Appeal Nos: SC/1/2002, SC/6/2002, SC/7/2002, SC/9/2002, SC/10/2002

Date of Judgment: 29th October 2003

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

The Honourable Mr Justice Ouseley, Chairman

Mr C M G Ockelton

Mr J Chester

AJOUAOU and A, B, C and D	APPELLANT
and	
Secretary of State for the Home Department	RESPONDENT

For the Appellants - Ajouaou, A and B: Mr B Emmerson QC

Mr R Hussain

Instructed by: Birnberg Peirce & Partners

For the Appellants - C and D: Mr M Gill QC and Miss S Harrison

Instructed by: Tyndallwoods

Special Advocate for B: Mr I MacDonald QC, Mr K Qureshi

Special Advocate for C and D: Mr N Blake QC, Mr M Hoskins

Special Advocate for Ajouaou and A: Mr R Scannell, Ms P Whipple

Instructed by: Mr S Trueman, Treasury Solicitor

For the Respondent: Mr W Williams QC

Mr S Catchpole QC

Mr R Tam

Ms L Giovenetti

Mr T Eicke

Mr J Swift

Instructed by: Ms L Smith, Treasury Solicitor

Introduction

1. These appeals are the first substantive appeals to be heard by SIAC pursuant to section 25 of the Anti-Terrorism, Crime and Security Act 2001. Each Appellant contends that his certification by the Secretary of State for the Home Department as a suspected international terrorist was not founded on reasonable grounds; each raises various arguments in law about the Secretary of State?s approach to the relevant material and as to how the Commission should approach its task. Each contends that the procedure, involving as it does, evidence and allegations about which the Appellant has not been told, is fundamentally unfair.

2. The Commission first heard the appeals of Ajouaou, A and B. In the next two appeals heard by the Commission pursuant to section 25 of the 2001 Act, those of C and D, the Appellants were represented by different solicitors, advocates and special advocates from those who represented the first three Appellants. The same panel heard those cases. Their submissions raised legal arguments similar to or different from but supportive of those raised in the first three appeals. There were no new advocates or special advocates involved in the subsequent five section 25 appeals heard by the Commission. Although it was thought at that time that the general submissions about the legal framework and approach had all been heard, two further points were raised in the subsequent appeals which might be relevant to the issues here and in respect of which the parties have made submissions. Those points were first that evidence obtained in breach of the Torture Convention was not admissible at all either in closed or open session; previously it had been submitted that any such breach went only to weight. The second point, raised by the Commission, was whether it had jurisdiction at all to hear an appeal once the certificate appealed against had been revoked, following the departure of the Appellant from the UK. It is important for consistency of approach, and convenient in dealing with the legal arguments, that those later submissions be dealt with now, while we are dealing with the

submissions actually made in these appeals. These later submissions also include those made in the next two appeals. There was a certain amount of cross-reference and interdependence in the submissions anyway. The same is true in relation to some of the generic evidence, in particular concerning the GIA, which was also relevant in the case of Appellant C. This part of the determination deals with the generic legal and factual material in those appeals. It provides the background for the consideration of country and group related issues in the subsequent appeals which have been heard, which subsequent appeal decisions may adopt. The second part of the open determination consists of the Commission?s conclusions on each of the individual Appellants.

3. The Commission ordered that the anonymity of the individual Appellants in all the appeals currently before SIAC should be protected with the exception of Ajouaou, Abu Rideh and Othman, also known as Abu Qatada. These Appellants? names were already in the public domain as Appellants and they had no objection to being identified. This direction was made under Rule 39(5)(h) of the SIAC (Procedure) Rules 2003 and to the extent applicable, under section 11 of the Contempt of Court Act 1981. The same applies to the names of the Secretary of State?s witnesses except for Mr Troake who gives immigration evidence only. Accordingly, the other Appellants will be referred to by letter only; their names should not be referred to in the media even if appearing as such in any determination.

4. Two of the first ten Appellants ceased to be detained under the 2001 Act because they were able to go to another country. When they left the United Kingdom, their current appeals were deemed to be abandoned by virtue of section 27(1) of the 2001 Act and section 7A(4) of the SIAC Act 1997. Fresh appeals were lodged from abroad; on 20th March 2002, the Commission, on the application of the Secretary of State, struck out that part of the fresh appeals which related to the deportation orders, but allowed the appeals against certification as a suspected international terrorist to continue. This was the only means available to him to try to remove the certification and the stigma which goes with it. On 16th January 2003, the Secretary of State revoked the certificates.

5. The other Appellants, however, remain in detention. They are all detained under the provisions of section 23 of the 2001 Act, which permits detention under Schedules 2 and 3 of the Immigration Act 1971, provided that removal or departure is prevented, either by a point of law relating to the Refugee or European Human Rights Conventions or by a practical consideration. Each contends that his removal would infringe his human rights, pursuant to an appeal under section 2A of the SIAC Act. They also appeal against deportation orders or refusals to revoke such orders under section 2 of the SIAC Act. Their deportation appeals arise under that Act because the Secretary of State relied on a public interest provision in making the orders, that it was conducive to the public good for reasons of national security.

6. Some Appellants, eg B, also appeal against a certificate which the Secretary of State has issued under section 33(1) of the 2001 Act, to the effect that he is not entitled to the protection of the

Refugee Convention because Article 1F applies to him (guilty of acts contrary to the purposes of the UN), and because Article 33(2) applies to him (he is reasonably regarded as a danger to the security of the United Kingdom).

7. The certificate in respect of A was issued on 17th December 2001 and he was detained very shortly thereafter. An appeal was lodged on 23rd December 2001. Much the same timetable applied to the other Appellants. The reasons for the passage of time before the hearing of their substantive appeals lie in delays in obtaining legal aid, the resources devoted to the initial challenge to the derogation from Article 5 ECHR, which the parties, including the Appellants, wished to have dealt with first, the service of further evidence, the process of examining whether "closed" material, including any intercept material, could be released to the Appellants and setting up the hearings for a time when the relevant advocates, and the special advocates in particular, would be ready and available; the latter are few in number, not readily approved and it is impracticable simply for their cases to be returned to other advocates. It was not practicable to list more than two appeals together, where the Appellants were present. There is much material common to all Appellants, and more still common to some others in respect of which a consistent approach is necessary. The length of this part of the judgment reflects that. It also needs, as with the closed points, to provide clear guidance to those who review these cases under the 2001 Act as to what has already been considered and dealt with.

The legal framework

8. The relevant provisions of section 21 of the Anti-Terrorism, Crime and Security Act 2001 are as follows:

> "(1) The Secretary of State may issue a certificate under this section in respect of a person if the Secretary of State reasonably -
>
> a. believes that the person?s presence in the United Kingdom is a risk to national security, and
>
> b. suspects that the person is a terrorist.
>
> (2) In subsection (1)(b) ?terrorist? means a person who -
>
> a. is or has been concerned in the commission, preparation or instigation of acts of international terrorism,
>
> b. is a member of or belongs to an international terrorist group, or
>
> c. has links with an international terrorist group.

(3) A group is an international terrorist group for the purposes of subsection (2)(b) and (c) if -

a. it is subject to the control or influence of persons outside the United Kingdom, and

b. the Secretary of State suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism.

(4) For the purposes of subsection (2)(c) a person has links to an international terrorist group only if he supports or assists it.

(5) In this Part -

?terrorism? has the meaning given by section 1 of the Terrorism Act 2000, and

?suspected international terrorist? means a person certified under subsection (1).

(7) The Secretary of State may revoke a certificate issued under subsection (1)."

It was not the Secretary of State?s case that any of these three Appellants fell within subsection (2)(a). The specific definition of "links" in subsection (4) is important.

9. "Terrorism" is defined by reference to section 1 of the Terrorism Act 2000, as meaning:

"(1) ... the use or threat of action where -

a. the action falls within subsection (2),

b. the use or threat is designed to influence the government or to intimidate the public or a section of the public, and

c. the use or threat is made of the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it -

a. involves serious violence against a person,

b. involves serious damage to property,

c. endangers a person?s life, other than that of the person committing the action,

d. creates a serious risk to the health or safety of the public or a section of the public, or

e. is designed seriously to interfere with or seriously disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section -

a. ?action? includes action outside the United Kingdom,

b. a reference to any person or to any property is a reference to any person, or to property, wherever situated,

c. a reference to the public includes a reference to the public of a country other than the United Kingdom, and

d. ?the government? means the government of the United Kingdom, or a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation."

10. The appeal provisions are in section 25 of the 2001 Act, as follows:

"(1) A suspected international terrorist may appeal to the Special Immigration Appeals Commission against his certification under section 21.

(2) On an appeal the Commission must cancel the certificate if -

a. it considers that there are no reasonable grounds for a belief or suspicion of the kind referred to in section 21(1)(a) or (b), or

b. it considers that for some other reason the certificate should not have been issued.

(3) If the Commission determines not to cancel a certificate it must dismiss the appeal.

(4) Where a certificate is cancelled under subsection (2) it shall be treated as never having been issued ..."

11. By section 27(1)(c) of the 2001 Act, section 7A(4) of the SIAC Act 1997 is incorporated. This provides that an appeal pending to the Commission is to be treated as abandoned if the Appellant leaves the United Kingdom.

12. The relevant provisions for the asylum and deportation appeals start with section 33(1) of the 2001 Act which provides:

"(1) This section applies to an asylum appeal before the Special Immigration Appeals Commission where the Secretary of State issues a certificate that -

a. the appellant is not entitled to the protection of Article 33(1) of the Refugee Convention, because Article 1F or 33(2) applies to him (whether or not he would be entitled to protection if that article did not apply), and

b. the removal of the appellant from the UK would be conducive to the public good."

13. The Secretary of State has so certified in some appeals and so sections 33(3) to (5) apply. They provide:

"(3) ... the Commission must begin its substantive deliberations on the asylum appeal by considering the statements in the Secretary of State?s certificate.

(4) If the Commission agrees with those statements it must dismiss such part of the asylum appeal as amounts to a claim for asylum (before considering any other aspect of the case).

(5) If the Commission does not agree with those statements it must quash the decision or action against which the asylum appeal is brought."

14. Section 34 is also relevant:

"(1) Articles 1(f) and 33(2) of the Refugee Convention (exclusions: war criminals, national security, &c) shall not be taken to require consideration of the gravity of -

a. events or fear by virtue of which Article 1(A) would or might apply to a person if Article 1(F) did not apply, or

b. a threat by reason of which Article 33(1) would or might apply to a person if Article 33(2) did not apply."

15. The relevant provisions of the Refugee Convention are Articles 1F and 33(2) which respectfully state, so far as material:

"Article 1F

The provisions of this Convention shall not apply to any person with respect of whom there are serious reasons for considering that ...

c. he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 33(2)

The benefit of the present provision [ie the non-refoulement provision in Article 33(1)] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, ..."

16. There are a number of UN Resolutions relevant in this context. The Secretary of State drew particular attention to General Assembly Resolution 51/210 of 16th December 1996 which declares:

"1. The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism ...

1. The States Members of the United Nations reaffirm that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations; they also declare that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

2. The States Members of the United Nations reaffirm that States should take appropriate measures in conformity with the relevant provisions of the national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not participated in terrorist acts, considering in this regard relevant information as to whether the asylum seeker is subject to information as to whether the asylum seeker is subject to investigation for or is charged with or has been convicted of offences connected with terrorism and, after granting refugee status, for the purpose of ensuring that

the status is not used for the purpose of preparing or organising terrorist acts intended to be committed against other states or their citizens."

The legal arguments

The role of section 25(2)(b)

17. Mr Williams QC for the Secretary of State submitted that section 25(2)(a) was the primary relevant power and that section 25(2)(b) was a residual power, to be construed narrowly. After all, its use presupposed that the certificate had not been cancelled under paragraph (a) and therefore that the Appellant who succeeded under (b) was reasonably suspected to be an international terrorist. It could be aimed at procedural errors in the certification process, or where the certificate had been issued irrationally, other than by reference to the merits of the paragraph (a) case. It did not cover the situation where reasonable grounds for suspicion only arose after the certification, because that was a matter for paragraph (a), which covered all areas of factual inquiry on the merits. It did not cover someone who was reasonably suspected of being an international terrorist, but who the Commission was satisfied was not a terrorist, because paragraph (a) again was the exclusive focus of the Commission?s appraisal of the evidence. In law, and not just in reason, there was no scope for it to reach such a combination of conclusions.

18. The Appellants, with Mr Emmerson QC to the fore on this point, submitted that it should receive a broader construction, or that at any event paragraphs (a) and (b) between them ought to provide the means whereby certain proper objections to a certificate should be given effect. It could cover someone in respect of whom the Commission concluded that he was not in fact a terrorist even though reasonable grounds for suspicion existed. It could cover cases which fell outside the scope of the derogation order.

19. There are real difficulties, in our view, in seeing what the precise scope of paragraph (b) is. It is clear that paragraph (a) is the primary power and is the relevant power pursuant to which the examination of the strength of the relevant suspicion or belief is carried out. It is the vehicle for the essential factual inquiry and decision. Paragraph (b) only applies where the Commission has already concluded that there are reasonable grounds for suspecting that an Appellant is an international terrorist. For reasons which we develop later, we regard paragraph (a) rather than paragraph (b) as the route through which effect should be given to the limitations on the Derogation Order, notwithstanding the way in which the Attorney-General appears to have seen its use for this purpose in the derogation hearings. It is academic in these appeals what the position would be in respect of an Appellant in respect of whom reasonable grounds for suspicion arose only after his certification; and it would be academic in the generality of cases because, if such grounds existed by the time of his appeal, he would either lose under paragraph (a), or if successful under (b) would be certified again under section 27(9). As to the position if reasonable grounds existed to suspect that someone was an international terrorist and yet the Commission was satisfied that in fact he was not, whilst we see the force of Mr Williams? submissions, they

lead to a less than appealing conclusion; its resolution is best left till such a problematic set of facts presents itself.

20. Mr Gill QC for Appellant C, and Mr Blake QC, his Special Advocate, developed a further argument which they submitted could be covered by paragraph (b). This related to human rights arguments. Mr Gill submitted that at the stage of considering individual appeals, it was still open to him to argue that C?s detention was disproportionate by reference to Articles 3, 6, 8 and 14 ECHR. He focused particularly on the evidence as to the health of C?s wife for Article 8 purposes, and related that to the nature of the allegations, the strength of the open evidence and the length of the detention. Mr Blake, in part of his written submissions which the Commission directed be an open document, submitted that the Commission?s task, in affording judicial protection against excessive or disproportionate action, had to reach decisions on the proportionality of the interference with private life and family well-being which indefinite detention entailed. Such points do not fall within paragraph (a), and if they are admissible at all, they fall within paragraph (b).

21. The Secretary of State really only dealt with this argument, and then briefly, in the alternative context in which it was raised, of the deportation appeal.

22. It is not our intention here to deal with the substance or merits of the point but rather whether it is capable of falling within paragraph (b) at all. That is a matter of statutory construction, with sections 3 and 6 of the Human Rights Act 1998 in mind. There is nothing in the language of Part IV of the Act as a whole or in paragraph (b) in particular to warrant a narrow view being taken of that provision so as to exclude consideration of those human rights which are not the subject of the derogation. Indeed, the language "some other reason" is wide in scope; it may cover but it is not confined to procedural error and it is difficult to see the value of an "irrationality" test in the case of someone whose paragraph (a) grounds of appeal have failed. It may be that paragraph (a) is the first and primary focus of the Commission?s attentions, but that is no reason to cut down the width of paragraph (b). We consider that the argument is in principle admissible under paragraph (b) as well as in respect of deportation. But it must be remembered that the assessment of proportionality will take place in the context of a conclusion that an Appellant raising such a point is reasonably suspected to be an international terrorist, and a risk to national security related to a public emergency threatening the life of the nation, in respect of which a derogation from Article 5 ECHR has been approved by Parliament, and indeed upheld so far in the Courts as compatible with the ECHR. In any individual case, it may be a very difficult point for an Appellant to succeed on.

23. Indeed, in none of the appeals in which a proportionality issue was raised was the Commission persuaded that certification and detention was a disproportionate response to the material which persuaded it that there were reasonable grounds for the requisite suspicion and belief.

24. The Act itself does not contain any reference to the significance of the risk as part of the

certification process. It would be possible for someone to come within it on the basis of comparatively minor activities in respect of which indefinite detention would be inappropriate. It should be open to someone so detained to contend that even if what is said against him were true, recourse to so draconian a power was disproportionate in the light of other circumstances. Such an approach is within the scope of section 25(2)(b).

25. We record in this context, however, what we were told initially in closed session in C?s appeal about the way in which cases were considered for certification by the Security Services; 11th June 2003 p53-4 and 12th June p12-17. The question had been raised by Mr Gill as to why certain people who were said to be extremist contacts of an Appellant were at liberty, if contact with them was a pointer to his client?s detention. The Security Service?s guidance note produced for the SIAC hearings was made open. It reflected how the risk to the United Kingdom had originally been assessed, and how the work of the service had been focused. In summary, not all those who might fall within the scope of the 2001 Act and the derogation had been detained: it would depend on such matters as the strength of the intelligence case, the prospect and gravity of any criminal proceedings, possible length of sentence, the management of the risk whether defensively or to obtain information, the prospect of deportation, and the significance of the threat which they were assessed to pose and whether detention was proportionate to that threat. Resources for detention was relevant. It was unlikely, if the danger warranted detention, that compassionate or family circumstances would prevent it, said witness A, in closed session. Obviously the individual would have to be a foreign national who met the statutory tests.

26. Mr Gill then submitted that any matter, which fell within the scope of "some other reason" why the certificate "should not have been issued", should be considered by the Commission in the light of all the evidence available to it about the circumstances of an Appellant currently at the date of hearing, just as with paragraph (a). Necessarily, this would follow through the review provisions. Section 3 of the Human Rights Act 1998 was relied on to impart the necessary flexibility and the Secretary of State?s position was characterised as more of an unprincipled forensic contrivance.

27. In our judgment, paragraph (a) clearly requires the Commission to consider the reasonable belief and suspicion in the light of all the evidence available to it as at the date of hearing. Its language contrasts with the provision at (b) which requires it to consider whether the certificate "should not have been issued". The phrase clearly refers to the time of the Home Secretary?s Act. It would have been very simple to have said instead "should be cancelled". Section 3 does not permit the one to be substituted for the other. We recognise that this can create a certain arbitrariness in the application of paragraph (b): a change in circumstances after certification would be irrelevant, even though the circumstances would have been relevant if recurring beforehand. But that consideration permits neither the wording of the Act to be changed to what might have been desired or desirable but was not said, nor an unnaturally constrained meaning to be given to "some other reason". In any event, that arbitrariness can be removed by the application in the appropriate case of the bail powers in section 24 of the 2001 Act. Those can be exercised at any time. If the Commission were of the view that an Appellant fell within the scope of section 25(2)

(a), and that, as at the date of certification there were no reasons why he should not have been certified, but that for some other reason he should now be released, the bail provisions would provide the mechanism. The appeal is against certification rather than against detention as such; it would be possible for the appeal to be dismissed and yet for the disproportionate nature of the detention in all the circumstances to be redressed. This would of course be the subject of submission by both sides, in particular as to the conditions, which might be very stringent.

28. Mr Gill?s suggestion that paragraphs (a) and (b) in effect required the Commission to be satisfied as to the reasonableness of the grounds as at the date of certification and also as at the date of hearing is academic. If the evidence did not justify it then but now did, and the Commission cancelled the certificate under (b), even though (a) not (b) is the true locus of the merits contest, the Secretary of State would immediately issue a further certificate under s 27(9).

