

<p>1 Tuesday, 9 April 2019</p> <p>2 (9.00 am)</p> <p>3 (Proceedings delayed)</p> <p>4 (9.19 am)</p> <p>5 (All proceedings interpreted)</p> <p>6 Submissions by MR FOERSTER (continued)</p> <p>7 THE CHAIRMAN: Then we got everything sorted. Go ahead.</p> <p>8 MR FOERSTER: It is my pleasant task today to make a short</p> <p>9 introduction to the section that relates to state</p> <p>10 university and then I will hand over the floor to my</p> <p>11 colleagues for them to explain more in details about the</p> <p>12 circumstances that are important to apply these rules.</p> <p>13 Yesterday's presentation of merits dealt mainly with</p> <p>14 to whom belongs the property, and the conclusion was not</p> <p>15 to Kazakhstan.</p> <p>16 Today's exposition is about the hypothesis that is</p> <p>17 if the judges conclude that the property does belong to</p> <p>18 Kazakhstan, if then the property is protected by</p> <p>19 corresponding measures under the principle of state</p> <p>20 immunity. State immunity means that no state without</p> <p>21 consent can be subject to another state's judicial or</p> <p>22 executive powers. In this case it is the state immunity</p> <p>23 against the coercive action and not court action.</p> <p>24 State immunity has been developed through customary</p> <p>25 law. International customary law is a prime legal</p> <p style="text-align: center;">Page 1</p>	<p>1 provisions that might be used in this case.</p> <p>2 In a little moment we will expand on these</p> <p>3 provisions, but first a little explanation about the</p> <p>4 provisions and how they relate to each other to create</p> <p>5 the framework for the fact that we will present.</p> <p>6 Surely you remember that the starting point from</p> <p>7 customary law and convention is that all property owned</p> <p>8 by a state enjoys immunity against executive execution.</p> <p>9 That can also be read in article 5, and in the</p> <p>10 Convention that immunity is the starting point, which is</p> <p>11 also the opinion from the two professors which have</p> <p>12 written their submissions. In the closing arguments we</p> <p>13 will go more into details on what they have said.</p> <p>14 Article 19(c) is the provision in the article 19</p> <p>15 which can be used in this case.</p> <p>16 It tells us under what conditions a court can make</p> <p>17 exceptions from the main rule about immunity.</p> <p>18 Exceptions can be made if three cumulative conditions</p> <p>19 are fulfilled.</p> <p>20 One is that it should be established that the state</p> <p>21 exclusively uses or has the intention to use the</p> <p>22 property for other than state non-commercial purposes.</p> <p>23 Number 2, the property should be located in the</p> <p>24 state's territory.</p> <p>25 Number 3, that execution actions which should be</p> <p style="text-align: center;">Page 3</p>
<p>1 resource. It is non-written law that is created by two</p> <p>2 criteria: one is Latin, usus, and the other one is the</p> <p>3 state opinion of use. Concretely, that means that state</p> <p>4 acting in such a way that a common practice is occurring</p> <p>5 and that is guided by a conviction. In this case one</p> <p>6 can assume that state immunity has gone from being</p> <p>7 absolute to being more limited or restrictive,</p> <p>8 particularly when it comes to handed down judgment.</p> <p>9 That it is restrictive means that the state sometimes</p> <p>10 have considered that they have a reason to allow cursory</p> <p>11 measures against other countries. The principle of</p> <p>12 state immunity has been codified in the UN Convention on</p> <p>13 Jurisdictional Immunities Of states and Their Property.</p> <p>14 That has been in Sweden been incorporated in the law on</p> <p>15 immunity for states and their property. That law enters</p> <p>16 into force when the Commission did so.</p> <p>17 Since the Convention did not enter into force, in</p> <p>18 this case the Convention or law cannot be applied in</p> <p>19 this case. The judges should apply the principles which</p> <p>20 are expressed in the Convention when we from now refer</p> <p>21 to the provisions in the Conventions, it's about the</p> <p>22 principles that are expressed in said Convention.</p> <p>23 Part 4 of the Convention is about immunity against</p> <p>24 coercive measures relating to the court action. We will</p> <p>25 dwell on articles 19 and 21, which contain the</p> <p style="text-align: center;">Page 2</p>	<p>1 taken may only be taken against property which is</p> <p>2 related to the unity towards whom the case aims. Even</p> <p>3 if the judges should conclude that all these conditions</p> <p>4 have been fulfilled, the rules about state immunity can</p> <p>5 still stop execution action to take place.</p> <p>6 Those rules contained in article 21 can be described</p> <p>7 as an exception from the exception that is back to the</p> <p>8 main rule.</p> <p>9 Article 21(1) lists different kinds of properties</p> <p>10 that merit extra protection, not to be considered</p> <p>11 property to be used or intended to use in other cases</p> <p>12 than state non-commercial purposes.</p> <p>13 Article 21(1)(c) establishes that such property</p> <p>14 belongs, it is the property of the Central Bank or other</p> <p>15 authorities which deal with monetary politics. That</p> <p>16 means that in immunity is at hand as soon as the</p> <p>17 property belongs to the Central Bank or another monetary</p> <p>18 policy authority. In a while, we will explain how</p> <p>19 "belongs to" should be defined.</p> <p>20 I want the judges to bear in mind that even if the</p> <p>21 judgment finds that the properties used in a purely</p> <p>22 commercial purpose, and even if it then should not be</p> <p>23 exempt for the main rule under article 19, then there is</p> <p>24 still immunity under article 21 when the property</p> <p>25 belongs to a Central Bank or other monetary policy</p> <p style="text-align: center;">Page 4</p>

<p>1 authority.</p> <p>2 The legislature has expressed the same way, although</p> <p>3 in a slightly different way.</p> <p>4 In the bill it says that this articles lists</p> <p>5 different kinds of state property which should not be</p> <p>6 considered property that states uses or intends to use</p> <p>7 exclusively for non-commercial purposes under</p> <p>8 article 19.</p> <p>9 The legislature then continues to explain that the</p> <p>10 property in article 21 cannot be subject to coercive</p> <p>11 measures because of the provisions in 19C.</p> <p>12 We now have an overview over those two provisions</p> <p>13 which mainly could be used in this case.</p> <p>14 With background of article 21 always sort of has the</p> <p>15 last word. The most natural thing would be to start at</p> <p>16 that end.</p> <p>17 Before we enter more into detail on article 21, let</p> <p>18 me say a few words about the overall questions that the</p> <p>19 judges might need to address in their assessment.</p> <p>20 A moment ago I said the judges might need to answer the</p> <p>21 question about if property is protected from executive</p> <p>22 action because of the principle for state immunity.</p> <p>23 That principle for state university is broken down in</p> <p>24 two or possibly three questions that the judges might</p> <p>25 need to address.</p> <p style="text-align: center;">Page 5</p>	<p>1 into legal force. But the main part of it</p> <p>2 a codification of applicable customary law. We will</p> <p>3 expand more on that in our closing arguments, but I want</p> <p>4 to mention now that all experts in this case agree that</p> <p>5 article 21 expresses the customary law, and the</p> <p>6 principle expressed therein is the legal rule which</p> <p>7 should be applied in this case.</p> <p>8 Although actually it is not necessary for the judges</p> <p>9 to find out what constitutes common state practice, and</p> <p>10 not because regardless of what should be considered to</p> <p>11 follow from customary law or not, the Supreme Court has</p> <p>12 expressed that the principle under article 21 is</p> <p>13 applicable when an assessment is made under the laws of</p> <p>14 Sweden.</p> <p>15 The Supreme Court said that absolute immunity shall</p> <p>16 apply for such property of special kind mentioned in</p> <p>17 article 21. That is the Sedalmayer case. I refer to</p> <p>18 the NJA2011, page 475.</p> <p>19 Furthermore, the Swedish legislature has chosen to</p> <p>20 incorporate the Convention through incorporation.</p> <p>21 If one has simply followed the original phrasing</p> <p>22 without any amendments at all, and even if the law is</p> <p>23 not enacted until the Convention is, that gives a clear</p> <p>24 signal that what is written in the Convention shall be</p> <p>25 applied in Sweden.</p> <p style="text-align: center;">Page 7</p>
<p>1 One is if the sequestrated property belongs to the</p> <p>2 Central Bank and for that reason is protected under 21</p> <p>3 or 22 in the Convention.</p> <p>4 If you first answer this, and the answer is yes,</p> <p>5 then you don't need to progress further. If the answer</p> <p>6 is no, then you can go on to next question, which can</p> <p>7 encompass two questions.</p> <p>8 The overall one, if the property is accepted from</p> <p>9 immunity under article 19 in the Convention, but what</p> <p>10 the judges should answer in the Dutch question: first,</p> <p>11 if the property is used exclusively for other then state</p> <p>12 non-commercial purposes, and also if the property, more</p> <p>13 exactly the securities, actually are located in Sweden.</p> <p>14 If the answer to either of the questions is no, then</p> <p>15 the appeals could be granted.</p> <p>16 Now, I will happened over to my colleague Agnes.</p> <p>17 She will speak about the circumstances which are</p> <p>18 relevant.</p> <p>19 Submissions by MS JADERBERG</p> <p>20 MS JÄDERBERG: Thank you, Alexander. Before I speak about</p> <p>21 article 21(1)(c) and how that should be used, I will</p> <p>22 shortly explain that the principle used is applicable in</p> <p>23 this case.</p> <p>24 Alexander Foerster already explained that the</p> <p>25 Convention is not directly applicable until it has come</p> <p style="text-align: center;">Page 6</p>	<p>1 Now I will leave this question, and we are now going</p> <p>2 to example the circumstances which are relevant for the</p> <p>3 assessment of whether the property is protected by</p> <p>4 immunity under the principle expressed under article 21.</p> <p>5 In order to understand the circumstances that are</p> <p>6 relevant for this assessment, I will briefly explain</p> <p>7 about the legal criteria that the judges should address</p> <p>8 in order to determine whether the property can enjoy</p> <p>9 immunity under the principles in 21(1)(c). So it is</p> <p>10 relevant to assess first if the Central Bank is subject</p> <p>11 to, covered, by those provisions, and also if the</p> <p>12 property belongs to -- or if it's property of the</p> <p>13 Central Bank under the sense of the Convention.</p> <p>14 It is not relevant to assess whether the property is</p> <p>15 used for monetary policy purposes or not. Such a</p> <p>16 condition would limit the scope of application of</p> <p>17 article 21 and that would contravene the very intention</p> <p>18 its of the Convention in 21(1)(c), because the intention</p> <p>19 that is to create that extra protection for the property</p> <p>20 belonging to the Central Bank, regardless of its use.</p> <p>21 Let us start then with question number 1 in the</p> <p>22 assessment, which is should, or is the Central Bank such</p> <p>23 a subject covered by article 21?</p> <p>24 The special immunity expressed in article 21(1)(c)</p> <p>25 applies to property of the state Central Bank or other</p> <p style="text-align: center;">Page 8</p>

<p>1 money policy authority. As Alexander just said 2 initially, the National Bank of the Republic of 3 Kazakhstan is the Central Bank of Kazakhstan. 4 In a little moment we will look more in detail on 5 the regulation for that. But initially I observe that 6 the Central Bank is an independent legal person relating 7 to the Kazakhstan. As we've heard, this has been 8 determined by a decision from the Svea Court of Appeal. 9 For this reason I will not expand on the Kazakhstan 10 provisions that lay the foundation for that decision. 11 Instead we should go on and look at the activities which 12 the Central Bank carries out. Let us start by looking 13 at the Kazakh law governing the Central Bank. You find 14 that in binder 2, tab 31. Please look at it. 15 Sorry, binder 2, tab 63. This is exhibit 28, 63. 16 Let us start at the initial provisions, articles 1 17 and 2, page 702 in the binder. 18 Article 1, paragraph 2 we read: 19 "The National Bank of Kazakhstan is the Central Bank 20 of the Republic of Kazakhstan and represents the top 21 first level of the bank system of the 22 Republic of Kazakhstan." 23 So it says clearly that the Central Bank is 24 Kazakhstan's Central Bank. Paragraph 3 under article 1 25 says:</p> <p style="text-align: center;">Page 9</p>	<p>1 The heading is "Main goal and objectives of the 2 National Bank of Kazakhstan", and article 7 continues on 3 page 704 in the binder. 4 Paragraph 1: 5 "The main goal of the National Bank of Kazakhstan is 6 to ensure the price stability in the 7 Republic of Kazakhstan." 8 The Central Bank's main goal thus is to ensure price 9 stability in Kazakhstan, and then there is a listing of 10 the way that main goal shall be accomplished. 11 It's, among other things, about carrying out the 12 activities indicated in article 2 that we just looked 13 at. For example, monetary politics and ensuring that 14 the payment systems in the economy work. And to ensure 15 price stability in the country is the typical task for 16 a central bank. Even the Swedish Central Bank strives 17 for price stability through its inflation goal. 18 We continue article 8. A bit further down at the 19 middle of the same page, article 8, it's headed 20 "Functions and powers of the National Bank of 21 Kazakhstan". Here we have the framework for the Central 22 Bank's activities. Article 8 is a long one. As you can 23 see it contains 39 items listing the functions and 24 capacities of the Central Bank. But, as one example, 25 let us look at item number 1. It says:</p> <p style="text-align: center;">Page 11</p>
<p>1 "The National Bank of Kazakhstan shall represent the 2 interests of the Republic of Kazakhstan in the relations 3 with Central Banks and banks of other countries, in 4 international banks and other financial and credit 5 organisations within its competence." 6 So the Central Bank shall represent Kazakh interests 7 in relationships with other central banks and other 8 foreign banks. 9 The first paragraph of article 2 says: 10 "The National Bank of Kazakhstan is the state body, 11 that provide the development and carries out the 12 monetary policy of the state, functioning of the payment 13 systems, exercising the currency regulation and control, 14 state regulations, control and supervision of the 15 financial market and the financial organisations, state 16 regulations of functioning of regional financial centre 17 of Almaty city, promoting stability of the financial 18 system and carrying out the state statistics." 19 So it says, among other things, that the Central 20 Bank shall apply the country's commodity policies, 21 ensure that the payment system works and regulate 22 currency and supervise the financial system. Those are 23 the good tasks of a Central Bank. 24 Let us now go on to article 7 at the bottom of 25 page 703 in the binder.</p> <p style="text-align: center;">Page 10</p>	<p>1 "The Central Bank shall develop and implement the 2 state monetary policy of the Republic of Kazakhstan." 3 It goes on with more items listing the tasks that 4 the Central Bank typically has, and let us take a glance 5 at item 39 also. Page 706. Here it says the Central 6 Bank shall: 7 "... carry out other functions and powers under this 8 law, other laws of the Republic of Kazakhstan and the 9 acts of the President of the Republic of Kazakhstan." 10 So we understand that the Central Bank shall carry 11 out the activities as set forth in law and this way it 12 is clear that the Central Bank's administration of the 13 central fund is regulated in the budget code, and the 14 civil law, and that the Central Bank's activities are 15 regulated by law is not an unusual thing. Also the 16 Swedish Central Bank's activities are regulated under 17 the law under Chapter 1, article 1, in the law on 18 Swedish National Bank, the National Bank shall only 19 carry out those activities as set forth by the law. 20 I shall at this point say that all central banks in 21 the world are very different, both with regards to the 22 internal government, the central bank's tasks and the 23 central bank's relationship to the state powers. 24 Under international law, different orders should be 25 respected when we compare Kazakhstan's Central Bank and,</p> <p style="text-align: center;">Page 12</p>

<p>1 for instance, the Swedish Central Bank and other foreign 2 banks, we do that in order to give an image on how 3 central banks can look in our countries. 4 But it's important to point out that this district 5 court should not make any real comparison between 6 Kazakhstan's Central Bank and the Swedish Central Bank, 7 nor other foreign central banks. 8 Now we continue in the law on the Central Bank, 9 article 29, page 21 -- sorry, 721 in the binder. 10 The first paragraph of article 2, it says: 11 "National Bank of Kazakhstan is the only body that 12 defines and implements the state monetary policy of the 13 Republic of Kazakhstan ..." 14 So this is same authority that implements the state 15 monetary policy and then it says: 16 "Monetary policy is implemented by the National Bank 17 of Kazakhstan in order to ensure the price stability." 18 So monetary policy is to be carried out by the 19 Central Bank in order to ensure price stability. From 20 paragraph 2 in the provision it says what that means. 21 That is: 22 "Money policy is implemented through the 23 establishment of: 24 "The official refinancing rate; 25 "The levels of interest rates on the main</p> <p style="text-align: center;">Page 13</p>	<p>1 tenge. 2 "Foreign currency interventions of the National Bank 3 of Kazakhstan are implemented within the general 4 monetary policy." 5 So the currency exchange transactions, this is a way 6 for the Central Bank to affect the currency, and this is 7 one of the assignments the Central Bank, and this is 8 something that a central bank typically does. 9 So we can note that Kazakhstan has appointed the 10 Central Bank to be its central bank. We can also note 11 that Kazakhstan's Central Bank, and this is in line with 12 other central banks, is an authority that, among other 13 things, implements the country's monetary policies, 14 controls inflation and also supervises the financial 15 markets. And therefore it is self evident that the 16 Central Bank is one of the central banks that is 17 intended under article 1C. And we could actually stop 18 here, but I'm sure that we will hear later on during 19 this meeting that the Central Bank is not an independent 20 or self-governing the central bank, but that it is only 21 a tool for the Presidential powers in Kazakhstan. 22 The applicant has claimed that the Central Bank, 23 because of their alleged dependence on the political 24 government, that they're not an independent 25 self-governing central bank, and that is why I will</p> <p style="text-align: center;">Page 15</p>
<p>1 transactions of monetary policy; 2 "The minimum reserve requirements ..." 3 So the Central Bank sets the official interest rate, 4 and this is also the typical task of a central bank that 5 can be compared with the Swedish Central Bank's setting 6 up the interest rate, and money policy is also carried 7 out by the Central Bank carrying out its foreign 8 exchange, foreign currency interventions. With the 9 Kazakhi currency, Tenge, and foreign currencies, we can 10 see this in article 30, item 3. 11 The first paragraph in article 30 is further down on 12 that page, page 721 in the binder. There it says: 13 "In order to implement monetary policy, the National 14 Bank of Kazakhstan shall perform the following 15 operations ..." 16 Then we move onto the next page, and under item 3 we 17 read that the foreign currency intervention is one of 18 the tools to implement the monetary policy. And then 19 article 36, on the next page, there is a more detailed 20 description of what this means: 21 "Foreign currency interventions of the National Bank 22 of Kazakhstan are implemented independently by buying 23 and selling foreign currency and carrying out other 24 types of foreign currency transactions in the interbank 25 or exchange market in order to influence to the rate of</p> <p style="text-align: center;">Page 14</p>	<p>1 briefly describe the Central Bank's relationship with 2 the political powers in Kazakhstan. And I'm going to 3 make a further comparison with other -- with the 4 governance of other central banks around the world. 5 But yet again this is not a comparison that the 6 District Court is going to make in its assessment. I'm 7 only mentioning this to give you more correct 8 illustration of the Central Bank's position than what 9 the applicant is going to give you. Counsel for the 10 Central Bank, quoted Robert Nordhs' statement that has 11 been submitted by the Central Bank as exhibit 284. We 12 do not have to take this out now, and Robert Nordhs 13 wrote that it is easy to be influenced by the Swedish 14 model of administration. This is characterised by the 15 authority's relatively independent decision, but the 16 Swedish model is unique and does not apply generally for 17 public administration in other countries. On the 18 contrary, it's common in other countries for authority's 19 operations being regulated by the authorities from the 20 Government. The responsibility for individual decisions 21 are often with the minister and not individual civil 22 servants. 23 Note it refers to this is the way in Denmark, Norway 24 and the UK. It's important to remember that we cannot 25 have as our point of departure the Swedish</p> <p style="text-align: center;">Page 16</p>

<p>1 administration model, neither when we assess the 2 position of the Kazakh Central Bank, nor when we 3 interpret international customary law in all countries 4 immunities to be respected. 5 We will look in more detail on the Central Bank's 6 relationship with the Kazakhi state, and the reason 7 I talk about this is the objections that have been 8 presented by the applicants. Those objections are the 9 Kazakhi government having such an influence on the 10 operations on the Central Bank that it is to be deemed 11 not independent. And that in turn, according to the 12 applicants, would mean that the Central Bank is not a 13 central bank in the sense of the Convention, and this is 14 not correct. 15 First of all, it is not correct that the Central 16 Bank lacks independence, and secondly, even if this 17 claim were to be true, the level of independence of 18 a central bank in relation to its government is of no 19 significance when it comes to state immunity, and this 20 is something that we will talk about later in our 21 closing arguments. 22 Now, let's move back to article 3 in the Central 23 Bank Act, which is on page 702 in the binder, and this 24 is still tab 63. 25 First paragraph of article 3, it says:</p> <p style="text-align: center;">Page 17</p>	<p>1 President appoints and has the right to release members 2 of the Central Bank. We can have an example from the 3 American Central Bank, Federal Reserve. The American 4 President also appoints the members of the board of 5 delegates which is the board of the American Central 6 Bank. We can have a look at Federal Reserve Act, 7 article 10.1. This is in binder 1 under tab 44. This 8 is exhibit 206. 9 We can read under section 10: 10 "The Board of governors of the Federal Reserve 11 System ..." 12 So item 1 has the heading -- and it says: 13 "The Board of Governors of Federal Reserve System 14 ... shall be composed of seven members, to be appointed 15 by the President ..." 16 That head of state appoints leading positions in 17 central banks, that is the most common approach. 18 We can see some report of the composition of central 19 banks around the world, and an excerpt from this report 20 is to be found under tab 41, binder 1. This has been 21 submitted as exhibit 204, and the report has been 22 produced by the Bank for International Settlements, 23 which is a group of central banks around the world, and 24 we can go to page 8 in the binder -- sorry, page 568. 25 It says in the first paragraph:</p> <p style="text-align: center;">Page 19</p>
<p>1 "The National Bank of Kazakhstan is accountable to 2 the President of the Republic of Kazakhstan." 3 So the National Bank is accountable to the President 4 of Kazakhstan. In the same article, it also says the 5 mandate that the President has with the Central Bank, 6 paragraph 2, we can read: 7 "The accountability to the President of the 8 Republic of Kazakhstan means: 9 "Appointment of the Chairman of the National Bank of 10 Kazakhstan by the President of the 11 Republic of Kazakhstan with the consent of the Senate of 12 Parliament of the Republic of Kazakhstan ..." 13 The President is to appoint the chairman of the 14 National Bank with the consent of the senate and the 15 President also has a mandate to remove the chairman or 16 to release him or her from their position. 17 So neither this circumstance, nor any of the other 18 circumstances that are mentioned here under article 3, 19 are unique to the organisation of the Central Bank. All 20 central banks have different levels of independence in 21 relation to the political powers, and the governance of 22 central banks is regulated in different ways and 23 different states. And now I'm going to give you a 24 couple of examples of this. 25 For example, it's not unique to Kazakhstan that the</p> <p style="text-align: center;">Page 18</p>	<p>1 "Although the specific legal procedure differs 2 across countries, the governor and other senior 3 officials of the central bank are generally appointed 4 through a governmental process." 5 And a bit further down, it says: 6 "In 60 per cent of the central banks surveyed by the 7 BIS, the governor is appointed by the head of state or 8 government ... In about one third of the cases, the 9 governor is appointed by the government or the minister 10 of finance." 11 So the most common way of appointing senior officers 12 in a central bank is by appointment of the government or 13 head of state. The applicant has said that the Kazakhi 14 President can give directives or instructions to its 15 Central Bank and, inter alia, they have referred to 16 article 3 in the Central Bank Act that we just looked 17 at, which says that the Central Bank is accountable to 18 the President. 19 According to the applicants, the President's mandate 20 and actions show that the Central Bank is not 21 independent enough in relation to the state, and 22 therefore the Central Bank is not to be covered under 23 the article 21(1)(c) of the Convention, that the right 24 to issue directives that regulate the central banks' 25 activities or operations, that is not very</p> <p style="text-align: center;">Page 20</p>

