Brinded who declared he agreed with negotiating with Malabu, who had been reallocated the block. Etete does not want to exploit the license, but to sell it for personal gain, but he will have to share the proceeds of the sale of the license with the politicians who helped him get it back, that is, President Obasanjo, Petroleum Minister Daukoru and Minister of Justice Bajo Ojo.

PP: "I would invite you to jog your memory, let's go back to that period. Obasanjo was still in power, the elections were in April, the elections that resulted in Yar'Adua becoming President. Diezani was not a minister, of course. Diezani at that time was a manager at Shell. A Shell manager going to meet with Dan Etete to talk about OPL 245. This email was written by Basil Omiyi, another Shell executive, and it says "I went with Diezani Alison-Madueke, who has some family relationship with Etete, to meet

Dan Etete (Malabu) yesterday April 2, 2007, essentially to find out what he had in mind, what other issues were in the mix, as well as to know", this is also important, "how they interpreted the Government's stated objective of preserving Shell's current position on OPL 245". This means that with the 2006 agreement, there was still a lot to play for, the government had indicated that Shell's position had to be safeguarded. But the thing that people will be aware of most is the reference to the family relationship with Etete: [English in the course text] "...who has some family relationship with Etete". [translation resumes] Now, I don't believe that they are actually related in the strict sense of the word, and the reference is probably to the extended family in the broader sense, I don't know, but this is what Shell's Basil Omiyi tells us in regard to the position of Diezani Alison-Madueke, a Nigerian, who has some kind of family relationship with Etete, and this is the reason why she went to Nigeria to negotiate on behalf of Shell in regard to the OPL 245 project: indeed, he also says that "Etete also congratulated Diezani on her promotion to the role of Director for East Africa", Diezani being the first female Shell executive in Nigeria. So there is this relationship between Etete and Diezani Alison-Madueke, Shell says so. In fact it was also said at the time of Luigi Bisignani's questioning, when he also said: "In regard to Obi and Etete's relationships with Nigerian government circles, I had found out from Di Nardo, who had in turn been informed by Obi, that a Minister of the Nigerian government was one of Etete's former assistants at the time when he was the Petroleum Minister. Obi and Di Nardo therefore took the support of this Minister for granted: we don't know whether she was Etete's assistant when he was a Minister in the 1990s, whether this was the reference to some kind of family relationship, but some form of relationship between Etete and Diezani existed when she had not yet been made Minister of Petroleum. Evidently she already had political ambitions.. she cultivated these ambitions because immediately afterwards she was made a Minister in Yar 'Adua's government - not the Minster of Petroleum, which was a position she was appointed to only later with Goodluck". In the same email, in another important passage, he refers to Dan Etete's expectations: "He said that Malabu had neither the people nor the expertise to manage a partner. In short, they just want to be bought out entirely by transferring the deal they had acquired in its entirety to Shell. Etete just wanted money." And the reason why he had to quickly cash in on these rights is also stated in this email, it says "During the discussion, he mentioned again the mountain of legal expenses he had incurred over the OPL 245 case (at one point he mentioned a figure of $ 500 million)". As important as certain legal expenses may be, I believe that this figure, $ 500 million, does not correspond to legal expenses, it corresponds to gifts to the members of the government who made the materialization, the cashing-in of these unlawfully acquired rights possible.

Diezani became Minister of Transport in 2007, in 2008 Minister of Mines and Steel, and finally Petroleum Minister with Goodluck, which in Nigeria is probably the most important government post, the most coveted, Nigeria's wealth is oil, so much so that Diezani even became President of OPEC, the first President of OPEC.

on June 24, 2008 (23:15) Ann Pickard wrote to Malcolm Brinded and, reporting on a meeting with an executive of the Nigerian national oil company, Asanusi Barkindo, wrote [English in source text:] "on 245, he said the president doesn't want Etete to get anything, but mosp is "involved" (i.e. on the take) and beholden ("adopted son ") to Odili, who told him that Etete must be satisfied. So, mosp can't move"; [Translation resumes:]

In this case there was talk of an unlawful arrangement for the payment of bribes involving President Yar'Adua who, while not wanting to please Etete, had to come to an agreement with Etete because the Petroleum Minister was involved and wanted money because he had debts.