29. Apart from the debate over paragraph (b), there was no dispute but that in those cases where the certificate was still in force, the Commission had to apply the statutory provisions to the material which was placed before it at the hearing, whether or not that material was before the Secretary of State when he issued the certificate and whether or not he had considered that material.

Those who have left the country

30. One of the first five Appellants, Ajouaou, had had his certificate revoked by the Respondent on 16th January 2003, after his second appeal, from abroad, had been lodged but before his appeal was heard. No issue arose before the Commission at that stage about whether it continued to have jurisdiction to hear the appeal.

31. There was a short debate about whether the statutory test was to be applied in those circumstances as at the date of the Appellant?s departure from the United Kingdom, but there was in the end no significant difference between a test immediately before, or at the day of departure. It was not suggested that the position had to be examined as at the date of revocation. This seemed a sensible approach to a situation not expressly provided for by the Act. Notwithstanding Mr Scannell?s submissions, it also seemed to the Commission that it could look at subsequent evidence, and evidence of subsequent events, whether it helped the Appellant or not to do so, because it might throw light on previous activities, telling the Commission more of the person who had been certified. It is unlikely that even if the matter were considered as at the date of revocation it would make much difference in most cases of departure.

32. Another Appellant, F, in a later series of appeals, was in the same position as Ajouaou. The Commission raised the question of whether it continued to have jurisdiction notwithstanding the revocation of the certificate.

33. There are obvious disadvantages with such a revocation having the effect of depriving the Commission of jurisdiction. It is odd that the Respondent can deprive the Commission of

jurisdiction to hear a properly lodged appeal. The lawfulness or merits of the certificate can no longer be tested directly, though they can be examined in effect should an Appellant seek to re-enter the United Kingdom.

34. However, the Commission has come to the view, for reasons set out at greater length in the appeal of F, that the revocation of the certificate does deprive it of jurisdiction. The appeal is against certification, which connotes a continuing state of affairs. The powers available on appeal are only to cancel a certificate; that power only makes sense in the context of a certificate which remains in force. The statutory language is reinforced by the first ground upon which an appeal can be allowed, which goes to present merits. The appeal would at best be arguable on the rather limited paragraph (b) ground.

35. The Respondent could, and, following the scheme of the Act, should have revoked the certificates when the Appellants left the United Kingdom. In those circumstances, they would have had no certificate at all against which to appeal. The Respondent purported to make the revocation retrospective to that date; whether or not he can do so, it is clear that he could put the Appellants in the position in which the Commission concludes those whose certificates have been revoked now find themselves. If the Respondent contends that this retrospective effect exists, he should have revoked the certificates immediately upon their departure.

36. Nonetheless, because we have heard full argument on the merits, we shall set out our conclusions on them.

37. We should add, in the case of Ajouaou, that we do not accept Mr Scannell?s written submission that if we had jurisdiction we should allow Ajouaou?s appeal under paragraph (b) on the grounds that his departure for Morocco showed that the certificate and detention were unnecessary. First, Ajouaou?s second appeal alleged that both the detention and the decision to deport were irrational, and although from overseas, that "to deport me to Morocco would be in breach of my rights" under the European Convention on Human Rights. His statement relied upon the breach of what appear to be Article 8 rights.

38. Second, the fact that someone may depart as an alternative to indefinite detention may demonstrate no more than the way in which he balances the various breaches or risks to his human rights, rather than that the Respondent should have realised that, in Ajouaou?s case, he could go to Morocco. It may well be that the degree of risk in Morocco and the effect on family life were outweighed in his mind by the unpleasantness of indefinite detention. His departure for Morocco does not of itself show that there were no breaches of human rights which would have been involved in his deportation there, or anywhere else. The evidence does not permit any other clear conclusion to be reached.

Reasonable grounds for belief and suspicion

39. Mr Williams, in his opening general submissions, recognised that there was a difference in standard between the "suspicion" required that someone is an international terrorist and the "belief" required that he is a risk to national security, with the former being a lower standard. On the face of it, that is correct, although the distinction may not in practice readily be made. The obvious starting point for the Commission is the reasonableness of the grounds for suspecting that the Appellant is an international terrorist. If it reaches the conclusion that there are such reasonable grounds, it is not easy to envisage the circumstance in which it would then conclude that there were no reasonable grounds for believing that he was a risk to national security. The reasonable grounds for the suspicion would be very relevant to the reasonable grounds for the belief. But the former is not to be regarded as inevitably sufficiently probative of the latter because of the existence of the two tests with their different wording.

40. Mr Williams also submitted that the Commission was only concerned with the question of whether, objectively judged, the relevant reasonable grounds existed. We accept that the Commission is not concerned, at least under section 25(2)(a), with whether the Secretary of State subjectively held the relevant belief or suspicion. It is a possibility that the Commission could conclude that there were reasonable grounds for the suspicion or belief without itself holding the requisite suspicion or belief. But its task under section 25 is to consider the reasonableness of the grounds rather than to cancel a certificate if, notwithstanding the reasonableness of the grounds, it were unable subjectively to entertain the suspicion or hold the belief to which the statute refers. If such a situation were to arise, the Commission will make that clear.

41. Mr Williams submitted that suspicion was a state of conjecture or surmise where conclusive proof was lacking; all that was required for reasonable grounds was information capable of being evaluated by a third person sufficient to generate that speculation. Plainly it is right that reasonable grounds for suspicion is some way short of proof even on the balance of probabilities and that reasonable grounds can be based on material which would not be admissible in a normal trial in Court, such as hearsay evidence of an unidentified informant.

42. Mr MacDonald QC and Mr Scannell, as Special Advocates in these appeals, and Mr Gill QC for C and D, and Mr Blake as Special Advocate for C and D, made broader submissions as to the way in which the Commission should approach whether reasonable grounds existed for suspicion that someone was an international terrorist. They submitted, in differing ways but to the same effect, that "reasonable suspicion" and "reasonable belief" had to be seen in the context of the draconian powers which are exercised upon those suspicions and beliefs and the amount of time which had been available to the Security Services to investigate the activities of the Appellants both before and after their detention. The relatively low threshold of reasonable suspicion as applied in relation to the arrest of someone, who would then enjoy the benefit of a full trial process, was too low for application under this provision. The Commission should subject the evidence and assessments of the Security Services to a close and penetrating examination. The legality of the detention, and its proportionality, depended on the facts of each case; the greater the length of the detention, the greater the level of scrutiny required.

43. Mr Gill placed some reliance on O?Hara v Chief Constable of the RUC [1997] AC 286, which concerned the arrest without warrant of someone under the provisions of anti-terrorist legislation. It allowed such an arrest only if the arresting officer had "reasonable grounds for suspecting" that the person had been involved in terrorism. The evidence upon which the officer relied was a briefing by a superior officer. The nature of the test which had to be applied was the source of the protection of individual liberty: as Lord Hope pointed out, it was the combination of genuine subjective belief and the objective examination of its reasonableness. At p298, he said "The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances." Simon Brown LJ referred to this sentence in Hough v The Chief Constable of Staffordshire [2001] EWCA Civ 39 in relation to the reasonableness of reliance upon a particular piece of information as grounds for suspecting that an arrestable offence had been committed. He said, at paragraph 17, that if there were no urgency in the situation and that if, in all the circumstances, some further enquiry was clearly called for before suspicion could properly crystallise, that piece of information alone would be insufficient.

44. The same approach can be seen in the ECHR cases to which we were referred. Mr Gill relied on the decision of the ECtHR in Fox, Campbell and Hartley v United Kingdom [1990] 13 EHRR 157. It concerned anti- terrorist legislation in which a person could be arrested without warrant and detained for up to 72 hours if he were suspected of being a terrorist. In considering the application of Article 5 to that provision, the Court said at p167:

> "The Court agrees with the Commission and the Government that having a ? reasonable suspicion? presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as ?reasonable? will however depend upon all the circumstances.
>
> In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge.
>
> As the Government pointed out, in view of the difficulties inherent in the investigation and prosecution of terrorist-type offences in Northern Ireland, the ? reasonableness? of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of ?reasonableness? to the point where the essence of the safeguard secured by Article 5(1)(c) is impaired."

45. In Murray v United Kingdom [1994] 19 EHRR 193, the ECtHR said at paragraph 56 that "the length of deprivation of liberty at risk may also be material to the level of suspicion required." All that was in the context of what was a "reasonable suspicion."

46. We accept that those cases illustrate the proposition that the objective judgment of whether reasonable grounds exist depends on the circumstances. Urgency, for example, may make it reasonable to rely on information upon which it would be unreasonable to rely without taking matters further, if more time were available. We accept Mr Gill?s submission that the extent, nature, independence and reliability of the evidence are relevant. The extent to which obvious lines of enquiry, which could have been followed, have been ignored is relevant. These cases also recognise the particular difficulties and risks faced in relation to terrorism, which may require urgent action and entail reliance on sources which do not usually appear in court cases. We also accept the general point that what may be reasonable for an arrest for a short period of detention may be insufficient for indefinite detention. It is all the circumstances which are relevant.

47. Mr Gill goes too far however when he submits that the evidence must point "unequivocally and strongly to the conclusion" that the Appellant falls within section 21. Likewise, he is wrong to suggest that an extremely strong basis for suspicion, with the scope of that word strained to its uttermost limits, was required by the statute.

48. It cannot be construed so as to re-impose requirements which are the subject of the derogation. The test is still whether reasonable grounds for suspicion and belief exist. The standard of proof is below a balance of probabilities because of the nature of the risk facing the United Kingdom, and the nature of the evidence which inevitably would be used to detain these Appellants. Having said that, it does have to be scrutinised carefully and its weaknesses and gaps examined to see if it does provide such grounds or whether suspicion exists or survives because of a failure to investigate matters in obvious ways which would have cast a clearer light, one way or the other, on the point.

49. We also reject Mr Gill?s submission that as a matter of law, no reasonable reliance could be placed on an Appellant?s contact with another person who gave rise to suspicion, especially when that other person may have been acquitted of offences, or not even charged. What weight is attached to any particular piece of evidence is a matter for consideration in any particular case in the light of all the evidence, viewed as a whole and not as isolated pieces. In these cases, those last few words are very important. The fact of acquittal may also reflect the admissibility of evidence in and the standard of proof in a criminal case; it is indeed the Respondent?s case that none of these Appellants could be convicted of terrorist offences in a United Kingdom court. Whilst the absence of arrest on criminal charges or interview can be an indicator as to the existence of reasonable grounds, it must be remembered both what material is admissible for these purposes and inadmissible or not usable for criminal trial purposes, and the nature of the matters in respect of which reasonable grounds for suspicion or belief has to be shown.

50. There is a point which does call for mention in this context. Some of the people, contact with whom is said to support the Respondent?s case in a number of appeals, are themselves Appellants, detained under the 2001 Act but whose appeals have not been heard. We do not consider that we should hear all the appeals first before coming to a conclusion on those which we have heard and delivering our determination. That would delay the release of those who might succeed and for those who lost, there would be at least the knowledge of a decision about their detention, with whatever appeal opportunities that permitted. If any more favourable view was taken during the appeal of that other detainee, the effect of that could be considered in a review of the continued detention of the first. We are conscious of the associated risk of a circular argument arising, or of a view apparently being formed in advance of an appeal. The Commission will look at all appeals on their own merits.

51. It may be useful at this juncture to deal with two features of the Respondent?s evidence which arose on a number of occasions: investigations and disclosure. Suspicions were aroused by activities for which sometimes an explanation was offered by the Appellants; sometimes they may have not been aware of them because the evidence was only dealt with in closed session. On a number of occasions, an obvious line of inquiry was not pursued either by the police or the Security Services; we exclude those where there would have been risks of one sort or another in pursuing them. Sometimes the enquiries were not pursued for the simple reason that at the time of the investigation, there was no desire or need on the part of the services to do more than see whether a particular individual was of interest to them so that resources should be allocated to him; they were not as such collecting evidence and still less were they trying to prove a case or investigate a possible innocent explanation. It is not a question of them simply ignoring material which might assist the Appellants because their minds would not be deflected from the track upon which they were set. It is that by the nature of their habitual task, they deal with suspicion and risk rather than proof. So it does not always appear to them necessary to pursue lines which might confirm or eliminate alternative explanations. But it does mean that less weight can be attached than otherwise might have been the case to certain aspects which aroused their suspicions. There may be a gap, between a seemingly suspicious activity and it giving reasonable grounds for suspicion in this context, which cannot be filled by inference or assessment where it could readily have been filled by further investigation.

52. The general point relating to disclosure did not so much concern the disclosure of material to the advocates, although it had an indirect effect there; it concerned the disclosure of material to the special advocates. Once disclosed to them, however, it could and sometimes did become the subject of further disclosure to the advocate and the Appellant. The SIAC Act and the Procedure Rules do not contain any provision for disclosure of unused material to the special advocates; there is no equivalent to the disclosure process applicable to criminal proceedings and there would be obvious difficulties in any such system. We were told in closed session on 28th May 2003, transcript p10 and following, that there was a guide within the Security Service SIAC team about disclosure which included a requirement that any "exculpatory material" should be disclosed. This requirement covered "material that may assist the Appellant?s case or undermine

his own". The obligation lasted throughout the case. Examples were given of what was meant. Legal advice should be sought about the disclosure. It would not necessarily be disclosed to the Appellant or his open advocate. A team was responsible for disclosure rather than the witness in the case, who was not in a position to read all the documents which might relate to a particular Appellant.

53. Mr Williams accepted that it was Counsel?s responsibility ultimately to make sure that if a point arose during the hearing that required a review of what had been disclosed to the Special Advocate, that such a review took place. There had been a process of secondary review already following the service of the Appellants? statements. It was accepted by Mr Williams that there needed to be a more formalised system of document checking for these purposes. (In fact the particular passage of cross- examination which led to that discussion revealed that there was both strong supportive material for the point being made by the witness which had not been disclosed, and a document which could be construed as helpful to the Appellant, but was not as helpful as Mr Scannell was inclined to suggest.)

54. It is correct that this disclosure system leaves control over disclosure in the hands of one party and its fair operation depends on the integrity of the Respondent?s team and its understanding of what might actually assist an Appellant. We had no reason to doubt the integrity of those who operate it and no-one sought to cast doubt upon it. But the understanding of the Appellant?s case is important as well. The Commission records and welcomes the Respondent?s acknowledgement of the role of responsible counsel in a more formalised system of checking, drawing to the Respondent?s team areas which should be looked for when the documents are reviewed after the Appellant?s statement and as the case proceeds. There is no reason why the Special Advocate should not raise specific issues to be borne in mind during such a review. The Commission would be very slow to draw conclusions adverse to the Appellant if it felt that the Respondent?s own guidance had not been faithfully and effectively followed. The reasonableness of the grounds would be reviewed in that light.

The standard of proof in relation to past facts

55. Mr Emmerson submitted that where a specific past act was relied on as part of the reasonable grounds for believing that someone?s presence was a risk to national security, that act needed to be proved on the balance of probabilities. He relied upon Rehman v Secretary of State for the Home Department [2001] United Kingdom HL 47, [2003] 1 AC 153. This case concerned the deportation of a Pakistani national on the grounds that it would be conducive to the public good in the interests of national security. He was said to be involved with an Islamic terrorist organisation acting on the Indian sub-continent but which was unlikely to commit such acts within the United Kingdom. It was said that he recruited British Muslims for terrorist training in Pakistan who, trained and indoctrinated with extremist beliefs, might return here and create a threat to the security of the United Kingdom. He appealed to SIAC under section 2 of the SIAC Act 1997. In particular, Mr Emmerson referred to what Lord Slynn said in paragraph 22, emphasising the first sentence.

> "Here the liberty of the person and the practice of his family to remain in this country is at stake and when specific acts which have already occurred are relied on, fairness requires that they should be proved to the civil standard of proof. But that is not the whole exercise. The Secretary of State, in deciding whether it is conducive to the public good that a person should be deported, is entitled to have regard to all the information in his possession about the actual and potential activities and the connections of the person concerned. He is entitled to have regard to the precautionary and preventative principles rather than to wait until directly harmful activities have taken place, the individual in the meantime remaining in this country. In doing so he is not merely finding facts but forming an executive judgment or assessment. There must be material on which proportionately and reasonably he can conclude that there is a real possibility of activities harmful to national security but he does not have to be satisfied, nor on appeal to show, that all the material before him is proved, and his conclusion is justified, to a ?high civil degree of probability?. Establishing a degree of probability does not seem relevant to the reaching of a conclusion on whether there should be a deportation for the public good."

Mr Emmerson also referred to what Lord Hoffmann said at paragraph 54; the factual basis for the executive?s conclusion that deportation would be in the interests of national security had to be established by evidence but unless there was no evidential basis for that conclusion, the ability to differ from his evaluation would be limited. He also said at paragraph 55 that "the question is always whether the tribunal thinks it more probable than not" that a past event occurred. This was said for the purpose of explaining the error into which the Commission had fallen of using what it called a "high civil balance of probabilities".

56. Mr Blake broadened the argument so as to contend that it applied to both parts of section 21; where a specific past act was relied on in any aspect of these appeals it had to be proved by the Respondent on the balance of probabilities. Mr Gill appeared to follow this same line. Mr Blake later accepted that that went too far. Mr Scannell, however, aligned himself with Mr Emmerson?s approach but emphasising the need for cogent evidence. Mr MacDonald recognised the distinction, but preferred to concentrate on the question of the degree of deference if any due to the Security Service?s judgments in relation to whether someone was a suspected international terrorist. He emphasised that this issue was simply a factual matter; no deference was due. We shall deal with deference later.

57. We reject these submissions. First, the statutory questions most at issue, here, are whether there are reasonable grounds for suspecting that an Appellant is an international terrorist and whether there are reasonable grounds for believing that he is a risk to national security. In Rehman, the question was whether the Respondent had satisfied the Commission that the deportation ground had been made out; in this respect, the Commission erred in a number of ways. But the task of the Commission in an appeal under sections 2 and 4 of the SIAC Act and section 15 of the

Immigration Act 1971 was not to decide only whether reasonable grounds existed for the Secretary of State?s actions. Second, to the extent that it is correct to say that the question of whether someone is a terrorist is a question of fact, a suggested requirement that past facts or specific factual allegations be proved on the balance of probabilities would turn the need to show reasonable grounds into an obligation to prove the case on a balance of probabilities. That is simply contradicted by the express wording of the Act. Of course, to the extent that the question is one of evaluation, the argument does not leave the ground.

58. Third, it would equally make a nonsense of the Act, in relation to the grounds for belief that an Appellant was a risk to national security, to require specific factual allegations to be proved on a balance of probabilities before account could be taken of them in a risk assessment or before they could afford reasonable grounds for the necessary belief. The obligation to ignore any and all factual allegations which had not been so proved, with the effect that they then fell out of all reckoning is not consistent with the statute. Moreover, fourth, during the course of our hearing of the evidence, it became quite plain that the suggested distinction between a specific factual allegation and either something more shadowy or expert evaluation or political judgment, is not readily drawn. Take an allegation that an Appellant engages in fraud for the purposes of raising money to assist terrorist groups linked to Al Qa?eda: how would that be broken up for these purposes into specific factual allegation and something else without undue philosophising as to what was a fact? The evidence may suggest quite strongly that fraudulent activities were in train in which the Appellant played some role; the purpose may be a matter of inferences from a range of other material which may include an expert or experienced assessment of what may have happened to the money and whether or not the group for whom it was intended was engaged in self- defence or charity work, and certainly an assessment that there was the necessary connection to the public emergency. If all of that is a specific fact, to be proved on the balance of probabilities, the wording of the Act would be pointless.