<p>1 controversial. There's the same system in the Canada, 2 Malaysia and South Korea, and I mention these countries 3 as examples so that the judges will have an idea of the 4 constitutional order that governs central banks in other 5 countries other than Sweden. 6 We can move on, look at the report that we just had 7 a look at on page 507 in the binder. In the grey box it 8 talks about: 9 "Government directives to the central bank". 10 In the second paragraph it says: 11 "In Canada, the law requires regular consultations 12 between the Minister of Finance and the Governor. If 13 an issue cannot be resolved in these consultations, the 14 Minister can issue a directive on monetary policy but 15 only after further consultation with the governor and 16 the approval of the Prime Minister." 17 So in Canada the representative of the central bank 18 that they consult with the minister of finance 19 regularly. So with the minister of finance, with the 20 approval of the prime minister, can issue directives. 21 And in South Korea it says: 22 "The Minister of Finance may request the Monetary 23 Policy Council of the Bank of Korea to reconsider 24 a decision that the minister believes is in conflict 25 with the economic policy of the government."</p> <p style="text-align: center;">Page 21</p>	<p>1 First we can note that this concept, "property of", 2 refers to more than just ownership. "Property of", 3 according to the Convention, also is about property that 4 is says used or deposited by a central bank. So that's 5 managed by a central bank, but the question is if the 6 property in this case, do they own, possess or control 7 or manage the property. 8 The Central Bank's counsel have already reported on 9 circumstances saying that that is the case and that 10 we're going to look at some of the most relevant sources 11 again. And I will start by reminding the court that the 12 structure of the National Fund is undisputed, and 13 according to this undisputed structure it is the Central 14 Bank that holds the assets that are administered by Bank 15 of New York Mellon, and we also take it that the Central 16 Bank at least disposes of the property, and this is 17 sufficient for the property to be deemed to be the 18 property of the Central Bank pursuant to the Convention. 19 Now, I'm going to move on and I'm going to look at some 20 of the evidence which shows that the property is the 21 property of the Central Bank, Mr Guterstam reported on 22 these documents yesterday, and he talked about the 23 assets in Kazakhstan do not belong to Kazakhstan. 24 I think it might be a good idea for us to go back and 25 take a look at some of these documents again, now that</p> <p style="text-align: center;">Page 23</p>
<p>1 So the minister of finance can demand that the 2 central bank reconsiders the decision that they believe 3 is in conflict with the government's economic policy, 4 and if the central bank does not change the decision 5 then the President of South Korea decides on the matter. 6 And then whether it comes to Malaysia it says: 7 "... that the minister of finance may issue 8 a directive to the central bank at any time, and the 9 central bank must comply." 10 And also in New Zealand the government may issue 11 a directive in the central bank. In this report it 12 says: 13 "The Prime Minister may issue the directive to the 14 central bank on the advice of the minister of finance." 15 So, in conclusion, we can note that the Kazakhi 16 Central Bank is a central bank in the eyes of the 17 Convention. It carries out the tasks that the central 18 bank typically speaking carries out, and we can also 19 note that central banks in different countries have 20 different functions and are organised in different ways. 21 But it is also the case that the governments of the 22 Kazakhi Central Bank have many similarities to other 23 central banks round the world. 24 Now let's move on to take a look at question 2, if 25 the property is the property of the Central Bank.</p> <p style="text-align: center;">Page 22</p>	<p>1 we are talking about the question of whether the 2 property is the property of the Central Bank in the 3 sense of the Convention, and therefore enjoys immunity. 4 We can start by taking a look at the National Fund 5 agreement. It is under tab 12 and binder 1 and this is 6 exhibits 35 and 79. 7 Here we can look at item 2 on the first page, on 8 page 156. And this is about the Bank's rights and 9 obligations according to the National Fund agreement. 10 It says under article 2.1 and 2.1.1: 11 "The Bank has the right to: 12 "possess, use and dispose of the fund under the 13 conditions specified herein ..." 14 So the Central Bank has the right to possess, use 15 and dispose of the fund. That is exactly what it means, 16 that the property is the property of the Central Bank in 17 the sense of the Convention. The Central Bank's 18 responsibility for the fund is -- there too we can look 19 at the Kazakhstan Budget Act under tab 8, binder 1 20 submitted as exhibit 33 and 74. We can go to page 37 of 21 that binder. Article 21 is about the National Fund. 22 Under item 7 it says: 23 "Trust management of the National Fund of the 24 Republic of Kazakhstan is carried out by the 25 National Bank of the Republic of Kazakhstan on the basis</p> <p style="text-align: center;">Page 24</p>

<p>1 of the trust management agreement ..."</p> <p>2 And we have heard before that the Central Bank</p> <p>3 administers the National Fund within the framework of</p> <p>4 trust, and this in itself is enough to establish that</p> <p>5 the National Fund is the property of the Central Bank.</p> <p>6 The assets in the trust belong to the Central Bank which</p> <p>7 is the trustee.</p> <p>8 The same thing is clear from the Central Bank Act,</p> <p>9 which is under tab 63 in binder 2, exhibit 28, and if</p> <p>10 you go to page 705.</p> <p>11 We earlier looked at sections of article 8 that</p> <p>12 govern the functioning and the capacities of the Central</p> <p>13 Bank. Now we're going to look at something else,</p> <p>14 item 31. In item 31, it says that the Central Bank</p> <p>15 shall:</p> <p>16 "... carry out as trustee for the National Fund of</p> <p>17 the Republic of Kazakhstan on the basis of the trust</p> <p>18 management agreement ..."</p> <p>19 And what is included in the Concept Trust, under the</p> <p>20 laws of Kazakhstan we can see amongst other things in</p> <p>21 the Kazakh civil law, under tab 14, binder 1, exhibit 32</p> <p>22 and 81.</p> <p>23 Article 883, page 173, and I draw your attention to</p> <p>24 paragraph 1 that says:</p> <p>25 "In settlement the trust management of property, the</p> <p style="text-align: center;">Page 25</p>	<p>1 to the property, and it can enforce that towards</p> <p>2 anybody, including the trustor, Kazakhstan. For that</p> <p>3 reason it is clear that the property is property of the</p> <p>4 Central Bank.</p> <p>5 We can also look again at the expressions from the</p> <p>6 Bank of New York Mellon about the relationship to the</p> <p>7 property that the Bank of New York Mellon has been given</p> <p>8 the task to manage.</p> <p>9 That is now exhibit 38 and 78, bank 1, tab 1. It's</p> <p>10 a letter from Bank of New York Mellon to Frank Law Firm</p> <p>11 on 13 October 2017. It is the letter that</p> <p>12 Karl Guterstam earlier showed. Here it's written under</p> <p>13 item 2 that:</p> <p>14 "... BNYM holds certain shares and other assets in</p> <p>15 custody for NBK ..."</p> <p>16 National Bank of Kazakhstan. Item 3, Bank of</p> <p>17 New York Mellon:</p> <p>18 "... acts upon instructions from its client NBK.</p> <p>19 Bank of New York Mellon does not accept any instructions</p> <p>20 from the Republic of Kazakhstan ..."</p> <p>21 Item 5:</p> <p>22 "NBK is the owner of the shares and other assets in</p> <p>23 Bank of New York Mellon's books."</p> <p>24 We see then from the description also from Bank of</p> <p>25 New York Mellon that the Central Bank is a registered</p> <p style="text-align: center;">Page 27</p>
<p>1 trustee shall control on the beneficiary's behalf the</p> <p>2 property, transferred to his (her) possession, use and</p> <p>3 disposal, unless otherwise provided by contract or</p> <p>4 legislation, in the interests of the beneficiary."</p> <p>5 Under the civil law, thus the Central Bank, as a</p> <p>6 trustee, controls the property owned by -- administered</p> <p>7 and controlled by the Central Bank in the interests of</p> <p>8 the beneficiary. And the Central Bank being a trustee,</p> <p>9 what that means is also explained in the expert</p> <p>10 statement from the professors Suleimenov and Mukasheva</p> <p>11 from 28 February. The statement, you will have had it</p> <p>12 under tab 15 of binder 1, exhibit 3082. Feel free to</p> <p>13 flip to page 185 in that binder.</p> <p>14 I quote item 38 on that page. The Kazakh professors</p> <p>15 write among other things:</p> <p>16 "Accordingly, the National Bank holds a right of</p> <p>17 claim to the assets of the National Fund for the</p> <p>18 duration of the trust management that it can exercise</p> <p>19 against anyone, including the Republic of Kazakhstan.</p> <p>20 This right is exclusive to the trustee and is a property</p> <p>21 right in all respects."</p> <p>22 The Central Bank thus has a right of claim, that is</p> <p>23 a kind of property right, to the property while it is</p> <p>24 held by the trust, and this Karl Guterstam explained in</p> <p>25 detail yesterday. The Central Bank has exclusive right</p> <p style="text-align: center;">Page 26</p>	<p>1 owner in the books of Bank of New York Mellon, and that</p> <p>2 it holds and controls the property. We can also look at</p> <p>3 the witness statement from Aliya Moldabekova, who is the</p> <p>4 manager of the monetary operations department in the</p> <p>5 Central Bank.</p> <p>6 Binder 1, tab 10, page 154, paragraph 32, that is on</p> <p>7 the last page.</p> <p>8 Aliya Moldabekova says:</p> <p>9 "In conclusion, NBK is registered as owner of the</p> <p>10 assets held by Bank of New York Mellon London in</p> <p>11 accordance with what has been stated in article 5 of the</p> <p>12 Global Custody Agreement. All the securities and money</p> <p>13 foreclosed by the Swedish Enforcement Agency are owned</p> <p>14 by the NBK and form part of the National Fund."</p> <p>15 It is thus clear from the witness statement that the</p> <p>16 Central Bank is a registered owner of the property by</p> <p>17 Bank of New York Mellon.</p> <p>18 The Central Bank's representative explained</p> <p>19 yesterday for even more evidence showing that the</p> <p>20 Central Bank is the party who is the registered owner to</p> <p>21 the property with Bank of New York Mellon. I'm not</p> <p>22 going to repeat all that evidence once again, since the</p> <p>23 judge surely has a good recollection of that. But it</p> <p>24 also mentions the Global Custody Agreement confirming</p> <p>25 that the Central Bank is the party which has been</p> <p style="text-align: center;">Page 28</p>

1 registered as the owner and the actual statements from
 2 the Bank's database showing that the bank is registered
 3 owner of the properties in London. We also have the AIG
 4 judgment confirming that the property with Bank of New
 5 York Mellon is the property of the Central Bank. This
 6 list could be longer, but I stop here.

7 Thus there is no doubt that the property which has
 8 now been sequestered is property of the Central Bank.
 9 For that reason, that property is subject to immunity
 10 under the principle expressed in article 21 in the
 11 Convention.

12 I finish. I hand over to my colleague Ludwig Metz.
 13 Ludwig will elaborate on immunity protection under
 14 article 19. I would like to ask if it's a good moment
 15 for a break?

16 THE CHAIRMAN: That sounds like a good idea because the plan
 17 says 10.15 for a break. Let us then break until 10.30.
 18 (10.10 am)

19 (A short break)

20 (10.30 am)

21 THE CHAIRMAN: I would just like you to know that what you
 22 show on the screen is on our small screens in front of
 23 us, so if you're wondering why we're not looking up,
 24 it's because we have it in front of us.
 25

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1 Submissions by MR METZ
 2 MR METZ: And, as Agnes was saying before the recess, I'm
 3 going to talk about the principles of article 19 in the
 4 Convention. I'd like to look at the circumstances that
 5 are relevant to the assessment that the court is going
 6 to make, and before I do that I'm going to repeat what
 7 this assessment is actually about. We heard about this
 8 before today. The main rule is that states and their
 9 property is immunity against jurisdiction and
 10 enforcement measures, we know that and this is customary
 11 law. This is expressed both in article 5 and 19 of the
 12 Convention. With the starting point of immunity,
 13 article 19 states the number of exceptions from this
 14 rule, and the Swedish translation is on the right-hand
 15 side and I'm going to base my comments on that.

16 So though coercive measures after judgment, "... such
 17 as attachment, arrest or execution against property of
 18 a State may be taken in connection with a proceeding
 19 before a court of another state".

20 And then the exceptions are listed under 3 main
 21 items. Item (a), it says that measures can be allowed
 22 if the state has expressly consented. That's not the
 23 case here, and item (b) says that enforcement can be had
 24 if the state has allocated or earmarked property for the
 25 satisfaction of a claim which is the object of that

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1 proceeding, but Kazakhstan has not done that in this
 2 case. And item (c) is the one that we are going to
 3 focus on.

4 According to item (c), measures can be made under
 5 three conditions all of which have to be met. First of
 6 all, it has to be established that the state only uses
 7 the property for use by the state other than the
 8 Government and non-commercial purposes:

9 "It has been established that the property is
 10 specifically in use or intended for use by the State for
 11 other than government non-commercial purposes ..."

12 And secondly it has to be established that it is in
 13 the territory of the state of the forum; and, thirdly,
 14 the property has to have a connection with the entity
 15 against which the proceedings were directed.

16 So the court says the purpose or the intended
 17 purpose, the state uses the property if the property is
 18 in Sweden, or if it has any connection with Kazakhstan
 19 which is a party to the arbitration.

20 One condition for article 19 coming into place is
 21 that the property belongs to Kazakhstan. This question
 22 was extensively dealt with by counsel for the Central
 23 Bank and I'm not going to do that again. If the court
 24 finds that the property belongs to Kazakhstan, there
 25 isn't a whole lot to say about the request that the

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1 property has to have a connection with the state. It's
 2 also a requirement that the property has to be located
 3 in Sweden. Magnus Nygren talked about that, that the
 4 securities, briefly yesterday. We will come back to
 5 that in his closing arguments. I'm not going to talk
 6 much about that, but if the court disagrees with us that
 7 the securities are not located in Sweden, and the court
 8 can grant the appeal, either on the ground that Swedish
 9 court authority is not a jurisdiction to order measures
 10 on property that is located abroad, or on the ground
 11 that the property enjoys immunity according to article
 12 19 of the Convention.

13 That's all I have to say about these conditions.
 14 I'm going to say a bit more about the purpose that the
 15 property is used for.

16 So what is to be the subject of analysis according
 17 to article 19(c)? That is the purpose of the use of the
 18 property or the intended use of the property. If we
 19 look at the provision, it says: "... in use or intended
 20 for use by the State ..."

21 That is that the state's use is relevant and the
 22 state is defined under article 2 in the UN convention.
 23 You can say that the state is the state and its various
 24 organs, and federal states and other authorities that
 25 are acting for the state. And that according to 19, the

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<p>1 court has to assess what use, or intended use, 2 Kazakhstan have. And the Central Bank is also covered 3 by the state definition of the Convention, but if the 4 property belongs to the Central Bank there is immunity 5 under article 21. We will come back to that in our 6 closing arguments. 7 It's quite simple to establish the use, or the 8 intended use, of the property because this is clear from 9 Kazakhi legislation. And the funds in the National Fund 10 can only be used by Kazakhstan for the purposes that are 11 stated in laws and regulations. And we're going to look 12 at the Budget Code of Kazakhstan, which has been 13 submitted as exhibit 33 and 74 as in tab 8 and binder 1 14 and page 137. 15 Article 21, item 2 in the Budget Code provides that 16 the purpose of the National Fund is intended to ensure 17 the social and economic development, and it's also 18 intended to reduce dependence on the oil sector and the 19 impact of adverse external factors. 20 So these are the overall purposes of the Fund and 21 the Presidential decree number 402 precedes as law, has 22 more or less the same wording. Tab 7, binder 1, 23 page 134. The differences are that here explicitly it 24 says that the National Fund is to be used for savings 25 for future generations. It doesn't mention specifically</p> <p style="text-align: center;">Page 33</p>	<p>1 functions. 2 These two functions also mean that the assets that 3 at any given time constitutes the National Fund are 4 common different types of assets. 5 In order for the stabilisation function, so that it 6 can meet the function, some of the assets have to be 7 liquid, and the idea of that is that this purpose can be 8 met in the present time or in the near future. The 9 saving function is there so that the purpose of the Fund 10 can be met in the future. 11 It could also be described as the saving function 12 being there in order for the stabilisation fund can 13 maintain its purpose in the future. 14 In order for this to be possible, the assets on the 15 National Fund has to be invested in such a way that the 16 fund maintains its value over time. So this is about 17 spreading risks, as it says on the screen, it's 18 a moderate level of risk, and I will come back to this. 19 So it is one fund with the same overall purpose and 20 all the assets in the National Fund serve these overall 21 aims, and we still have tab 8 up. Article 23 on 22 page 138, we're going to take a look alter this. This 23 is till from the bung code of Kazakhstan and here it's 24 regulated -- this regulates how Kazakhstan can use the 25 National Fund. Item 1 under article 23, it says that</p> <p style="text-align: center;">Page 35</p>
<p>1 that the dependence on the oil economy is to be reduced. 2 We can go back to the Budget Code on page -- under tab 8 3 and look at article 21, item 3, and this tells us which 4 functions the National Fund has. 5 In the first paragraph, under article 21, item 3, it 6 says that the National Fund has one saving function and 7 one stabilisation function. In the second paragraph the 8 saving function is explained in the third paragraph, 9 this stabilisation function is explained. This saving 10 function is to provide an accumulation of financial 11 assets "in the long term with a moderate level of risk". 12 This means in the long term and with a moderate level of 13 risk, a low or small moderate level of risk. 14 The stabilisation function is designed to maintain 15 a sufficient level of liquidity of assets of the 16 National Fund. And counsel for the Central Bank said 17 this yesterday, and I'll repeat this, that these 18 functions, the saving and stabilisation functions, they 19 are there so that the purpose of the National Fund can 20 be met over time. There are tools to reach this goal in 21 article 21, that is to ensure the social development of 22 the state and reduce dependence on oil, and minimise the 23 risk of the impact of unfavourable external factors, and 24 this is today, tomorrow, or in ten years time and 25 100 years' time. That's why they have these two</p> <p style="text-align: center;">Page 34</p>	<p>1 the fund is used as a guaranteed transfer from the 2 National Fund to the state budget. Under 1.3 it 3 stipulates that the National Fund may be used in 4 covering of expenses associated with the management of 5 the National Fund, and audit. And item 1.4 it says that 6 there may be targeted transfers from the National Fund 7 to the state budget for purposes, specific purposes. On 8 page 29 there are items 3 and 4, and there it says that 9 the National Fund may not be used for crediting 10 individuals and legal entities, and not to ensure the 11 performance of obligations. 12 We will talk more in detail about how they may be 13 used when we look at the next document, which is 14 Presidential decree number 385, submitted as exhibit 146 15 by the applicant. That's to be found in binder 2 under 16 tab 79, and the applicants have invoked this document to 17 show that the National Fund consists of two separate 18 investment portfolios with different purposes. I will 19 come back to this, but it's more than that is of 20 interest in this decree. 21 We'll go to item 4 on page -- sorry, this is quite 22 far down on the page. 23 The first paragraph of item 4, it says that: 24 "The National Fund's goal is to preserve financial 25 resources by accumulating savings for future generations</p> <p style="text-align: center;">Page 36</p>