PP: "On June 24, 2008.... In the Shell documents, RDS 283, there is an email that Ann Pickard of Shell sent to Malcolm Brinded about a meeting with the President of NNPC, named Barkindo. And the subject was OPL 245. On OPL 245 he, that is, the head of NNPC, said the President does not want Etete to have anything. So things are going badly for Etete with Yar'Adua, but MOSP, i.e. the Minister of

Petroleum, is involved, and they put “involved” in quotation marks, open parenthesis “He is on the take”, meaning “he has to take money, he has to take bribes”. Moreover, the Petroleum Minister is, let's say, Odili's godson, Odili was the Governor of Rivers State, who told him that Etete had to be satisfied. So the Petroleum Minister is stuck. The Petroleum Minister is not Diezani yet, it's someone named Lukman”.

PP: I want to mention two more documents, from which it is crystal clear that the Petroleum Minister, Lukman, was owed money, and that Etete had to pay bribes. It's an email dated January 5, 2009 from John Copleston in RDS 318, "Saw my Delta guy about 245, talked to Miss E. this morning, said Etete is complaining that he's only going to ratchet up 40 million of the 300 we're offering him, the rest will go to pay bribes." Later on it talks about Lukman, it says clearly [English in the course text] “[He] took the job because he needs the money”. [Translation resumes] Here we have evidence that Copleston, and the Shell representatives, knew that Etete would use the bulk of the money he would receive for OPL 245 to pay bribes.

PP: "And on February 25, 2010 Ann Pickard, RDS 416, reiterated this issue by explaining that the agreement was urgently required as consideration for the support given by Etete for the amnesty. These were the actual circumstances that were a prelude to the entry on the scene of Goodluck Jonathan, of Jonathan’s government. Before I get to Jonathan I want to mention two more documents, from which it is crystal clear that the Petroleum Minister, Lukman, was due money, and that Etete had to pay bribes. It's an email dated January 5, 2009 from John Copleston in RDS 318, "Saw my Delta guy about 245, talked to Miss E. this morning, said Etete is complaining that he's only going to ratchet up 40 million of the 300 we're offering him, the rest will go to pay bribes." Later on it talks about Lukman, it says clearly [English in the course text] “[He] took the job because he needs the money”. [Translation resumes] Here we have evidence that Copleston, and the Shell representatives, knew that Etete would use the bulk of the money he would receive for OPL 245 to pay bribes. He says it, Etete says it. Mrs. Etete says so, at first I wondered who Miss Etete might be, because of course one has to ask questions. But reading other emails, which we will see later, it's clear that when Copleston talks about “Miss E" he's talking exactly about Etete's wife, she's his wife. Of the 300 million that Shell was offering at that moment, for 20 percent, Etete would only keep 40 million. This is what he says, this Shell knows. And Copleston tells Robinson and Colegate about it.”

The following passages of the closing argument of the defendant’s Brinded’s defense are now reported, since they clearly illustrate the complexity and importance of the figure of the defendant Etete, following on from what the prosecution has already affirmed in the discussion, with the consequent equivocal nature of the evidence that the charges brought against the defendant draw upon:

Chief Etete was an important tribal leader. He held the supreme role of Ndagbudukeme in the Kolokuma/Opokama community in Bayelsa State, Boluwodi of Osoroland, Ondo State, and Oisaba of Ishaba-Ekiti, Ekiti State. He has been a very important and highly influential figure in the political and cultural life of Nigeria, and has had a noticeable impact on Southern Nigeria, including as mediator between the FGN and the Ijaw ethnic minority. Etete was an Ijaw, the largest ethnic group in the Niger Delta, estimated at between 13 and 15 million people, which makes it one of the largest ethnic “minorities” in Nigeria as a whole.