59. Fifth, the argument stems from a failure to understand Rehman in the first place. The principal point in relation to the standard of proof was the erroneous use of a "high civil standard" rather than focusing on risk assessment with due deference to the political and expert judgments of the Government and the Security Services. Lord Slynn?s comments need to be seen in the context of the whole of paragraph 22. Even taking his comments at their most favourable to the Appellants, the speeches as a whole do not support so awkward an approach even in the context of the statutory provisions there being considered. Lord Hoffmann takes a different view at paragraph 56, focussing on the assessment of future risk which entailed an evaluation of the evidence of conduct against the whole range of factors with which they might interact. He said:

> "In any case, I agree with the Court of Appeal that the whole concept of a standard of proof is not particularly helpful in a case such as the present. In a criminal or civil trial in which the issue is whether a given event happened, it is sensible to say that one is sure that it did, or that one thinks it more likely than not that it did. But the question in the present case is not whether a given event happened but the extent of future risk. This depends upon an evaluation of the evidence of the

> Appellant?s conduct against a broad range of facts with which they may interact. The question of whether the risk to national security is sufficient to justify the Appellant?s deportation cannot be answered by taking each allegation seriatim and deciding whether it had been established to some standard of proof. It is a question of evaluation and judgment, in which it is necessary to take into account not only the degree of probability of prejudice to national security but also the importance of the security interest at stake and the serious consequences of deportation for the deportee."

60. Lord Clyde agreed with Lord Hoffmann, Lord Steyn agreed with Lord Slynn and Lord Hutton agreed with both. We consider that it would be an unrealistic approach to the expression of assent with one or other of their Lordships? speeches to treat that as an agreement with every comment made in such a speech. There was no comment along the lines of Lord Slynn?s comment in the judgment of the Court of Appeal. The latter emphasised the need to look not only at the allegations and whether or not they have been proved; it was necessary to look at the case as a whole and ask on a global approach whether was a danger. The fact that the Commission had to determine the facts in that case for itself did not assist with the standard of proof; [2000] 3 WLR 1240 paragraphs 44 and 43.

61. Finally, the approach suggested by Mr Gill and Mr Blake would also be inconsistent with the established jurisprudence in asylum and human rights cases, where risk also has to be evaluated and what has happened in the past is relevant to the assessment of risk but not determinative of it; see in particular Karanakaran v SSHD [2000] Imm AR 271, Court of Appeal. We also point out that the focus of the appeals on asylum and human rights grounds in these cases under section 2 and of section 2A is risk based on reasonable grounds. It is plain that the Commission has to be satisfied as to the existence of reasonable grounds for suspicion and belief for the section 25 appeals by taking account of all matters even if not proved on the balance of probabilities; the Rehman decision is of no assistance to the Appellants in that context. It would be bizarre then, if for the purposes of the deportation appeals, those factors which had not been proved by the respondent on the balance of probabilities then fell to be ignored completely. It would not be an easy decision to analyse. Even more curious would be the fact that the Appellant would not have to prove any past facts which he relied on in his favour to any such standard.

The role of the Secretary of State?s views and deference

62. It was submitted on behalf of the Appellants that there was a difference in approach required towards the Respondent?s views in relation to questions of national security and towards his views about whether someone was a terrorist. It was accepted that deference was due to his views in the former but not in the latter case, because the latter was essentially a factual enquiry in which the Commission was just as well placed as the Security Service to draw inferences and to reach factual conclusions. The former involved risk assessment and political judgment and responsibility and in any event the decision in Rehman had conclusively dealt with that issue. Mr Gill submitted that Rehman could be distinguished because the 2001 Act required an actual risk

to be shown whereas Rehman concerned only a potential risk. That latter submission is wrong. Risk looks to the potential for harm, the distinction is a false one and nothing in Rehman or in the 2001 Act warrants a different approach to what constitutes national security or a risk to it.

63. The Respondent submitted that the Commission, in deciding whether there were grounds for suspecting that someone was an international terrorist, was engaged in an assessment of facts and circumstances which involved expert evaluation. Mr Williams instanced the question of whether associations with extremists were innocent or merely criminal or terrorist related. In this area, he urged the Commission to recognise the special competence of the Security Service and to reject their considered views only if there were cogent reasons for doing so. He referred us to what Brooke LJ said at paragraphs 87 and 88 of his judgment in A,X and Y v SSHD [2002] EWCA Civ 1710, the derogation appeal: the judiciary had to be willing to put an appropriate degree of trust in the ability of Ministers who are publicly accountable to satisfy themselves as to the integrity and professionalism of the Security Service.

64. The question of how the Commission should approach the assessment of what "the interests of national security" involve, and how the Commission should approach the Government?s assessment of risk has been considered in Rehman. "National security" or the security of the United Kingdom involves more than its military protection or its territorial integrity and its independence from foreign domination. It extends to the protection of its democratic government, its legal and constitutional systems; see Lord Slynn at paragraph 16. We would include the political values, including respect for individual freedoms, by which it lives. The interests of national security are not however confined to dealing with direct threats to such interests. Action of a terrorist nature against another state may affect the security of the United Kingdom whether through the response of that other state to the actions or inaction of the United Kingdom or through reciprocity in assisting the United Kingdom in dealing with threats to it. As Lord Slynn put it:

> "The means open to terrorists both in attacking another state and attacking international or global activity by the community of nations, whatever the objectives of the terrorist, may well be capable of reflecting on the safety and well-being of the United Kingdom or its citizens. The sophistication of means available, the speed of movement of persons and goods, the speed of modern communication, are all factors which may have to be taken into account in deciding whether there is a real possibility that the national security of the United Kingdom may immediately or subsequently be put at risk by the actions of others."

65. We would add that the sense of that is well-illustrated by the broad anti-Western agenda of Al Qa?eda and its networks, and their response to the support given by the United Kingdom to measures taken by the USA after the attacks of 11th September 2001. This has seen the United Kingdom, on the Government?s assessment, move from safe haven to a primary target. Combating terrorism in this country may involve combating terrorism abroad whether to remove

a direct or indirect threat, or to support those who can assist the United Kingdom.

66. Lord Steyn, quoting Lord Woolf CJ in the Court of Appeal, said at paragraph 28 that the Government "is perfectly entitled to treat any undermining of its policy to protect this country from international terrorism as being contrary to the security interests of this country." It is in that vein that we accept the point made on behalf of the Secretary of State that ECtHR jurisprudence recognises the legitimate interest of the state in combating terrorism and in preventing recruitment and fund-raising.

67. The question of whether a risk to national security exists is one on which the Commission should show deference to the Secretary of State. Due weight, not unquestioning adherence, must be given to the views and assessment of the Secretary of State who bears the direct responsibility for the safety of the country and is answerable to Parliament for his actions. As Lord Steyn said, at paragraph 28, "the executive is the best judge of the need for international co-operation to combat terrorism...". Lord Hoffmann made the point at paragraph 50 that the question of whether something is in the interests of national security is a matter of judgment and policy, entrusted to the executive and not to the courts. It is artificial to separate such issues from foreign policy, which is an issue for Ministers answerable to Parliament and not for the courts. At paragraph 54, he pointed to the need for the Commission to evaluate the material relied on by the Secretary of State, but considered that its scope to differ from the Secretary of State?s views was limited by the advantage which he had over the Commission through the advice which he received from people with specialist day-to-day involvement in security matters, given the very considerable margin allowed to his appraisal of national security matters especially as they involved the assessment of risk. The cost of failure, as he put it, can be high; this required the judiciary to respect the conclusions of the Secretary of State that, in that case, support for foreign terrorists acting in a foreign country constituted a threat to national security. Such decisions required a legitimacy which could only be conferred by entrusting them to those who were answerable for them to Parliament.

68. We also accept the Respondent?s submissions that the resolutions of the United Nations Security Council, such as 1373 of 2001, declaring terrorism to be contrary to the purposes and principles of the UN, and the linking of those resolutions to the Al Qa?eda network and its associated individuals and groups, provide a clear framework into which the interests of national security can be set for these appeals. Terrorism is an international phenomenon and countries throughout the world can be affected by terrorist acts in countries other than those where an attack may take place. Countries co-operate in part so that they and their allies and friends can more effectively protect each other and thereby themselves.

69. The evaluation of the existence of a risk to national security for the purposes of an appeal under section 2 of the SIAC Act, requires significant weight to be given to the views of those who have day-to-day expertise and experience in these areas and to the appraisal of the Minister who is answerable to Parliament for his actions. Considerable deference is due to the assessment of whether someone?s presence constituted a risk to national security both for the purposes of

section 2 of the SIAC Act and section 25 of the 2001 Act.

70. We approach the question of deference in respect of the other limb of section 25, suspicion of being an international terrorist in this way. It is perfectly correct that Rehman does not deal with any issue beyond national security risks. But it is a mistake to see it as providing no relevant assistance. Lord Hoffmann pointed out in paragraph 57 the wide range of advice that the Respondent has, unlike the Commission. The evidence of the Security Service witnesses drew upon the opinions of others within the service upon a wide range of matters: the assessment of whether a particular pattern of behaviour showed that someone was undertaking counter-surveillance measures, the probability that money or documents were for use in terrorist activities rather than to provide for self-defence or to enable someone to evade deportation. As we have said the issue of whether someone is a terrorist in these appeals also is connected to the question of whether that person has the necessary link to the public emergency. It is a mistake to treat this issue as simply a factual question in answering which the Commission is just as well placed as the Security Services. It is not a question of deference as is the case in relation to national security. It is no more than recognising that the answering of the question involves appraising all the evidence including expert evidence from the Security Service. Intelligence material may call for expert assessment by its very nature, whether as an individual piece of intelligence or for its place in a larger and usually incomplete picture. This can relate, for example, to the reliability of a source, or the meaning of a coded conversation. Its significance may or may not be clear intrinsically or for the larger picture; cross-checking with other sources, the repetition of a pattern seen elsewhere may aid understanding. This may call for the expertise and experience of the Security Services. In some areas the Commission is indeed as well placed as them to draw inferences and draws its own. In other areas, there may be different degrees of expertise, some related by the witness at second hand. There it is for the Commission to assess the weight it gives to such expertise; as with any expert, it is not bound to accept what is said. The weight given depends upon the experience of the expert, his objectivity and fairness and the extent to which his views can be explained and how they fit with other material. Whilst we accept the general point made by Brooke LJ in the derogation appeal, the Commission is also in a position to form some view about the professionalism and integrity of the witnesses and the Security Service upon whose views they draw, and will have to weigh their evidence accordingly. This does not constitute deference; it is simply the proper evaluation of all the pieces of evidence.

71. It is our task under section 25 to examine the evidence relied on by the Secretary of State and to test whether it affords us reasonable grounds for the relevant belief and suspicion; it is not a demanding standard for the Secretary of State to meet. The very formulation of the statutory tests gives significant weight to his views and expertise, which reflects his role as the Minister answerable to Parliament. They might be thought to embody the requisite degree of deference as described in Rehman. However, the Commission must be careful to ensure that such deference or recognition of expertise as is appropriate does not mean that it forswears its own obligation to be satisfied that there are indeed reasonable grounds for the necessary belief and suspicion.

Article 3 and the admissibility of evidence

72. In the earlier appeals, Mr Emmerson had submitted that evidence which had or may have been obtained as a result of treatment which breached Article 3 should be given very little weight. He had not submitted that the Commission was not entitled to take it into consideration. In the appeal of E, he submitted that the Commission should decline to consider any evidence unless it was shown not to have come into existence as the result of a breach of Article 3. He asked that these submissions be considered by the Commission in relation to those earlier appeals, which we have done. He referred to many observations made about treatment by the Americans at, for example, Guantanamo Bay and allegations about ill-treatment of particular individuals such as Moazzim Begg. Thus Abu Zubaida, said to be an important terrorist with close links to Osama Bin Laden, had suffered a bullet wound when captured and it was alleged that he was interrogated without any treatment being given for the wound. It might apply to the partially retracted confession of Djamel Beghal in the United Arab Emirates. Mr Emmerson submits that the Commission should ignore any statements made by individuals who had been taken into custody and who then gave information which implicated others (and frequently themselves too) in activities which could help to show their links with terrorist groups.

73. Mr Emmerson argues that such evidence is inadmissible on three grounds. First, it would breach the right to a fair trial under Article 6(1) of the European Convention on Human Rights. In this regard, he relies on Montgomery v HM Advocate [2001] 2 WLR 779, in particular observations of Lord Hoffman at p75, where he said:

> "If the reception of evidence makes the trial unfair, it is the court which is responsible ... . For example, an accused who is convicted on evidence obtained from him by torture has not had a fair trial. But the breach of Article 6(1) lies not in the use of torture (which is separately, a breach of Article 3) but in the reception of the evidence by the court for the purposes of determining the charge. If the evidence had been rejected, there would still have been a breach of Article 3 but no breach of Article 6(1)."

74. It is accepted that, as the law stands in the light of the Court of Appeal?s decision in A v Secretary of State for the Home Department [2002] EWCA Civ 1102 (the derogation appeal), Article 6 is engaged. Thus Mr Emmerson?s second argument, that Article 5(4) (which is not the subject of any derogation) has implied into it the fairness requirements set out in Article 6(1), is not necessary. Thirdly, he submits that the common law prohibits the use of confession evidence obtained by torture or other means likely to overbear the will of the individual and refers by analogy, to section 76 of the Police and Criminal Evidence Act 1984.

75. There is no doubt that admissions obtained from a defendant in the criminal trial by means of a breach of Article 3 are not admissible against him. That is what the cases referred to by Mr Emmerson decide and Lord Hoffman?s remarks in Montgomery extend no further. But, as Mr Emmerson accepts, evidence which is obtained as a result of information given as a result of a

breach of Article 3 may be considered. Thus, for example, the finding of a bloodstained knife which implicates a defendant may be used against him even though it was found only by acting on information which was itself obtained unlawfully.

76. It is in our view important to distinguish between evidence obtained from a party (usually the defendant in a criminal trial) and evidence obtained from someone else. The authorities relied on by Mr Emmerson are concerned with admissions or confessions, and section 76 is so confined. The general principle of the common law is that, however unlawfully obtained, other evidence is admissible. The headnote in R v Sang [1980] AC 402 accurately summarises the findings of the House of Lords thus:

> "Save with regard to admissions and confessions and generally with regard to evidence obtained from the accused after commission of the offence, the judge had no discretion to refuse to admit relevant evidence on the ground that it was obtained by improper or unfair means, the court not being concerned with how it was obtained ... ."

That leaves, however, the residual discretion to exclude evidence the prejudicial effect of which outweighs its probative value. But this approach does not appear relevant to a non-jury trial, let alone to an appeal dealing with reasonable grounds for suspicion or belief.

Sang?s case involved an agent provocateur, but the principle was expressed to be one of general application.

77. Mr Emmerson referred us to Article 15 of the Convention against Torture (CAT) to which the United Kingdom is a signatory. This provides:

> "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

78. Torture is distinguished from other acts of cruel, inhuman and degrading treatment or punishment which, by Article 16, all parties to the Convention are enjoined to prevent in any territory under their control. Torture is defined in Article 1 of CAT to mean:

> "... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession ... which such pain or suffering is inflicted by or at the instigation of or with the consent of a public official or other person acting in an official capacity ..."

79. CAT is not part of domestic law, but we recognise that it should be assumed that the authorities in the United Kingdom must seek to comply with its provisions and that we should not do anything which contravenes it unless compelled by domestic law to do so. Article 15 specifically refers to any statement "which is established to have been made as a result of torture". That makes it abundantly clear that there should be exclusion only if a court is satisfied that the statement in question was obtained as a result of torture. Whatever may be the merits of the underlying arguments on evidence obtained by torture, we regard that as sufficient to deal with Mr Emmerson?s submission that the burden of proof is on the Government. Even the CAT does not require that.

80. We do, however, accept that if there is material which shows that torture or other breaches of Article 3 may have been used to obtain the information relied on, those advising the Respondent and we must consider that material since, at the very least, it will bear on the proper weight to be given to the information. If torture is alleged, that must be looked into, but the material will not fall within the embargo set out in Article 15 unless torture is established. And the assertion by an individual that he or anybody else was tortured may not of itself suffice to prove that he was: he may be seeking to exclude evidence against him which would be damning.

81. In the context of these appeals, which do not involve criminal proceedings, an exclusionary principle would be difficult, if not impossible, to apply. There is no doubt that in considering the protection of the State and its citizens, the Respondent must be entitled to have regard to all information which is relevant. He must of course be concerned whether it is reliable and so is bound to consider how it was obtained and from what source. If there are possibilities of breaches of Article 3, he will inevitably have to consider them because they will be highly material in relation to reliability. In judging reliability, he will have regard among other things to any other evidence which supports the information. He does not have to ask himself in every case, whether he is satisfied that this information was not obtained by torture before being able to take it into account: that would be absurd and, incidentally, represent a grave danger to the safety of those he has to protect. We cannot be required to exclude from our consideration material which he can properly take into account, but we can, if satisfied that the information was obtained by means of torture, give it no or reduced weight. Otherwise, we will have regard to any evidence about the manner in which it may have been obtained and judge its weight accordingly. We are, after all, concerned in these proceedings not with proof but with reasonable grounds for suspicion.

82. We should refer to R (Ramda) v Secretary of State for the Home Department [2002] EWHC 1278 (Admin) upon which Mr Emmerson relied. That case concerned the extradition to France of an alleged terrorist who had been involved in bombings in 1995. A crucial element of the case against him was information in a statement made by a man called Bansaid, a co-accused, which implicated the claimant. Such evidence is admissible against a co-accused in French law. It was said that Bensaid?s statement had been extracted by means of torture or at least by violent ill-treatment and there was evidence, in the form of injuries to Bensaid, which was capable of supporting that allegation. In paragraph 9 of the judgment, Sedley LJ cited Lord Hoffman?s observations in Montgomery (above), saying that the Home Secretary must consider whether

there would be a fair trial: and one of the matters he should consider was the voluntariness of extra-judicial confessions relied on as evidence. This is an extension of Montgomery, but one can well understand how an English judge would see little merit in the distinction between the voluntariness of a confession made by the accused and that made by a co-accused in circumstances where the latter could be used against the accused. There was also an issue in Ramda as to whether the French authorities had properly or at all investigated the complaint that Bensaid had been ill-treated and assaulted, in order to obtain the information from him.

83. It seems to us that the decision in Ramda is entirely understandable from an English lawyer?s point of view since it might well appear that to admit such evidence would result in unfairness. But it does not in our view justify the conclusion that information obtained from a third party by methods which breached Article 3 is inadmissible. The circumstances of a particular case will determine whether it should be admitted or what weight should be attached to it if it is. It does not appear to be suggested in Ramda that the Secretary of State is obliged to exclude the evidence from consideration if he thinks that the allegation about the way it was obtained is or may be true.

84. We are, of course, not bound by any rules of evidence, but must act fairly in considering the appeal of each Appellant. But the means by which information is obtained goes to its reliability and weight and not to its admissibility, and that is how we have considered it.

The effect of the derogation

85. It was agreed that the terms of the 2001 Act and the application of the tests in section 25 to the facts of any appeal involved consideration of the terms in which the Human Rights Act 1998 (Designated Derogation) Order 2001 was made, by which the United Kingdom derogated from the provisions of Article 5 ECHR. In the course of the derogation proceedings, the Secretary of State, through the Attorney General confirmed that he would use the powers in Part IV of the 2001 Act only in relation to the emergency which underlay the Derogation Order. The decision of the Court of Appeal in A, X and Y, and Others v Secretary of State for the Home Department [2002] EWCA Civ 1502, [2003] 2 WLR 564, shows that the Secretary of State?s powers under section 21 are limited by the terms of the derogation to the public emergency threatening the life of the nation, and cannot be exercised in respect of someone whom he does not reasonably believe to be a risk to national security because of his connection to that threat and whom he does not reasonably suspect to be a terrorist connected to that threat.