<p>1 and reducing the national budget's dispense on global 2 commodity markets." 3 In the second paragraph that begins on page 936 and 4 continues on page 937: 5 "Therefore, the National Fund has both saving and 6 stabilisation responsibilities ..." 7 And the use the word "therefore" marks that the 8 National Fund has both a saving responsibility and 9 a stabilisation responsibility in order to achieve the 10 main goal. 11 Third paragraph, it says to ensure that the saving 12 function is realised, a minimum balance has been 13 established but there is no upper limit on the size of 14 the fund. 15 The fourth paragraph is about the stabilisation 16 function and this is explained in some more detail here. 17 We can see that the yellow markings is not quite clear 18 on the slide and that's my mistake, but I would like the 19 judges to look at the binder. 20 The fourth paragraph, it's clear why it says in 21 article 21 in the Budget Code that the stabilisation 22 function is to ensure sufficient liquidity of the assets 23 of the National Fund. I'm going to read the fourth 24 paragraph, and it says: 25 "Stabilisation requires ensuring annual guaranteed</p> <p style="text-align: center;">Page 37</p>	<p>1 The assets may be used as an annual transfer to the 2 state budget, and targeted transfers from the national 3 to international budgets and for paying the cost of 4 managing the National Fund and its annual audit. 5 And the following paragraph, it says: 6 "All guaranteed and targeted transfers from the 7 National Fund to the national budget must be made in 8 accordance with budget procedures." 9 A little bit further down on the same page, and 10 I don't know if the court can see, its 206 trillion in 11 2018, if you continue a little bit further down to the 12 paragraph that begins with "Non-profit national". Can 13 you see that paragraph? And here it is clarified that 14 the targeted transfers for the non-profit social 15 projects and the strategic infrastructure projects can 16 only be made if there is no alternative funding sources 17 available. 18 What it says in this decree on the use of the fund, 19 this reflects what it says in the Budget Code. This 20 confirms that the answers can only be used for state 21 non-government's non-commercial purposes. Then we're 22 going to go to the point in the decree that the 23 applicants say that -- prove that there are two 24 different purposes of the fund: number 3, which is about 25 the administration or management of the assets -- on</p> <p style="text-align: center;">Page 39</p>
<p>1 transfers to the national budget, as well as targeted 2 transfers to fund crisis management programmes to 3 stimulate economic growth during periods of economic 4 decline or growth deceleration ..." 5 I guess there should be is a comma there: 6 "... to provide funding nor non-profit social 7 projects and for strategic infrastructure projects." 8 So this means that the stabilisation function refers 9 to the National Fund being able to ensure annual 10 transfers to the national budget. It also says that the 11 National Fund can have targeted transfers to fund crisis 12 management programmes, to stimulate economic growth, 13 during periods of economic decline or growth 14 deceleration, and for non-profit national social 15 projects and strategic infrastructure projects. 16 In the 5th paragraph, the following paragraph, it's 17 clear that it cannot be used for any other purpose, not 18 even for investments in domestic financial instruments 19 and the point of the stabilisation fund is that part of 20 the National Fund is to consist of liquid assets, is 21 that assets of the National Fund may be used when needed 22 for the purposes that are stated in the law. The 23 question is how may they be used. This is clear from 24 page 938. It says in bold "Use of National Fund 25 assets", fairly high up on the page.</p> <p style="text-align: center;">Page 38</p>	<p>1 page 79, a bit further down on the page. 2 Under 5.3, second paragraph, it says that: 3 "The main goals of investment operations during the 4 management of the National Fund assets are preserving 5 the assets ..." 6 That is to keep the value of the assets: 7 "Maintaining adequate liquidity ... 8 "... and ensuring long term returns with 9 an appropriate level of risk ..." 10 And this is to ensure long term returns with an 11 appropriate level of risk, and an appropriate level of 12 risk is a moderate, this is according to article 21, 13 item 3, of the bundle code. At the bottom of page 939 14 we have the 5th paragraph, which reads: 15 "In view of the National Fund's main goal and 16 responsibilities, it has a stabilisation and a saving 17 portfolio." 18 In light of the main purpose of the National Fund, 19 to ensure that Kazakhstan's social and economic 20 department and to reduce dependence on the oil sector 21 and the impact of negative factors and this is to be 22 done through a saving function and a stabilisation 23 function and that's why the saving fund has a 24 stabilisation portfolio and a saving portfolio. 25 We're going to talk about what these portfolios</p> <p style="text-align: center;">Page 40</p>

<p>1 actually mean, but what is important is that it is 2 clearly stated in the decree that the portfolios are 3 there in order to ensure the overall purpose of the 4 National Fund: 5 "In view of the National Fund's main goal and 6 responsibilities, it has a stabilisation and a saving 7 portfolio." 8 Paragraph 6 expresses that the stabilisation 9 portfolio predominantly aims at maintaining a sufficient 10 liquidity for the assets in the National Fund. Further 11 down, the portfolio may have a value of a maximum 10 12 billion dollars, otherwise the surplus shall be placed 13 in the savings portfolio. 14 Next paragraph, a description of the savings 15 portfolio as aiming at saving and maintaining assets 16 that result from the sales of non-renewable energy to 17 ensure long term returns with a reasonable level of 18 risk. 19 The next document that I would like to show is the 20 resolution number 65 in the Central Bank's board of 21 directors. Binder 2, tab 80, exhibit 147. We're going 22 to examine item 16. 23 Item 16 defines a portfolio. It expresses 24 a portfolio is a set of financial instruments, including 25 the fund's money.</p> <p style="text-align: center;">Page 41</p>	<p>1 maximising benefits, it's a matter of spreading risks 2 and trying to maintain the worth of the National Fund so 3 that it can keep existing. 4 Further down, item 17, it is clear that there is 5 a close link between the saving function and the 6 stabilisation function or rather the stabilisation 7 portfolio and the saving portfolio. It says: 8 "All proceeds to the savings portfolio and transfers 9 from the savings portfolio are made through the 10 stabilisation portfolio." 11 That means concretely that all the assets that at 12 any moment are classified as part of the savings 13 portfolio at an earlier stage were classified as part of 14 the stability portfolio and, if anything should be 15 funnelled from the savings portfolio, it must go to the 16 stabilisation portfolio. Assets at any point in time 17 are classified as part of the savings portfolio can only 18 be converted to assets to be classified as part of the 19 stabilisation portfolio. 20 In other words the savings function is a means to 21 ensure that the stabilisation function can remain and 22 also that this National Fund can exist and serve these 23 purposes in the future and that is the purpose for the 24 savings function. 25 Particularly this link shows that it's a matter of</p> <p style="text-align: center;">Page 43</p>
<p>1 What is called the savings portfolio is thus a set 2 of financial instruments and money. What is referred to 3 as the stabilisation portfolio is a set of financial 4 instruments and money. 5 The applicants adduce this resolution to support the 6 claim that the savings portfolios assets are invested in 7 a way that maximises benefits in the long term. 8 Item 17: 9 "A savings portfolio is a portfolio whose purpose is 10 to increase the return on assets in the long term." 11 That means roughly that a savings portfolio is 12 a portfolio whose purpose is to increase returns on 13 assets in the long run. Possibly this is the item that 14 the applicants that they use as their arguments when 15 they argue about maximising benefit. The applicants 16 arguments also say that stabilisation and investment 17 portfolio are two different portfolios with different 18 purposes. About the stabilisation portfolio, the 19 applicants allege that it has a stabilisation purpose. 20 They have also said that there is no reason to doubt 21 that the stabilisation portfolio is used for monetary 22 policy purposes and that also matches the position in 23 other jurisdictions. 24 There is a difference from what the applicants say 25 and, as I have said earlier, it is not a matter of</p> <p style="text-align: center;">Page 42</p>	<p>1 one fund with the same overall purpose. All assets in 2 and originating from the National Fund are used for or 3 will in the future be used for transfers to the 4 Kazakhstan state budget. 5 The professors, Pal Wrangle and Said Mahmoudis have 6 analysed the question whether this is used for the 7 property for state non-commercial properties. Both of 8 them conclude that that is the case. I would say a few 9 words about their findings. 10 You will see this on the screen. You do not have to 11 find it in your papers. 12 Said Mahmoudis statement is under tab 48. In 13 paragraph 48 he writes: 14 "The National Fund's purpose is, amongst others, to 15 ensure a stable social and economic development of the 16 country ... to accumulate financial resources for future 17 generations, and to reduce the dependence of the economy 18 on the impact of unfavourable external factors." 19 And then he continues, and we can see that his 20 opinion is that this purpose is qualified and it can in 21 no way be regarded as commercial. 22 Pal Wrangles' statement, tab 26, binder 1, he reminds 23 us that, when it is a matter of immunity against 24 execution, or enforcement, the important thing is not 25 what is being done with assets but the purpose. This is</p> <p style="text-align: center;">Page 44</p>

<p>1 from his first statement.</p> <p>2 Eventually Wrangle concludes that there is no doubt</p> <p>3 that the property is protected by state immunity under</p> <p>4 article 19, amongst other things based on the purpose as</p> <p>5 expressed in the Budget Code.</p> <p>6 We shall return to this in our closing arguments but</p> <p>7 I mention this now because I want to highlight that it</p> <p>8 is the purpose of the usage that is important when to</p> <p>9 determine if immunity is at hand, the same way it is</p> <p>10 important that the judges at this stage realises that it</p> <p>11 is of lesser importance, the nature of an act or</p> <p>12 transaction, at least when it comes to immunity against</p> <p>13 enforcement measures. However, that question is</p> <p>14 important when it comes to immunity against court</p> <p>15 action, but that is not the case here.</p> <p>16 Let us now examine a statement by Professor Didenkos</p> <p>17 that is used to argue that the savings portfolio assets</p> <p>18 are used for commercial purposes, exhibit 152, tab 81,</p> <p>19 binder 2. Let us look at this. Page 978.</p> <p>20 In the correspondence, the applicants allege that</p> <p>21 Didenkos has concluded that the assets in the savings</p> <p>22 portfolio are used for commercial purposes. That is</p> <p>23 incorrect and it is sufficient to read the instructions</p> <p>24 to Didenkos' statement to conclude that. They refer to</p> <p>25 page 14 in the statement, line 78 in the binder, the</p> <p style="text-align: center;">Page 45</p>	<p>1 the Address of the President of the</p> <p>2 Republic of Kazakhstan N. Nazarbayev to the people of</p> <p>3 Kazakhstan dated 1 March 2006. It is intended to ensure</p> <p>4 the stability of the financial market, to maintain</p> <p>5 required flexibility in the actual exchange rate in</p> <p>6 order to reduce the adverse consequences of growth in</p> <p>7 inflation, and simultaneously to stimulate economic</p> <p>8 growth.</p> <p>9 So this expresses that the purpose of the National</p> <p>10 Fund is so secure the stability of financial markets, to</p> <p>11 maintain sufficient flexibility in the real currency</p> <p>12 exchange rate, to reduce adverse consequences of</p> <p>13 inflation and to stimulate economic growth.</p> <p>14 But that it is the purpose that is crucial also</p> <p>15 gains support from the Norwegian Foreign Office's</p> <p>16 statement on the Norwegian funds oil and pensions. It</p> <p>17 is also the role model for the National Fund when it was</p> <p>18 created. This statement is our exhibit 100. It is</p> <p>19 binder 1, tab 30, page 281.</p> <p>20 The statement was written within the framework for</p> <p>21 the investigation NOU2017:13 on a new law for the</p> <p>22 Norwegian Central Bank and the statement relates to,</p> <p>23 among other things, a reorganisation of the oil fund,</p> <p>24 how that would affect its immunity. Here the Foreign</p> <p>25 Office expressed that there is a number of exceptions</p> <p style="text-align: center;">Page 47</p>
<p>1 paragraph starting by "therefore". It says:</p> <p>2 " ... the specific actions of the National Bank to</p> <p>3 dispose of the National Fund attest to the commercial</p> <p>4 nature of these actions ..."</p> <p>5 They have also highlighted the last sentence in</p> <p>6 that same paragraph:</p> <p>7 "The non-gratuitous nature of the services being</p> <p>8 provided and the generation of income are the main</p> <p>9 indicia attesting to the commercial nature of the</p> <p>10 transaction."</p> <p>11 And then they highlight:</p> <p>12 "... the transactions of the National Bank on the</p> <p>13 disposal and management of the National Fund comply with</p> <p>14 effective understanding of commercial activity."</p> <p>15 As you hear and as you can read, Professor Didenkos</p> <p>16 analyses the nature of the actions and not the purpose.</p> <p>17 What is expressed in this statement is, number 1, not</p> <p>18 what the applicants allege, that is that Didenkos speaks</p> <p>19 about the purpose; number 2, it is not relevant for the</p> <p>20 assessment for the judges to make in this case.</p> <p>21 At another place in Didenkos' statement, something</p> <p>22 is expressed on the purpose of the National Fund,</p> <p>23 page 966. Here we can see that. I believe it's</p> <p>24 paragraph 2, starting on line 66:</p> <p>25 "The role of the National Fund was highlighted in</p> <p style="text-align: center;">Page 46</p>	<p>1 from the main rule on immunity and that in practice the</p> <p>2 most important exception is the one for business</p> <p>3 transactions or, simplified, the ministry continued by</p> <p>4 saying if a state organ deals with securities based on</p> <p>5 an ordinary commercial way of proceeding, that is normal</p> <p>6 and it is to be regarded as a business transaction not</p> <p>7 covered by immunity, and it says with yellow:</p> <p>8 "However, if it is a matter of special management of</p> <p>9 public funds with a purpose to ensure the state present</p> <p>10 and future finances, then that indicates clearly that</p> <p>11 immunity is at hand."</p> <p>12 Page 284 in the binder contains a summary that is</p> <p>13 in bullet list. In this summary the Foreign Office</p> <p>14 writes how the oil fund should be set up if the goal is</p> <p>15 at the highest possible degree of immunity. The</p> <p>16 ministry mentions as examples that it could be useful to</p> <p>17 within the core of the concept state that is part of</p> <p>18 a closely related to the central administration or the</p> <p>19 ministries. The Foreign Office also mentions the fact</p> <p>20 that the assets are state property, that is part of</p> <p>21 a fund, or means or, next item, it is part of the</p> <p>22 Central Bank's funds and, last item, another fact that</p> <p>23 it is clearly a matter of a fund that exclusively</p> <p>24 manages public funds for the countries and people's best</p> <p>25 interests. That is a public something and a framework</p> <p style="text-align: center;">Page 48</p>

<p>1 that makes it different from a private investment fund 2 or similarly. 3 If the District Court has reached this point in 4 their assessment, it means that you consider that the 5 attached properties belongs to Kazakhstan, that 6 Kazakhstan is a state, and that the property is property 7 of the state, that the National Fund is a fund that is 8 being managed in the best interests of the country and 9 its people as per the Kazakh Budget Code, decree 402, 10 and decree 385. 11 And here we can read that one of the goals is 12 savings for the future, that is, even according to the 13 Norwegian way of seeing things, it is considered that 14 the public fund is to be used for state non-commercial 15 purposes, which makes it protected against enforcement 16 action. 17 Summarising, in this part the court should assess 18 whether the purpose of the usage or intended usage of 19 the property is state non-commercial purposes. That is 20 not a difficult task. It says plainly in the 21 constitution the national overall purpose is to ensure 22 Kazakhstan's economical development, save for future 23 generations, reduce the state's dependence on the oil 24 sector and reduce vulnerability for adverse external 25 factors. It is in the very concept development that it</p> <p style="text-align: center;">Page 49</p>	<p>1 the decision on sequestration. 2 It's sometimes useful to look at these things. 3 From Ludwig's presentation, it was clear, hopefully, 4 that the Swedish enforcement agency expressed himself in 5 an unclear or unfortunate way about the property subject 6 to sequestration. One could also say that the 7 enforcement officer did not know what it was doing. The 8 enforcement officer did not properly analyse the civil 9 right consequences, let alone have them taken into 10 account in international law. But now, thanks to Karl 11 Guterstam and his brilliant presentation, we have 12 a better understanding for who owned what, that is how 13 the chain of debtors looked, and to quote once again 14 Marcus, the debtors must be respected. You cannot jump 15 levels. 16 It is SEB who has been registered as a formal 17 administrator and they're also administrator for a big 18 number of other customers and it cannot be designated 19 for whom they perform this administration. 20 Bank of New York Mellon has used SEB as the formal 21 administrator for their own affairs and for their 22 customers in its so-called custodian agreement. It is 23 not possible to identify what share belongs to the bank 24 and what share belongs to the bank's customers. 25 Under the agreement with SEB, the Bank of New York</p> <p style="text-align: center;">Page 51</p>
<p>1 is a purpose that be fulfilled now and it must be 2 fulfilled in the future. We know that the state under 3 the law cannot, may not, use the National Fund, its 4 property, in any other way than transfers to the state 5 budget. 6 That is sufficient to make the observation that the 7 property is use for state non-commercial purposes. 8 That was everything for me. I now hand over to 9 Alexander Foerster for his final views. 10 Concluding submissions by MR FOERSTER 11 MR FOERSTER: Thank you, Ludwig. I shall try to conclude. 12 Let me just make the observation that there are two 13 parties for the state. We naturally support everything 14 that the Central Bank representative has said and then 15 I am aware that this presentation on merits took a long 16 time, it contained a lot of information, details and 17 maybe the judges ask themselves why is all of this 18 necessary. 19 Well, it is then useful to briefly sum what was said 20 during the last one and a half days and to repeat very 21 briefly what should be the most important take home for 22 the judges, normal pictures, normal codes. But what 23 I would like you to look once again is the enclosure 24 that the learned friends from Frank handed in yesterday 25 that highlights the structure for the parties and for</p> <p style="text-align: center;">Page 50</p>	<p>1 Mellon is entitled to securities of a certain kind and 2 number and not to certain identifiable securities. 3 Bank of New York Mellon thus has a claim for 4 securities. It is in Sweden but it belongs to Bank of 5 New York Mellon and nobody else. 6 The Central Bank has a claim against Bank of New 7 York Mellon for money and securities for a certain type 8 of value. This is regulated under the Global Custody 9 Agreement that is governed by English law. After the 10 Central Bank transfers money to Bank of New York Mellon, 11 a claim towards the bank is created relating to money, 12 the same why the same Central Bank has a claim for the 13 securities of a certain kind and value that are acquired 14 by Bank of New York Mellon. Kazakhstan is not part with 15 New York Mellon and they have no rights whatsoever 16 towards New York Mellon. 17 Kazakhstan, that is the state, only has a right 18 towards the Central Bank. It is the Central Bank which 19 holds a right of claim to the assets in the trust, that 20 is the assets belong to the Central Bank. The state has 21 a conditional claim for money in the Kazakh currency, 22 tenge, under certain conditions and for certain 23 purposes. The state can never benefit specific assets 24 and they do not have proprietary right to any specific 25 asset.</p> <p style="text-align: center;">Page 52</p>

<p>1 All these things are governed by Kazakh law and we 2 know that it was a tough exercise to understand this 3 foreign legal situation. But the Swedish court must 4 respect Kazakh law the way it is applied in Kazakhstan. 5 Kazakhstan thus does not own the property that is 6 subject to execution measures. Why then this long 7 introduction from yesterday and all the information 8 about findings from courts in other countries? Well, 9 certain questions have been settled in England. It has 10 been finally concluded that an arbitral award may not be 11 executed in the Netherlands. There was an attempt at 12 executing the arbitrary award without participation of 13 Kazakhstan and that failed because the assets were 14 considered to be protected under state immunity. In no 15 other country than Sweden it has been finally 16 established that the arbitrary award shall be executed. 17 An English court found that, if there was prima facie 18 evidence, that is sufficient written evidence, through 19 a deceptive way of acting from the appellant. 20 Now, when it comes to application of foreign right, 21 the Swedish court per se are not obliged to follow 22 a decision from foreign courts but one should respect 23 that courts are experts on applying their own country's 24 law. That is clearly what Belgian and Dutch courts 25 consider.</p> <p style="text-align: center;">Page 53</p>	<p>1 (12.20 pm) 2 THE CHAIRMAN: And now it's time for you to give your 3 presentation on the merits. 4 MR NILSSON: So I'm going to begin and then Ms Isaksson is 5 going to talk about the circumstances of the property 6 that has been attached, and we note that the property is 7 located in Sweden and belongs to Kazakhstan and not the 8 Central Bank, nor the National Bank, and then lastly 9 we're going to report on the circumstances that, in our 10 opinion, means that the Kazakhi side, that I'll talk 11 about also the investors in future. But it means that 12 the Kazakhi side cannot claim immunity, and that it is a 13 question of Kazakhi property and that this is a manager, 14 administrator for commercial purposes. 15 Just as the other side, as they were doing, in order 16 to put on these documents into context, we are going to 17 navigate in the border zone between opening statement 18 and closing statement, and I hope that you will allow us 19 to do that. 20 Just to briefly remind you what this case is really 21 about, it is the investors' attempts at finally get 22 compensation for a very flagrant breach of international 23 law that is Kazakhstan is guilty of. It is a breach 24 that has been established in an arbitration award by 25 an internationally renowned arbitration panel.</p> <p style="text-align: center;">Page 55</p>
<p>1 Finally, and this is important, to tell you what 2 goes on in other countries. Kazakhstan has good 3 reasons, good grounds, to have the objection of the 4 deceit to be assessed under the Convention in other 5 countries. If the objection of immunity and 6 particularly the customary law and interpretations of 7 the Convention, I will return to that in my closing 8 argument. 9 The gist of today is, one, the Central Bank of 10 Kazakhstan is regulated under the law. All common 11 Central Bank functions, such as the country's monetary 12 policy, establish official interest rates, control 13 inflation and control financial markets. Furthermore, 14 that the assets managed by the Bank of New York Mellon 15 are property of the Central Bank under the meaning of 16 the Convention and finally that those assets are being 17 used or are intended for use for state non-commercial 18 purposes and with that we end our presentation of the 19 merits. 20 THE CHAIRMAN: Thank you very much. It's now 11.20. 21 11.30 was the schedule, so we're fine. How about if 22 we meet 12.20, that way we are certain that we have 23 enough time this afternoon. 12.20 then. 24 (11.28 am) 25 (The luncheon adjournment)</p> <p style="text-align: center;">Page 54</p>	<p>1 This is an award that can no longer be appealed in 2 Sweden since the Svea Court of Appeal have decided on 3 the challenge and this is really what is of relevance to 4 the District Court. 5 The Kazakhi side yesterday during their 6 presentations wanted to make it look as if the investors 7 actually have failed everywhere except in Sweden in 8 their efforts to get justice, but that's not really the 9 case. 10 The circumstances in England are fairly complex, and 11 I'm just briefly going to touch on that, it is correct 12 that the award cannot be enforced there after the 13 investors had revoked their application for enforcement. 14 And background was fairly special, and the judge who 15 annulled the award in the case for revocation, the one 16 that the Kazakhis very gladly quoted yesterday. 17 In that decision the judge had said that the 18 judgment from Svea Court of Appeal appeared to him to be 19 disturbing, and he believed, in good Brexit spirit, that 20 an English judge could assess that same question at a 21 full trial, and that was decided. The investors were 22 not amused by being forced yet another time to go 23 through the exact same proceedings that had been 24 conducted at the Svea Court of Appeal, and that is why 25 they withdrew.</p> <p style="text-align: center;">Page 56</p>