The Ijaws also constituted the main basis of support for many armed groups within the Niger Delta region (in the south of the country where the main oil fields are situated). As mentioned in § 3.9 and Part B(5), the oil companies’ plants and personnel have been for years the target of attack from militant groups operating in the Niger Delta, which have resulted in loss of life, damage to plants and consequent environmental damage and loos of earnings for the FGN. At its height in 2009, [English in the source text] “the insurgency in the Niger Delta was claiming an estimated 1,000 lives a year, had cut Nigeria ’s oil output by over 50 per cent and was casting the government dose to four billion naira (nearly $19 million) per day in counterinsurgency operations” [translation resumes].

In August 2009, the government led by President Yar Adua introduced an Amnesty program offering presidential pardons accompanied by professional training programs, in exchange for the rebels giving up their arms. This led to a significant reduction in the attacks on the oil industry, together with an increase in state revenues: by August 2010 oil production had reached 2.2 million barrels a day, up from around 700,000 barrels a day. Nevertheless, the threat of new violence remained in 2010, and in March of that year the rebels claimed responsibility for the setting off of bombs during speeches concerning the Amnesty. The occurrence of further serious incidents in the Niger Delta was seen as a threat to Jonathan's hopes of being elected President of the PDP, and subsequently of winning the 2011 election. However, many of the Niger Delta's governors, and the Ijaw leaders, initially withheld their support for Goodluck Jonathan's candidacy for the acting presidency in February 2010, as this would probably have prevented them from choosing another presidential candidate (a Nigerian from the country's South) for the 2015 elections, after another northern president had "completed" the two four-year terms of office of Yar'Adua. In fact, in 2010 President Jonathan was not deemed to possess a strong political base, and was seen as lacking in a solid network of contacts, basing himself on those of his own political sponsors. In order to win popular support, President Jonathan tried to deal with the underlying causes of the Niger Delta's malcontent, which was giving rise to the violence seen, and to satisfy the interests of his kings and sponsors, which is an intrinsic feature of Nigerian culture. As reported by the Financial Times, President Jonathan had [English in the source text] "vowed to address the electricity crisis, revamp a discredited electoral system and curb militancy in the Niger Delta, the oil heartland from where he hails" [translation resumes]

The importance of the Amnesty has been explained by Keith Ruddock as follows:

"[The Amnesty] was a very important issue both for Shell and for Nigeria. In the southern states of Nigeria, which are among other things the oil-producing states, there had been a long history of violence and disorder that caused interruptions and violence in the oil production of Shell and of the other oil companies. Vice President Jonathan, who came from the southern states, had proposed "an amnesty as one of the key points of his policy and had followed through, I believe in 2009. Etete also came from the southern states, from the state of Bayelsa, and was considered a senior figure and very influential, so from the point of view of the Nigerian government it was important that Etete supported the amnesty."

The support of Etete, as a leading Ijaw, was thus key for the success of the Amnesty in the Niger Delta. The importance of Etete's support for the success of the Amnesty, is also clear from the documents in the trial dossier:

i. On November 13, 2009 Robinson sent an email to Ruddock and to MB (and copied to, among others, Ann Pickard, Wetselaar, Bos, Klusener, German Burmeister) to which a document was attached entitled "OPL 245 - Settlement options" . said email observed that the [English in the source text] "Government is prepared to consider a more generous position for Etete as it is in their interest to have a high-profile Niger Delta individual actively supporting the amnesty " [translation resumes]

ii. Ann Pickard sent an email to MB and Ruddock (copied to Wetselaar, Guy Outen and Craig), dated February 25, 2010, explaining that: "The settlement is urgently required (1) in order to balance some deals that have been done for northerners recently and (2) in support of the amnesty given the role Etete plays."

iii. On February 27, 2010, MB sent an "e-mail to the CEO, to the CFO and to the Legal Director (copied to Ruddock, Wetselaar and Outen) in which he explained that "There may be a window to settle 245 which Ann [Pickard, Ed.] recommends we should take, and Marteen [Wetselaar, Ed.], Guy [Outen, Ed.] background is political manoeuvring which means that Acting Pres, MOSP and others want to get Etete on side esp so as to get his contd support for the Amnesty". The fact that the elections were about to be held, after which all of the FGN's activities would have slowed for months, opened up this window of opportunity in which to resolve the even more important question so as to avoid the imminent Bilateral