86. There was some debate before us as to how best to reflect the effect of the derogation in the statutory framework. It is unnecessary to explore it. What is important is that it applies to both the national security and international terrorist limbs of section 21 of the 2001 Act, for they are separate tests and both need to be satisfied, however unlikely it may be in practice that someone who is reasonably suspected of being a terrorist connected to the public emergency would not reasonably be believed to be a risk to national security. It is also important that the standard of proof of the necessary connection to the public emergency be clear; that is achieved in

accordance with what we regard as the intentions of the derogation and the Act by notionally writing the connection into the two limbs of section 21(1). That is how we have expressed it above.

87. It is important next to be clear about what activities, and by whom, are covered by the public emergency underlying the derogation. The terms of the derogation and the nature of the public emergency to which it relates are important because of contentions on behalf of the Appellants that their activities, however they might otherwise be categorised for the purposes of section 21, fell outside the scope of the derogation and that emergency. They also were concerned at the number of links relied on in the chain to establish a connection to Al Qa?eda.

88. The Schedule to the Derogation Order refers to the public emergency in the United Kingdom in these terms. It refers to the events of 11th September 2001 and the two subsequent UN Security Council resolutions which recognised the attacks "as a threat to international peace and security".

> "The threat from international terrorism is a continuing one. It its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.
>
> There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom."

89. The provisions of the 2001 Act are then summarised and related to Articles 5 and 15 of the ECHR. But there is no further indication as to the scope of the public emergency underlying the derogation.

90. Lord Woolf CJ, at paragraph 42 of the judgment in A,X and Y, noted that the Secretary of State, through the Attorney General, had given an undertaking to SIAC that Part 4 "would only be used for the emergency which was the subject of the derogation". In paragraph 48 of its decision, the Commission records the way in which the Attorney General put the point:

> "Secondly, the Attorney General indicated to us on behalf of the government that if the powers under sections 21 to 23 of the 2001 Act were exercised against a person not said to be linked with Al Qa?eda or its associates, that would be a proper basis for this Commission to set aside the certificate under section 25(2)(b) of the Act."

91. Chadwick LJ expressed himself, paragraph 149, in the same language as Lord Woolf CJ.

92. Brooke LJ, at paragraph 98, referred to the terms of the derogation, to the threat exemplified by the attacks of 11th September 2001 and said:

> "In other words it identifies the threat posed by Al Qa?eda and its associated networks (and no-one else), and the Secretary of State has put the matter beyond doubt by the way his authorised witness explained to SIAC the factors that led him to identify a public emergency threatening the life of the nation."

93. The Commission?s decision, in the derogation hearings to which Lord Woolf CJ referred, records the Attorney General in paragraph 26 referring to Al Qa?eda as:

> "... a loose-knit body which is linked to other terrorist organisations, some at least of which are supported by those in and funded from the United Kingdom and this makes it the more difficult to identify its members and supporters."

94. In paragraphs 25 and 26 of the Secretary of State?s statement to which the Commission expressly referred, he said:

> "25. Collectively, extremists in the United Kingdom present a potent force. They include those who are lying dormant for specific tasking from Bin Laden as well as those who have been instructed to establish themselves in the country against a future occasion when they are needed. Plans for terrorist attacks such as those of 11th September take a long time to develop. Terrorist cells consisting of a small number of individuals prepared to involve themselves in any such attack may therefore lie dormant over long periods. In addition, others continue to provide support activity, a core component of terrorism linked to Bin Laden. On past experience, it is likely that these others may also participate more directly in terrorist-related activity in the future.
>
> 26. ... Extremists in the United Kingdom have the skills, opportunity and intent to further and provide material support to Al Qa?eda?s campaign against the United States and its allies; the military campaign in Afghanistan may provide a rallying call to action. The presence of such extremists here at this time, and for the foreseeable future, creates a situation of public emergency threatening the life of the nation."

This analysis was accepted in the derogation hearings.

95. The other reference is to the open statement of the Respondent?s witness in those hearings whose evidence was accepted. He referred in general terms to the danger from the Al Qa?eda network

and associated groups, and to foreign nationals linked to those responsible for the 11th September attacks or to other groups and individuals associated with Al Qa?eda.

96. The true emphasis, for the limit to the exercise of Part 4 powers, is on the emergency underlying the derogation. The expression "Al Qa?eda and its associated networks (and no-one else)", which Brooke LJ alone used, was relied on by a number of advocates for the Appellants without recognising the significance of the rest of the paragraph. There is a risk that that phrase, taken in isolation from the rest of the judgments and indeed that of the Commission, might be thought to suggest clear cut distinctions and a clear point at which the nature or number of the links to an associated group fell outside the scope of the derogation. The reality of the nature of the terrorist groups and individuals, whose activities give rise to the emergency and the derogation, does not permit such clear cut distinctions. As was pointed out in the evidence for the derogation hearings, Al Qa?eda and its associates are loosely knit, lack formal organisational structures and have links with other active terrorist organisations. The real point of Brooke LJ?s remark was that the Act could not be used to detain foreign nationals belonging to other terrorist organisations, perhaps proscribed under the 2000 Terrorism Act, such as ETA or the Real IRA, even though they were reasonably suspected of terrorist activities, of being a risk to national security and even though they could not be deported, however grave the risk they were thought to pose.

97. In the appeals, the Respondent?s evidence referred regularly to the link to Al Qa?eda being created not just by national groups but by a loosely co-ordinated series of overlapping networks. They shared a broadly similar ideology, had shared training and jihad experiences and shared logistic and financial support. Mr Williams submitted that the derogation covered:

> "... individuals in the United Kingdom who are members of Al Qa?eda or its associated networks or are linked to members of such organisations or groups [and] are by reason of that fact part of the threat to the United Kingdom which comprises the current public emergency. That threat is compounded where they provide support for Al Qa?eda or any of the networks associated with it because they are thereby enhancing the capability of those networks."

98. He identified groups such as the GIA and the GSPC, the EIJ, the Arab Mujahaddin in Chechnya, the Abu Doha group or network, a group or network centred around Beghal, and a wider North African network comprised of "individuals who are also previous or present members of other networks linked to Al Qa?eda (including the GSPC and the Abu Doha Group) and is itself part of the Al Qa?eda network or a network linked to Al Qa?eda". A UN Monitoring Report of August 2002, to which we refer later, described Al Qa?eda as "a series of loosely connected operational and support cells." A diagram annexed to it illustrated what was meant: at the centre of an oval was Al Qa?eda, linked by arrows to the cardinal points where were marked four distinct but interlinked entities: the strategic decision-making structure, the base force for guerrilla warfare in Afghanistan, the loose coalition of transnational terrorist and guerrilla groups, and the global terrorist network. Links around the circumference of the oval connected to those groups.

99. We accept that general schematic description of Al Qa?eda and its associated networks; it was borne out by all the evidence which we heard and was not the subject of serious debate. Terrorist groups have historically worked in small cells, often disconnected from each other with deliberate cut-outs in the chain of command, with direct communication at operational level to the leadership hierarchy discouraged. We deal later with the specific groups referred to because their relationship, if any, to Al Qa?eda was the subject of dispute. But we accept Mr William?s submission as to what connections and with whom had to be shown for the purposes of the derogation and in very summary form his submission as to why, if such connections are shown, it shows the link to the public emergency and why the threat is increased. Of course, Mr Williams is using the word "link" in its specific statutory meaning. Mr Williams submitted that it would be an unwarranted restriction on the scope of the emergency to require the group of which an Appellant was a member or to which he was "linked" in the statutory sense to be a supporter of the core aims of Al Qa?eda as expressed in the February 1998 fatwa. That was one core aim or statement of intent and means but not the only objective. Its objectives were a combination of the global and national, the latter being part of and assisting the former and vice versa. It was not necessary to show that an individual supported that fatwa in order to show, to the requisite standard of proof that he was both an international terrorist and connected to the public emergency.

100. Issues then arose related to the public emergency, as to the continued existence or role of certain groups, and their support for Al Qa?eda or its aims: for example, it was submitted for some Appellants that the GIA?s activities for a number of reasons fell outside the scope of the emergency even though it was a proscribed terrorist organisation. The Respondent put weight on the inclusion of certain organisations such as the GIA, the GSPC and the EIJ in lists prepared for the UN. Security Council Resolution 1333 of 2000 requested a previously established Committee to maintain an updated list of individuals and entities "designated as being associated" with Osama Bin Laden, including those in the Al Qa?eda organisation. This was to be based on information provided by governments and regional organisations. In Resolution 1363 of July 2001, it set up a monitoring group to monitor the measures taken against the Taliban in Afghanistan and their role with Bin Laden in promoting terrorism. The list, kept up to date, is part of the means whereby the UN polices the effectiveness of anti-terrorism measures against Bin Laden and Al Qa?eda. Security Council Resolution 1390 of January 2002 decided that all states should take measures, relating to the finances, movement and supply of materials, against Bin Laden, Al Qa?eda , the Taliban and other individuals, groups, undertakings and entities associated with them, as set out on the updated list. We were referred to a report of the Monitoring Group of August 2002 in open Generic Bundle C. It describes the list as a key instrument in the implementation of the UN Resolutions and says in paragraph 24: "It is important that all States treat the list as an authoritative and key reference document supporting the measures laid down in" the January 2002 Resolution. The list was authoritative but not exhaustive. In January 2003, the Security Council again resolved that the list be kept up to date and notified to states. None of the first five Appellants appear on the list, but the GIA, GSPC and EIJ are on it. The same names feature on EU Council Regulation 881/2002. This is intended to give effect within the EU to those measures which the Security Council required to be taken,

which fell within the competence of the EU.

101. Mr MacDonald contested the Respondent?s reliance on the UN Resolutions. He said that the sequence of Resolutions began with 1267 of 1999 which was concerned to take measures against the Taliban. That is so, we accept, but the justification for those measures was the failure of that regime to surrender Bin Laden for trial for terrorist attacks, and by Resolution 1333 of 19th December 2000, measures against individuals and entities associated with him including Al Qa?eda, were required. Although the Resolution was directed at financial measures and would cover those who were linked to Bin Laden financially, there is no reason to treat the resolution as leaving to one side the finances of those who supported him in other ways. We do not accept Mr MacDonald?s submission that the list prepared pursuant to that Resolution is not relevant. He said that Resolution 1373 of 2001 was directed at terrorism generally although referring to the attacks of September 11th; this is true but in this context 1363 of 2001 is the more important. It is also correct that Resolution 1390 of 2002 followed the making of the United Kingdom Derogation Order but it re-affirmed the earlier Resolutions and we do not accept that on that account the list should be discounted in some way.

102. The more important points made by Mr Macdonald were, first, that the list was not intended to deal with whether an individual or group was a threat to the United Kingdom in the context of the public emergency, and certainly not in the context of the threat as defined by Mr MacDonald and, second, that there was no means of ascertaining the evidential basis upon which any group or individual had been placed upon the list. It might have been no more than the desire of a government to gain the backing of the UN against a group which it was seeking to repress because it fought against that regime?s oppression. We accept that there is force in both those points, without at this stage dealing with Mr MacDonald?s wider submission as to the nature of the derogation threat. Presence on the list is a factor which we can take into account because it may represent a legitimate and considered view, but as we have heard evidence about the activities and attitudes, the existence of and splits within the groups and the degree to which the GIA has been infiltrated, it is to that evidence which we should primarily look for the necessary satisfaction as to the grounds for suspicion and belief. The Respondent has endeavoured to satisfy us by evidence rather than to rely merely upon the presence of an organisation upon the UN list. The list has been compiled in the context of association with Bin Laden and Al Qa?eda. "Links" within the 2001 Act has a specific meaning which may not have been what the compilers of the list had in mind. The list cannot be simply disregarded but the evidence has to satisfy us as to the requirements of the Act and the derogation emergency and the list is not the primary source of that evidence. We do not accept the submission that the list is irrelevant because it only included those associated with Al Qa?eda after the derogation, since it included those associated with the Taliban and with Bin Laden already. Nor do we accept that it was concerned with general measures against terrorism and so was too broad on that account to be relevant to the narrower focus of the public emergency. Of course, it is correct though that these appeals have a narrower focus than the statutory wording by itself would provide.

103. In the Rideh appeal, witness B accepted that the work of the author Ronan Gunaratna, which was

drawn upon for some aspects of the UN Report (Open Generic C, p69 and following) was regarded as doubtful in certain parts and that he had been stood down as an expert witness for the Crown in the trial of Meziane and Benmerzouga. But witness B?s point was that the use of this UN Report was a way of bringing into open conclusions, assessments or material which would otherwise have to be dealt with in closed session. The Security Service did not, themselves, rely upon the Report or Mr Gunaratna as the source of their intelligence or assessments. He was being used as the vehicle for expressing in open what they otherwise knew. The doubts were expressed in general terms about some but not all aspects of what Mr Gunaratna expressed in his extensive writings. No instance was given or asked about in relation to that Report. We are satisfied from all that we have heard that the general depiction of Al Qa?eda and its workings is reliable and well-supported.

104. Mr Gill later instanced these comments as showing a want of disclosure by the Respondent. It may be that the fuller explanation earlier would have been useful, but the main theme of witness B?s answer was a common one. Material is put into open, not because it is the source, but because it is the vehicle for expressing what the Security Service regard as the position, without declaring in open their closed material in support of it, or having to forego putting any such conclusions into the open evidence.

105. Mr MacDonald next submitted that the loosely co-ordinated, informal and overlapping groups or networks showed that there was no single military or operational command and no evidence of one single organising committee or structure. In order for the necessary link to the public emergency to be made, it was therefore necessary for the Respondent to show that there was a common aim, the aims of Al Qa?eda, which the Appellants pursued. The fact that there might be some evidence of some association with Al Qa?eda of which an Appellant might have been aware, was insufficient to show the connection to the public emergency; that required the pursuit of the common purpose. That could only be shown by evidence of material assistance and support for the core Al Qa?eda aims. Association with someone who was associated with someone who was connected with Al Qa?eda was not enough. There had to be support in terms of the threat to the United Kingdom; so if there was support for Al Qa?eda in conflicts in Chechnya or for other national purposes e.g. the change of regime in Algeria to an Islamic one, that could not provide the necessary link to the threat to the United Kingdom or the suspicion of one. The core aims of Al Qa?eda could be seen in the 1998 fatwa, which went beyond the encouragement to terrorism which was seen in Bin Laden?s 1996 Declaration of Jihad against the US. It was in the 1998 fatwa "Jihad Against Jews and Crusaders", addressed to all Muslims, that he ordered the killing of Americans and their allies, civilians and military, in any country in which that could be done. It was support for this global jihad, with indiscriminate killings as its aim, which had to be shown through membership of or support for a group which subscribed to the aims and to the means of that fatwa.

106. Mr Blake suggested that the derogation required a link to be demonstrated to an international terrorist group which threatened the life of the nation. We consider that by itself that cannot be enough; there has to some expression of a connection of whatever degree or nature to Al Qa?eda.

It also goes too far in requiring that the group itself threaten the life of the nation. Mr Blake submitted that the central question was whether there were reasonable grounds for believing or suspecting that an Appellant, if at liberty, would be likely to give effect to operational instructions from senior Al Qa?eda operatives and to promote, execute or materially assist an Al Qa?eda linked act of terrorism in the United Kingdom. This formulation is too restrictive for the wording of the Act. Section 21(3) requires that the international terrorist group, which is supported or assisted, be controlled or influenced from abroad, and no more. Section 21(3) defines a terrorist in three ways which range from involvement in an act or planned act of terrorism to membership of a group concerned in such acts, or support or assistance for a group concerned in such acts. Those latter two parts are clearly broader than Mr Blake?s summation. For reasons which we give later, we reject the suggestion that the acts of terrorism must be planned for the United Kingdom, whether for the Act itself or for the derogation. The Act itself is not so limited because the definition of terrorism which it incorporates from the Terrorism Act defines "terrorism" so as to include acts which take place outside the United Kingdom; section 1 (4). Rehman should stand as guidance against an over narrow view of the impact of terrorism and the interdependence of countries in fighting it in their own self-defence.

107. Mr Gill put his argument in a number of ways. There had to be conduct directly or indirectly furthering Al Qa?eda to which an Appellant was linked in some material way. The Respondent had to demonstrate strictly, to the high standards required by the draconian powers invoked, that an Appellant was linked to a group itself sufficiently closely linked to Al Qa?eda in a way relevant to the public emergency. Mr Gill overstated the standard of proof. Later he adopted the submissions of Mr MacDonald, saying that membership or support for a group had to be active association with Al Qa?eda and its core aims of violent jihad against western interests by terrorist means. He also said that it was necessary to distinguish between those who were "truly and actively" involved with Al Qa?eda and its associated networks in a way which related to the public emergency, and those who happened to know others connected to a group, only part of which actively supported the Al Qa?eda agenda. What was needed was actual activity, assistance or support directly related to the threat to international peace and security by Al Qa?eda and its associates. A distinction also had to be drawn between groups which pursued a solely national agenda, albeit with assistance perhaps from Al Qa?eda or its associates, and the international terrorism which was the subject of the derogation. There was an issue about whether membership of a group or support for one which had a multi-faceted agenda fell within the Act or within the derogation, if the support was given either for the self-defence facet of its activities, so that it would be said not to be terrorist at all or which fell outside the derogation.

108. As to these wider submissions, we first observe that many of these points are best not dealt with in the abstract; it is better to ascertain the factual basis to which the Act is then applied with the Derogation Order in mind, rather than to answer interesting and important points without such a firm footing. This is particularly so when there is debate as to the extent to which any group has an exclusively national agenda and, if so, whether that is also the case for present or former adherents noted in the United Kingdom. But we are of the view that the formulation by Mr MacDonald of the link to Al Qa?eda and those associated with it, as requiring support for a core

aim of global jihad, expressed in the indiscriminate killing of civilians, is too narrow an approach. It is not necessary for adherence to that core aim of Al Qa?eda, expressed in the 1998 fatwa, to be the point of overlap between the GSPC, GIA, Al Qa?eda or the Appellants. Similarly, Mr Gill?s submission that there has to be support for the core aims of global jihad against the West by terrorist means is too narrow. The threat to the life of the nation is not so confined although that is an obvious part of it. The threat is not confined to activities which may take place within the United Kingdom for the nation?s life includes its national activities abroad whether diplomatic, cultural or in civil aviation and tourism. Nor would it necessarily be right to suppose, in the light of Rehman, that the nation?s life cannot be threatened by attacks upon other countries who are allies, friends or vital sources of material for the economy such as oil. This threat could come directly from the disruption created by such attacks, or indirectly from the strength which the terrorist may gain from such an attack in a world in which the interdependence of countries facing a global terrorist threat is obvious. The threat to the nation, which underlies the derogation, is posed by any of the various activities of Al Qa?eda and those who are associated with it, whether or not they agree with all aspects of his global agenda or with the indiscriminate killing of civilians as a means or end.