<p>1 When the investors then wanted to discontinue, the 2 judge thought that it was so important for an English 3 judge to spread this lie around the world, so they would 4 not allow the discontinuation. I'm using, like, sharp 5 language here because there is actually a convention 6 that applies to the English courts as well. 7 Anyhow, this approach that should have 8 reached finality with the ruling and that Court of 9 Appeal luckily did not share that. In its courts 10 findings, the appeal court said: 11 "The parties are foreign. The dispute relates to 12 the investment in Kazakhstan. The arbitration was held 13 in Sweden and is subject to the supervision of the 14 Swedish courts and the law applicable to the parties' 15 disputes is not English law." 16 And in that light, the Court of Appeal have sensibly 17 said: 18 "In our respectful opinion, with all due respect to 19 the judge, he was wrong to conclude that this provided 20 a legitimate interest for the state in the continuation 21 of the proceedings." 22 And after that admonition by the Court of Appeal, 23 I think that you have to treat the statements by judge 24 in the previous case with a pinch of salt. And it's 25 also correct that in the other jurisdictions that the</p> <p style="text-align: center;">Page 57</p>	<p>1 Caspian Sea. Unfortunately, after the fall of the 2 Soviet fall they have been called kleptocracies. 3 They know that this is because there is a dominating 4 presidential powers in conjunction with extensive 5 corruption and lack of justice. 6 In Kazakhstan this has been personified by the 7 President, Nazarbayev, who was the old Soviet Republic's 8 last statesman and has stayed in power since then. Even 9 if he recently declared his resignation as President, 10 and also appointed his oldest daughter as the speaker of 11 the national assembly, and the exercise of power under 12 him has been arbitrary and promoting people who are 13 close to him. 14 This is a sad development. This exercise of power, 15 the investors got experience of this in the beginning of 16 2008, when different authorities in Kazakhstan under the 17 instructions of the President, and started what has been 18 mentioned in the arbitration award as a stringer. 19 The total lack of independence of these authorities 20 are illustrated by this. I'm sure that all these 21 institutions had lovely rules and regulations that 22 regulated their operations, but there is a difference 23 between the letter of law and the application of the law 24 when the President has made his wishes known. The 25 purpose of this campaign was to force the investors to</p> <p style="text-align: center;">Page 59</p>
<p>1 Kazakhi side listed there is no ruling that has gained 2 legal force. But the rulings in the first instance, 3 both in Italy and in the US, they mean that they found 4 that the arbitration award was enforceable and they 5 refer to the judgment of Svea Court of Appeal in the 6 challenge case. 7 That's all I'm going to say about the international 8 scene and I'm going to go back to the more simple 9 matters of fact. 10 First of all, about the parties, we heard the 11 Kazakhi side yesterday that Anatolie Stati was 12 considered, before the abuse by Kazakhstan started, 13 he was deemed to be one of the richest persons in 14 Moldavia, but unluckily he invested the best part of his 15 wealth in the prospecting and development of Kazakhi oil 16 and gas fields. And now he cannot himself, and neither 17 can the other investors, finance the very costly job it 18 is to fight a country with rich oil reserves, and it can 19 only be done by third party financing and that's how 20 they can continue their efforts to get justice. They do 21 not have any assets themselves since Kazakhstan has 22 confiscated the greater part of their assets. But 23 Kazakhstan is one of the so-called "stan" states, with 24 Uzbekistan, Tajikistan, Turkmenistan. These are former 25 Soviet republics that they are situated east of the</p> <p style="text-align: center;">Page 58</p>	<p>1 sell their assets at a lower price to the state company 2 MunayGas, which was controlled by the son-in-laws of the 3 President, Kulibayev. He is now a dollar billionaire, 4 as is his wife, and it has been speculated that he may 5 succeed the President. 6 Another speculation is that it would be one of 7 Nazarbayev's daughters. 8 I'll refrain from telling the court about all the 9 abuses that followed from Kazakhstan finally took the -- 10 all the property of the investors in Kazakhstan because 11 they had refused to sell it at a below cost price. 12 It is possible that the oil fields that constituted 13 the majority of the assets were difficult to value, but 14 the arbitrators were very cautious in their estimate of 15 the size of the award and the claim of \$3 billion was 16 perfectly realistic. 17 In that context, we can note that this alleged 18 fraudulent conduct that we have heard about in all the 19 jurisdictions and all instances, that referred to a 20 smaller part of the evidence that the investors invoked 21 for a small or essential part of the total assets that 22 was a gas plant that was in the process of being built. 23 There Kazakhstan said that our bid that this company 24 had given that that in turn had been affected by an 25 error in the reported invested sums. It is a pretty</p> <p style="text-align: center;">Page 60</p>

<p>1 long chain, and they alleged small instance has the 2 impact on the arbitration panel, but the Court of Appeal 3 did not feel that the award could be annulled even if 4 there had been an influence. This is the meaning of the 5 Court of Appeal judgment. 6 Just one single example of the arbitrary conduct by 7 Kazakhstan is that one of the investor's poor managers 8 was sentenced to four years imprisonment in a sham 9 proceedings. And a report on the details about this and 10 other arbitrary actions of the authorities were referred 11 to the arbitration award, exhibit 122. There's quite 12 a lot to read, but it's interesting but rather 13 interesting to see what were the realities like in this 14 country. 15 When it comes to the internal treatment in 16 Kazakhstan of people and their territory, and just as 17 they do not care about legal principle, they do not have 18 any respect either for their international legal rights. 19 After Kazakhstan had signed the Energy Charter Treaty, 20 often called ECT, the treaty gained force in 1998 when 21 it came to Kazakhstan, but this was before the investors 22 made their investment in the oil and gas industry of the 23 country. 24 Kazakhstan's purpose of entering into this treaty 25 was to get a necessary influx of capital in order to</p> <p style="text-align: center;">Page 61</p>	<p>1 We'll come back to the actual situation, what it's 2 like, but we can start by mounting that the idea of 3 a treaty is of course that it is to be complied with, 4 not that you're to force the individual parties to a lot 5 of arbitration proceedings. 6 We are going to look at how many arbitrations 7 Kazakhstan is involved in. There is a whole branch of 8 the state administration who are working with demands 9 for compensation. When it comes to this particular 10 case, it was the case that after the arbitration award 11 had been announced, Kazakhstan challenged it on other 12 grounds, at least one year before in an additional 13 lawsuit introduced these fraud accusations that the 14 Court of Appeal rejected. 15 So not complying with the award has nothing to do 16 with the alleged fraud. It's simply the case that 17 Kazakhstan does not want to pay. It might be natural, 18 but it is not very respectable. 19 This general account is for the purpose setting the 20 scene of what type of a conflict the District Court has 21 got involved in and has to handle. 22 The more immediate relevance and the circumstances, 23 we'll come back to them in our closing arguments, but in 24 a nutshell it is the view of the investors that the 25 state loses the right to invoke immunity, even if</p> <p style="text-align: center;">Page 63</p>
<p>1 modernise the oil and gas industry which had fallen into 2 disrepair under the Soviet era, and through accessing 3 the Convention and having then been subject of these 4 benefits, then they did not want to accept the 5 corresponding obligations. 6 According to the treaty, investors are to be treated 7 fairly and justly, there is a prohibition against 8 expropriation without any legal grounds. If there is 9 legal grounds, they have to pay prompt, adequate and 10 effective compensation, as it says in article 10. 11 The state commits to go to arbitration in case 12 there's a dispute. This says explicitly that 13 arbitration awards are to be immediately enforced by the 14 parties who have entered into the treaty, but Kazakhstan 15 does not accept this. 16 They did not want to comply with the arbitration 17 award, and they continued to obstruct in Sweden because 18 they have -- they want to reopen it, a petition for a 19 new trial. And now Kazakhstan, they are saying that 20 this is something which has been caused for very 21 particular circumstances regarding the investors. 22 But apart from that, Kazakhstan respects their 23 obligations under international law and they have even 24 presented a statement by the minister of the interior 25 entirely for that purpose and this is quite pathetic.</p> <p style="text-align: center;">Page 62</p>	<p>1 normally in other cases it would be -- it exists if they 2 are guilty of abusing rights. And with that we can move 3 over to number 2. That is the question of the location 4 of the property. 5 Submissions by MS ISAKSSON 6 MS ISAKSSON: In this part we have prepared a PowerPoint 7 presentation. We would like to hand that out. (Handed) 8 Here you will find material from our evidence 9 binder, most of what we want to present during today. 10 I hope there will be references to exhibits, enclosures, 11 and also the pages in our binder with evidence where 12 this has been copied from. The judges may of course 13 choose whether you prefer to look there or in that 14 binder, but it should be the same material. 15 Now, starting by the first and simplest part, in our 16 opinion, which is that the property is in Sweden, the 17 entirety, which is that it is available for attachment 18 for the Swedish enforcement agency. That should maybe 19 be obvious, it was obvious to the Swedish 20 District Court, and it also was obvious for the 21 enforcement officer, but this is still a challenge from 22 Kazakhstan, which is why we're going to run through 23 that. 24 But to start with, I would like to briefly 25 recapitulate the property that we deal with, that is the</p> <p style="text-align: center;">Page 64</p>

<p>1 disputed property. 2 That is in the first place, as we have heard, 3 securities, shares, in Swedish listed companies. Most 4 part of the property, the highest value, and then it is 5 also properties that relate to the shares: dividends, 6 liquidation from rights, refunding of tax and cash funds 7 on what we call the cash account, which is linked to 8 securities deposit with SEB in Sweden. 9 Said property is part of the Kazakh National Fund, 10 it is placed on accounts on SEB by BNY Mellon. And we 11 heard yesterday about a number of decisions for 12 sequestration and attachment. Surely they could have 13 been more clear than they are, these decisions from the 14 Swedish enforcement agency, but it is quite clear that 15 all the property somehow is connected to the securities 16 deposit, and the property linked to that and the cash 17 account. 18 There were no problems for SEB or the enforcement 19 agency to establish what this property is, regardless of 20 if it was shares, emission right or repayment of tax or 21 other things. 22 We shall look a little bit more in detail on the 23 investigation. 24 First, I quote from the Stockholm District Court, 25 saying that the property obviously is in Sweden. This</p> <p style="text-align: center;">Page 65</p>	<p>1 the shares. 2 BNY Mellon, who keeps a registry in England, writes 3 that the shares are kept with SEB in Sweden. Here we 4 can see that BNY Mellon declared in email to 5 Karl Guterstam in 2017 that some of the property is 6 being administered "at SEB in Sweden", and that is the 7 security account that was here. 8 This was October 2017. Some months later, there was 9 also -- it was expressed from BNY Mellon through 10 a witness submission used in England in December 2017 11 and it was James Ronalds who says these things in 12 paragraphs 26 and 33: 13 "BNY is not the immediate holder of GCA assets which 14 are securities, as in each case such assets are held 15 under sub-custodian or depository arrangements in the 16 relevant local market where the securities are changed. 17 Most securities are held through sub-custodian ..." 18 And the relevant local market in this case is SEB in 19 Sweden. In 33, once again, there is mention of 26 20 saying: 21 "It treats securities as being located in various 22 places around the world by reference to the location 23 where such assets are held ..." 24 So in our opinion there is no doubt that the shares 25 are located in Sweden, and that the enforcement agency</p> <p style="text-align: center;">Page 67</p>
<p>1 is from the final decision from the District Court 2 from January 20, 2018. The District Court writes that 3 BNY Mellon uses SEB to keep its customers' Swedish 4 securities. Thus the securities, the shares, are kept 5 in Sweden by SEB as a deposit for BNY Mellon. Whether 6 SEB has a role as an administrator and adviser is 7 irrelevant. The property was also de facto sequestered 8 by the enforcement office. The identified property 9 clearly is located in Sweden. 10 So, that it was de facto attached here, but when it 11 comes to the right to use attachment, then the objection 12 is that they are not in Sweden but in England. 13 Let us return to the legal aspects on Friday, but 14 very briefly the investors' position is that the shares 15 that we have here in Swedish companies, they are 16 available for attachment if the register is kept in 17 Sweden. The relevant register here is Euroclear's 18 combination registry or SEB's deposit registry. 19 Both of those registries are indisputably in Sweden. 20 The combination of accounts or registry, or whatever 21 we call it, that BNY Mellon keeps in England is not 22 relevant in this case. 23 The registries in Sweden are regulated under the 24 laws of Sweden. The shares are in Sweden, available for 25 attachment, just as the rest of the property related to</p> <p style="text-align: center;">Page 66</p>	<p>1 had the possibility and the right to attach them as 2 well, just as the rest of the property. 3 If we then go on to the property belonging to 4 Kazakhstan, in the first place, Kazakhstan, in the sense 5 of the Swedish law, illiquid assets may be attached if 6 it is clear that the property belongs to the owner. In 7 this case their evidence may be used to our discretion. 8 There's no special fact that stipulates that the 9 property belongs to the owner. Swedish law applies. It 10 might be important what different accounts, 11 denominations, there are and what is written in the 12 listing of the custodians in Sweden, and also where the 13 information comes from, and information submitted in 14 Swedish authorities in different legal contexts. And 15 that is mainly the kind of evidence that the investors 16 adduce. 17 The District Court in their case about sequestration 18 and the enforcement agency, both of them considered that 19 the property was in Sweden in the sense of the law. 20 The appellant's position has constantly been that it 21 does not belong to Kazakhstan, but it was a bit tricky 22 to decide whose the property actually is. 23 Until August last year, I believe it was, it was 24 contended that the property belonged to the Central 25 Bank, but then, at the meeting in the old</p> <p style="text-align: center;">Page 68</p>

<p>1 District Court, both parties changed their minds and 2 said that they do no longer say that the Central Bank 3 owns the property, those individual shares, but they 4 only have a claim towards BNC Mellon equivalent to the 5 worth of that property, and that BNY Mellon cannot 6 substitute other property for that. 7 So then it was BNY Mellon who owned that property. 8 But after that meeting both parties changed their 9 minds again, and then in the next statement they added 10 that as a second alternative it seems like the property 11 belongs to the Central Bank anyway, if it is considered 12 not to belong to the BNY Mellon. It is completely clear 13 that BNY Mellon considers that they are not the owners 14 of the property; nor does SEB, but nobody has said so. 15 Both of them say that they hold the property in 16 custody for somebody else. 17 Now, going on to the investigation, let us look at 18 some documents that we saw yesterday. Let me see if 19 I do this more swiftly. This is from the public listing 20 of custodians. I think we only looked at Handelsbanken. 21 Now we look at LM Ericsson. It doesn't really matter 22 which one you look at. And for whom is this custodian 23 account kept? I would like to direct you to the binder 24 with evidence, page 195. 25 Here we see on the first page what listed company</p> <p style="text-align: center;">Page 69</p>	<p>1 one of these 33 possessions that we deal with. 2 The rest of the possessions on this page is also for 3 BNY Mellon but they belong to other customers, which is 4 you can also see by the denomination of the accounts at 5 the end of each line. 6 Column 1, that is called "Pers/Orgnr", is also 7 interesting. 8 All of BNY Mellon's possessions on this page, and on 9 the next page, have unique ID numbers, we could call 10 them. It is not an organisation number or similar for 11 BNY Mellon; it is a unique number for customer with BNY 12 Mellon. Kazakhstan's unique number is 004 -- let me see 13 what it says. 586, it says -- this is a poor copy -- 14 dash 3180. If one looks at the following pages, and the 15 previous pages, exactly the same number is found on all 16 BNY Mellon's possessions marked with the minister of 17 finance of Kazakhstan. 18 Because outside sales, that when they are registered 19 with a custodian, there could be many custodians, and, 20 in the listing of the custodians, nothing can be seen of 21 if the person listed there is the owner or whether there 22 are several levels of custodians. 23 That could be like that in theory, but in this very 24 case Kazakhstan is listed in the listing, and also on 25 the SEB deposit account. And we happen to know that</p> <p style="text-align: center;">Page 71</p>
<p>1 this is: it is LM Ericsson. There are different 2 information on the following pages. 196, we can see the 3 portfolio that BNY Mellon holds with a custodian, and on 4 the next page we see in the portfolio that BNY Mellon 5 holds. And what is interesting on page 196 is the two 6 first columns. We looked at them yesterday, 2, column 7 number 2, with name, postal address. 8 Here the parties agree to what we call the account 9 denomination. That abbreviation represents Bank of New 10 York Mellon London. It is a branch that handles that, 11 and Ministry of Finance of the Republic of Kazakhstan. 12 There's also no doubt that the address is to 13 Kazakhstan's ministry of finance, not to BNY Mellon nor 14 to the Central Bank. 15 On this slide, in the PowerPoint presentation, there 16 is also a reference to the address to the 17 Minister of Finance, but that is undisputed. 18 This means that in this account listing there is 19 more than only the name of SEB's customer, BNY Mellon. 20 We also read Kazakhstan's minister of finance, and that 21 means that in this case, with the custodian BNY Mellon, 22 the real owner is identified: the 23 Republic of Kazakhstan. 24 All shares registered with a custodian have 25 an equivalent marking in the listing, as here, for each</p> <p style="text-align: center;">Page 70</p>	<p>1 Kazakhstan itself is not a custodian for anybody else 2 account. Kazakhstan must be the ultimate actor, that is 3 the owner of the securities. 4 Other parties have also understood the information 5 in the listing of custodians in this way, which is that 6 Kazakhstan is the owner the shares. We saw this image 7 yesterday too. It is from a prospectus from a emission 8 in Electrolux from 2016, I believe. In this prospectus 9 it is written under "Major shareholders": 10 Ministry of Finance, Republic of Kazakhstan. And this 11 information about shareholders is obtained from the 12 central depository from the -- or from the listing of 13 custodians or -- so this the same information as from 14 the listing of the custodians. So clearly the persons 15 responsible for this prospectus understood from the 16 denomination of the account, and from the information 17 with Euroclear, and in the listing the custodians in 18 such a way that it is the Republic of Kazakhstan who 19 owns the shares. 20 The SEB bank, SEB, communicated with the enforcement 21 agency and declared that it was Kazakhstan who was BNY 22 Mellon's customer. That is not the Central Bank. This 23 is an early communication, just a week or so after the 24 sequestration decision was handed down by the Stockholm 25 District Court, and when the enforcement agency started</p> <p style="text-align: center;">Page 72</p>

<p>1 to search for a property belonging to Kazakhstan. 2 It is email from a person called Lundahl with SEB 3 bank, writing that the Bank of New York Mellon opens 4 a deposit using an accredited name and address. He says 5 that an injunction should be directed towards Bank of 6 New York Mellon to find out about their customer, which 7 is the Republic of Kazakhstan. 8 If we now examine the deposit account with SEB, 9 statement of securities, that BNY Mellon has, we saw 10 yesterday that the account denomination includes the 11 same information about BNY Mellon and the Kazakh 12 Ministry of Finance as in the listing of the custodian. 13 When it is not so abbreviated we can see the full name 14 of the Ministry and the Republic, and we see that BNY 15 Mellon is designated as the account holder. 16 Also later in April 2018, we have correspondence 17 with the Central Bank's representative in the attachment 18 case confirming that BNY Mellon is not the owner in the 19 deposits held with SEB, but that BNY Mellon is 20 an intermediary who acts on behalf of a client. 21 It says as follows: 22 "In order to keep these securities we have asked SEB 23 to open segregated deposits in the system for their 24 clients. Such deposits were opened in BNYM's own name 25 for customers' behalf and there were abbreviated names</p> <p style="text-align: center;">Page 73</p>	<p>1 to get more in 2016. These are tax reclaims for BNY 2 Mellon Kazakhstan on 2 August 2017. 3 In this case we have submitted attachment S22. This 4 is whole bunch of documents to do with these taxes. We 5 have submitted -- and when we got them they are not very 6 well structured, but we did not want to break up this 7 bundle, but we wanted to show you what they look like. 8 We're going to start on page 242. 9 Here we can see one of the application forms. This 10 is the tax agent's standardised form, and this reflects 11 what SEB said to the enforcement agency, that 12 Kazakhstan, through the Ministry of Finance, which is 13 the applicant. And here it is confirmed that the 14 applicant at the relevant time was the owner of the 15 shares, in that they ticked the box at the Roman number 16 iii, whilst the applicant at the time is listed under 4, 17 and the bank owner of the stated shares, "yes" has been 18 ticked. 19 The form that we looked at yesterday in the National 20 Bank's presentation was the corresponding form but it 21 was empty, it was not filled in standard form, where you 22 couldn't see that this box had been ticked. So this is 23 what it looks like on the application forms that exist, 24 and then the resulting decisions that I have pasted in 25 here where the tax agency decides to repay tax dividends</p> <p style="text-align: center;">Page 75</p>
<p>1 for customers and addresses designated by BNY Mellon." 2 Thus BNY Mellon is not registered in SEB's deposit 3 system as owner of the securities kept in those 4 deposits, but is an intermediary with possessions for 5 an underlying customers' behalf. 6 We have this that is called the segregated deposit 7 for securities for BNYM's underlying customers. That 8 means that each underlying customer's deposit has 9 a specific and individual name that BNY Mellon has 10 chosen. And the fact that each customer's position is 11 identifiable and possible to distinguish when it comes 12 to the number of shares of a certain kind in the 13 respective consolidation company. 14 It is not just the SEB's account descriptions that 15 name Kazakhstan as owner but on instructions by Bank of 16 New York Mellon Kazakhstan they applied for a tax 17 reimbursement on tax on dividends, and they do that with 18 the support of the general taxation agreement between 19 Sweden and Kazakhstan. And here we can see an email 20 from SEB to the enforcement agency from 21 21 September 2017. Here the enforcement agency informs 22 SEB that they are going to pay Kazakhstan back taxes, 23 and that we expect further credit in that relate to 24 dividends in 2016, and SEB has received two tax reclaims 25 from BNY/Kazakhstan on 22 August 2017, and they expect</p> <p style="text-align: center;">Page 74</p>	<p>1 for the applicant, Ministry of Finance of the 2 Republic of Kazakhstan. 3 So this is what that looks like. 4 In each and every one of these decisions, there are 5 41 decisions about tax refunds, and this was applied for 6 during the period 2016 and 2018, and these are decisions 7 that have been communicated. This is on appendix S22 8 and S45. I'm not going to look at any more of these. 9 But there are more documents and this appendix 22 10 that are of interest, and they show that Kazakhstan was 11 authorised to dispose of the property. 12 Let's go to page 228. 13 There we see that the republic of Kazakhstan has 14 issued a power of attorney for BNY Mellon to open 15 accounts in local banks and deal with tax issues. Then 16 under item 5, and also to exercise voting rights: 17 "To represent us and act for us with respect to the 18 exercise of all voting rights in our place and stead, 19 including the completion and execution of required 20 documentation, and to cast our votes and attend 21 shareholders meetings, all on our behalf in accordance 22 with our direction ..." 23 And here it is not account technicalities, but this 24 is about exercised voting rights, which is a typical 25 share owner's rights. This document was used before</p> <p style="text-align: center;">Page 76</p>