Investment Treaty award and its potentially damaging consequences.
As the academic literature has duly acknowledged, Etete had been a “highly placed politician" who in the past had tried to [English in the source text] “alleviate such oil induced interruptions" [translation resumes] before the announcing of the Amnesty. The Public Prosecutor also acknowledged this in his remarks: "There were many revolts in the Niger Delta, there had been attacks by armed groups, the MEND, etc., the President had proposed a peace based on forgiveness for those who surrendered their weapons. And the Niger Delta region is Dan Etete’s region, and therefore this project could not be successful without the political support of Dan Etete”.
The witness Ruddock conformed that the FGN had on several occasions said that Shell should have negotiated with Etete in his capacity ops Malabu’s representative, stating, for example, that Chief Etete presented himself as the person able to speak in the name and on behalf of Malabu, and was treated by the Nigerian Government as the representative of Malabu.
Insofar as it was believed that the FGN’s support for Malabu reflected support for Etete, this came as no surprise to MB or Shell. The reason for this is that it was very clear that President Jonathan and his government needed Etete’s political support for hge purposes of the Amnesty which, if successful, would have significantly benefited Nigeria, in particular southern Nigeria, as explained in §3.15.1 below.
In fact, the Amnesty brought significant benefits, including Nigeria’s saving 3.74 billion naira (approximately 18.7 million US dollars) each day, money that had previously spent combatting the rebel insurrections.

21.3 The diverse legal classifications

Not only are there elements leading to different corrupt agreements from the one alleged here, but as from October 30, 2010, and thus close to the time of the conclusion of the alleged corrupt agreements, the rejection of the joint offer from Eni and Shell by Etete, represents evidence negating his involvement in any underlying corrupt agreement; and from the viewpoint once again of the excistence of reasonable doubt, as emerges from the records, there are various elements leading one to believe that the public officials, and in particular the Attorney General Adoke Bello, directly handling the negotiations, forced, or at least induced, Etete into paying the bribe, with the corresponding consequences this implies in terms of the legal framework of criminal offenses for which, at the time of events, private individuals induced into committing such offences were not punishable.
PUBLIC PROSECUTOR – Relations between business and politics in Nigeria.
WITNESS GIANDOMENICO - As I have said to your colleague Mr Fabio De Pasquale, in Nigeria, just like all over Africa, you do not work unless...
PUBLIC PROSECUTOR – Wait. “That in Africa in general, in Nigeria in particular, it is not possible to do business, especially with federal government organizations, or with the agencies of the various States, without having important connections. For me, it was almost common knowledge that the public officials of the contract-issuing entities always received cash kickbacks from these big deals with foreign companies. Do you confirm these statements?
DEFENSE ATTORNEY SEVERINO – Shall we continue?
WITNESS GIANDOMENICO - I confirm that.
WITNESS GIANDOMENICO - But I don't remember from whom, I can’t say. I am perfectly aware that in Nigeria, just like all over Africa, you do not work unless you grease the wheels. It is how I see things, and this is...
PP: “so just a few days prior to October 30, the day on which the offer was sent”. It’s an email, information to be found in PM3-230, it’s an email from Eni. Roberto Casula wrote to Claudio Descalzi: “Yesterday evening Shell met informally with the Attorney General, who said that the seller is under general watch to close, because if it does not sell, the block will revert to government control and will be reassigned at that point. Shell says with priority given to them, while other sources say by means of