109. It is necessary to understand the overlap between the various groups and individuals, and how they connect to Al Qa?eda, to realise why the derogation is expressed as it is. Take the Arab Mujahaddin fighting in Chechnya: those who go there or support those who fight there with that group, connected as it is to Al Qa?eda, are assisting fighters with a radical Islamic agenda to train, and to gain experience and prestige which is capable of being deployed later for global jihad purposes or in the recruitment of others, radicalised by their experiences, to be part of a United Kingdom based terrorist support network able to carry out attacks in or against the United Kingdom. The derogation is properly seen as related to Al Qa?eda and its associates. The "international terrorist group" contemplated by section 21 is Al Qa?eda or a group associated with it, provided it is recognised that the very nature of the groups associated with Al Qa?eda encompasses informal, even ad hoc, groups which can as easily or better be described as overlapping , loosely co-ordinated groupings or networks. Their purposes may overlap in part but not in whole, and they may not agree with all the means which another would use; but that does not prevent them being part of the threat to the life of the nation as a matter of principle or law. It is that connection to Al Qa?eda which provides the threat rather than a desire for a particular type of atrocity, because it is Al Qa?eda and its associates which provide the threat to the nation by whatever means they consider further their anti-western agenda and through whomsoever they operate directly or indirectly.

110. A number of advocates submitted that there are groups engaged in the defence of Muslim communities against oppression or state terror. To some extent this depends on the specific groups in question and evidence as to what else they may do and how the defence activities may be related to and support the global jihad in various ways. It may also depend on what the particular individual was doing. But, in our judgment, if those groups also support Al Qa?eda for a part of their agenda and an individual supports them nonetheless, it is a legitimate inference that he is supporting and assisting Al Qa?eda through his support for that group, whatever his own

views may be on the indiscriminate killing of civilians, in the absence of evidence showing that the group has compartmentalised operations and is not assisted in other activities by the support given for eg self defence purposes. Indeed the Act requires only that there be support or assistance for an international terrorist group. The derogation requires that there be a link between that group and Al Qa?eda. It is sufficient that there is that indirect connection to Al Qa?eda. It is not necessary that the assistance be in connection with the Al Qa?eda facet. A group can be strengthened through support in one area and thus better able to carry out activities in another in a number of ways: publicity for fund raising and recruitment, the diversion of resources supplied for one purpose to another, the dual use of resources, the ability to retain resources which would otherwise have to be spent for another purpose. It is also unwise to suppose that there is a readily discernible and closely observed distinction between one activity and another within a terrorist group with many agendas. They all feed off each other. The same person who does fundraising or false documentation for one purpose is able to do it for other purposes; accommodation for one can be used for another; someone radicalised through jihadic experiences and indoctrination in Chechnya may see the violent global jihad as a next step. There is room for debate as to what has been called unwitting assistance which we deal with later.

111. The Respondent?s focus, rightly, is on activities rather than mere membership of a multi-faceted group: what does someone do, with whom and why? Support for Chechen fighters in general may not engage the public emergency, but support for a multi-faceted group, part of which has a global terrorist agenda, can do. But much of this is a theoretical distinction, particularly without evidence of a supporter making the distinction and of such a distinction in reality, existing within a multi-faceted group.

112. We do recognise that it is possible to construct connections, which by a number of links in a chain, can reach Al Qa?eda but without having any sensible connection to any threat or any real substance. But it is unrealistic, given the lack of formal structure to Al Qa?eda, to its various associated groups or networks, or to the links between them, to define the connection in a way which suggests that no more than one remove or link is permissible in order for the link to the public emergency, derived as it is from the activities of Al Qa?eda and its associates, to be made. Any more analysis depends on the facts of the cases.

Membership, support and assistance

113. We have already touched on a number of aspects of this in dealing with the effect of the derogation. It is important to remember, in the light of the weight attached in the Respondent?s evidence to contacts with those who were said to be Islamic extremists, that having "links" in the 2001 Act has the specific and narrower meaning of "supports or assists". It may not always be clear in any given case whether someone is a member of a group or whether he supports or assists it. Terrorist groups may have some formal swearing of allegiance or other indicia of membership such as the Provisional IRA Green Book, but they may have nothing at all to indicate membership. One may talk of a gang member without supposing that he was any more than one of a group of criminal conspirators. A group for these purposes may be informal, ad hoc, formed

for temporary expediency; the effect of the Act, draconian though it is, should not be approached as if it were only intended to apply to those terrorist groups whose affairs were conducted with some formality and constitutionalism. We do not consider that a group can only exist if it is shown to have a formal structure capable of membership. A group in this context is no more than an association of some sort between individuals to pursue one or more aims; the lone terrorist is excluded, "group" is a word of very wide meaning. It covers the concept of networks. We note that section 121 of the Terrorism Act 2000 defines "organisation", the word relevant for proscription and certain offences, as including "any association or combination of persons". We do not consider that "group" should be construed more narrowly. If anything, "group" in the 2001 Act suggests something yet looser, if that is possible, because the ability to proscribe a body might imply the greater degree of cohesion. "Group" either way must be intended to cover a terrorist cell. It would be unwise to lay down any hard and fast distinctions for the purposes of this Act between membership and support or assistance.

114. Mr Gill submitted that the concept of "membership" required the Respondent to show an individual?s positive support for and association with acts of international terrorism. This may be a clear indicator of membership without being the sole way in which it might be shown. It is rather that support and assistance for a terrorist group covers activities more remote or of less significance than those which would identify someone as a member of a group. It must be recognised however that a mere contact does not suffice for section 21(4). There is a risk of over much gloss being applied to the words of the Act.

115. It is convenient here to deal with the extent to which knowledge is required of what a group does and how it is connected to Al Qa?eda or assists its global agenda. The very word "support" itself connotes that there is some awareness of what the group does, and "support" for it in connection with the public emergency similarly connotes an awareness of a connection. The word "assist" does not have such a connotation. However, we are satisfied that the Act cannot be construed so as to permit detention without trial of those who have provided unwitting assistance to a group, or to a group by someone unaware of its relationship to Al Qa?eda. We do not accept the Respondent?s submission that the only question is whether the activity in fact supports or assists the group. If someone knows what a group does or of the connection to Al Qa?eda, and supports the group even despite disagreeing with that aspect of its activities, he falls within the Act and the derogation. If he supports it, indifferent to what it does or whether his support will assist the Al Qa?eda part of its agenda, he is within the Act and the derogation. Take Chechnya: sending support to whomsoever will assist the Muslims would not fall within the derogation (and it does not matter for these purposes whether it might nonetheless come within the Act), unless it was known that some might go to the Arab Mujahaddin and that there were connections between them and Al Qa?eda. Alternatively, it would suffice if a blind eye were turned to what was obvious or if an Appellant were aware that the support might go there, were aware that it might assist Al Qa?eda in some way and continued to provide it indifferent to that consequence. Questions of degree of knowledge and of assistance are matters which may go to whether detention is proportionate but that is a matter for the individual case. In reality, the extent of knowledge and the purpose of the support will be gauged from all the evidence. Although we

have thought it right to provide indications of our approach at this stage, there is a risk of academic analysis because the answers do depend upon the facts of each case.

Departure to another country

116. Section 23 permits detention only where deportation cannot be achieved in two circumstances. It is clear that it is for the Respondent to show that those circumstances apply. But, where the Appellant alleges that he cannot return to his country of nationality because of the breach of Article 3 ECHR which that would involve, the burden is discharged. It is not for the Respondent in those circumstances to contact speculative possibilities for the Appellant. The departure to another country would have to be arranged and could not be done without informing the third country of the background to the request. If there are obvious third countries to be investigated, we would expect the Respondent to make some inquiries. But they may be limited where an Appellant has already left that third country, fearing that it would return him to his country of nationality or imprison him. In reality, an Appellant would be expected to identify the country to which he thought he might be able to go, if he does not wish to return to his country of nationality directly or indirectly via a third country and has indicated a fear of such a result.

The Appellants? evidence

117. Some Appellants have given evidence to the Commission upon which they have been cross-examined. They have done so whilst re-iterating their objections to the unfairness of the procedures which govern the appeals. Others have given statements but have been unwilling to answer questions on them, saying that the procedures were unfair. We raised the question of whether inferences adverse to the Appellants should be drawn in such circumstances, which would apply the more so where an Appellant provided no statement at all. Both sides were in agreement that that would be unfair and we agree. We are conscious that cross-examination of an Appellant proceeds on a basis where he does not know the significance of some of the questions being asked or the extent to which they may seek to lay the groundwork for a contradiction with closed material, with which he cannot deal except to the extent that he may have anticipated the point and provided other material to the special advocates to use as they saw fit. The standard of proof is not high. The Respondent must establish something before there can be any basis for saying that what he has said clearly calls for an answer; by the stage at which he has established that, the low threshold of proof here would have been already established. He cannot reach that threshold by the silence of an Appellant or by his refusal to answer questions on his written statement. But a refusal to answer questions does mean that less weight can be given to the written statement, and where no statement at all has been provided, there is no material from him to rebut what the Respondent says, apart from any generic material put in by the Appellants.

118. Sections 2 and 2A of the SIAC Act provide the jurisdiction to deal with the asylum and human rights appeals. It is not necessary for the purposes of these three appeals to set out the legal framework here for them because no issue arose in relation to them. Ajouaou is abroad and only

has, at best, a certification appeal. Although in A?s case there has been no section 33 certificate, A appealed against the deportation order on the grounds that his removal to Algeria would be in breach of Article 33(1) of the Refugee Convention. He contends that the discretion to make the deportation orders should have been exercised differently. Paragraph 364 of the Immigration Rules HC 395 sets out the need to balance the public interest against any compassionate circumstances; again A accepted that if he lost his certification appeal, the other matters were irrelevant; the Respondent accepted that if A won his appeal, he would not actually seek to deport him because of his Article 3 rights. B made no submissions about this aspect of his appeals for the same essential reasons.

The generic evidence

119. The Respondent?s case in respect of each of the Appellants comprised the open and closed generic evidence, generic in the sense that it was of general relevance to the appeals of many Appellants including Ajouaou, A, B, C, D and others, providing context and background evidence, and open and closed evidence dealing with the individual appeals. The closed evidence is dealt with in a separate judgment. There was a considerable degree of overlap between the generic and individual evidence.

120. The Respondent?s generic evidence described the continuing terrorist threat emanating from extreme Islamist groups and networks linked to Osama Bin Laden and Al Qa?eda, which were also described as "those individuals and groups falling within the loosely co-ordinated series of overlapping terrorist networks and groups linked to Al Qa?eda". That is the internationally recognised threat to global peace and security and the way in which the threat to the United Kingdom has increased since 11th September 2001, as the United Kingdom moved from being seen as a safe haven or base for such groups and individuals to being a target. This increased risk has been reinforced by United Kingdom participation in the invasion of Iraq.

121. It is the Respondent?s case that all of the Appellants were linked to groups or networks linked to Osama Bin Laden and Al Qa?eda.

122. The Respondent justifiably, on the evidence, emphasised the importance of the way in which the Al Qa?eda network and the overlapping groups and individuals linked to it, had developed.

123. The generic evidence pointed to the role played by Osama Bin Laden in linking together in a loosely co-ordinated series of overlapping informal networks, groups which had previously been unconnected and had pursued their extremist Islamic aims in a single country. He and Al Qa?eda had created this series of connected networks both as a matter of deliberate policy and indirectly through the influence which they were able to exert through finance and, most importantly, through the terrorist training facilities in Afghanistan. They broadened the aims of the groups and placed their activities in the context of an overall extremist or radical interpretation of Islam. This radical interpretation of Islam is sometimes referred to as a salafist interpretation, so called

because it is seen as a pure interpretation of Islam. They pursued an agenda which went beyond replacing the regimes in Muslim countries with those who shared their radical interpretation of Islam or protecting oppressed Muslims, and extended to the removal of Western influences from Muslim countries and the destruction of Israel. The pursuit of this agenda was not confined to action within Muslim countries but included action against those interests wherever they might be found, in the USA, the United Kingdom or in other parts of Europe.

124. The Respondent?s evidence attributed Al Qa?eda?s ability to draw together these disparate groups to the Mujahaddin who had fought together in Afghanistan, some of whom remained there and some of whom returned to form national groupings within their own countries. Their shared ideology drew upon a radical Islamic interpretation, a desire for an Islamic form of government, varying degrees of support and sympathy for the aims of national groupings, and an increasingly anti-US and Israel and western approach. They shared training camps and experience in Afghanistan and jihadic experiences, not merely in Afghanistan but also in Bosnia and Chechnya. Al Qa?eda provided financial support to other groups as well.

125. The ideology which Osama Bin Laden has developed and which has united the individuals and groups in a way which does not undermine the individuals, but works with them to further their common objectives against a common enemy, is set out in the "Declaration of Jihad by Osama Bin Laden against the US" of 23rd August 1996. He described the crimes which he thought had been committed against Muslims around the world from what he called a "Zionist-Crusader" alliance. He referred to the need to expel the occupying enemy, as he referred to the United States, out of the country of the two "Holy Places" which was Saudi Arabia and asserted that the imbalance of power between "our armed forces and the enemy forces" meant that a suitable means of fighting had to be adopted, which was guerrilla warfare or, more aptly, terrorism. He praised as heroes, four who had been killed bombing the Americans in Riyadh. In February 1998, he orchestrated the signing of a fatwa entitled "Jihad against Jews and Crusaders" issued under the name of The World Islamic Front for Jihad against the Jews and Crusaders. Other signatories included the leader of the EIJ, a leading member of the GI, and radical clerics from Pakistan and Bangladesh. This fatwa stated that it was the duty for every Muslim to kill the Americans and their allies, civilians and military. It said:

> "We issue the following fatwa to all Muslims: The ruling to kill the Americans and their allies - civilians and military - is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim."

126. The Respondent pointed to some of the statements issued after the 11th September 2001 attacks in which Osama Bin Laden made clear not just his role in the attacks but emphasised the importance of attacks being carried out in the United States and against US interests throughout the world in order to achieve the aims of Al Qa?eda?s Islamic agenda, which focused on the

Americans leaving Saudi Arabia, stopping its support for Israel and lifting the embargo on Iraq. The invasion of Afghanistan was seen as a further attack amounting to "an all-out crusader war".

127. Later statements presented the attacks, the subsequent military action and the aims of Al Qa?eda as representing a fundamentally religious war, with the east who were Muslims, against the West who were the crusaders, an enmity based on creed. Subsequent broadcasts on Al-Jazeera by Osama Bin Laden and Al Zawahiri, leader of the Egyptian Islamic Jihad and a close associate of Osama Bin Laden, confirmed that Britain was now singled out as a target for Al Qa?eda and those who shared his ideology. He said that the killing of the British and Australians in the Bali explosions were carried out by zealous sons of Islam "in defence of their religion and in response to the order of their god and prophet ...". Britain, France, Italy, Canada, Germany and Australia were threatened with killings and bombings for their part in joining with America in the invasion of Afghanistan. They emphasised that it was America and its allies who would be punished. In February 2003, in contemplation of the US-led military action against Iraq, Osama Bin Laden specifically urged suicide attacks, "martyrdom operations", against the enemy.

128. The extreme Islamist ideology which links together the aim of ending the United States? influence and presence in the Middle East, ending its support for Israel and ending even the existence of Israel, with the broader anti-western ideology, supports those groups whose aim is to change the governments of individual countries from those which are perceived as being anti-Islamic, or secular, or corrupt, or pro-western into those which follow what they see as Islamic precepts. Indeed, it is in the nature of Islam for it to be seen as transcending national boundaries and unifying Muslims everywhere.

129. In the United Kingdom, the Respondent says that there are two extreme spiritual advisors who have acted as a focal point for extreme Islamist groups, networks and individuals. They have drawn together individuals with differing national agendas and have focused their attention on common Islamic agendas such as in Chechnya and Afghanistan. They have radicalised and recruited young Muslims for training and participation in what the Respondent says are terrorist operations. Those two clerics are involved in appeals to SIAC. Abu Qatada is detained under the 2001 Act, and Abu Hamza faces proceedings for deprivation of citizenship under the Nationality, Immigration and Asylum Act 2002. We recognise that insofar as their role is relied on by the Respondent in these appeals and insofar as the Commission accepts the evidence currently before it about that, any conclusions drawn in relation to that will need to be reviewed in the light of the evidence in the specific appeals; conclusions in this appeal about those, or indeed any other individuals, cannot of themselves influence the assessment which is made of those cases. The Respondent contended that the Appellants were direct contacts of Abu Qatada who had provided the ideological and religious justification for the activities of a number of terrorist groups.

130. In order to understand the true scope of the terrorist activities to which the public emergency and the derogation relate it is necessary to understand the structure, if such it can be described, of Al Qa?eda. The Respondent submitted that a good summary was set out in the letter of 19th September 2002 from the Chairman of the Security Council Committee established pursuant to

Resolution 1267 of 1999 concerning Afghanistan and addressed to the President of the Security Council. It says:

> "4. ... The image that emerges of [Al Qaida] is that of a series of loosely connected operational and support cells. These cells are operating, or are established in at least 40 countries. They are well entrenched in Europe, the Middle East, North Africa, North America and many parts of Asia.
>
> 5. Despite having lost its physical base and training facilities in Afghanistan, [Al Qaida] continues to pose a significant international threat. This is in part due to its loose worldwide structure and its ability to work with, and from within, militant Islamic groups in numerous countries. Many of these extremist elements look to [Usama Bin Laden] and his Shura Majilis, a sort of ?supreme council? for inspiration, and sometimes also for financial and logistic support.
>
> 6. The shape and structure of [Al Qaida] and the absence of any centralised tightly knit command and control system makes it extremely difficult to identify and scrutinize its individual members and component entities. Its global network and links with various like-minded radical groups enables it to operate discretely and simultaneously in many different areas. [Al Qaida] cells or elements operating under its banner often form coalitions with local radical or splinter groups for specific purposes ...
>
> 7. [Al Qaida] has sought to link itself to the aspirations of different radical groups ranging from traditional nationalist Islamic organizations to multi-national, multi-ethnic ones. It has sought to preach a general ?common cause? which paints a ? common enemy? on which these groups should focus. Unlike almost any other terrorist organization or movement, [Al Qaida] is able to motivate its followers and sympathizers to transcend their individual political, national and religious factional beliefs ..."

131. The Respondent emphasised the importance of individuals in the distinct, even formal, network. Some of the parts of the Al Qa?eda network may be described as terrorist groups. But some may be networks, rather than distinct groups, operating within a loosely-co-ordinated series of networks. Some individuals may have closer or more distant degrees of connection with identified groups to the extent that individuals in the Al Qa?eda network may be non-aligned extremists and may not consider themselves to be members or indeed allied to any particular group. It is important, we accept, not to confine attention to a structure which is not really present and not to ignore the effectiveness for terrorist operations and the pursuit of the Al Qa?eda objectives of what are properly described as loosely co-ordinated and overlapping networks. They appear to have in common as individuals, according to the Respondent?s submissions which we accept, that they:

> "... are outside their country of origin, active within the extremist community and are willing and able to fulfil, on their own initiative or under direction, ideologically motivated extremist acts that are supportive of or contribute directly to Al Qa?eda?s global terrorist agenda."

132. The connections between the individuals have often been formed during fighting of jihads, or in training camps in Afghanistan, or through contacts with extremist clerics. We accept the Respondent?s case that:

> "The loyalties, associations, and activities, which contribute to the collective efforts of the loosely-overlapping networks are at least as important as the particular affiliations of an individual to a particular movement or group."

133. The Respondent identified as generally relevant terrorist groups, the GIA and the GSPC from Algeria, the Egyptian groups Gama?at Islamiaiya (GI) and Egyptian Islamic Jihad (EIJ) from Egypt, the Libyan Islamic Fighting Group, the Tunisian Fighting Group, Asbat Al Ansar, a Palestinian group, and Jeemah Islamia, which operated in Singapore, Malaysia, Indonesia and the Philippines. Abu Doha?s group was a looser group but also within the Al Qa?eda network of overlapping groups. Unlike the others, it did not have a specific or original territorial base or national identity, but was more of an ad-hoc grouping though particularly focused on Algerian extremists and in recent years of direct relevance to the United Kingdom. Other informal groups were also identified.