<p>1 Swedish documents in order to get a tax reimbursement, 2 and this is to show that it is Kazakhstan who is acting 3 here. And this power of attorney, with what Kazakhstan 4 said that they do not have the right of disposal, the 5 ownership right. 6 On page 22, on page 244, for example, we have 7 a certificate of domicile to be used for tax purposes 8 for the Republic of Kazakhstan and it is Kazakhstan that 9 this is about. It was issued by the Ministry of 10 Justice -- sorry, Ministry of Finance, and it is also 11 clear from documents in the same appendix that 12 applications have been made by BNY Mellon and SEB bank 13 and this is clear from pages 238 and 239. 14 In 238, we see an example where Bank of New York 15 Mellon have sent documents to SEB for an application for 16 the repayment of tax. These are three forms, or 17 application forms, which are about Kazakhstan. Ones 18 that have been marked here are crossed out -- deleted, 19 that are about other clients that of no relevance to 20 this case, and they're asking SEB to handle this. And 21 then on the next page it is SEB's correspondence with 22 the tax agency where they attach applications from BNY 23 Mellon that these are the documents that tax refund is 24 based on. 25 The National Bank and Kazakhstan have said that it</p> <p style="text-align: center;">Page 77</p>	<p>1 "The beneficial owner's tax status in their country 2 of residence ..." 3 "Tax exempt" 4 And "full name of the beneficial owner", 5 "Ministry of Finance of the Republic of Kazakhstan." 6 Then a bit further down, just below that box the 7 declaration is valid for all the sub-custodian customer 8 accounts, also all accounts that the client might open 9 with the Bank of New York Mellon. 10 So here we can see that it has been clarified that 11 it is not the National Bank that is the beneficial 12 owner, but it is the Ministry of Finance of the 13 Republic of Kazakhstan. And this application form came 14 from BNY Mellon there when they opened their account 15 with BNY Mellon. 16 You should remember when it comes to these documents 17 that there are large number of professional advisers, 18 and lawyers and financial advisers, and it would be 19 strange that it would be a mistake if these people did 20 not keep track of the legal subjects that they act on 21 behalf of. 22 We're going to take a look at what BNY Mellon says 23 about who owns the property in the National Fund. 24 This comes from what has been said in an English 25 court, that the property's owned by Kazakhstan. This is</p> <p style="text-align: center;">Page 79</p>
<p>1 was a mistake, that it was Kazakhstan and not Kazakhstan 2 that were listed in this, and they don't really -- there 3 was the Kazakhstan National Bank this was listed here, 4 it's not just one mistake. This is clear from another 5 document, that is the document that shows when 6 Kazakhstan as an owner opened a new account with 7 BNM Mellon, and this has been filled in by the National 8 Bank, appendix 123, which is on page 279. 9 So this form has been filled in by the National Bank 10 and they have used what it says in the left hand corner, 11 "New account opening request", and you can see further 12 down name of the legal entity, the National Bank of 13 Kazakhstan, beneficial owner, Ministry of Finance of the 14 Republic of Kazakhstan. And then on the following pages 15 that I'm not going to report on, it's about asset 16 manager, and it is about the account, currencies, 17 et cetera. But on page 4 there is an interesting piece 18 of information at the top, top left hand corner, which 19 is the one you can see here marked in the yellow on the 20 presentation. 21 There is a question: 22 "The client is the beneficial owner of the 23 securities held in the sub-custodian custody account." 24 The client here is the National Bank that opens the 25 account and it has been filled in "no":</p> <p style="text-align: center;">Page 78</p>	<p>1 one of -- if not one of the latest statements made by 2 BNY Mellon from March 2019 and I have cut out a section 3 where it says what -- how BNY Mellon understands the 4 National Fund: 5 "The National Fund is exclusively owned by the 6 Republic of Kazakhstan... 7 NBK is not capable of owning any assets of the 8 National Fund which are not owned by the 9 Republic of Kazakhstan. 10 During the currency of the TMA (Swedish spoken), 11 the Republic of Kazakhstan nevertheless has the ability 12 to control and/or significantly influence the management 13 of the assets of the National Fund..." 14 Yesterday we saw and we heard BNY Mellon had a very 15 cautious position that was their initial position, but 16 in later documentation and also after then they have got 17 assistance and got legal statements. They have 18 clarified their position like this. Item 2 has been got 19 from legal opinion of experts on Kazakhi law. 20 THE INTERPRETER: Sorry, I can't get the name. 21 MS ISAKSSON: Appendix S25, it's by Arman Shaikenov and 22 Andrey Kozik. 23 BNY had got expert assistance and got their whole 24 understanding of this whole thing. 25 They were also quite clear in an earlier statement</p> <p style="text-align: center;">Page 80</p>

<p>1 before the Belgian court from August 2018 slightly 2 earlier. Here they say firstly: 3 "Firstly, the GCA shows that the NBK acts as trust 4 manager for the National Fund and that BNYM holds cash 5 and held securities of the National Fund as custodian 6 and banker." 7 That is, it is the National Bank acts as a trust 8 manager, and that BNY holds cash and securities as 9 custodian. 10 "Further, it is not contested by RoK that RoK is the 11 owner of the National Fund and therefore is the owner of 12 the securities that BNYM held and of the cash that it 13 still holds. 14 "This is explained by the fact that, contrary to the 15 trust under Common law, the trust under Kazakh law does 16 not entail any transfer or ownership of assets entrusted 17 to the trust manager. This legal construction only 18 confers the trust manager the right to manage the 19 entrusted assets." 20 Note 14 refers to this expert statement, the 21 statement by Shaikenov and Kozik that I just mentioned, 22 the judgment of 25 May 2018, and then there is a quote 23 from that: 24 "It follows that BNYM currently holds cash of the 25 National Fund, which is belongs to the RoK."</p> <p style="text-align: center;">Page 81</p>	<p>1 May I have another ten minutes? So I thought 2 I would finish before we take a break. 3 We then go to the investigation that shows that the 4 property belongs to Kazakhstan, even under Kazakhstan 5 law. 6 As Ms Ahrel will say in a little while, this 7 property is state property administered by the Central 8 Bank. We can see that, amongst other things, from the 9 Budget Code, article 21(1), saying that: 10 " National Fund of the Republic of Kazakhstan, 11 presents the state assets in the form of financial 12 assets, accumulated in the account of the Government of 13 the Republic of Kazakhstan in the National Bank..." 14 And let us also look at the Presidential decree 402 15 once again, item 1, expressing also that the assets of 16 the fund belong to the Kazakh state through the 17 Government, the same phrasing: 18 "The Assets of the fund are accumulated on the 19 account of the Government of the Republic of Kazakhstan 20 in the National Bank..." 21 And item 2, that the funds assets are managed by the 22 National Bank: 23 "The Fund's assets are managed by the National 24 Bank." 25 Continuing to items 3 and 4, they should that the</p> <p style="text-align: center;">Page 83</p>
<p>1 And note 15 refers to a ruling in May 2015. It's 2 SO6, which is also in our binder of evidence, also from 3 a Belgian court. 4 So BNY Mellon, that they do not own these assets and 5 it is the Republic of Kazakhstan that does, that we 6 believe that this is supported by BNY Mellon's 7 understanding as that has been expressed in different 8 proceedings. 9 And, as we know, the Stockholm District Court 10 arrived at that, and we have included the conclusions 11 from the Stockholm District Court from their final 12 decision on 24 January 2018 where it says that the 13 property is part of the National Fund, which is 14 administered by the National Bank. And it says that 15 there is nothing in Presidential decree number 402, or 16 in the National Fund agreement, that shows that the 17 ownership right to the funds has been transferred to the 18 National Bank, that there is no statutory(?) agreement 19 between Kazakhstan and BNY Mellon who manage the funds 20 on instruction of the National Bank. And that does not 21 have -- and is of no importance and in the 22 District Court it has been shown that Kazakhstan is the 23 owner of the funds in question, and that would conclude 24 this section. 25 Now, let me see how are we doing time wise.</p> <p style="text-align: center;">Page 82</p>	<p>1 President rules over how the property shall be used and 2 that the government annually shall report to the 3 President how the funds have been used: 4 "The size and directions of the use of the Fund are 5 determined by the President based on the proposals from 6 the government..." 7 And item 4: 8 "The Government ... annually submits for approval to 9 the President an annual report .. on the formulation and 10 use of the Fund." 11 So even if the Central Bank manages, it means the 12 President has the right to decide. 13 The Central Bank's role is under instructions from 14 the Government or Kazakhstan. We have called it many 15 different ways: amongst other things, discretionary 16 management or trusteeship management. 17 Here we see the National Fund agreement. 18 It has submitted in two different English versions 19 by the Kazakh side. We base this on the first version, 20 where this is called asset management, that is the 21 management of assets. And then the Kazakh side makes 22 reference to the second version which they submitted 23 that instead uses the expression "trust management" and 24 use that as an argument saying that this is a Kazakh 25 trust. I don't believe that the translation determines</p> <p style="text-align: center;">Page 84</p>

<p>1 whether it's a trust or not, and we will hear more about 2 why this is not a trust, in the sense of Kazakhstan. 3 But rather this is management for somebody on somebody 4 else's behalf. That is the firm position from the 5 investors. And we have heard both about the Central 6 Bank's role in the management and the asset managers who 7 gave advice on the investments that would be made, and 8 so on. And it is not a matter of trust, in the sense 9 that it could have under the laws of Kazakhstan, nor has 10 the republic handed away the possibility to use the 11 assets. 12 We shall also look at the additional -- the addendum 13 to the National Fund agreement, item 1.1, which says 14 roughly the same: 15 "The Government transfers Fund's assets to 16 management and the Bank undertakes the obligation to 17 carry out asset management for the benefit of the 18 Government by investing the assets into financial 19 assets." 20 And we could also look at the Global Custody 21 Agreement, expressing: 22 "Client is carrying out certain trust management 23 services with respect to the certain securities of the 24 Republic of Kazakhstan (the National Fund) ..." 25 That is the National Fund contains assets in the</p> <p style="text-align: center;">Page 85</p>	<p>1 THE CHAIRMAN: Indeed we had planned a break at 2.30, 15 2 minutes, but if we have space for an extra break, or do 3 you want to go directly? 4 MR NILSSON: We could -- 4.30. It's three hours left. We 5 would have time for two breaks. We assure you that. 6 THE CHAIRMAN: 15 Minutes. 7 MR NILSSON: Yes. 8 (1.25 pm) 9 (A short break) 10 (1.45 pm) 11 THE CHAIRMAN: It seems like everybody is present. 12 Submissions by MS AHREL 13 MS AHREL: Thank you. If you do not mind, I will stand up. 14 I hope that the recording works. I will speak louder if 15 there should be a problem. 16 Yes, I shall speak about the part of our 17 presentation of merits that concludes that the property 18 is not immune against enforcement. 19 First, a short background, first about the 20 principles of immunity, state immunity. We have already 21 heard that from the other side, and also at the bit at 22 the parallel development of the so-called sovereign 23 wealth funds and the possible implications of that. And 24 then before 19C and 21C, I will also speak rapidly about 25 the AIG case that we heard about. We heard about that</p> <p style="text-align: center;">Page 87</p>
<p>1 form of securities belonging to Kazakhstan and it is the 2 client that is the Central Bank which manages the 3 assets. And to finalise this section we are going to 4 show the conclusions from the experts, Shaiken and Kozik 5 from the previously expressed statement S25, relating to 6 the ownership of the positions. 7 Their conclusion is that the Central Bank does not 8 own the possessions under Kazakh law. They say under 9 22: 10 "The National Fund is distinct from the National 11 Bank in the sense that the National Bank is not an owner 12 of the National Fund." 13 And under item 42 they express: 14 "Indeed, as it is stated above, under the Contract 15 the National Bank has rights to 'possess, use and 16 dispose of the National Fund' with the Government as the 17 beneficiary. However, the Republic of Kazakhstan 18 remains to be the owner." 19 They thus observe that the National Fund is separate 20 from the Central Bank in such a way that the bank does 21 not own the National Fund; it is the Republic which 22 remains as the owner. And it is the Central Bank, what 23 they can do is they can possess, use or dispose of the 24 possessions but not possess them. And with that I end 25 that section. Maybe I propose --</p> <p style="text-align: center;">Page 86</p>	<p>1 yesterday, but we will hear about that again. 2 So first about the development about immunity. 3 In the western world countries we heard yesterday 4 that the principle of state immunity has progressed from 5 absolute immunity towards restricted immunity. And to 6 that we could add that it is -- they are two different 7 immunities: it is enforcement and jurisdiction and in 8 the western world the principle of immunity also works 9 against enforcement. And in the state practice has 10 worked towards a restrictive theory, that is clear from 11 the proposition, amongst others. 12 Customary rights and the extent of that, we will 13 return to that in our closing arguments, and whether 14 articles 19 and 21 are covered customary law, because we 15 agree with the other party that the UN Convention has 16 not entered into legal force, nor has the Swedish law, 17 which means that it is Swedish jurisprudence which 18 determines the effects of the customary law. 19 The development that has taken place in parallel, 20 since we're now, during the latter years, have gone 21 towards a restrictive state immunity, mean that there 22 are more and more so-called sovereign wealth funds. 23 They can be described as commercial investors which 24 act in order to gain purely financial gains, instead of 25 having a political agenda. For all of these sovereign</p> <p style="text-align: center;">Page 88</p>

<p>1 wealth funds consist of the surplus means from a state 2 that are placed or handled somehow, and they are 3 collectively known as sovereign wealth funds. 4 They exist in different forms, some are legal 5 persons, some are not, but the fact is that nowadays 6 there are quite a few of them in the world. 7 The Norwegian Oil Fund is one example, the Kazakh is 8 another one. 9 If we look at the list of the major sovereign wealth 10 funds we see that the Kazakh fund is ranked 25. 11 The reason why they want to see themselves as 12 commercial investors is that, since these are state 13 money that is being invested, for instance the Chinese 14 funds -- the Chinese money is probably the world's 15 largest funds -- if they were invested in US companies, 16 there would be problems, if they would be considered to 17 be linked to the States. For that reason they are very 18 careful about saying that, no, these are only purely 19 commercial investments. 20 And, as far as we're concerned, we observe that the 21 property, as barrister Isaksson previously defined, with 22 bravura, is part of the National Fund, that is it's part 23 of a sovereign wealth fund. 24 The funds, the National Fund, will be looked at 25 under evidence in a little moment, that has been handed</p> <p style="text-align: center;">Page 89</p>	<p>1 that the English judge -- what did he have to do? He 2 had to interpret English procedural laws. It was a set 3 up. Now, I'm bad at English but my understanding is 4 that, and please correct me if I am wrong, it was not 5 a standard litigation; it was some kind of sequestration 6 process. So in that case it was the English procedural 7 law which were instrumental for the English judges' 8 findings. And, once they had done that, they 9 interpreted the English State Immunities act, besides 10 based on common law constructions. That is, in England 11 there is a law which the court interpreted. 12 Item number 3, they interpreted the concept of 13 property. Property under the laws of England has 14 a different sense than under the laws of Sweden, when we 15 speak about property. 16 Item D, ambassador's statement. Under the Immunity 17 Act, which is, how shall I say it, it's proof of what 18 the position is used for. There's a possible for an 19 ambassador to issue a written statement declaring 20 whether this property is used or not, and for what 21 purposes. That had been submitted in that case, and the 22 judge gave importance to that. 23 And finally there are also some considerations that 24 deal with finance politics, and the English judge says, 25 as he phrased himself:</p> <p style="text-align: center;">Page 91</p>
<p>1 over to management by some of the world's largest 2 capital managers for active management. 3 As I said, I will return with evidence on that. 4 Now, before article 19, a few words about the AIG 5 case. 6 Why do we contend that AIG is of no importance in 7 this case? Well, that is chiefly for two reasons. One, 8 the factual circumstances are completely different; and, 9 two, it is a different legal context, where the AIG case 10 was settled. 11 Very briefly, one can say that, about the factual 12 circumstances being different, we heard different: that 13 it was alleged that they're completely identical. That 14 is not the case. We know that in our case we have power 15 of attorney from the Republic that signals who actually 16 rules over the shares. There are application forms or 17 applications for tax repayment and the crucial 18 difference is that BNY Mellon has intervened in cases in 19 Belgium, and there's a part 8 and part 7 proceedings in 20 England where they have declared their position. 21 And number 4, if one looks at AIG case items 28 to 1 22 and 2, here it was a matter of money on an account that 23 would be attached et cetera and that the shares, the 24 security, Kazakhstan actually agreed to that. 25 Now, about number 2, the legal context. Here we see</p> <p style="text-align: center;">Page 90</p>	<p>1 "The assets of the Central Bank would be an obvious 2 target for the enforcement process and in relation to 3 judgments against the state or its Central Bank. This 4 might lead to unwelcome and perhaps embarrassing 5 litigation in the UK courts." 6 And he goes on, so one can see that the fact is that 7 London being a financial centre has influence on this 8 case. 9 And finally we observe that the AIG case, according 10 the minister for justice, Mr Tayus(?), as a witness, 11 they actually reached a settlement, even after that 12 judgment. And that was in the first instance, and 13 I actually shouldn't need to say that, if you say 14 "trust" to an English trust he has completely different 15 legal connotations than if we say that in Sweden. 16 If we then move on to what's interesting here, 17 article 19(c) and article 21(1)(c). I suggest 18 I organise myself this way: I start with article 19(c) 19 and discuss whether the property is used for commercial 20 purposes. And under this item I have three main parts, 21 and they are linked to the different portfolios that we 22 heard about before today. 23 And under article 21, where my point is that the 24 property does not belong to the Central Bank under the 25 spirit of the Convention, there will be five items. And</p> <p style="text-align: center;">Page 92</p>

<p>1 then, finally, I will argue that Kazakhstan has lost its 2 right to claim immunity because of an abuse of the law. 3 I then start with article 19. It is the text from 4 the Convention. You have seen this before today. We 5 heard barrister Ludwig Metz tell us today that there are 6 three elements. And, as far as we are concerned, I will 7 focus on the first of these elements, and I will briefly 8 call that commercial purposes. 9 What I mean by commercial purposes is the full 10 phrasing, which says: 11 "... the property is specifically in use or intended 12 for use by the State for other than government 13 non-commercial purposes..." 14 That is it is being used or it's intended to be used 15 for commercial purposes, and I said "commercial 16 purposes" to avoid the double negation. 17 Elements 2 and 3, which deals with the property 18 being in Sweden, and that it is related to the unit. 19 I will oblivate(?) that because barrister Isaksson 20 explained that it is already in Sweden. And, in the 21 second place, that it is not disputed from the other 22 side that the possessions are related to the state, 23 since the arbitration and other processes have always 24 been against the Republic of Kazakhstan. 25 I shall return -- we shall return to the nature and</p> <p style="text-align: center;">Page 93</p>	<p>1 account was opened in 1996 with about \$1 billion in 2 proceeds from the sale of 20 per cent of the Tengiz oil 3 field to Mobil. In his revelation to parliament in 4 April 2002 about the existence of this account, Prime 5 Minister Tasmagambetov reported that its purpose was to 6 prevent inflation and that in 1997 it paid pension 7 arrears and helped stabilise the currency after the 8 devaluation of the Russian ruble. He also admitted that 9 other foreign bank accounts in the President's name 10 existed." 11 So what was it that gave rise to this revelation by 12 Prime Minister Tasmagambetov to the Parliament in 2000, 13 but it is clear in the report that is summarised here. 14 The reason was that a couple of years before in '99, the 15 justice department had initiated an investigation about 16 a James Henry Giffen, an American adviser to the 17 President Nazarbayev, what was his role in the sale of 18 the Tengiz fields? Giffen was later prosecuted for 19 bribery because of his involvement in the transfer of 20 payments from oil companies to bank accounts in 21 Switzerland. This was called Kazakh-gate in the media, 22 and during that investigation the Kazakhi leadership 23 felt it was safer to transfer the assets to Kazakhstan, 24 and they were in a hurry. In July 2000, the President 25 told the -- said that they were going to develop a</p> <p style="text-align: center;">Page 95</p>
<p>1 purpose as mentioned earlier today in the closing 2 arguments, but at this point we should notice that the 3 text of the law, the text of the Convention, actually 4 expresses that it is in use or intended for use. 5 So first in this part I will discuss that, and argue 6 that the National Fund consists of the stabilisation and 7 savings portfolio. We have heard this before today, so 8 we agree on that, but I will speak about that because 9 I'm not completely certain whether our conclusions are 10 the same. And before we plunge into the stabilisation 11 and savings portfolio, I consider that it is once again 12 useful to return and explain what the National Fund is, 13 where does the means come from and how was it created, 14 particularly since we heard several times today that it 15 was mimicked on, based on the Norwegian fund. 16 There is no doubt that the first deposit in the 17 Central Fund cam from Kazakhstan, but the background is 18 a bit peculiar. And I would like to quote from the 19 report written by Svetlana Tsalik. It is headed -- 20 interpreter did not hear the heading. I refer to the 21 evidence binder, page 275, and this deals with, as 22 you know, that the fund was created in 2000 and this 23 deals with what happened just before and after: 24 "Nevertheless, oil money was set aside in a secret 25 Swiss bank account tied to President Nazarbayev. The</p> <p style="text-align: center;">Page 94</p>	<p>1 new -- come up a with new proposed legislation. And 2 a week later he informed the Parliament that the first 3 deposit was going to be the proceeds from the sale of 4 the Tengiz oil field. And less than two months later, 5 in 2003, the Presidential Fund was formed. The first 6 deposits were made in 2001 and 2002, and you can say 7 that from 2002 the National Funds are in the 8 Government's account in the National Bank, rather than 9 in secret Swiss bank accounts. 10 And then whether the Presidential decree 204 came, 11 the President also ordered that the legislation was to 12 be adapted to the forming of the National Fund. And we 13 can see this in the Budget Code, which code, it's 14 chapter 5, formation use and management of the National 15 Fund of the Republic of Kazakhstan, article 21. And we 16 have already heard this read to us today. 17 "National Fund of the Republic of Kazakhstan 18 presents the state assets the form of financial assets 19 accumulated in the account in the [National Bank]." 20 Here in this Budget Act from 21.3, we saw earlier 21 that there was talk about two functions, savings and 22 stabilisation. And I'm not going to read that, we have 23 already heard that today. 24 That there is stabilisation portfolio and a saving 25 portfolio. I think it is exactly the same references</p> <p style="text-align: center;">Page 96</p>