a call for tender". Thus there's this possibility, there's this viewpoint: Etete is under pressure from the Government to close the deal.
on November 3 (15:00) (Ednan Agaev wrote to Emeka Obi that "[Etete] will lose his block - we have learned that GU has ordered that it be revoked by the end of the week. Even if that were to occur, it would still be positive for us";
November 4, 2010 (18:23): Guy Colegate writes to John Copleston and Peter Robinson to describe the strategy to convince Dan Etete to accept the offer. It is envisaged that Granier Deferre cut the credit lines and that PAG send him the message that the block will be revoked: "I talked to Ed - we agreed on the next steps:
1) He is cutting the lines of credit
2) He will think this afternoon about how to communicate with Richard GD in regard to the block. He supports our talking with Richard but wants to find a way of communicating.
3) he agrees on the AG's option for Monday - he said that if it were done beforehand it would be fine all the same - the message consists of the revocation of the block.
4) he agrees with the failure and says that he will do the same if he is not paid at the end of the game, which will happen after the final pressure applied by AG, R, GD and the cut credit lines.
5) He will call me tomorrow with the final game plan - he says that the Italians are emotional and pissed off and need to calm down - he says that we have to liaise with them to check to see whether they have still want to negotiate".
On this point, Ednan Agaev affirmed: "I exerted a bit of pressure on Etete, exactly as it is written here, Shell asked me to stop paying, and to ask Granier-Deferre too to stop paying Etete, so Etete would be put in a difficult financial position and therefore he would meet halfway. I was covering his travel costs, hotels...".
PUBLIC PROSECUTOR – In point 3, it states [English in source text:] He supports AG option's Monday, says early would be fine too, message being block revoked" [Translation resumes:], so it would appear that you were in agreement on the AG's option for Monday, you said that if it were done beforehand it could go well all the same, the message consists of the revocation of the block.
INTERPRETER - "No, Etete told me this, he told me that the Attorney General was putting pressure on, saying that if the offer were not accepted then there would be the risk of the block being revoked".
PUBLIC PROSECUTOR – Therefore the pressure from the Attorney General was fundamentally this? Threatening to revoke the block?
INTERPRETER - "Yes, he was applying pressure on Etete because he wanted to close the deal".
PUBLIC PROSECUTOR – Yes, but I was asking whether the threat, the pressure was the revocation of the block. INTERPRETER - Yes, there was that risk that the block would be revoked and then the whole procedure would have to start from scratch.
pp: "An email from Colegate dated November 4, 2010 confirms this approach. It says: "He supports the AG's option from Monday", he says that first it would be fine, [Translator's note: English and Italian translation thereof in the source text:] "message being block revoked", "il messaggio è blocco revocato ", [Translator's note: translation resumes:] the government and Adoke are pushing, they are pressuring Etete, threatening him with revocation. A meeting with Claudio Descalzi at Eni's headquarters on November 4, 2010. Lots of things were discussed, there was in fact... at a certain point during the conversation, Descalzi asked: [English and Italian n the source text] "How much is principal shareholder of Malabu getting, 50 per cent? ", "'Quanto deve prendere il principale azionista di Malabu, il 50 percento? ", "How much was Dan Etete supposed to get of the money we give them?" Descalzi wondered. 50 percent? And who gets the rest?". But we know fully well who that money goes to, Etete had told us, Mrs. Etete told us, all of those Shell emails told us, Agaev told uis. They served to pay everyone who had helped him obtain the rights on OPL 245.
On November 12, 2010 (8:19), Ednan Agaev wrote to Emeka Obi: "Papa is going to Nigeria today. The

government is putting pressure on him so that he will accept the offer and close the deal";