134. The Respondent saw the function of many of the cells in the United Kingdom as being engaged in support activity for terrorist organisations or networks. This support activity encompassed fund-raising, whether lawfully or through crime, providing support for training camps, identifying candidates for terrorist training, providing the means of communications between various individuals within the network, distributing propaganda, providing logistical support for those who were engaged in direct action such as procuring false documents and procuring equipment for the use of such groups. Those who were involved in direct attacks would often come from outside the country where the attack was to take place, but would need the assistance of a support network in order to make the operation effective. There were three groups which were said to be part of the Al Qa?eda network which were of particular importance in these three appeals; the Armed Islamic Group or GIA, the Salafist Group for Call and Combat (GSPC) and a looser group which can be described as the Abu Doha group or network.

135. The GIA is a proscribed organisation under the Terrorism Act 2000. It emerged in 1992 following the cancellation of the elections in Algeria by the military-backed government and its goal is to overthrow the current government and replace it with an Islamic regime. Up to 1995 it focused its attacks in Algeria, but from 1994 to 1996 the Respondent contended that the GIA was responsible for several attacks in France, including the hijacking of an Air France plane and several attacks against the Paris Metro. It also targeted government and civilian and western

interests in Algeria.

136. The Respondent accepted that although the GIA was a significant terrorist group proscribed in the United Kingdom, there was little intelligence to suggest that it was currently closely associated with Al Qa?eda at an organisational level, but appeared to be focusing on the internal Algerian issue. Its previous organisational links had effectively been displaced by closer links between Al Qa?eda and those whose GIA allegiance evolved into support for the GSPC. Appellants A and B were said to be members of or associated with the GIA engaged in various activities such as fundraising, recruitment, propaganda and procurement of materials such as false documents on its behalf.

137. The GSPC is also a proscribed organisation under the Terrorism Act 2000. Its goal is to create an Islamic state in Algeria. It grew out of the GIA in a period beginning in 1997. A faction within the GIA, grouped around Hassan Hattab, condemned the way in which the GIA indiscriminately massacred civilians under its leader, Zouabri. The GIA leadership issued a statement in 1997 attempting to justify the killings of civilians in that way. This attempt to justify the indiscriminate killing of civilians led to a weakening of support for the GIA in the United Kingdom as elsewhere, and United Kingdom-based GIA members began to group around Hattab. There was a period when the Hattab group was a faction only within the GIA, but in September 1998 Hattab announced the formation of the Islamic Group for Prayer and Combat which, by early 1999 and upon, the Respondent said, the suggestion of Osama Bin Laden, became the Salafist Group for Call and Combat. A number of Appellants were said to be members of or associated with the GSPC now and engaged in fund-raising propaganda and the procurement of false documents, communications equipment and other material on behalf of that organisation and others.

138. The Respondent contended that there were early indications that the Algerians, who were part of the Hattab faction, engaged with non-Algerian extreme Islamist groups and nationalities. There also appears to have been a more general transfer of support to Hattab. The GSPC members in the United Kingdom in January 2002 distributed video material of their gruesome fighting behaviour in Algeria, exalting in jihad. It had been said to have been passed around Britain?s extremists as a tool of recruitment, including at the Finsbury Park Mosque. The importance of the Afghanistan training camps and the personal contacts there formed had been important in spreading the more nationalist agendas into support for an international jihadist agenda.

139. Algerian extremists in the United Kingdom linked to the GSPC helped not only the GSPC in Algeria, but also supported the Mujahaddin in Afghanistan and Chechnya and had also been involved in terrorist planning against the West. Instances were Ressam, who had both GIA and GSPC connections, who was arrested in connection with the Los Angeles Airport plot. Others were involved in the Strasbourg Christmas Market plot. There was continued activity, for example, in Holland. The GSPC had planned an attack in France during the World Cup in all probability and an attack against the Paris-Dakkar Rally in 2000.

140. The Respondent contended that for the GIA and the GSPC it was not so much any organisational link between them and Al Qa?eda which was significant but rather the individual links which had been created on an informal basis as a result of the common experience in Jihad in Afghanistan and in the training camps there. The Algerians became particularly influential amongst the Afghanistan-based supporters of Osama Bin Laden with the effect that United Kingdom-based Algerian extremists became involved not just in the provision of extremist support in Algeria, but also in support for Mujahaddin in Afghanistan, Bosnia and Chechnya. There was also involvement in terrorist planning against the West by individuals who were members or associates of or had a history of allegiance to the GSPC.

141. The Respondent pointed to the importance of personal association, however informal, between Al Qa?eda and the GIA and other groups. Many Algerian extremists had fought in Afghanistan, were trained in camps espousing Bin Laden?s global terrorist agenda and their experiences there forged personal links between those who had an international jihadist agenda and those who may originally have had a more nationalist agenda. Four individuals arrested in Frankfurt in December 2000 and since convicted for planning an attack in Strasbourg on the Christmas Market were Algerian Islamists who had trained in Al Qa?eda camps in Afghanistan and were linked to Algerian Islamists in the United Kingdom who had affiliations to the GSPC and past allegiances to the GIA. Algerian extremists had also been arrested in connection with alleged terrorist planning against US interests in Paris. Djamel Beghal was the leader of this cell, subsequently described as a network or group, and was in contact with a range of Islamists in the United Kingdom including GSPC supporters. The Respondent contended that those attacks were inspired by the global terrorist agenda, rather than any local Algerian nationalist agenda. The choice of France as a country of operation may have reflected a combination of the two.

142. The Secretary of State highlighted the importance of the terrorist training camps in Afghanistan. The GIA and GSPC were among the Islamic extremist groups involved with training there. The camps, although originally set up to train Mujahaddin for war against the Soviet Army, had then over time developed into camps for training Mujahaddin for fighting against the subsequent Kabul regime and later against the Northern Alliance. They provided training, not just for operations in Afghanistan, but for operations elsewhere; they provided religious indoctrination for the young Muslims, and the reputation of those who had fought in Afghanistan encouraged new recruits to train there. The Respondent said that those training camps provided "the single most easily identifiable common denominator for terrorist attacks mounted and/or linked to Al Qaida, both successful and failed". Most, if not all, of the significant camps were under the influence of Al Qa?eda or the Taliban to some degree, the latter because it was the Taliban who controlled the country. The evidence was that the training involved explicit instruction to make no distinction between military violence and terrorist violence. This was illustrated by the fact that those who had fought against the Soviet Union in Afghanistan, and in the subsequent internal conflict, and also in the wars in Bosnia and Chechyna, and yet later after September 11th 2001, in Afghanistan, have been involved in terrorism.

143. The Respondent explained that this was because for those who shared Bin Laden?s global jihad,

his ideology embraced both warfare and terrorism. He made the important point that the combination of war, terrorist activity and association with particular groups established credentials for individuals and cemented relationships across nationalities. The Respondent identified eight attacks or plots which had, since the mid-1990s, involved extremists who had been trained in Afghanistan. The Respondent said that Abu Qatada, with whom many of the Appellants were linked, and Abu Hamza, had played a vitally important role in radicalising young Muslims and recruiting them as volunteers for the camps.

144. The third group on which the Respondent relied in these cases was the Abu Doha group of North African extremists, which it regarded as one of the most significant groups of terrorists in the United Kingdom and a continuing significant threat to its security. Abu Doha is an Algerian who held a senior position in training camps in Afghanistan, but was believed by the Respondent to have relocated to the United Kingdom by May 1999. The Respondent assessed that he brought cohesion to Algerian extremists based in the United Kingdom and strengthened individual links with terrorist training facilities in Afghanistan and Pakistan. He had a wide range of extremist contacts in the United Kingdom and overseas, had links to individuals involved in terrorist operations, links with GSPC, and was involved in what the Respondent regarded as a number of extremist agendas including logistical support for Chechnya. He had met Osama Bin Laden.

145. Abu Doha was arrested as he tried to flee the United Kingdom at Heathrow Airport; he was attempting to fly to Saudi Arabia on false documents, shortly after a number of Islamic extremists including Abu Qatada and Labsi had been arrested. Although no charges in relation to terrorist-related offences were in the end proceeded with, Labsi was re-arrested on the basis of an extradition request from France, and Abu Doha arrested first on immigration charges and later, following the extradition request from the USA. Abu Doha is currently in custody as the subject of an extradition request to the United States, having been arrested in connection with that in February 2001. It was said that he had been part of a plot to attack Los Angeles International Airport, which had been foiled by the arrest of Ahmed Ressam on the Canadian-US border. It was said that he had helped to train Ressam and was a close associate of Labsi, who had been due to assist Ressam in Canada.

146. The Respondent also said that Abu Doha had provided support to a group in Frankfurt which had been convicted of planning an attack in Strasbourg. He was believed to have had advance knowledge of their terrorist plans. After his arrest, his Algerian contacts continued as an active terrorist network in a way which demonstrated the co-operation of individuals with each other, pursuing Al Qa?eda?s general terrorist agenda regardless of the particular terrorist group to which they might have allegiance. The Respondent also said that this group illustrated the sort of activities in which Islamic extremist networks engaged and the way in which, notwithstanding the arrest of a senior member of the group, the group was able to resume its activities despite the disruption. Such a terrorist infrastructure could be created within a short space of time. Abu Doha had only been at liberty in the United Kingdom for just under two years. It was said that a number of Appellants were linked directly to Abu Doha and others.

147. The Respondent provided evidence of a number of terrorist attacks which he said had been perpetrated by groups with which these Appellants had at various times been connected. One was a GIA bombing campaign in France in 1995. The significance of these attacks was in establishing some of the links between groups and individuals and demonstrating the sort of risk which these terrorist groups posed. There were connections between some of those attacks and the GIA, and between the GIA and individuals who were charged with terrorist-related offences. Boukemiche and Kebilene were referred to, along with the collapse of their trial in March 2000. The Respondent said that the GSPC had planned an attack in Europe, in all probability against the World Cup in France in 1998 and had planned an attack against the Paris-Dakkar Rally in January 2000.

148. A number of attacks after 11th September 2001 were referred to and the Respondent stated that he believed that most of the attacks after that date had been the responsibility of members or associates of Al Qa?eda and local groups affiliated to it, although he acknowledged that in certain instances it was not possible to assess whether the attack had indeed been Osama Bin Laden inspired, although there were a number of common elements.

149. There was other evidence which, whilst given in the open session, was precluded from being reported by an Order of the Commission under the Contempt of Court Act because it related to criminal proceedings which were on-going. We have dealt with that in an appendix which is not to be reported.

150. An issue of particular importance was the jihad in Chechnya which a number of Appellants were said to be supporting. Those included Ajouaou, A and B. The first two admitted supporting Islamic fighters in Chechnya, and A said that B was likewise concerned about the position in Chechyna, looking to help. (B?s statement complained at the process and declined to address the substance.) They contended that their support was directed to helping fellow Muslims in a brutal war being waged against them by the Russians. It therefore had nothing to do with any global jihad agenda of Al Qa?eda, nor did it pose a threat to the United Kingdom. It was a form of self-defence for the Muslim communities in which they were engaged. The Respondent did not accept their analysis of their actions. He acknowledged that the conflict in Chechnya was complex and that there were human rights concerns in relation to the actions of both sides in the conflict. He submitted that there were three categories of combatant on the Chechnyan side of the conflict: Chechnyan separatists, militant extremists and mercenaries, and a relatively small number which was estimated to be about 250-300 of foreign and largely Arab Islamic extremists pursuing an extreme interpretation of jihad. It was the latter category which was relevant to the national security of the United Kingdom. This was because the third category included leaders and fighters who had direct links to Al Qa?eda and who were fighting in Chechnya in pursuit of the global terrorist agenda. They had been trained in camps in Afghanistan, had personal links with others around the world who had been similarly trained and represented a core component in the Al Qa?eda terrorist capability.

151. Ibn Khattab was the leader of the Arab Mujahaddin in Chechnya until his death in March 2002. He had known Bin Laden and had fought with him in Afghanistan in the late 1980s and early 1990s. It was said that Bin Laden had visited his training camps in Daghestan. He had committed terrorist atrocities. His successor, Al-Walid, also had close links to Al Qa?eda. Abu Doha was a senior member of an Algerian Mujahaddin training network in Afghanistan linked to Al Qa?eda, but when he was relocated to the United Kingdom he provided significant logistical support for the Chechnyan Mujahaddin. The Chechnyan Mujahaddin received various forms of support from extremist networks around the world. Each of these three Appellants was involved in supporting the Chechnyan Mujahaddin. The closed evidence deals with the links between the Chechnyan Mujahaddin and the threat to the United Kingdom.

152. The Respondent regarded radical clerics and, in particular, Abu Qatada, but to a lesser extent Abu Hamza, as having played an important part in the terrorist networks at issue in these appeals. These spiritual leaders operating from the United Kingdom, some of them in formal positions, had preached an extremist message, raised funds and fostered an environment in which young Muslims are recruited for participation in extremist causes overseas. Their preaching had been the cause of many volunteering for terrorist training; they were a focal point for fundraising and propaganda in support of extremist networks and, as spiritual advisors to them, provided a religious legitimacy for the atrocities which terrorists planned, at least in the eyes of the perpetrators.

153. As a focal point for extremist groupings, networks and individuals in the United Kingdom, they had joined together individuals whose antecedents lay in different national agendas and directing the attention onto shared agendas such as Chechnya. Appellants, including the first five, had links to such clerics. Abu Qatada supports the overthrowing by violence of some governments of Arab countries and their replacement with Islamic states, and is linked to many of the terrorist groups and networks which are connected to the Appellants. He has direct contact with individuals associated with Osama Bin Laden and Al Qa?eda. He has extensive contacts with senior terrorists around the world, has been directly implicated in a number of terrorist actions, including issuing the fatwa that was used as a justification of the GIA?s large-scale slaughter of women and children in Algeria in the mid-1990s. He had been directly implicated in a terrorist campaign in Jordan in 1998, for which he had been sentenced to life imprisonment in absentia. He provided spiritual encouragement to those involved in terrorist plots in France. He had had direct contact with members and supporters of terrorist cells and his preaching had inspired individuals involved in terrorist attacks including the Beghal group, and some of the 11th September 2001 hijackers.

154. The Respondent pointed out that terrorist-support activity was a vital part of the ability of the terrorist networks to plan, finance and execute significant terrorist operations. This support activity included fundraising, facilitating training, procurement of materials and false documents, publication and distribution of propaganda, spiritual advice and co-ordination between different members of the network or different networks. No hard and fast distinction could necessarily be drawn between those engaged in terrorist support and those engaged in terrorist attacks, because

they could move from one to the other. He instanced Algerian Islamists in the United Kingdom who, having initially been concerned with support activity, had been involved in terrorist planning in the United Kingdom in 2003.

155. The Respondent said that before 11th September 2001 the United Kingdom had been a significant base for support activity for Islamic extremist terrorist networks linked to the current Appellants and Al Qa?eda. Although it continued to be a significant base, there had been a more fundamental shift subsequently in which the United Kingdom had moved from being seen as a safe haven for such groups to being a prime target for direct terrorist action. The camps in Afghanistan provided the single most easily identified common denominator for the actual and planned attacks, and it was thought that over 1000 individuals from the UK had attended training there in the last 5 years. Documents found in Afghanistan at an Al Qa?eda training camp suggested a plan to attack Moorgate in the City of London. UK interests overseas came under greater threat from terrorists linked to Al Qa?eda; there had been a plot in December 2001 to bomb British, American and Australian diplomatic and other facilities in Singapore in six simultaneous attacks. There had been links between the plot in Germany to bomb the Christmas market in Strasbourg and the UK. The Respondent pointed out that identifying and training volunteers was of fundamental importance to the development of the Islamic terrorist networks over recent years. Almost all the more significant terrorist operations involved individuals who had undergone training in Al Qa?eda associated camps in Afghanistan. They had also been key to the formation of individual links and contacts which had enabled the creation and evolution of the informal, overlapping terrorist networks which pursue the wider Islamist agenda. Training involved radicalising suitable candidates so that they would accept training, establishment of terrorist training camps, the provision of training, the selection of candidates and financing those training operations.

156. All aspects of the terrorist networks? activities required financing and the production or procurement of false identity papers and false financial documents including false credit cards. This was essential in order to raise money, to facilitate the movement of operatives, and to enable them to live clandestinely where they chose and to claim benefits. Planning attacks over a relatively long period of time involved planning and communications between different countries and even different continents. Communication with other members of the network, co-ordination and receipt of instructions and information required communications equipment. The material had to be procured in a secure way and shipped to the required destination. Individuals in the United Kingdom had been involved, for a number of years, in the provision of support for planned or actual attacks. The Respondent listed a number of those.

157. Support activity could not always be directly linked to a terrorist operation, but was seen by the Respondent as underpinning, perpetuating and increasing the threat from extreme Islamist terrorism to United Kingdom interests here and overseas, posing a significant threat to national security. False documentation assisted travel undetected. The United Kingdom had been a good recruiting ground for networks which had sent individuals for terrorist training; they had also fought in Bosnia, Chechnya and had been engaged in terrorist operations against the United

Kingdom and western interests. Richard Reid and Zacarias Moussaoui were among those recruited in the United Kingdom. The United Kingdom had always been a source of finance for terrorist networks. Many Appellants, including these five, had been involved in support activity for extreme Islamists.

158. The Secretary of State said that the nature of the ideology meant that individuals involved in Islamic terrorist networks were very committed and often had little concern for their own liberty or survival. They did not cease activity after they had been charged or at times convicted of offences. As circumstances change, the flexible nature of the overlapping terrorist networks linked to Al Qa?eda enabled those engaged in support activities to become part of a network directly involved in planning and executing terrorist acts, or forming or reforming links with others to achieve their objective. He said that "those in the UK who continued to perform support functions for the structure of terrorist networks linked to Bin Laden therefore continue to pose a particular and dangerous threat to the nation". That, it was said, applied to each of the current Appellants.

159. The summary which we have provided of the Respondent?s case on general and background matters, in particular those parts of the background which bear more directly on these Appellants, is drawn from the Respondent?s open submissions for all these appeals. Those open submissions repay careful reading. The Respondent?s witnesses gave evidence which supported the contentions. The closed submissions and evidence provided greater detail, more evidence and additional allegations.

160. We now turn to deal with those areas of the generic material where issue was taken with the Respondent?s contentions by these Appellants. Ms Peirce, solicitor and partner in Birnberg Peirce, acting for Ajouaou, A and B, provided evidence for the derogation hearing which was relevant to some of the issues which arise on a general basis in these appeals. She said that the individual Appellants would have customs, attitudes, beliefs and behaviour which were not familiar to or often comprehensible to the British. Many had a continuing commitment to achieve an alteration to the government of their home country and a few had been involved in resistance to military oppression there. They were part of a diaspora of refugees who would thus have communication and contact worldwide with, for example, Algerian and Egyptian émigré communities who were settled throughout Europe, the Americas and in the Middle East. This would involve continuous contact by telephone and e-mail. It would involve the provision of financial help, for that was a primary duty of Islam. The material from intelligence services working for repressive regimes such as in Algeria and in Egypt made unreliable sources for assessing the roles of individual Appellants. Likewise, unfair trials, whether in Europe or in those countries, could not be a basis for forming an adverse view of an Appellant. Many came as refugees and she said that false documentation and the manufacture of false documentation was endemic amongst refugees. Muslims would be bound to regard the mosque in the area where they ended up as a focal point for their often small émigré community and it was natural that people would gravitate to it for social, spiritual, cultural and political purposes. We heard arguments on these points from the advocates and deal with their significance in the individual appeals. We

accept that they can be important as a context; whether they are important in any given case rather depends on the whole picture of what an Appellant is doing.