<p>1 that we are using as the other side, but it is a fact 2 that it cannot be denied that there is a stabilisation 3 and a savings portfolio, obviously. 4 And further is the resolution of the board of the 5 National Bank, where they also talk explicitly about 6 a savings portfolio, a stabilisation portfolio: 7 "A savings portfolio is a portfolio whose purpose is 8 to increase the return on assets in the long term. 9 Stabilisation portfolio is a portfolio aimed at 10 providing liquidity of assets and increasing 11 profitability in the short term." 12 So they have two different purposes, two different 13 goals of these portfolios. One is to maximise profits 14 in the long term, and the one is to provide liquidity in 15 the short term, and to be used as necessary. 16 Having these two portfolios, they are not just on 17 paper, it's not just a theoretical division for some 18 higher purpose. It is clear from the National Bank's 19 report from 2017 that, at first, this whole section is 20 about these two portfolios. The savings portfolio here 21 first, but it says first: 22 "The market values of the stabilisation and savings 23 portfolios within the foreign currency portfolio of the 24 National Bank equalled USD 7.9 billion (13.6 per cent) 25 and USD 50.4 billion (86.4 per cent respectively.)"</p> <p style="text-align: center;">Page 97</p>	<p>1 of assets of the National Fund. It's marked in yellow: 2 "The market value of stabilisation and savings 3 portfolios within the monetary portfolio of the fund 4 constituted ..." 5 This is for Q3, 2014 and it's a report on the 6 results of the fiduciary management. And here it is 7 3.5 billion in Swedish, they say it in the English, 8 billions in the English, and 49.5 billions in 9 Swedish.billions, billions of dollars. 10 So how are they managed? And from this report 11 I would like you to look it up in our binder, which is 12 page 438. 13 On page 438 there is the actual table that I'm going 14 to look at in a moment, but in the preceding page you 15 can see the heading of the table, which is table 9, 16 "Savings portfolio management". And on this page you 17 can also see that this whole section, the heading of 18 this section is "The profitability of the savings 19 portfolio". And if we move to table 9, on the left-hand 20 column we can see the heading "Management", and then the 21 next column is "Market value". 22 I'm going to talk mainly about the first two ones. 23 Under "Management" we have three headings in bold print, 24 "Global fixed income bonds", "Global stock" further 25 down, and at the very end, "Global tactical distribution</p> <p style="text-align: center;">Page 99</p>
<p>1 So we see that the savings portfolios is the much 2 larger part which is 86.4 per cent, whereas the 3 stabilisation part is the smaller part of 31.6 per cent 4 and then we see: 5 "In 2017, the return on the stabilisation portfolio 6 was 0.83 per cent, during the same period the return on 7 the benchmark portfolio ..." 8 Sorry, we cut that. There should be -- it's first 9 talking about the return on stabilisation portfolio, and 10 then it's talking about the return on the savings 11 portfolio, which was in 2017, and the saving portfolio's 12 return was 9.41 per cent, which is to be compared with 13 0.83 per cent. So we have established that the 14 stabilisation and savings portfolio exists and they 15 serve different purposes. They consist of different 16 types of assets, they're managed in different ways, and 17 they are valued and evaluated separately. 18 Now we'll move onto the second part, which is about 19 whether the property is part of the savings portfolio. 20 We can see it, not least here in the report. This 21 is for Q3, 2017, and I prepare all the translations. 22 Here is yet another translation that they use in 23 Kazakhstan for trust management. They call it -- the 24 interpreter didn't get that. 25 Here we can see this section is that the structure</p> <p style="text-align: center;">Page 98</p>	<p>1 of the assets". 2 Under this first "Global fixed income bonds" we see 3 a line with "Asset manager", "Pictet" and "Mitsubishi", 4 "Union Bank", "Deutsche", et cetera and then line 6 is 5 the National Bank of Kazakhstan. 6 So we saw that the value of the savings portfolio at 7 Q3, 2017, is 49.5. That was clear from the previous 8 slide. Out of those 49.5, that this table summarises in 9 total, the total -- we don't have a total sum at the 10 end, but it is 49.5 if you add them up. But out of this 11 49.5 the total assets of the savings portfolio, those 12 26.9 are managed by the National Bank itself, and the 13 remaining 22.5 billions are managed by this external 14 asset managers. 15 For our -- what's relevant to us is to look at the 16 second heading, "Global stock", and here we can see in 17 "Global stock" that it is equities, shares sometimes 18 called securities. It depends on how broad a concept 19 it's supposed to be. But here they mention 5 managers: 20 State Street Global and UBS, HSBC, Citibank, JP Morgan 21 Asset Management. Some of the world's largest capital 22 asset managers. 23 So the question that arises, when you look at this 24 list, where is BNY Mellon? BNY Mellon is not listed 25 here because BNY Mellon is not an asset manager. They</p> <p style="text-align: center;">Page 100</p>

<p>1 are just a custodian. They deal with practical -- you 2 could say they're the administrators here. I think that 3 they would get angry if they heard me say that, but they 4 receive instructions from the asset managers and the 5 make sure to execute them. They do not manage anything 6 and that's why they're not included in this table. 7 They manage this in their capacity as custodians. 8 This is clear from James R Ronalds' witness statement 9 that was submitted in the part 8 claim in England. He 10 is says that for Q3: 11 "As of 31 October 2017, the total value of the 12 assets held pursuant to the GCA (the GCA assets) was US\$ 13 22.6." 14 So if we summarise this, we can see that the 15 National Fund at Q3, 2017, had about \$60 billion in 16 total. Of those, the US\$49.5 billion was in the savings 17 portfolio. And out of these 49.5 millions, 22.5 went to 18 Bank of New York Mellon, and 26.99 was managed by the 19 National Bank itself, and everything that is in SEB 20 comes from Bank New York Mellon. 21 So we can draw the conclusion that the property is 22 a part of the savings portfolio of the National Fund. 23 So now we're moving to the part about the use or the 24 intended use of this property. 25 We saw from the table that there is a global stock</p> <p style="text-align: center;">Page 101</p>	<p>1 So this is very active management with daily 2 transactions, in order to achieve this high return that 3 was shown the previous slide. 4 The conclusion that the assets are used for 5 commercial purposes, this has been presented by 6 Professor Didenko and Kenzhaeyva, who share the opinion 7 that it is used for commercial activities. And what's 8 interesting in this article is that this is from 2006. 9 So this was written a long time ago, 13 years ago. And 10 the design has been the same all along, we understand, 11 but already then professors Didenko and his colleague 12 Kenzhaeyva said in an article named "Legal framework of 13 the National Fund of the Republic of Kazakhstan". And 14 we can see from the actual document this was published 15 in a -- as a law information portal, which is called 16 zakon.kz. Zakon in Russian means the law. This is 17 an official portal for information on laws, and this is 18 where they published this article, and both of them, 19 reached or concluded -- I mean, they talk about the 20 whole design of the National Fund but the conclusion is 21 that: 22 "Consequently, the transactions of the National Bank 23 on the disposal and management of the National Fund 24 comply with effective understanding of commercial 25 activity."</p> <p style="text-align: center;">Page 103</p>
<p>1 with five managers, and they have been taken out in the 2 National Bank's report for 2017. Here they called 3 global equities mandate, and they say: 4 "Assets in the savings portfolio for the global 5 equities mandate were managed by five external managers. 6 The return from the asset management for this type of 7 mandate was 22.81 per cent ..." 8 Ah, you say, that's pretty good. But you can say 9 that it generates a high annual yield. 10 In order to get such high return, it's clear from 11 the transaction history that the National Bank has 12 submitted in its appendix 47, and this is an excerpt of 13 page 1 of 415 pages of appendix 47. This is about 14 a transaction history of the property here in Sweden, in 15 SEB, the one that is with SEB, and this little cut out 16 from the first page, from this we can see that they're 17 buying and selling shares on a daily basis. 18 Here, in the column "Trade date", we can see that on 19 the 23rd of January 2008 they sold stock from Svenska 20 Cellulosa, and 9,000 was the amount and on the same date 21 they bought stock from Ericsson, this number of shares. 22 The next day they buy more Ericsson. On the 24th they 23 sell some of the SCA. The following day they buy two 24 instalments of Ericsson and on the same day they decide 25 to sell SCA.</p> <p style="text-align: center;">Page 102</p>	<p>1 And they're stating that whether the assets were to 2 be covered by state immunity, it was in that context 3 they made this statement. 4 More or less the same conclusion or the same kind of 5 analysis is repeated by him in 2015, a long time before 6 this case was initiated where he, in an article with 7 a heading "Legal services(?)", that makes enforcement 8 measures possible in us as belonging to the National 9 Fund of Republic of Kazakhstan. This was published in 10 a journal issued by the Supreme Court of Kazakhstan. 11 So this has been published by the Supreme Court and 12 this is an excerpt from page 652: 13 "In our view the National Bank's concrete actions in 14 the management of the National Fund, that they are taken 15 for commercial purposes. The commercial nature of the 16 National Bank's actions and their legal allowability 17 fully corresponds or complies with the Kazakhi law's 18 requirements, and which contain provisions about the 19 taking of fees for services regarding the management of 20 the National Fund. 21 This is also supported by the Presidential decree of 22 1 September 2005, one of its purposes being that the 23 purpose of the investments was the management of -- and 24 the management of the National Fund was to ensure 25 profitability of the National Fund's assets in the long</p> <p style="text-align: center;">Page 104</p>

<p>1 term and in a moderate risk level and the return on the 2 services and profitability are significant signs of the 3 commercial nature of the agreement. 4 The same conclusion was made by the court in Belgium 5 that said that all property managed by Bank New York 6 Mellon is part of the National Fund which has a specific 7 purpose. And here we would like the judges to go to the 8 binder of evidence on page 68. 9 This is thus the decision handed down on 10 15 May 2018. It's the Dutch-speaking, the first 11 instance court of Brussels. The decision starts a bit 12 earlier, page 55. One can see that it is a translation 13 to English. And I would like to quote, this is what we 14 have copied here on the slide, it's on page 68: 15 "Hereafter the attachment judge examines whether or 16 not the three contested conditions are fulfilled. 17 "And the first condition is properties at that are 18 used or are intended to be used in particular for the 19 foreign authority for other than non-commercial 20 governmental purposes." 21 "Rightfully", says the judge: 22 "... the Stati parties emphasise they have only 23 requested, and were only granted authorisation for 24 conservatory attachment on the claims and assets 25 relating to the 'savings funds' of the National Fund of</p> <p style="text-align: center;">Page 105</p>	<p>1 divided in two portfolios: a savings portfolio and a 2 stabilisation portfolio. The NBK describes the 3 objective of the savings portfolio as always to increase 4 the profitability of the assets in the long term. It is 5 not contested that the attached securities and cash, as 6 listed per the attached third party BNY Mellon in its 7 declaration, are exclusively part of the same 8 portfolio." 9 So that was not disputed in the Belgian proceedings, 10 and then next page: 11 "On the basis of the objective of the savings 12 portfolio, these attached securities and cash must be 13 considered to be long term investment objects. The 14 increase of the profitability of the assets in the long 15 term is a commercial activity. Consequently the Stati 16 parties had demonstrated that the savings portfolio of 17 the National Fund of Kazakhstan is in particular used 18 for other than non-governmental -- non-commercial 19 governmental purposes." 20 Approximately the same conclusions are from the 21 Stockholm final decision, that is what has now been said 22 leads to the assessment that since it has been shown 23 that the property, despite being part of the National 24 Fund, is used exclusively, or intended to be used in 25 other than state non-commercial purposes.</p> <p style="text-align: center;">Page 107</p>
<p>1 Kazakhstan." 2 Here I want to point out that it is being said that 3 one had asked for enforcement against the Central Bank 4 in Belgium, but that is not the case. It was 5 "conservatory attachment", as they call it, which is 6 sequestration which was claimed against the savings 7 fund: 8 "It is not contested that this National Fund is part 9 of and owned by Kazakhstan." 10 Here, I want to point out that in the Belgian 11 proceedings it was not contested that the National Fund 12 was -- that is not the case today. 13 "We rejected the Presidential decree of 23 August 14 2000, for the establishment of the National Fund 15 determines this objective." 16 And then it is written about the objective. We have 17 read that and heard that already. And then it continues 18 explaining: 19 "The Kazakh budget code confirms the two objectives 20 and functions. The savings function ensures, according 21 to the code, that combination of the financial assets in 22 other property ..." 23 And I do not continue the legal text, but the next 24 paragraph: 25 "To realise these two objectives, the funds are</p> <p style="text-align: center;">Page 106</p>	<p>1 So the conclusion of this part, relating to article 2 19C, are that the National Fund has been created for 3 state means. It consists of stabilisation and savings 4 portfolios. The property is part of the savings 5 portfolio and the property is used and intended to use 6 for commercial purposes. That is, not acting in 7 sovereignty, and for that reason it is not protected 8 under immunity against enforcement action. 9 I carry on for a little moment further. Well, you 10 interrupt us when you find it appropriate after a little 11 while. 12 Now then to article 21(1)(c). I will refer to that 13 only as 21C. 14 We have shown that the property is not unprotected 15 by state immunity -- this article must be read in view 16 of article 21. This is as an added position. Here 17 there are mentions of the property of the Central Bank 18 or other monetary authority of the state. The property 19 belongs to the Central Bank or other monetary policy 20 authority under the state. 21 In this part we will start by examining the question 22 of whether the Central Bank can, in the first place, 23 claim immunity under article 21, and then what is the 24 purpose of article 21 and how shall 21 be interpreted? 25 What does this expression the property belongs to the</p> <p style="text-align: center;">Page 108</p>

<p>1 Central Bank or other monetary policy authorities, and 2 in that part we will examine whether the property is 3 used for money policy purposes or whether it is held for 4 its own account, and what the alleged trust, what the 5 meaning of that is and if the Central Bank can be 6 considered to be independent from the political power. 7 Starting by the question: can the Central Bank claim 8 immunity? 9 In this very case, we have a debtor under 10 attachment, and there is another debtor, which, is the 11 Central Bank, which considers that they have 12 preferential right to the property, at least as an 13 alternative, as we understand it. Both of them claim 14 that the attached property may not be attached because 15 of state immunity. 16 Now, can the Central Bank that acts as a separate 17 legal person, you heard it several times, can they 18 actually use state immunity or claim state immunity? 19 The main rule about state immunity, article 5, which 20 we agree upon, establishes no execution action may be 21 used in the property belonging to another state because 22 the state enjoys immunity. But the Central Bank is 23 a separate legal person. They are not the state. 24 In order for the Central Bank to claim immunity, 25 they must be covered by the definition of a state under</p> <p style="text-align: center;">Page 109</p>	<p>1 other, in the addendum, the later version, about what 2 applies between the Central Bank and the government. We 3 see that item 2.1.3, and let me say that 2.1.1, headed 4 "The bank has a right to ..." and then comes 2.1.3, it 5 is written: 6 "The bank has the right to: 7 "To receive a quarterly commission for asset 8 management of the fund ..." 9 And then there's a certain per annum rate and then 10 in yellow: 11 "... and reimburse the expenses occurred in the 12 process of carrying out its obligations under this 13 Agreement ..." 14 So, concluding, the bank has the right to obtain 15 a commission, 0.02 per cent per annum on a certain 16 average market value of the fund, plus a compensation 17 for expenses for the management quarterly. 18 Item 2.1.4 says the bank has the right: 19 "... to receive commission for the year, depending 20 on the results of independent management of the Fund 21 equal to 10 per cent of positive excess return ..." 22 And then comes a limitation and a description of how 23 this excess return should be calculated. And the next 24 paragraph: 25 "In the case of a negative excess return of the</p> <p style="text-align: center;">Page 111</p>
<p>1 article 2, where it is written in B: 2 "State means agencies or instrumentalities of the 3 state or other entities, to the extent they are entitled 4 to perform and are actually performing acts in the 5 exercise of sovereign authority of the state ..." 6 So that means that article 21C protects the 7 property of the Central Bank only to the extent that the 8 Central Bank has the right to make -- and actually it 9 makes things in the execution of the state authority. 10 That is the text from the proposition. 11 Now to the investigation. 12 How what is included on their property that is part 13 of the fund: is the management for the Central Bank that 14 they perform, are those actions in the sovereign 15 exercise of the authority of the state? These are 16 clippings from the addendum agreement with the central 17 fund agreement. 18 As we have heard, there are two different 19 translations of the National Fund agreement and its 20 addenda and we make reference to the translation which 21 was submitted first, from the beginning, that is from 22 the Kazakh representation. 23 If we then look at the addendum, of the addendum 24 which modifies some of the provisions in the National 25 Fund agreement shall. And if we compare them to each</p> <p style="text-align: center;">Page 110</p>	<p>1 Fund, the bank shall reimburse the Government an amount 2 equal to 10 per cent of a negative excess return ..." 3 So from 2.1.4, or recapitulated 2.1.3, one is 4 entitled to a commission, one has a fixed amount and 5 compensation for expenses. From 2.1.4 we understand 6 that one addition on top of that is entitled to 7 an additional compensation if the management is better 8 than benchmark. But, if it is worse than benchmark, 9 then the bank shall compensate the Government. 10 That is a negative excess return, that is 11 a far-fetching commitment, even for a capital manager. 12 So if it is considered to be actions under a state 13 sovereign exercise of authority, that conclusion appears 14 to be impossible. 15 Here we could also refer to items 2.2.3, and items 16 2.2.4 and 2.2.7. 17 Item 2.2.3 refers to liability. They are in the 18 National Fund agreement but they all aim in the same 19 direction, that this is not exercise of authority; this 20 is commercial management. 21 That it is not exercise of authority is also clear 22 from GCA, the Global Custody Agreement, where we know 23 that, as we heard before, the Central Bank hands over 24 the assets to BNY Mellon, and from article 2, item A, we 25 read:</p> <p style="text-align: center;">Page 112</p>

<p>1 "The client [the Central Bank] hereby appoints 2 Boston Safe to act as custodian..." 3 And (b), the client hereby appoints Mellon to act as 4 a banker for the funds in the National Fund and both 5 these will be put together in BNY Mellon." 6 So one manager hands over the job to another 7 manager. That has nothing to do with exercise of 8 authority. 9 It is also clear from the comments to the Convention 10 written by O'Keefe and Tams, the meaning of a separate 11 rights legal subject could claim immunity. That means 12 that this must be within the scope of the sovereign 13 exercise of authority, and here is from the comments, 14 where this matter is being discussed by O'Keefe and 15 Tams: 16 "In the case of Central Bank etc that also engages 17 in commercial conduct, Article 2(1)(b)(iii) proviso may 18 make a crucial difference. While it can be assumed 19 that, insofar as it is authorised to act as the state's 20 monetary authority, the Central Bank et cetera is 21 entitled to perform acts in the exercise of the state's 22 sovereign authority, the question will be whether, when 23 it engages in purely commercial conduct, it can be said 24 actually to be performing such acts. If the answer is 25 that it cannot be, it cannot be considered a 'State' in</p> <p style="text-align: center;">Page 113</p>	<p>1 is not fund of Central Bank or anything similar. 2 The same thing is clear from the Kazakh Budget Code 3 and the National Fund agreement. We are have already 4 looked at that. However, Kazakhstan advocates a wider 5 interpretation of the word "property" as referenced to 6 all property that a Central Bank possesses, has, 7 administers, owns. But, reasonably, the concept cannot 8 be eternally wide. That would lead to consequences that 9 are not reasonable. 10 So in order to understand the purpose of this scope 11 of application of this, we must look closer at this 12 provision, starting by the purpose as it has been 13 summarised by expert Linderfalk. 14 If the purpose of this is only to protect state 15 property or protect importance, since it is so important 16 and since it is to generate an increase in value and 17 benefits is not that important. 18 So where does this expression "property of the 19 Central Bank" from? 20 Professor Wrangle, cited by the Kazakh side, says in 21 his statement that several of the expressions in the UN 22 Conventions are identical to FSIA, and the first drafts 23 to the Convention are based very much on section 1611 of 24 this law. FSIA is Foreign Sovereign Immunity Act, it 25 was -- it comes from the United States and the work</p> <p style="text-align: center;">Page 115</p>
<p>1 this context, and its property will not be 'property of 2 a State' within the meaning of article 19. As such, the 3 property will not be protected in the first place by the 4 immunity from foreign measures of the constraint posited 5 in that article. In short, Article 19(c), and therefore 6 article 21(1)(c), will not enter into it, because the 7 property will not be 'property of a State'. 8 So the central banks, if -- concluding -- if the 9 Central Bank engages in the commercial activity, then 10 article 2 may be of crucial importance. The Central 11 Bank, as a separate legal entity, then does not carry 12 out acts in the state sovereign exercise of authority. 13 For that reason, the Central Bank cannot, does not have 14 the right to claim state immunity. 15 So one section more and then we take a break. 16 If we then take a look at the next item, which deals 17 with how property was and what kind of possessions 18 belong to the Central Bank, it is our first position 19 that the property shall be owned by the Central Bank. 20 That is clear from the phrasing in the Convention: 21 property of the Central Bank. That is not the case, 22 I have already shown that. And it becomes particularly 23 clear from the Presidential decree 402 is actually 24 sufficient to read item 1 and the name of the fund. It 25 is the National Fund of the Republic of Kazakhstan. It</p> <p style="text-align: center;">Page 114</p>	<p>1 within the UN Convention started shortly thereafter in 2 1978. It was adopted in 2004, the Convention. 3 From -- these are also clippings from Mr Wrangles' 4 statements. He makes reference to 16.11 in his footnote 5 29, it says: 6 "Notwithstanding the provisions of section 1610 of 7 this chapter, the property of a foreign state shall be 8 immune from attachment and from execution if - (1) the 9 property is that of a foreign Central Bank or monetary 10 authority held for its own account." 11 Now what does "held for its own account" mean? 12 Well, that is funds that a Central Bank has for its own 13 use and independent of its mission as a monetary policy 14 unit. 15 From the history of the proceedings, we see that the 16 report that they make from their readings, and in one of 17 the reports, it's from 1986, here we can read that 18 Mr McCaferly said that in his understanding: 19 "... paragraph 1(c) referred to property of the 20 Central Bank which is held for its own account." 21 Mr McCaferly was the American member of the 22 Commission, and his valuations here about the report was 23 not contested, nobody opposed him or had any opinions 24 about that. 25 So what does it look like in this case. I would</p> <p style="text-align: center;">Page 116</p>