In November 2010, Roberto Casula sent an email to Guido Zappalà and Enrico Caligaris in which he announced that a new round of negotiations was to be held in Abuja, since following the intervention of the AG, Malabu had decided to accept the sum of $1,300,000,000. It was Donatella Ranco who sent Zappalà and Caligaris to Abuja. ENI was certainly not the one to involve the AG in negotiations (Guido Zappalà's witness statement). Also Donatella Ranco, when examined, mentioned the convocation for the new round of negotiations before the AG on the part of Roberto Casula. After rejection of ENI's offer in October 2010 Roberto Casula reported that he's been informed by people at Shell that the AG was disappointed with the outcome of the affair, and therefore Casula advised that developments be closely monitored (Ranco's witness statement). In his witness statement, Caligaris confirms that when he got to Abuja, the price question had already been resolved, with an agreement on $ 1,300,000,000 (see Akinmade's witness statement).
November 17, 2010 (13:45) Emeka Obi wrote to Ednan Agaev: "let's leave things to proceed of their own accord, although I'm not sure Papa will play ball. I believe he agreed because he was pressured into it, but he'll continue to try and wriggle out of it";
Then on December 2, 2010, Ewubare sent an sms (1201) to Obi saying "Great news: everybody has told him to close or risk losing 245 at the next licensing round". Now, if revocation of the block...the threat of revocation of the block were intended to spite Etete, if this were true, then yes, it would be the right, legitimate thing to do. However, the threat to revoke the block was intended for very different purposes, because it does not amount to depriving Etete of something. What it does amount to is helping Etete get the money in another fashion. That is, if they'd said "We'll take the block away from you and give you nothing", fine, we'd all be happy and we'd all agree with this approach by the Nigerian government. But the question here is another one: we'll take the block from you if you can't come to an agreement on the price, and we'll give you all the money we manage to let you have. This is the message. And the pressure in question is pressure resulting from their expectations regarding revenue, because shortly afterwards, a few months later, perhaps they'd no longer be in power, as the elections were to be held just a few months later, What does this tell us? That Adoke Bello was determined to close the deal quickly, which is understandable. But even these "rights" of Malabu in regard to OPL 245, were nothing more than a gracious concession from friendly leaders, favors, rights so to speak that could have been revoked, and should have been revoked, immediately. But there was the problem of the price. Etete was not satisfied with the price offered: remember that on October 30, 2010 an offer of 1,260,000,000 was submitted through EVP, but it was not enough, it was too little. Especially if the price included Emeka Obi's fees. This was the thorny question, the problem. Adoke decided once again to take the matter into his own hands, to deal personally with the problem of OPL 245, Etete, Obi and ENI. And this intervention by the Attorney General initially seemed to have borne fruit. We are well aware of the email that Casula sent to Descalzi on November 16, 2010, in which he says "Meeting with Attorney General over", he says, I'm just summarizing what happened, he concludes "after an intense discussion lasting all of 2 hours and after continuous calls to the seller, the latter accepted to close the deal at 1.3 billion dollars". 1.3 billion.

November 17, 2010 (13:45) Emeka Obi wrote to Ednan Agaev: "let's leave things to proceed of their own accord, although I'm not sure Papa will play ball. I believe he agreed because he was pressured into it, but he'll continue to try and wriggle out of it";
PP: "October 28, 2010 of the "Unprotected chrono file". The offer is about to be handed over personally by Obi, and Obi makes note of these details regarding, the demands, the instructions of Dan Etete, who is referred to using the acronym DLE, Daniel Losia Etete. "DLE is complaining, complaining that he is being threatened; ENI has to show it is serious about closing the deal, he wants to do the deal with ENI

because of the close relationship between ENI and himself when he was Minister of Petroleum"; and later "rumors that ENI and Shell have approved a payment of 85 million to EVP from the buyer. He's good with that and can participate". So Etete is telling Obi "I heard [rumors] that a payment to you has been approved -"for Obi, for EVP" - "of 85 million to be made by the buyer" to which he replies "that's OK". 85 million dollars payable by ENI and Shell to Obi.

May 8, 2011: The sequence of messages ends with the following reply from AGAEV:

I had no choice but to be linked to Chief. I don't like very much this situation, that's what why I tried to make the deal with another consortium, but the Orange insisted on closing with spaghetti. Now I will only receive if the Chief receives, and I am not sure how much and if anything will be received. Everything is in the hands of the FGN, and more specifically the Attorney General and the Finance Minister, and naturally the Big Boss. Tomorrow I'm in Geneva and then I'm going to Malta. Let's talk".

On May 8, 2011 (14:39) Ednan Agaev wrote to Emeka Obi: "a long time ago, I advised you to settle with the AG. It's all in his hands. Chief has not decided anything for a very long time".