161. Her evidence in particular related to the role of the GIA. She said that the activities of the GIA, which had been one of the groups of armed resistance that emerged following the military coup in Algeria in 1991, had really only come to the attention of the public internationally in 1997 after a particular pattern of atrocities. She said that since then, it had been the repeatedly expressed view of a significant number of informed individuals and organisations that by the mid-1990s, the GIA, instead of being loosely linked groups of genuine resistance fighters, had become infiltrated, dominated and manipulated by the Algerian regime Securite Militaire and that the terrorist atrocities perpetrated upon Islamic villages and supporters of the FIS (which won the elections in 1991 leading to the military coup) were not the work of the GIA but of the regime itself in order to discredit and terrorise the opposition. She referred to interviews with potential witnesses which she herself had carried out on a wide scale, including members of the Algerian Army. She concluded that by the second half of the 1990s the GIA had become, and was now being understood to have become, the creature of the Algerian regime carrying out terrorist acts for the Algerian state. She said that in consequence it was "highly questionable as to whether an organisation describable as the GIA in fact exists and certainly not in the abbreviated and unqualified way from which the Secretary of State has appeared to proceed".

162. She referred to a number of sources for her views, some of which related to information provided by an Algerian intelligence officer who had left the Algerian security organisation. She referred to a paper of November 1995 produced by the Middle East Research Unit for the Foreign Office. This said that there was a convincing allegation that the Security Services may have been involved in the setting up of GIA groups, and that it focused attention on the strengths and successes of the GIA so as to depict the Islamic challenge as one of pure terrorism, in order to show that the FIS was no longer a major force. The paper said that the Security Services may well have infiltrated GIA cells or used GIA as cover for their own operations. The paper commented that it had not been convincingly proved that the Algerian Security Service had not been involved in the terrorist attacks in France.

163. A Foreign Office communiqué of January 1997 discussed the competing theories about the GIA. It said that an alternative theory of involvement of the Algerian regime was quite plausible. Military security would involve splitting people from the Islamists, causing problems for other parts of the regime and discrediting Islamists in international eyes. They could act with autonomy from the President. Bomb attacks were taking place in areas which supported the FIS and in densely populated working class areas of the capital as well as being left outside barracks. In July 1997, the Foreign Office, in a communiqué, reported doubts about the Algerian Government?s explanation for the violence and raised specifically the question of why the security forces were so ineffective, seemingly remaining in their barracks while civilians nearby were being attacked, and asking whether the Government directly or indirectly was manipulating or controlling the GIA. In 1997, newspapers in the United Kingdom were questioning the Algerian Government?s role in violence. A JIC assessment was referred to as having concluded that responsibility for

violence could not be conclusively laid in one place and that there was no firm evidence to rule out Government manipulation or involvement in terrorist violence. A Foreign Office communiqué in February 1998 referred to the establishment of brothels in a very conservative region of Algeria in order to establish a pretext for massacres, ostensibly to be carried out by GIA terrorists, but actually to be carried out by the Government?s militia.

164. Ms Peirce said that the consequence of what was happening in Algeria was that the refugees were looking to provide support for those in Algeria in a number of ways. One was the provision of false documentation to assist those in Algeria to escape and seek asylum, and another was to provide for and assist in the provision of the means for the physical defence of communities otherwise defenceless against terror from the Algerian Government.

165. Ms Peirce, dealing in particular with Chechnya, likened the way in which young Muslim men enlisted as volunteers and armed resistance in defence of Muslims to the international brigade of the Spanish Civil War. It was this realisation that there might be a continuing need for Muslim self defence of Muslim communities which led to the setting up of training camps in Afghanistan. She said that she understood that there were several significant camps there which were neither Al Qa?eda nor Taliban created or controlled, and which existed for the purpose of providing military training for those involved in resistance elsewhere but including importantly Chechnya. There had been an urgent plea for trained volunteers in the defence of Chechnya after the second invasion of 1999. This invasion, according to the Respondent, was in fact occasioned by the Arab Mujahaddin, working with others, invading the neighbouring republic of Daghestan. She provided a great deal of evidence about the human rights abuses by the Russian forces, although it is perfectly clear that terrorist or terrorist-like attacks are undertaken by all parties to that terrible conflict. She said that many who went for training in camps in Afghanistan wished to support Chechnyan resistance and were motivated by a strong desire to provide effective support for beleaguered Muslim communities around the world.

166. Ms Garcia, solicitor and partner in Tyndallwoods, for Appellant D, produced material relevant to Algeria. We have taken both this evidence and that of Ms Peirce into account in dealing with all Algeria-related appeals. She produced a report from Dr Roberts, a senior research fellow with the Development Studies Institute of the LSE, currently a research scholar at the American University in Cairo. In his report, he said that he was reluctant to express a view about whether the GIA had been infiltrated by the Algerian Secret Service and what the nature of its relationship with Al Qa?eda was because of the difficulty of finding satisfactory source material. However, he had been studying Algerian politics closely for thirty years and had lived there for some years. He said that he had been reluctant to address these issues because so much of the commentary was partisan and commentators had been quick to take sides, which he had not done. He felt it his duty, however, to provide what assistance he could to the Commission.

167. He said that the opinions which he had expressed were that the official blame on the Islamists for the massacres of 1997 was unconvincing, that the claim that the Army had committed massacres attributed to Islamists and GIA had not been substantiated, but that the Army had a lot of

explaining to do and that there was a case for accusing them of complicity. Certain parts of the testimony of Sauaidia, a former Special Forces Counter-Insurgence Officer, relating to a 1997 massacre in which he claimed to have participated, was unreliable, but other elements of his testimony about torture, extra-judicial execution and the authorities? ambiguous attitude to these events rang true. He said that there could be no serious doubt but that the GIA is, and had long been, infiltrated by Algerian military intelligence, and in particular by its counter-espionage section. He gave his reasons for that view. He recognised the possibility that Algerian intelligence services might have deliberately encouraged the rumour that they had infiltrated the GIA, without it actually being true, in order to cause the GIA to turn on itself in purges and thus destroy itself.

168. He gave two reasons, however, for saying that he was convinced that Algerian intelligence had infiltrated the GIA. First, he referred to the omni-presence of the intelligence services and its role of infiltrating subversive organisations. (This, it appears to us, is no more than common sense: the real issue is whether the purpose and effect of the infiltration has been to cause the GIA to do things, notably to massacre civilians, in the interests of the Algerian state.) His second reason was the behaviour of the GIA, which struck him as odd. The GIA had leapt to prominence in 1993 with attacks on foreigners. The Algerian Government had said that this would have been an attempt to subvert the state by deterring foreign partners from doing business with it. He said that that was not consistent with the nature of the attacks, however: they were instead consistent with influencing a power struggle within the regime between those who favoured dialogue with the banned FIS and those who were opposed to that. These attacks on foreigners were designed to assist those who were opposed to such a dialogue. There had also been repeated clashes between the GIA and a rival Islamic armed group, the Islamic Salvation Army. He saw this also as consistent with the GIA working to the benefit of the Algerian regime?s hard line faction. He said that the horrifying sequence of civilian massacres in 1997 and 1998 provoking groups or factions to splinter off from the GIA, was further evidence of infiltration of the GIA by the Algerian Government.

169. He said that the view which he expressed about the infiltration of the GIA as serving to influence an internal power struggle within the regime, was a view to which he had been inclined as long ago as 1994 and was now more strongly of that view. The GSPC, which was one of those splinter groups, remained active but had confined its attacks to the Algerian security forces without carrying out massacres of civilians at all. He said that if the aim of the infiltration had simply been to obtain information or to dismantle a subversive organisation and destroy it, the efforts of the Algerian security forces had been a complete failure over ten years. He also saw the manipulation of the GIA by the Algerian intelligence services as being responsible for splitting two rival groups into two widely separated commands and ensuring that the strategically crucial area around Algiers was controlled by a movement that was at least effectively manipulated by the Algerian intelligence services.

170. He suggested that the killing of Italian sailors in Algeria in 1994 was desired by the regime faction which wished for no dialogue with the FIS. A meeting was due to happen in Naples

shortly thereafter at which consideration of the Algerian crisis was to take place, with America favouring dialogue and Paris opposing it. He could give no rationale for the civilian massacres of 1996 and even worse ones in 1997, although he said it was certain that in many cases they happened in the vicinity of army or security forces installations. The security forces knew what was happening but the killers proceeded with slaughter over several hours and were able to escape unhindered. He said it was crystal clear that the GIA was "not in the least a simple, straight-forward, bona fide Islamic terrorist organisation engaging in a clear-cut campaign against the Algerian state. Its victims have overwhelmingly consisted of defenceless civilians in villages and neighbourhoods which, as it happens, voted for the FIS in 1990 and 1991, plus defenceless intellectuals and foreigners, and members of rival armed movements. Cui Bono?"

171. He contrasted the position in Algeria with that in Egypt where the regime had been ruthless in suppressing the terrorist activities of the EIJ, the GI and Takfirist group following which there had been no terrorist violence since late 1997.

172. Dr Roberts said that he could not pretend expertise where Al Qa?eda was concerned, so as to deal with the question of a link. He accepted that the possibility of informal links dating back to the war against the Soviet regime in Afghanistan could not be excluded, but the notion that the GIA could sustain an active alliance with Al Qa?eda because it had the same ideology was illogical. The salafist tendency associated with Wahhabism, which is the Islamic tradition in Saudi Arabia and to which Bin Laden was said to subscribe, does not automatically lead to the activities which GIA or Al Qa?eda engaged in. The GSPC was also a product of a salafist trend but behaved very differently in relation to the targeting of civilians. The anti-West attitude of the GIA was confined to France and, to some extent, Russia. He could not comment on the relationship of Ressam to GIA or Al Qa?eda in assessing whether GIA was anti-American. He said that there had so far been no GIA attacks on American targets. He said that the influence of the Algerian intelligence services on the GIA would lead them away from encouraging an effective connection with Al Qa?eda other than for proper intelligence purposes since the Algerian Government was conspicuously behind the US war on terrorism. There might well be a ready supply of politically naïve but angry young men in the Algerian diaspora who might be lured into desperate adventures involved in Al Qa?eda-linked activities, some of whom might be drop-outs from the GIA networks outside Algeria and that so long as the troubles persisted there, that tendency would continue.

173. Ms Peirce also drew attention to the obvious problems of reliance on intelligence information and contacts as leading to wrong conclusions about involvement in terror, in respect of which she spoke from long experience as we accept. She provided evidence based on her experience as to the reliability of information contained in press articles and said how easy it was for the repetition of unfounded assertions, each drawing upon each other, to lead to mistaken inference after mistaken inference. The outcome of the Lotfi Raisi case seemed to be accepted by witness A (in closed) as an example of apparently good reason to suspect someone of terrorist activities proving to be unfounded. She referred to the teaching of Islam to the effect that when a country gave shelter and offered refuge, the beneficiary accepted a contract with that country and owed it

respect for its laws and customs. There was every risk that quite mundane activities had been wholly misunderstood. She referred to the lack of reliability of informant based evidence as well. The ordinary activities involved in fundraising and sending money to contacts in Chechnya was a worthy cause. It was only natural that communication around the world should be undertaken by intelligent people who had left their country and wished to understand information and disseminate it. The possession and production of false documentation was an inherent part of the existence of being a refugee and assisting others to become refugees. As to the procurement of both basic goods and high technology communication systems, careful scrutiny was required as to where they were destined for and why. The provision of shelter and assistance in travel are necessary parts of everyone?s life. The role of Islamic clerics was also capable of being misunderstood. Religious opinion was continually sought on every aspect of the daily lives and relationships of devout Muslims. Many different views were formed and the seeking of advice should not be regarded as an indicator of terrorist activity or support.

174. The Respondent answered this as a general point in the third open generic witness statement, paragraphs 3a-3c. The Respondent was aware of the sort of issues raised by Ms Peirce in relation to the reliability of foreign liaison and other sources and explained that it sought to cross-check a number of sources to make sure that it got a consistent picture. It explained in more detail, in closed evidence or in the cases related to particular individuals where concern had arisen, how it assessed certain pieces of evidence.

175. Mr Gill, in the appeal of Appellant D, took up with witness B the nature of the Security Service assessments in general, but used its appraisal of Abu Zubaida?s testimony as an example. It was said to provide authoritative first-hand evidence of continuing terrorist capability, planning and intent, notwithstanding the disruption caused by the actions in Afghanistan. The specific material drawn from that was the plan to construct a viable radiological dispersible device, or dirty bomb, which posed a higher level of threat to the public than any conventional device, and the involvement in it of someone who had been previously resident in the United Kingdom, was important. Although it had come from somebody in detention, they took that into account in assessing how sound it was. In open generic bundle B, page 146, was a report in the New York Times related to the dirty bomb plan. This article referred to American officials being very cautious about Abu Zubaida?s evidence because he could either be bragging or lying to interrogators in the hopes of lenient treatment or of creating panic. It was recognised to be a different assessment but in open witness B said that they had looked at a number of factors and were confident of the basis of their intelligence assessment of the reliability of what Abu Zubaida had said.

176. The Respondent did not accept the evidence which both Ms Peirce and Ms Garcia provided in relation to the GIA. It referred to the number of Algerian veterans returning from Afghanistan who joined its ranks, to the links between the GIA and Bin Laden and to the significance of the personal, as opposed to group links, between the GIA members and the Al Qa?eda agenda, formed in training and fighting in Afghanistan. Personal links were thereby formed, it was said, between those who had an international and those who had a national agenda. The Algerians

became influential in Afghanistan and occupied senior positions there. Thus, Algerian extremists in the United Kingdom, who had supported the GIA or the GSPC, provided support, not merely for extremists in Algeria, but support for Mujahaddin in Afghanistan, Bosnia and Chechnya and in terrorist planning against the West. Ahmed Ressam, who intended to conduct a terrorist attack on Los Angeles International Airport, was instanced as someone who originally was associated with the GIA, trained in Al Qa?eda camps in Afghanistan where the attack was first thought of, received assistance from other Algerian extremists including Abu Doha and shared accommodation with members of GIA in Canada. Others charged in the plot were also said to have GIA connections. He had endeavoured via an intermediary to seek sponsorship from Bin Laden for his attack and planned to credit the attack to Bin Laden. If this is correct, it is also a good example of the informal associations between individuals connected to each other and the nature of the link to Al Qa?eda. It is not a formal hierarchical link but a connection that is forged through shared fighting and training experiences, logistics and inspiration. That is the activity to which the derogation is directed.

177. If the GIA were truly manipulated and controlled by the Algerian security forces which are carrying out the terrorist attacks, it is difficult to understand why Abu Qatada issued a fatwa in 1995 (Open Generic C1) in which he provided a religious justification for the killing of wives and children of those who were apostates. That was, Abu Qatada said, the only way for the Islamic fighters to defend their women and children from massacres being carried out by the other side, the apostates. It is clear that the group had or have a policy of carrying out civilian massacres in order for there to have been a need for religious support to justify what they were doing. Abu Qatada did not suggest that this was evil work being carried out by the Algerian Government in 1995.

178. We turn to the open oral generic evidence given by the Respondent. Witness B said that the Respondent?s various statements had been prepared by a team of people within the Security Service. They had considered the Appellants? statements and all of the supporting material, but he, and no one individual, had read it all, including all the newspaper or internet articles in the many volumes provided. Indeed, this is understandable. Many of the documents are repetitious of points which were in many ways not in dispute, for example, the human rights abuses by Russian forces in Chechnya.

179. Witness B agreed that the GIA emerged following the cancellation of the elections in 1991 by the military because the FIS was expected to win a landslide victory. The GIA started with attacks inside Algeria between 1992 and 1994 and then undertook attacks in France between 1994 and 1996, including a number of bombings in Paris. It was not now assessed as presenting a threat to Western interests outside Algeria and had no current organisational links with Al Qa?eda. The Respondent focused on the personal allegiances of former associates or members of the GIA who are now said to be members of the GSPC or, in other cases, acting as Algerian extremists in a wider sense without any specific allegiance. It was their personal involvement in terrorist related activities which threatened the United Kingdom rather than the GIA as such. He accepted that by the mid-1990s information had been received in the Foreign Office suggesting that the GIA had

been infiltrated by the Algerian Secret Police, but not that it was dominated by them.

180. He was aware that the Foreign Office had received information that there was doubt as to the precise nature of those who had carried out terrorist actions including the massacre of civilians south of Algiers, and that there was a series of massacres of Muslim villagers by armed groups close to army barracks without army intervention. He understood that there was a belief that in some cases the Algerian Government may have had a role in the massacres to further its own aims, which included discrediting the Islamic opposition in Algeria. He believed that there had been an assessment that some communities were arming themselves to defend themselves against state sponsored terrorism, although they had also been arming themselves for some time, and that there were expatriate Algerians in the United Kingdom providing support which could be used to defend their communities.

181. Witness B said that the Security Service position was that many of the acts carried out in Algeria during that whole period were terrorist acts carried out by the GIA, but some potentially were acts involving the Government. Some of those who were assisting the defence of communities were terrorists because they were GIA members or supporters. He accepted that the origin of the GIA was in a series of armed groups rather than as a single organisation, although he still believed that the concept of GIA as an organisation was coherent.

182. He was asked about the material in the 1995 Middle East Research Unit briefing for the Foreign Office which we have set out above. This raised questions about Algerian Security Service involvement in the bombings in France. Witness B said that the Security Service position now was that the GIA did conduct a series of attacks in France. Witness B also accepted, although there had been some earlier confusion over what the question had referred to, that the French prosecution had now acknowledged that an Algerian Government agent was an important figure in the Paris bombings. He was taken through the other Foreign Office communiqués of January 1997 and February 1998. He was asked in particular about the JIC Assessment in the January 1997 communiqué that there was no unified GIA and that responsibility for violence could not be conclusively laid in one place and that there was no firm evidence of ruling out Government manipulation or involvement in terrorist violence. He was unaware of any particular JIC assessment, but said that it was certainly plausible that responsibility for violence could not be conclusively laid at the door of one person. He was less willing to accept the comment that there was no unified GIA. Witness B said that it would be consistent with the Respondent?s understanding of the position, that the Algerian Government may have had some involvement in the 1997 fatwa issued by the GIA supporting the killing of civilians. This would have been to discredit the GIA. He was unaware of any specific Security Service assessment of that. It was this statement which was the raison d?être for the evolution of the GSPC, though, whatever their opposition to the killing of civilians originally, that had not, in practice, been the case.

183. Witness B referred to open generic Bundle C, Document 5X, Page 11(1), which was a Security Service summary of the GIA dated 30th June 2000. This document assessed that there had been no suggestion that the GIA had originated with the Algerian Government. The GIA were reported

as claiming that a number of massacres were conducted by the Algerian regime and rejected its claims that they had raped women, saying that those allegations showed that the GIA had been manipulated by the intelligence services. However, the GIA had claimed responsibility for the hijacking of an Air France plane in 1994, the shooting of an imam and the Paris Metro bombing campaign in 1995, and the Port Royal bomb in 1996.