<p>1 like you to go to our binder, page 745. 2 745, this is the National Bank's consolidated 3 statement for 2017, and I could just point out here that 4 it is the report of the National Bank at 2017. And then 5 there's the consolidated statement of financial position 6 as at 31 December 2017. They're two different 7 documents. One of them reports on what the bank has 8 done and this the statement of its financial position. 9 On page 745, we see the balance sheet for the 10 National Bank as at 31 December 2017. 11 We can see in the left-hand column that there are 12 assets and they are listed in the customary way, there 13 are assets and notes, and the value, and the difference 14 in the value from previous year. If we look at assets, 15 we can see that it is cash on hand, gold, its placements 16 and loans with banks and other financial institutions. 17 If we look at the ones with the highest value, we 18 see that it is gold, note number 18. We can see it is 19 placement and loans with banks and other financial 20 institutions, note number 19. And available for sale 21 financial assets, note number 22. 22 Therefore, I do not really have to do this, but if 23 you wanted to check what is gold, well, that's sort of 24 self-explanatory, but what available for sale financial 25 assets, the note explains this on the pages that we have</p> <p style="text-align: center;">Page 117</p>	<p>1 Note 40 on page 885 in the report, or in actual fact 2 in R5, note 40 is about Funds management, trust and 3 custody activities: 4 "The National Bank provides trust and asset 5 management services to trust companies, retirement 6 benefit plans and other institutions, whereby it holds 7 and manages assets or invests funds received in various 8 financial instruments at the direction of the customer. 9 "The National Bank receives fee income for providing 10 these services [this is what we read before]. Trust 11 assets are not assets of the National Bank and are not 12 recognised in the consolidated statement of financial 13 position. The National Bank is not exposed to any 14 credit risk and related to such placements, as it does 15 not guarantee these investments. 16 "As at 31 December 2017, the total amount of assets 17 that the National Bank holds and manages for [National 18 Bank is 20 trillion] ..." 19 Large sums. That's about 60 billion dollars. 20 So what we can see from this is that the funds of 21 the National Fund, well, first of all they're not owned 22 by the National Bank. It explicitly says that they are 23 not assets by the National Bank, they are not recognised 24 in the consolidated statement. But what is particularly 25 important here is that neither is it held for the</p> <p style="text-align: center;">Page 119</p>
<p>1 noted on the slide. But we can see just briefly that 2 the assets that are listed here, that's cash on hand, 3 it's gold, these are placements and loans with banks and 4 other financial institutions. For the exchange 5 transactions and available for sale transactions that is 6 bonds and government bonds and what you could call is 7 the currency reserve. 8 But what is not clear, or the thing that has not 9 been listed under the assets is the National Fund. It 10 is not listed here. 11 Sorry, I have mixed up my pages here so I will just 12 put them in the right order again. 13 So since the National Fund is not listed here, so 14 you might think then that -- it's in here somewhere and 15 that they have just reported it in some other way. But 16 let's move on. This is note number 5 to the balance 17 sheet, where they talk about: 18 "Fee and commission income on asset management 19 operations consists of income for asset management 20 services provided to the National Fund of the 21 Republic of Kazakhstan ... The National Bank manages the 22 assets of these organisations investing funds received 23 in various financial instruments in accordance with 24 customers' instructions." 25 And that is the Government's instructions.</p> <p style="text-align: center;">Page 118</p>	<p>1 National Bank's own account; they are explicitly 2 reported in the consolidated as somebody else's funds. 3 And we think that this is a good time to take 4 a break. 5 THE CHAIRMAN: So another 15 minutes. Will we be finished? 6 Then yes. So we'll take a 15-minute break. 7 (2.52 pm) 8 (A short break) 9 (3.14 pm) 10 THE CHAIRMAN: So we're all back here again, so please 11 continue. 12 MS AHREL: So the next item in our presentation of merits 13 under article 21.1(c), but one other prerequisite for 14 article 21.1(c) to be applied, and this is our view that 15 the property is not to be used for monetary purposes. 16 Where does that come from? If we look at the 17 history of International Law Commission, when it started 18 its work on the Convention in 77/78, somewhere around 19 1987 they had produced the first draft. This was sent 20 to the countries with an offer of suggesting comments in 21 the report from 1988. We can see these comments on 22 country by country, and what they said. And here we're 23 going to look at the comments that are specifically 24 about article 21.1(c). 25 Where they talk about the reach or extent of article</p> <p style="text-align: center;">Page 120</p>

<p>1 21.1(c) and we can see here that the Nordic countries 2 made a joint statement, the governments of all five 3 countries. And this is their view on customary law, and 4 in their comment they say in the relevant part: 5 "In paragraph 1(c), property of central banks in the 6 territory of other states is unconditionally excluded 7 from execution. This rule seems to be based on the view 8 that because central banks are instruments of sovereign 9 authority any activity they undertake must be covered by 10 immunity from execution. However, if the foreign 11 property of a central bank is used or intended for use 12 by the State for commercial purposes, it might be 13 logical not to treat it definitely from other State 14 property that fulfils this condition." 15 So the Nordic countries held the view that article 16 21.1(c) -- here it was called article 23, but that has 17 changed later -- but that the property of the central 18 bank did not reflect customary law. The Nordic 19 countries' joint statement was that if the national 20 bank's assets are used for commercial purposes, it might 21 not come under article 21.1(c). Other countries held 22 the same view. If you see under their item 233 on the 23 slide, we can see a summary of the Federal Republic of 24 Germany, what they stated: 25 "With regard to paragraph 1(c), the Federal Republic</p> <p style="text-align: center;">Page 121</p>	<p>1 monetary purposes", it was -- they're referring to the 2 Commission report from '91: 3 "With regard to paragraph 1(c), the 4 Special Rapporteur suggested the addition of the words 5 'and used for monetary purpose' at the end of the 6 paragraph, but they were not included for lack of 7 general support." 8 And I see that the red line should be under the word 9 "general" and not "para", to emphasise that word 10 "general". 11 There's a reason why this is called the history of 12 negotiations and not a preparatory works. This cannot 13 be compared to legislating work, not from Swedish 14 perspective, when the Government orders a report to the 15 Swedish public authorities, and then there is a bill. 16 And in the bill whether you decide to remove something 17 or add something, it is done for a specific purpose. 18 Here, this is just a negotiation between the states and 19 we can see that we showed you some views from one camp 20 that wanted restrictions, paragraph 21, and Kazakhstan 21 was the one from the other side who did not want to 22 include this expression. And they said from 23 paragraph 227 in the report from 1990, and this is the 24 reason why they choose not to include the phrase "used 25 for monetary purposes".</p> <p style="text-align: center;">Page 123</p>
<p>1 of Germany considers that there is no clear 2 justification for a complete immunity of central bank 3 property and that it should be made clear that immunity 4 may only be claimed by such property of central banks or 5 other authorities of foreign states as serves monetary 6 purposes." 7 It also says: 8 "Australia, the five Nordic countries and Qatar 9 submit similar comments in this regard." 10 So here we can note that all countries submitted 11 commentaries. I think it was about 16 countries who did 12 comment. The majority of them, 12 countries, had an 13 opinion on the wording of article 23, and therefore it's 14 clear from item 520 of the report from '88 that: 15 "Finally, in order to make it clear that not all 16 property of the central bank would automatically enjoy 17 immunity, the Special Rapporteur proposed adding the 18 words 'and serves monetary purposes' at the end of 19 paragraph 1(c) of article 23." 20 And this is then what is then going to become 21 article 21. 22 So, in conclusion, these countries' comments say 23 that article 21(c) should not cover commercial property. 24 Now Kazakhstan has said, and through their experts 25 they have said that this proposed addition "used for</p> <p style="text-align: center;">Page 122</p>	<p>1 It's still article 21 but: 2 "... many members supported the addition of the 3 words 'and used for monetary purposes' in paragraph 4 1(c), although one member opposed the addition because 5 of the way those words could be interpreted by local 6 courts." 7 And if we look at the underlying reports to this 8 report, we can read that this one member is 9 a representative of Peru, Solari Tudela. And if we move 10 on. 11 "Another member endorsed the view that there was an 12 organic link between the new article 22 and draft 13 article 11 bis which should be duly taken into account. 14 The same member, however, stressed the importance of the 15 concept behind subparagraph (c), namely that property of 16 the central bank of the foreign State which was in the 17 territory of the forum State was unconditionally 18 exempted from measures of constraint whatever the 19 purpose for which it was used ..." 20 This statement is made by another member and it's 21 clear from the underlying reports that this is 22 representative Juri Barsegov from the Soviet Union. And 23 what we see here is that the states have separate views 24 on article 21(c). The USA also said that this should 25 cover probably that's(?) held for its own account. The</p> <p style="text-align: center;">Page 124</p>

<p>1 Nordic countries' views that commercial properties not 2 included; the same goes for Germany and Australia. But 3 the Soviet Union are sticking to absolute immunity, and 4 when individuals say they do not want to accept this 5 addition, it was agreed that this would be left out. 6 So now to whether the property has been used for 7 monetary purposes. I read this earlier from an article 8 published by Professor Didenko and his analysis of 9 national legislation, or Kazakhi national legislation. 10 And he pointed to the fact that the National Bank gets 11 compensation for its work by the National Fund. This is 12 an excerpt from that article 70, which talks about the 13 compensatory nature of services rendered by the National 14 Bank of Kazakhstan: 15 "National Bank of Kazakhstan shall not charge for 16 banking and other services rendered to government of the 17 Republic of Kazakhstan and central authorised body for 18 budget execution, with the exception of services on 19 management of the National Fund of the 20 Republic of Kazakhstan ..." 21 So the Central Bank has a right under the law to 22 compensation from the government for management of the 23 National Fund, indeed, but not for other services but 24 indeed for the National Fund. 25 The compensation is paid and that is a sign that it</p> <p style="text-align: center;">Page 125</p>	<p>1 intended to use for monetary policy purposes. It is not 2 read in the Presidential decree 402; it is not in the 3 National Fund agreement; it is not in the Budget Code, 4 nor is it in the annual report. 5 Now then to the next section about the alleged trust 6 and the importance of it. 7 One could also deal with that in the section on 8 whether Kazakhstan possesses possessions, but it is just 9 as relevant to deal with that here also. 10 Initially, I want to point out that the trust 11 appeared on the Kazakhi side as late as in the 12 submissions, and that in last year in April/May prior to 13 that they had, during a fairly long time, participated 14 in the different proceedings in the Stockholm 15 District Court before the enforcement officer, where we 16 exchanged submissions and evidence, and also before this 17 Nacka District Court in many cases. 18 The trust did not appear there until the joint 19 submissions were presented in April/May last year, and 20 prior to those joint submissions, the Kazakh side also 21 used the translation that used the expression "asset 22 management". But later on all inclusions were changed 23 and into trust. In Russian it is something that the 24 interpreter did not get, but we'll hand in all the 25 documents that are used, and in order to mix things we</p> <p style="text-align: center;">Page 127</p>
<p>1 is a pure commercial management task. 2 It is also seen from the Central Bank's report from 3 2017 that the property and the saving portfolio, with 4 its funds, National Funds are not used for monetary 5 policy purposes. In these reports are different 6 accounts for what the bank has done during the year and 7 there is one section "Government fiscal policy" which is 8 tax or financial policy with an explanation about the 9 activities: 10 "Additional measures to support the economic and 11 banking sector taken by the Government in 2017 resulted 12 in the necessity to take an additional volume of 13 transfers from the National Fund in order to finance 14 such activities." 15 There is a section on monetary policies in this 16 report too, but there is no mention of use of the 17 National Fund. 18 Apart from that, the question about the monetary 19 policy purposes is rather similar to what I already 20 mentioned under this section on whether the Central Bank 21 has a right to claim immunity. 22 There it was a question of if this were actions 23 within state execution of authority. Here we could say 24 broadly the same. There is no central document in this 25 case where one can read that the property is used or</p> <p style="text-align: center;">Page 126</p>	<p>1 will still refer to this as the "alleged trust" with 2 certain expressions. But one must keep in mind that in 3 the first place there is no such thing under Swedish law 4 that is called "trust". However "förvaltning", which 5 this interpreter would call "administration" or 6 "management". 7 Now, what is the importance of the alleged trust in 8 the context? Well, we have explained that the 9 possession belonged to Kazakhstan, even under Kazakh 10 law, this also becomes clear from Professor Didenko's 11 article from 2006, the fact that if one would under 12 Kazakh law, article 883, even if one enters into 13 a trusteeship agreement, there is no transition of 14 possession when the agreement is made. 15 Professor Didenko presents it in such a way that he 16 refers to article 883. 17 "Article 883 of the Civil Code stipulates the 18 trustor transfers specific rights to the property to the 19 trustee (possession, use and disposal). In the event of 20 trust management, the trustor remains the owner the 21 property. Kazakhstani law does not know of the 22 institute of a trust where the trustee becomes the owner 23 the property together with the trustor. Therefore it is 24 indisputable that the state, after concluding a trust 25 management contract with the National Bank of the</p> <p style="text-align: center;">Page 128</p>

<p>1 Republic of Kazakhstan, remains the owner of the 2 property of the National Fund transferred for trust 3 management." 4 Later on in that report he also says: 5 "Accordingly ... separate accounting of the assets 6 in trust by the trustee serves as further confirmation 7 and that the state continues to remain the owner of 8 these funds." 9 And that is that I said just before the break that 10 in the annual accounts, this is a separate account. 11 We consider that also in this very case, even if we 12 don't dispute that there is such a thing in Kazakh law 13 as trustee management, but we consider that in this case 14 this does not fulfil with the requirements from Kazakhi 15 law, and one crucial requirement that the other party 16 used several times is that, through this agreement on 17 trusteeship management, that is the alleged trust, in 18 that case the principal, that is the person who issues 19 the mission, frees himself from all possibilities to 20 act. 21 And what we say, then, is when we quote the saying 22 that with an agreement on the trustee management of the 23 possession, they hand over to one party -- one party 24 hands over to the other parties a property for 25 management, and the other party commits to manage this</p> <p style="text-align: center;">Page 129</p>	<p>1 Next quote: 2 "The money from the National Fund can be withdrawn 3 easily and wasted. 'The money earmarked, 10 billion for 4 the crisis have gone astray, gone -- no way to get them 5 back,' said the head of state. According to the 6 President, the banks have simply stopped working and 7 asked that the money shall be handed out from the 8 National Fund." 9 So the withdrawals from the National Fund are 10 ordered on a regular basis, through different decrees, 11 as we see to the right, but sometimes they are difficult 12 to trace once they have been withdrawn from the National 13 Fund. 14 Moving on to the requirements for the trust and the 15 alleged freeing oneself of possibilities to act, if one 16 examines the National Fund agreement, please look it up 17 in our binder, page 119 -- sorry, 1,019. On page 1017 18 we see that it is an asset management agreement. Moving 19 then to page 1019, section 3 and under 3.2: 20 "The Government shall ..." 21 The first item under that is actually to: 22 "... determine ... on a competitive basis in 23 collaboration with the Bank, who, if necessary, will 24 represent the interest of the Fund in foreign countries 25 in the resolution of legal disputes arising from the</p> <p style="text-align: center;">Page 131</p>
<p>1 property in the interests of the principal. 2 "The Bank shall conduct money transfer [from other 3 organisations] and targeted transfers from the Fund 4 within ten working days from obtaining the Government 5 instructions to transfer to the republic and local 6 budgets ..." 7 What we just heard was the second point started by 8 2.2, "The Bank shall". 9 So the Government can give instructions and the bank 10 shall send the money within ten working days from the 11 day of receipt of instructions. 12 That withdrawals from the National Fund are ordered 13 on a regular basis is clear from many sources. We have 14 listed the relevant exhibits on the right here. Here 15 I want to highlight a clipping from the President's 16 speech -- no, sorry, it was an article, an article from 17 the news portal, Tengrinews.kz, from 2013. And the 18 heading is: "Ten billion dollars allocated from the 19 National Fund for the battle against the crisis and 20 lost". 21 "In this struggle against the international 22 financial crisis, Kazakhstan has earmarked \$10 billion. 23 However, the money disappeared in an unknown direction. 24 This is what was informed by Nursultan Nazarbayev under 25 the meeting in Akorda related to the results for 2012."</p> <p style="text-align: center;">Page 130</p>	<p>1 asset management of the Fund ..." 2 If with we then look at 3.2.4, we also see that the 3 government shall: 4 "Reimburse the expenses for managing the Fund 5 (clause 4.2 of Agreement), except for the Bank's 6 commission within three working days after receipt of 7 notice." 8 If we then look at 4.1, about the expenses related 9 to the management fund, this is about -- further down we 10 see item 4.1: 11 "The expenses related to the asset management of the 12 Fund and payments of the commission fee are ..." 13 And item 4 hereunder is: 14 "Other expenses that may arise while managing assets 15 of the Fund, including, if necessary the service of 16 a legal advisor ..." 17 So the Government, together with the Central Bank, 18 shall appoint and has the right to appoint a -- or shall 19 appoint, it says the Government shall determine, legal 20 counsel which will represent the interests of the fund 21 before a foreign court litigation about the management 22 of the National Fund. Additionally, the Government 23 shall also compensate the National Bank's expenses for 24 this within three case days from the request. 25 So freeing one's self from the way of acting is also</p> <p style="text-align: center;">Page 132</p>

<p>1 nothing that happened. Well, within parentheses we can 2 look at page 323, which expresses the Government shall: 3 "... contribute to the submission of documents by 4 the Fund, the stages of Fund, as well as any other 5 documentation relating to the operation of the Fund that 6 may be required by tax or other authorities or foreign 7 states ..." 8 And then we can tie back to the part that barrister 9 Isaksson explained about when it comes to application 10 for a tax repayment. Amongst other things, opening 11 request form, that was handed in by Bank of New York 12 Mellon. 13 That there was no freeing from possibilities to act 14 is also clear from documents that the investor has 15 received from one of the assets, managers that were 16 mentioned -- within the framework for the process within 17 the United States -- for enforcement. And this 18 document, this is an agreement, an amendment to 19 an agreement, to the agreement between the National 20 Bank, the customer, and State Street Global Advisors. 21 It is the amendment number 13 to said agreement deals 22 with -- providing investment services, and in the 23 amendment 13 and in item 9 we read, as well as: 24 "For the time of duration of this Agreement, the 25 Manager [that is State Street] will invite two staff</p> <p style="text-align: center;">Page 133</p>	<p>1 And 891 says that in the case of bankruptcy from the 2 principal then the management is terminated and the 3 property will be transferred to the joint property of 4 the bankruptcy estate. 5 If we then in this case, as it was phrased here by 6 Professor Maggs, we see that the assets never can be 7 accessible for the creditors of the estate, it says: 8 "However the Republic of Kazakhstan cannot be 9 declared bankrupt, since only natural persons and legal 10 entities can be declared bankrupt, and it is neither. 11 And of course it is can never be a decedent in 12 inheritance proceeding." 13 It can't die. 14 "The Republic of Kazakhstan has deliberately 15 attempted to use the provisions of Paragraph 4 of 16 Article 885 to permanently protect the Republic's 17 National Fund Property from claims of creditors, by 18 ordering the National Bank to sign a contract of 19 entrusted management with the Republic." 20 And here is the conclusion from Professor Maggs. He 21 concludes that if one would consider that the 22 requirements for this Kazakhi trust have been fulfilled, 23 then the court could obviate that with support from 24 Kazakhi law. 25 "In light of the above, it may be said that the</p> <p style="text-align: center;">Page 135</p>
<p>1 members of the Customer [that is the Central Bank] 2 (including specialists from the Ministry of Finance of 3 the Republic of Kazakhstan) ..." 4 So in accordance with article 9 of the agreement 5 also representatives from the Ministry of Finance in 6 Kazakhstan have the possibility of obtain training in 7 investment management from State Street in London. 8 And while we have this agreement open, maybe we 9 could just read this quote. We see from 7.4 that it is 10 only the President who may decide to terminate the 11 National Fund agreement. It is not the parties of the 12 alleged trust or the trustee management. They, in this 13 case, cannot not even terminate the agreement. 14 There are no requirements indicated for when the 15 President should or may make such a decision. It is 16 clear that all of this is in the President's hands. 17 In any case, if one -- if the judges would conclude 18 that there is such a trust under the laws of Kazakhstan, 19 the investors consider that in that case would be 20 an abuse of Kazakh laws, particularly based on those two 21 articles that say an attachment of the principal's debts 22 on property that has been handed over by him is not 23 allowed. And that is what the Kazakh side says, except 24 for in those case listed in article 10.81 in this 25 legislation, and in the case of personal bankruptcy.</p> <p style="text-align: center;">Page 134</p>	<p>1 Entrusted Management Agreement does not create the legal 2 effect which its written terms are ostensibly aimed to 3 create and that Article 160 of the Civil Code allows 4 a court to look beyond such contractual such terms in 5 order to apply legal consequences of the actual intent 6 of the parties. Accordingly, the property which forms 7 the subject matter of the Entrusted Management Agreement 8 may be treated as not falling under the entrusted 9 management regime provided for in the Kazakh Civil Code. 10 This in turn makes this property amenable to claims 11 brought by creditors of Kazakhstan (subject to any 12 applicable international law limitations)." 13 So while we're talking about Professor Maggs, 14 I would like to say that he's a Professor of Law of 15 Illinois College of Law, and he has a very -- 16 background, a lot of experience on state governance, and 17 he has been used as a legal expert in Kazakhi matters. 18 He speaks and reads Russian and he's the co-author and 19 author of a number of books on Russian and Soviet law, 20 and he also knows about, much about Kazakhi law, 21 especially the Kazakhi Civil Code since he himself was 22 part of a suggested or proposed -- or developing this 23 Civil Code. 24 Then now over to the second last item of our 25 presentation: whether the Central Bank lacks</p> <p style="text-align: center;">Page 136</p>