21.4 Other possible bribe-givers

The lawsuit brought on 23 November 2010 by General Abacha's son and the appearance of a new representative of Malabu at the negotiations (Alaji Abubaker Alyu) introduce a variable that offers a different circumstantial interpretation of the existence of corrupt arrangements, as anticipated in chapter 2, which are now summarized to facilitate their reading. We are referring to a different interpretation of the facts resulting from the evidence represented by the fact that Dan Etete is not the sole owner of Malabu, but rather a silent shareholder who co-owned the company with a 50% share, together with the other shareholder, Mohamed Sani Abacha, the son of the Nigerian President when the first award was made in 1998. We have already had the opportunity to highlight that it was the following Government, led by President Obasanjo, a famous opponent of the military dictatorship, who reassigned the entire license to Malabu in 2006, in spite of the notorious presence of its silent shareholder, Dan Etete.

Dualism in the ownership of Malabu even persists in the prosecution's view of the fraudulent entries made in the companies register, which led to elimination from the ownership structure of the original third shareholder, mentioned by the Eni investigators as a representative of an ambassador. The existence of dualism in the ownership of the company is proven first and foremost by the division into equal parts, on two different accounts held at different banks, of the compensation paid by the government to the company for relinquishing the license. In fact, on 24 August 2011, the Finance Minister ordered two credit transfers to two accounts of Malabu Oil and Gas: one for $ 401 million at the First Bank of Nigeria and the other for $ 400 million at the Keystone Bank.

The funds deposited on the first account at First Bank of Nigeria were destined to four companies traceable to Alaji Abubaker Aliu, who has been referred to as the public officials' intermediary, but who in reality might also have been the representative of the other silent shareholder, General Abacha's son, the one who at the time of the agreements had brought a civil lawsuit precisely in order to confirm his corporate investment.

The existence of this silent shareholder and his participation in the division into equal parts of the compensation from sale of the OPL 245 license, would also be confirmed by the handwritten notes prepared during the first days of January by the intermediary Granier Deferre. In those notes, it was claimed that the compensation that Eni would have paid to purchase a share of the license would have had to be deposited in two different accounts held by Malabu: MI and M2.

During the investigations, the function of the accounts had been traced back to the kickbacks to the executives of the two companies Eni and Shell. However, this involved an explanation that is incompatible with the diachronic development of the facts, because during that phase, Shell had absolutely nothing to do with the agreements that Eni had started to discuss with Malabu, and therefore it cannot be claimed that the notes represented an agreement which at that time could not even be supposed to have exist. During the trial proceeding, Granier Deferre instead explained that the two

accounts allegedly served to divide up the amount in such a way as to facilitate the transit of a very large sum of money to a company that featured a silent shareholder who had previously been convicted of money laundering, Etete. However, not even this reconstruction of events appears especially persuasive and, in any case, the weak indicia-based reconstruction is no longer convincing, where it rests on the 50-50 division of the company shares. In fact, this second possibility also appears consistent with the subsequent dispersal in cash of the share ascribable to the heirs of General Abacha, who was being investigated with the aim of recovering money which the General had stolen from Nigeria during the final period of his dictatorship. The reference to the "Abacha looting" was made by the prosecution itself on several occasions, both during the discovery phase and during final discussion in the trial.
The culmination of this reconstruction would also lead to the logical conclusion that the destination of the money for the public officials might even lead to possible corrupt arrangements with this silent shareholder of Malabu, and not with Dan Etete, regarding whom there are, as we shall see better hereunder, even other and different political reasons that would justify the favor displayed by various Governments, and not only that led by Jonathan.

FOR ALL THE ABOVE REASONS

having regard to Article 530 of the Italian Code of Criminal Procedure,

THIS COURT ACQUITS

Scaroni Paolo, Descalzi Claudio, Casula Roberto, Armanna Vincenzo, Pagano Ciro Antonio, Agaev Ednan Tofik Ogly, Bisignani Luigi, Falcioni Gianfranco, Etete Dan, Brinded Malcolm, Colegate Guy Jonathan, Copleston De Carteret John, Robinson Peter, ENI S.p.a., Royal Dutch Shell p.l.c. of the criminal change brought against them and reported in the count of indictment, because it has not been proven that an offence was committed; and consequently

DISMISSES

all of the demands proposed regarding criminal matters

ESTABLISHES

a term of ninety days for the filing of the reasons for the judgment.
Milan, March 17, 2021

Reporting Judges **The Presiding and Reporting Judge**

[signatures and stamps]