<p>1 independence to the political power. 2 So what does this mean, the Central Bank in the 3 Convention? Could it be any state authority that gets 4 given that name and is then covered by the provisions of 5 the Convention? 6 Fox and Webb, this is a standard work on state 7 immunity, and part of that deals with article 21, where 8 it reading the following: 9 "Central Banks have certain common characteristics: 10 (i) they enjoy considerable autonomy from the parent 11 State which set them up ..." 12 So what does it look like here? Well, we've also -- 13 the Kazakhi side read this page from the Budget Code and 14 it is that the national -- 15 Sorry -- the interpreter did not get that. I'm not 16 going to read this provision. 17 I'm going to move on and here we're back in the 18 Presidential decree for 02 that it is the President who 19 determines how the funds are going to be used: 20 "... the size and directions of the use of the Fund 21 are determined by the President of the Republic of 22 Kazakhstan based on the proposal from the Government 23 ..." 24 And the same thing is clear from the Budget Code, 25 with the addition that:</p> <p style="text-align: center;">Page 137</p>	<p>1 in the opposite side, the "Accountability of the 2 National Bank ..." 3 It says that the President has the right to appoint 4 the chairman and four of the total nine members of the 5 council: 6 "The National Bank of Kazakhstan is accountable to 7 the President of the Republic of Kazakhstan. 8 "Accountability to the President means: 9 "Appointment as the President of the 10 Republic of Kazakhstan with the consent of the Senate of 11 Parliament of the Republic of Kazakhstan, the Chairman 12 of National Bank of Kazakhstan; release it from position 13 ..." 14 As it was correctly pointed out by the opposite 15 side, that for the President to appoint chairmen, the 16 senate needs to give its consent. But I would like it 17 point out the second part of the sentence which says 18 that the President can release the chairman without any 19 consent. 20 The same article 3, from that it is clear that the 21 accountability and the President's rights are quite 22 expansive when it comes to the National Bank, the 23 organisation, the number of the employees, the 24 remuneration, this is clear from the sections marked in 25 yellow.</p> <p style="text-align: center;">Page 139</p>
<p>1 "Solutions to improve the efficiency of formation 2 and use of the National Fund of the Republic of 3 Kazakhstan, as well as the volume and direction of its 4 use are made by the President of the Republic ..." 5 It's also the President who decides on the 6 composition of the Management Council. And the 7 Management Council's composition, it is the President 8 who determines, and this is clear from the Budget Code, 9 article 25.1. 10 The management council is described as follows: 11 "The Management Council of the National Fund of the 12 Republic of Kazakhstan is an advisory body to the 13 President of the Republic of Kazakhstan, developing 14 proposals for effective use of the National Fund of the 15 Republic of Kazakhstan and its placement in financial 16 instruments, except for intangible assets. 17 "The decision to establish the Management Council of 18 the National Fund of the Republic of Kazakhstan, its 19 composition and regulations shall be approved by the 20 President of the Republic of Kazakhstan." 21 It's also the case that the President is the 22 chairman of this Management Council who in turn is going 23 to give him advice on the management of the National 24 Fund. 25 It's also clear from article 3, and we've heard this</p> <p style="text-align: center;">Page 138</p>	<p>1 The first yellow part is about assignment and 2 dismissal by the President, and also the vice chairman 3 and the representation of the chairman of the National 4 Bank, that the President approves the structure and 5 general number of staff. Also that the President 6 approves the wages system of the employees. The 7 President approves the regulations of the National Bank 8 and approves the annual statement, et cetera. 9 Then in practice what is it like? Just some 10 examples. In January 2018, this is clear from a message 11 from President Nazarbayev to speak to the nation. The 12 President -- what is says in this speech, he's telling 13 the Central Bank to take certain measures. And as is 14 marked in yellow here, as well as that: 15 "I ask the Central Bank to finally resolve the issue 16 of the citizen's mortgages in foreign currency that have 17 been granted up until 21 January 2016." 18 Et cetera. 19 We can see in March 2018 there was a report in the 20 paper called The Astana Times, which reports in English, 21 in an article called "Foreign currency mortgages to be 22 converted to Tenge, older mortgages to receive payment 23 support". And the heading and the preamble, where it 24 says that. 25 "The National Bank of Kazakhstan updated March 27</p> <p style="text-align: center;">Page 140</p>

<p>1 the nation's mortgage loan refinancing programme to 2 convert foreign currency mortgage loans to tenge ..." 3 So the National Bank has executed this request in 4 two months' time. 5 On 30 January, in 2019, President Nazarbayev 6 strongly criticised the Government and the National 7 Bank. This is clear from an article that was published 8 in Forbes Kazakhstan, with the heading "Nazarbayev, 9 you're cowards, you're not government". 10 "At an extended government meeting in Astan on 11 30 January, the Kazakhstan's President expressed his 12 displeasure of the National Bank and the council of 13 ministers' lack of co-operation ..." 14 And it turned to the head of the National Bank, 15 Daniyar, and he is referring to Daniyar Akishev, who at 16 this time was still the head of the National Bank. 17 "You ..." 18 And I would like to say that in Kazakhstan the 19 second person singular is only used for people that 20 you know very well, or you're related to, so: 21 "You, you Daniyar, you're responsible to this with 22 your head. What are we afraid of? As the banks(?) is 23 a fairly common phenomenon in countries that are open to 24 market economy, but you're all cowards. You're not 25 a government, not ministers. You're all afraid of</p> <p style="text-align: center;">Page 141</p>	<p>1 performance and the dreadful health of the banks in the 2 country. Just weeks later, Nazarbayev suggested again, 3 this time in a more formal setting, that the cabinet 4 quit. Immediately after the presidential request, the 5 whole government presented its resignation and 6 Nazarbayev appointed Vice Prime Minister Askar Mamin as 7 interim prime minister on February 22." 8 We skip that and the next highlighted section. 9 "The weekend of speculation on who was going to be 10 the next prime minister, why the president cleared out 11 the cabinet and whether it was a move related to 12 transition, ended with a few surprises on February 25 13 when the Parliament - a rubber-stamp institution 14 occupied almost entirely by members of the president's 15 party - approved the new government with Mamin at its 16 head. Crucially, the reshuffle also included a change 17 at the head of the Central Bank. Outgoing governor 18 Daniyar Akishev had been under fire for months regarding 19 his somewhat maverick policies that did not align with 20 the government's." 21 I can here finish the part that is about how the 22 National Bank has autonomy as it was described in 23 Linderfalk's comments and then we'll move onto the final 24 part, which is abuse of rights. 25 Professor Linderfalk summarises as follows:</p> <p style="text-align: center;">Page 143</p>
<p>1 making decisions. What are you working? It is clear 2 that the banks for me and then I'm going to expect this 3 government honestly repay the debt and also of your 4 resignations ..." 5 And he says -- the President then added that the 6 Prime Minister has to deal with this issue and solve it 7 systematically. It has to be solved and: 8 "It was just something I said, you have to resign." 9 "Do not resign. Solve it and report." 10 So the President then dismisses the government and 11 changes the chairman of the Central Bank, just as he is 12 entitled to do. And this is done in February 2019. 13 This is clear from -- or in the end of January, sorry. 14 This is clear from an article, The Diplomat, it was 15 written in English under the heading "Kazakhstan 16 appoints a new old government": 17 "After the abrupt firing of the Kazakh government 18 last week, a new cabinet was immediately approved. 19 "At the end of January, Kazakhstan's President 20 Nursultan Nazarbayev called the whole government a group 21 of 'cowards' and, for the first time, suggested that the 22 ministers resign." 23 This was the last article, the previous article we 24 were referring to: 25 "The president singled out the poor economic</p> <p style="text-align: center;">Page 142</p>	<p>1 "Doctrine on abuse of rights goes back to one of the 2 most fundamental principles of international law, the 3 one that obligates states and international 4 organisations to exercise rights in good faith. Abusing 5 a right is not exercising it in good faith. Thus you 6 can abuse a right as in situations where you're acting 7 pursuant to what the right from a superficial point of 8 view appears to allow. 9 Here Professor Linderfalk highlights article 26.8 in 10 the LECT which prescribes a duty to submit arbitration 11 awards: 12 "The award of arbitration, which may include 13 an award of interest, shall be final and binding upon 14 the parties to the dispute ... Each Contracting Party 15 shall carry out without delay any such award and shall 16 make provision for the effective enforcement in its Area 17 of such awards." 18 So here we're saying that Kazakhstan is invoking 19 immunity and the only purpose is not to comply with the 20 arbitration award. 21 If we move onto the evidence, for this part, we 22 would like to go to a press release published on the 23 website of the Ministry of Justice of Kazakhstan on 24 26 October 2017, where the Ministry of Justice talks 25 about this specific case against Anatolie Stati and at</p> <p style="text-align: center;">Page 144</p>

<p>1 the end of the release it says: 2 "The Republic of Kazakhstan is taking all necessary 3 steps to oppose enforcement by submitting the evidence 4 of the fraud to the respective courts. 5 Moreover, to protect its rights to claim 6 compensation for the fraudulent acts committed by Stati 7 over years in the Republic of Kazakhstan, it filed 8 a civil racketeering (RICO) complaint in the US District 9 Court in Washington DC. The Republic of Kazakhstan is 10 currently further assessing all options available under 11 public international law or municipal law to redress the 12 wrong it suffered by Stati." 13 So we also heard from the Kazakhi side about the 14 action in the US and here in the previous slide in the 15 press release there's talk about this RICO complaint, 16 and RICO, civil racketeering complaint, that's what it 17 means. 18 The court in Washington DC has reached a decision 19 from 30 March. We have not submitted this as part of 20 the case but I know that the opposite side knows exactly 21 what this is about and we would like to quote from that 22 judgment: 23 "At bottom, this suit is yet another attempt to 24 relitigate the underlying arbitral award. Whatever 25 fraud Kazakhstan contends occurred before and during the</p> <p style="text-align: center;">Page 145</p>	<p>1 "Kazakhstan's interests are now defended by several 2 Kazakhstani and international lawyers. According to 3 him, now it's time to do the utmost ..." 4 And there is a quote by Beketayev: 5 "Do not get me wrong: the disputed amount in Stati 6 case is 500 million. You can either do a simple math 7 and correlate the attorneys' fees with this amount, or 8 also take into account all possible litigations in the 9 future. Then it will clear that we must do our utmost 10 now in protecting the interests of our country - the 11 minister said." 12 And then further down in the article: 13 "When asked whether Stati needed all these 14 litigations, Beketayev said that he considered Stati 15 a fraudster." 16 The ministry for justice has also submitted 17 a witness statement in this case. It's in Kazakhstan's 18 binder, appendix K-52 and this is in binder -- tab 49. 19 Is it binder 1? Tab 49, page 600. 20 I think that we could look it up. 21 It is relatively short. It is one page and 22 an appendix, where Mr Beketayev, that is the minister of 23 justice, he lists 11 cases or arbitrations where there 24 are arbitral awards against Kazakhstan and where 25 Kazakhstan have been found having contravened the</p> <p style="text-align: center;">Page 147</p>
<p>1 SEC arbitration more than eight years ago, it had a full 2 opportunity to raise those issues in the appeals process 3 in Sweden and its allegations were rejected. Kazakhstan 4 tried again in the numerous subsequent proceedings where 5 it has resisted the enforcement of the arbitral award on 6 the same ground. As the Court noted in its prior 7 opinion, the grounds for refusing the enforcement of 8 a foreign arbitral award under the New York Convention 9 are 'narrow' and Kazakhstan failed to meet its 'heavy 10 burden'. Casting defendants' enforcement proceedings 11 now as an unlawful 'pattern of racketeering activity' is 12 an improper use of the auspices of this Court to revive 13 and prolong a dispute that is over. The motion to 14 dismiss will be granted." 15 That is the investor's motion to dismiss the RICO 16 claim. 17 Then if we move on in the evidence, there's a 18 statement by the Ministry of Justice. This is also new, 19 recent. This has not been submitted. It is from an 20 article published on 13 March 2019 on the website 21 zakon.kz, which means "the law.kz", and the heading is 22 "Beketayev on Stati Case the Litigation is Being Watched 23 by Many Countries". 24 So Mr Beketayev tells the journalist, this is the 25 words of the journalist:</p> <p style="text-align: center;">Page 146</p>	<p>1 standing treaty. We cannot confirm that it is just 2 a case of 11 cases, because these are confidential 3 arbitration panels, so we have no way of confirming the 4 number, and, secondly, in order to confirm again why we 5 cannot acknowledge this has been correct. 6 This is clear from an article published in 2014 and 7 a website called Kapital.kz. This is an article where 8 there is a discussion with the Ministry of Justice. The 9 heading is "Not just to defend oneself but also to read 10 agreements more carefully". And under this heading we 11 hear that in the light of the global trend we can note 12 that there are a number of cases in international 13 arbitrations in foreign courts, that number is growing, 14 and in 2003 the Ministry of Justice represented this 15 state in four cases with total demands of \$340 million 16 to be compared with a number of cases in 2013 being as 17 many as 37 and the total sum was \$18.2 billion. 18 So if we then look at this list of 11 cases, we 19 could just look at number 3 is AIG Capital Partners. 20 This is the case that is referred under this 21 AIG Capital, and this said that the parties settled the 22 award and the majority of these are actually settled. 23 I wonder why, after an award against Kazakhstan, but 24 what I would really like to highlight here in this list 25 are the ones under number 7. That is Rumeli Telekom and</p> <p style="text-align: center;">Page 148</p>

<p>1 number 11, which is Aktau Petrol, where the minister of 2 justice says that in Rumeli there was annulment against 3 an award. And after that Kazakhstan paid, fully 4 complied with the award. And the other one, Aktau, it 5 says that the arbitral tribunal granted its award and it 6 was subject of an annulment application and that now 7 there is a stay of enforcement currently in place. So 8 it has not been finally ruled on.</p> <p>9 I'd like to refer to an article that was published 10 in the Global Arbitration Review with a heading 11 "Kazakhstan has to pay up". This is ICSID the annulment 12 committee. This was published on 5 October 2018.</p> <p>13 These two cases, Rumeli and Aktau, it was the same 14 counsel for the plaintiff -- this is Hamid Gharavi, as 15 we can see from this excerpt -- and he made a comment in 16 relation to the Aktau case and he commented on the 17 enforcement of stay in the Aktau case and he also 18 mentioned the Rumeli case and he says:</p> <p>19 "Kazakhstan is not in the compliance business. In 20 Rumeli, Kazakhstan managed to convince the ad hoc 21 committee ..."</p> <p>22 The ad hoc committee, who decides on the annulment 23 application: 24 "... to order the continuation of the stay of the 25 enforcement in exchange for a letter from its Minister</p> <p style="text-align: center;">Page 149</p>	<p>1 done.</p> <p>2 THE CHAIRMAN: Thank you very much.</p> <p>3 MR GUTERSTAM: We have just one little addition to make.</p> <p>4 THE CHAIRMAN: Yes.</p> <p>5 MR GUTERSTAM: Yes. Just one little added comment to what 6 we just heard. I want the judges to find it.</p> <p>7 Slide 79 in the document you have. There is a 8 certain limit to the selectivisation reached. There are 9 many slides that we could look at but I want to draw 10 your attention to one thing.</p> <p>11 This relates to the argument why would this not 12 constitute a trust in Kazakhstan and what we just heard 13 is that a trust under the laws of Kazakhstan requires 14 a limitation of one's possibilities to act.</p> <p>15 That is what was highlighted in yellow in the bottom 16 part of that quote and the it is said but according to 17 the National Fund agreement it is possible to withdraw 18 money from this fund under certain circumstances. It 19 was answered that that would be in breach of this 20 absolute requirement to stop oneself from acting but if 21 we just read the full sentence it says:</p> <p>22 "Under the validity of the agreement the trust 23 management should not have the right to carry out any 24 action relating to the managed property." 25 But then it's added "if nothing else is written in</p> <p style="text-align: center;">Page 151</p>
<p>1 of Justice undertaking to comply with the award in full 2 within two weeks of a decision dismissing the annulment 3 application. Yet Kazakhstan refused to comply with its 4 own undertaking once its annulment decision was 5 rejected. It was only long after once enforcement 6 measures were sought against it that Kazakhstan engaged 7 in settlement.</p> <p>8 In Aktau, Kazakhstan could no longer pull the same 9 trick. It was ordered by the ad hoc committee to post 10 security for the award amount in exchange for the 11 continuation of the stay it was seeking. Yet, it 12 refused ultimately to post such security. Why? Because 13 the state has no intention to voluntarily pay anything 14 required under the international law instruments this it 15 itself has signed."</p> <p>16 So in summary then, or in conclusion, it's clear 17 that Kazakhstan has abused its rights systematically and 18 for a long time in other cases as well.</p> <p>19 Professor Flinderfalk has summarised this, that if a 20 case acts in such a manner, especially as this case, he 21 has summarised this as that the immunity that Kazakhstan 22 otherwise could have claimed has been lost, given the 23 state's actions and other factual circumstances.</p> <p>24 This summarises everything that we were going to 25 present in our opening statement here today, so we are</p> <p style="text-align: center;">Page 150</p>	<p>1 the laws of the Republic of Kazakhstan or in the 2 agreement".</p> <p>3 So it says explicitly that these amendments can be 4 made to the conditions, which is what we read in several 5 slides after that. For that reason I urge the judges to 6 read the underlying documents and this would relate not 7 only to this slide but it is a general thing.</p> <p>8 MR NILSON: I'm not going to argue this now. I did not like 9 this last thing, it is under my dignity. But I will 10 leave it at that.</p> <p>11 THE CHAIRMAN: We'll leave it that. We have then finished 12 for today. It's a quarter to four; no, it's a quarter 13 past four. We have five witnesses to be examined 14 tomorrow, three until 10.45 and the rest for the rest of 15 the day, which is for Kazakhstan Bank. The idea is that 16 we going to start at 9 o'clock and run all day.</p> <p>17 MR NILSON: Could we have an idea of how long the big 18 examination with the witness Moldabekova will take?</p> <p>19 MR GUTERSTAM: I think we emailed that to you two weeks ago, 20 that information. I don't have that -- I don't know it 21 by heart but your colleague does. But we have that 22 information. We were asked two weeks ago and we 23 responded to that question. I don't have that but there 24 will be absolutely no problems to finish in time.</p> <p>25 MR NILSON: Maybe we can finish in time.</p> <p style="text-align: center;">Page 152</p>

<p>1 THE CHAIRMAN: My recollection is that three hours was set. 2 Did you turn off the recording? No, what it says here 3 is that 10.45. (Pause) 4 But it's in practice the total time, three, three 5 and a half hours, if I'm not mistaken. 6 Yes, we have four and a half hours booked, if I'm 7 not mistaken. 8 MR NILSON: In total, yes, excluding pauses and lunches, 9 which means that maybe you will use three hours and I an 10 hour and a half, is that correct, roughly? 11 THE CHAIRMAN: We don't feel that we should participate in 12 at that discussion. This is a schedule that we have 13 sent out for your opinions, but we will continue 14 speaking about that after the meeting, or shall we here 15 and now start discussing how we should use Thursday? 16 MR NILSON: No, that is not at all my intention, but it's 17 useful no know that approximately how long time the 18 examination and the cross-examination lasts. But if we 19 agree -- 20 THE CHAIRMAN: Can we agree? 21 MR GUTERSTAM: Well, it's a little bit difficult for me to 22 say exactly, for the witness to answer, but I don't 23 think that will be any problems whatsoever to make three 24 hours. 25 THE CHAIRMAN: Fine, but if I you allow me to intervene,</p> <p style="text-align: center;">Page 153</p>	<p style="text-align: center;">I N D E X</p> <p style="text-align: right;">Page</p> <p>1 2 3 4 Submissions by MR FOERSTER2 (continued) 5 Submissions by MS JADERBERG7 6 Submissions by MR METZ31 7 Concluding submissions by MR51 FOERSTER 8 9 Submissions by MS ISAKSSON65 10 11 Submissions by MS AHREL88 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 155</p>
<p>1 maybe it would be useful if the sent information could 2 be resent. 3 MR GUTERSTAM: I will find it and forward it you. 4 THE CHAIRMAN: We have our planning, yes we have our 5 planning, but we have a spare day. 6 Thank you. Anything else? No, thank you for today. 7 Nine o'clock, same room tomorrow. 8 (4.15 pm) 9 (The hearing concluded until 9.00 am on Wednesday, 10 10 April 2019) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 154</p>	

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