184. Witness B gave further evidence in relation to the GIA and GSPC in the course of Appellant D?s appeal. He said that the two groups, GIA and GSPC, have not really appeared as two groups outside Algeria. They are not engaged in conflict with each other, primarily because individuals in the United Kingdom, for example, who have been or are involved with those organisations, tend to be pursuing various types of common activity. In Algeria there had been an obvious disagreement about the degree of violence against civilians and there had been a high degree of violence by the GIA against the GSPC in Algeria. He continued to accept that there had been some infiltration of the GIA by Algerian Government forces. He was unable to say which particular activities were attributable to infiltration by the Algerian Government, but there was some friction and violence between the GIA and GSPC or parts of them during the period of the split which lasted for some time. The GIA had sought to control the area around Algiers in 1997 and 1998, but he did not accept that the GIA massacres in the area around Algiers were parts of the Algerian Security Services? plans to control the area. The GIA itself was in opposition to the Algerian Government.

185. Witness B had not heard of Dr Hugh Roberts before seeing his material in the statement. He was not familiar with some of the names that appeared in Dr Roberts? report and associated documents. Although he and other intelligence services were aware of allegations of infiltration and bore them in mind when assessing the significance of intelligence, witness B said that overwhelmingly there were many acts which it was widely accepted had been carried out by the GIA. He rejected the contention that the infiltration of the GIA made the true situation impossible to ascertain.

186. So far as whether the infiltration by the Algerian Government went beyond that which was inherent in the Security Service investigating a terrorist organisation, to become manipulation of it so as to discredit militant Islam and to kill the Government?s own enemies, that was a matter which he would only deal with in closed session.

187. He accepted that the GIA had been a collection of different groups, rather than a single group, but nonetheless with all the intricacies it was reasonable to describe it as a group. Dr Roberts? report accepted more of the infiltration theories than the Security Service would. The reason why witness B was unwilling to go further as to the nature of infiltration and the purposes of infiltration in open session related to the difference between what the GIA did in Algeria and what it did outside. They were not concerned so much with a detailed assessment of specific instances of terrorist activity in Algeria; rather the Security Service?s primary interest had been with the obvious threat it posed to the United Kingdom through the activities over the last few

years of various individuals acting outside Algeria.

188. Witness B could not remember the extent to which they, in discussion within the Security Service, had focused on what Dr Roberts himself had specifically said, but there had been discussion and consideration over the issue of infiltration and the assessment of the GIA in terms of activities inside and outside Algeria, in particular the types of terrorist planning which those Algerian extremists involved in the GIA and GSPC had undertaken. He rejected the assertion that he had simply ignored the Appellants? material and remained of a one-track mind. He said they consistently considered intelligence which shed light on the background of the GIA and GSPC and that they had revisited infiltration in the light of the Appellants? evidence. He did not regard the Takfir Wal Hijra as being a constituent group within the GIA, but rather a movement or ideology to which a number of Algerian extremists adhered. Although his statement referred to links between the GSPC and Al Qa?eda being well publicised and acknowledged in statements submitted by Tyndallwoods and Birnbergs, he was unable to point to what it was that supported that in their statements, either then or later. We have ignored that reference to those statements. There was other evidence for the links between GSPC and Al Qa?eda including the suggestion of the name and some limited funding for it. It was an error for him to attribute to the GSPC members in the United Kingdom, the distribution of the videos entitled "The Mirror of the Jihad" showing Taliban forces in Afghanistan decapitating Northern Alliance soldiers. The GSPC were, on that source, distributing another gruesome video, but one related to the slitting of the throats of Algerian soldiers in Algeria.

189. Witness B was asked by Mr Gill for Appellant D about the politico military memorandum (Open Generic C, page 6(xiii)) produced by the Defence Intelligence Analysis staff in September 1999 which dealt with the background to the GIA. It attributed the massacres of civilians to a GIA initiative against the AIS with whom they had been rivals. Hattab declared a jihad against the GIA?s national leader, Zouabri, because it had been infiltrated by agents provocateurs who had instigated the infamous massacres. Hattab also condemned the ceasefire declared by the AIS. The memorandum also said that the GIA had used stolen uniforms in its attacks, mutilation, torture, burning people alive and the slitting of throats as a ritual. The GIA had endeavoured to justify its brutality by claiming a duty to eliminate those who had abandoned their religion or who did not pray, who drank, who were homosexuals or debauched women. It was justifiable in their eyes to kill civilians when they were in the same place as enemies, which appeared to include anybody who did not support them. Innocent people killed by them in such circumstances would be regarded as martyrs.

190. Mr Gill?s theme was that the animosity between the GIA and GSPC would preclude any co-operation in the United Kingdom. Witness B, dealing with the memorandum, said that the Hattab faction had declared a holy war against the GIA, notwithstanding it being said that Zouabri?s group had been infiltrated, because Hattab was in effect saying that Zouabri was not really the GIA proper and that the GIA proper was not behind the massacres. It is plain that violence is not necessarily or habitually described by its participants as holy war, but it illustrated the disagreement over what was legitimate. The point that witness B continued to make was that

whatever the degree of animosity in Algeria, outside Algeria, for example, in the United Kingdom, there would not always be a continuation of the conflict between people from one organisation or the other, since their agendas, in effect, were subsumed into a wider anti-West agenda. He did not regard it as incredible that the degree of animosity in Algeria would not spill over into the United Kingdom.

191. It could be seen, for example, that a wide range of people went to Abu Qatada for his advice and support, including people from the GIA, GSPC and generally Algerians who had had some connection with those organisations now working in the Abu Doha network, for example. What linked them was the wider agenda of terrorist planning against the West or support for jihad in Chechnya and links to training camps. Abu Qatada was supportive of those who moved from the GIA to the GSPC, but Abu Qatada did support United Kingdom members of the GIA and did not concern himself with where the particular sympathies of an individual Algerian extremist might lie. Witness B did accept that Abu Qatada?s principal role was support from 1999 to those members of the GIA who moved to the GSPC, but he qualified that by saying that his support in later years to Algerian extremists had been replaced to some extent by wider agendas, in the context of which Abu Qatada had been happy to provide advice to Algerian extremists generally, and that those who had not necessarily moved to the GSPC would nonetheless be able to receive support from Abu Qatada.

192. Although witness B recognised that the GIA focused its activity on Algeria, it had a wider international role in this way: individuals linked to the GIA who had left Algeria, as with GSPC members, had involved themselves in wider types of terrorist activity. The organisation from which they came remained relevant to them in that it was the original role from which they developed and influenced their terrorist background. He said that the wider agenda when they left Algeria could be shown by the fact that the Algerian extremists had involved themselves as a matter of fact in terrorist plots and activities. There was intelligence linking Al Qa?eda to the GIA and to the GSPC. Many whose terrorist antecedents lay in Algeria or other countries became radicalised because of common agendas exploited by Al Qa?eda through training, ideological similarities and so on. They had obviously involved themselves in activity in western countries, sometimes basing themselves there for longer term types of activity by way of support without really involving themselves in any particular terrorist plan but doing so on other occasions. It was a fundamental part of the case that those who had left Algeria and other countries did not simply, or even at all, pursue a national agenda but became part of the pursuit of a wider agenda, providing a support network for others and sometimes involving themselves in terrorist plans.

193. Mr Gill disputed the link between GIA and Al Qa?eda, pointing to references in Open Generic C, page 4 (iii), which reported that Al Hayat had said that Al Zawahiri of the EIJ, who was close to Bin Laden, had decided, in November 1996, to withdraw support for the GIA leadership because of its excesses. Witness B said that he had not been making a point about GIA and EIJ links, other than through the wider overlapping networks which linked each of them to Al Qa?eda, so it did not show a want of connection between GIA and Al Qa?eda.

194. Witness B explained why the focus of the Security Service was more upon the group of individuals aligned to the GIA rather than on its activities inside Algeria. He said that a range of intelligence investigations of GIA and GSPC activists or members or supporters showed activity carried out by Algerian extremists linked to both organisations in terms of various types of terrorist activity. However, the wider types of activity did fit by and large with the aims and agendas of the parent organisations and there was also specific intelligence linking the various organisations such as the GIA to Al Qa?eda. Through individual personal contact and anti-Western aims, a number of the key planned attacks by Algerian extremists had focused on France, which illustrated the merging of aims and agendas through organisational and individual links.

195. Witness B also gave evidence about the Beghal network. This network was closely linked to Al Qa?eda. Like the Abu Doha group, individuals were largely Algerian and had connections to the named Algerian groups, GIA and GSPC. Djamel Beghal was a central figure in it. This network, as with other linked networks of Algerian extremists operating outside of Algeria, derived its terrorist antecedents to a considerable extent from GIA and GSPC. Significant roles in the network were played by Daoudi, Trabelsi, Jerome Courtailler, Abu Abdullah and Ben Merzouga. Their most significant planned activity had been the attack against the US Embassy in Paris, but there was other planned terrorist activity. Witness B described it as a network because they worked together in a range of terrorist activity including operational planning. He emphasised the importance of looking at what people did in the United Kingdom rather than the particular agendas of the groups to which they had belonged or still belonged, in Algeria. The differences between the groups became less significant in the United Kingdom and they linked up with people who supported a wider terrorist agenda and also the Arab Mujahaddin in Chechnya or the training camps in Afghanistan.

196. Witness B accepted that there had been an assassination plot against Osama Bin Laden in Sudan in the early 1990s. He said that the Takfir Wal Hijra behind it was a mixture of both group and ideology. They have principally been Algerian in recent years. In that period, the early 1990s, it would have been an ideology rather than a formal organisation. The individuals in the Beghal network would have so described themselves.

197. Witness B was asked about the prosecution of Boukemiche and Kebilene, who the Security Service assessed were the GIA leaders in the United Kingdom. They were said to have been in possession of materials destined for Algeria which could be used for making explosives or poisons. They also had quite a lot of documentary material in their possession when they were arrested. The police found pledges to the GIA, chemicals, materials for smuggling, false documents, a radio scanner and books on the construction of bombs. He was aware that Kebilene? s case had been that all this had been done to assist the defence of communities in Algeria against attack by state sponsored militia rather than for the promotion of terrorism and that it was accepted by the Crown that if, as a matter of fact, that position could be established, it would constitute a defence to the charge under section 16(a) of the Prevention of Terrorism Act. The trial had collapsed because a Security Service agent refused to give evidence in court because his

anonymity could not be agreed. But witness B agreed that in fact the position when fleshed out was that this was a witness who was going to give evidence for the defence in relation to state terrorism in Algeria which had been disclosed by the Crown, who had made him available as a witness for the defence. That witness, however, had not been prepared to give evidence, either for the defence or for the Crown. Mr Emmerson was critical of the way in which those events were described by Witness B.

198. Witness B accepted that there was a distinction between self defence and terrorism, but that the distinction between one type of attack and another as terrorism or self defence was a particularly difficult question unless related to particular circumstances. He was not aware that there had been any change of position by the Crown in relation to those matters in a way which would lead to a different position under the 2001 Act. He also accepted that the distinction was important when assessing whether a person?s support for a particular cause represented a threat to national security.

199. Witness B said he was aware, although it was not in the statements, that Rashid Ramda, who was a United Kingdom-based Algerian and was said to have been involved in financing terrorist attacks in France, had been sought on the basis of a confession made by Bensaid. He was aware that there had been an allegation that Bensaid had been tortured or ill-treated into making the confession. He was aware that the Secretary of State?s order to proceed in the extradition case of Ramda had been quashed on the basis that he had failed to enquire adequately into whether the confession relied on had been procured by torture and whether the prosecution against Ramda could then be a fair one. Mr Emmerson produced a copy of the draft Divisional Court judgment in Ramda v SSHD, which entirely supports the questions put to witness B.

200. He agreed that the Algerian President had acknowledged that the GSPC?s position was to focus only on military targets in Algeria. He said that that did not mean that they could not be a threat to the national security of this country because of the interlocking nature of terrorist networks and the individuals involved in them. Even if the only aim of the GSPC as an organisation was to carry out military attacks in Algeria, it could nevertheless, by virtue of the people who are members of it, pose a threat to the United Kingdom?s national security. Witness B identified four instances of terrorist activity in which the GSPC had been involved in planning attacks against civilian targets. They were the mid-1998 plan probably to attack the World Cup, the January 2000 plan to attack the Paris-Dakkar Rally, the Frankfurt plan to bomb the Strasbourg Christmas Market and the arrest of four Algerians in Holland. The attack planned on the Paris-Dakkar Rally was dealt with in closed evidence.

201. Witness B said that in May 1998 eight people had been arrested in the United Kingdom in a planned series of arrests of GIA targets in the United Kingdom. Although Appellant B was arrested at the time, he was not one of those who had been targeted; he was in the house of Rechachi when the latter was arrested and his home searched. All but two of the eight arrested had been released on bail including Appellant B, who surrendered to bail again as required, was re-bailed and no further action was then taken. Witness B said that apart from Appellant B who

had not made a claim for compensation, all of those who had been released on bail, had been paid compensation for unlawful arrest. But two had been charged under the Prevention of Terrorism Act. Those charges had eventually been dropped, one before, and the other after committal. Both of them now had been paid compensation. All the others arrested were currently at liberty.

202. Witness B accepted that there had been no completed terrorist action against any European or American civilian target for which the GSPC had claimed responsibility, but the witness emphasised the importance of individual linkages as well as GSPC organisational activities. The individuals who had been involved in terrorist activity were connected to the GSPC, or in some cases members. He accepted that the German court which convicted four men in relation to the planned bomb at the Strasbourg Christmas Market had concluded that their activities were not linked to any wider group. Trabelsi was another individual in contact with a group in Spain, headed by a GSPC supporter on bail there awaiting trial on fraud charges, alleged to have been committed with Jerome Courtailler who had been put on trial in Holland in December 2002 for his involvement in fraud and terrorism. He had been acquitted of that offence. None of the four, one of whom who was a GSPC member, who had been arrested in Holland on suspicion of involvement in a terrorist network and in recruiting North Africans, had been convicted of terrorism; instead they had been convicted of minor document offences.

203. Witness B was asked about the relevance of the link between the GSPC and Yasser Al-Sirri. Amongst the material found in the possession of two "journalists" who had assassinated Massoud, the leader of the Northern Alliance, were letters of introduction from the Islamic Observation Centre. This was run by Al-Sirri. The letters of introduction were signed, or purported to be signed, by him, as a result of which he was charged with conspiracy to murder. Massoud had been murdered two days before the attacks of 11th September 2001. Part of the case against Ajouaou is that he visited Al-Sirri in custody, visited his wife and was driving a car that he had bought from Al-Sirri in the ordinary way. The Security Service said that visas were procured with the assistance of an individual based in London, alleged to have been Al-Sirri. Witness B accepted, albeit that it was not in his statement, that Al-Sirri contended at the Central Criminal Court on 16th May 2002, that the two assassins had obtained a letter of introduction purportedly from the Islamic Observation Centre from which they had then forged the letters which they used in order to obtain access to Massoud. The charge against Al-Sirri was considered by the Common Sergeant at the Old Bailey over a four day hearing, at the end of which he concluded that the evidence did not create a case for Al-Sirri to answer. There was some more about this in closed session. Al-Sirri had then been granted bail in relation to a minor Public Order Act charge of publishing inflammatory material. He had been immediately re-arrested on a US extradition warrant, alleging that he had provided funding to those responsible for the first attempted bombing of the World Trade Centre. He was granted bail the next day and, in July 2002, the Home Secretary refused authority to proceed, because there was no evidence to support the allegation; it did not even need to go to the Magistrate. Al-Sirri is therefore at liberty. There is further closed material of relevance.

204. The Respondent also relied upon a planned attack on the United States Embassy in France in 2001 in respect of which a group of individuals in a number of European countries had been arrested. One of those arrested was Djamel Beghal, and the other arrests had followed partly as a result of that arrest. He had been arrested in the UAE in the summer of 2001 and held there incommunicado for months. It was only after news of that arrest leaked out in September 2001 that the arrests of his associates in the United Kingdom and elsewhere in Europe had taken place. Beghal confessed in the UAE that he was planning to bomb the Paris Embassy. That confession was part of the basis for the allegation that such a plot existed, but it was not the sole basis which was provided in closed evidence. Beghal had been subsequently extradited to France to await trial where he has retracted the confession, alleging that it was beaten out of him by torture in the UAE.

205. There had been other arrests in the United Kingdom linked to that plot: Daoudi and an Algerian called Abu Abdullah, or Baghdad Metziane. The latter, however, had never been alleged to be involved in the bomb plot, but he had been convicted on 2nd April 2003 of a conspiracy to defraud and for fundraising for terrorist purposes. But the Crown had been unable to specify whether the money was going to GSPC or Al Qa?eda. A charge of membership of Al Qa?eda had been withdrawn. There was evidence of recipes for explosives and of links to Abu Doha.

206. Witness B was asked about the series of arrests in February involving Abu Doha and others. Appellant A was arrested two weeks after that initial sweep. He was released on bail and informed that no proceedings would be taken against him in May 2001. He was never charged. Some of the others were charged, but proceedings against all of them, including Abu Doha, were discontinued in May 2001. None of the others arrested, but who were not charged, are in custody. Labsi was immediately gate-arrested at Belmarsh on a French extradition warrant. The suggestion is that he was involved in the Paris bombings and the provision of false documentation.

207. Witness B accepted that it was possible that the bombing charge was dismissed by the Magistrate at the committal proceedings. He was not aware precisely which aspects of the charges formed the basis of his continued extradition-related detention, notwithstanding the fact that the outcome would have been in open evidence and some of the assessment of the threats to national security was based on this man?s actions. Abu Doha was gate-arrested at Belmarsh on immigration matters initially, released on bail, but immediately re-arrested on a US extradition warrant. Abu Doha was focused on a number of activities, only one of which related to Chechnya. The other matters would be dealt with in closed evidence. For a period Chechnya had been his primary focus.

208. The primary basis for the assessment that Doha was implicated in the Los Angeles International Airport bomb plot was the evidence of Ressam. Ressam was arrested in December 1999, having travelled by boat from Vancouver to Seattle. He had a car containing a large quantity of explosives and detonators. Initially he said that he had been duped into driving the car by another man. This was his account right up until the point when he was convicted, in April 2001, on nine

counts related to the smuggling of explosives and a conspiracy to bomb the airport, as a result of which it was announced that he would face a sentence of 130 years imprisonment without parole. Witness B was unaware of any allegation against Ressam that he had been acting on behalf of Al Qa?eda or any other group. The sentence was then adjourned for a while during which he agreed with the US Attorney?s office that he would give evidence pursuant to a formal written agreement by which he became a co-operating witness. The upshot of this was that his sentence was reduced to 27 years.

209. It was after that that he began to tell the full story, which was that Abu Doha had been aware of his intentions to attack Los Angeles International Airport and had agreed to assist him to return to Algeria afterwards. He had met Abu Doha in Khalden Camp in Afghanistan and Abu Doha had had an arrangement at some point to meet Bin Laden. He accepted that a Hamburg court, trying another alleged terrorist, travelled to Seattle to take evidence from Ressam. Witness B was not fully familiar with the details of those proceedings. It was suggested to him that Ressam was reluctant to give evidence, that the proceedings had had to be adjourned several times and that he had had to be forcefully reminded that unless he gave the account which he had said he was intending to give, his witness agreement would fall apart. Witness B said that what had been put to him by Mr Emmerson was not inconsistent with anything he knew. Witness B was aware in broad terms that there were doubts about his motivation for co-operation and the circumstances surrounding his giving evidence. He later said that a conspirator in the plot had been convicted in Los Angeles on evidence given by Ressam, after a trial.

210. Al Fawwaz was an Egyptian arrested with Eidarous and Bari and others in the summer of 1998; four of them were no longer in detention, at least in the United Kingdom, although one of them might have been in detention elsewhere. But Witness B agreed that central to the case against Al Fawwaz, who had been re-arrested on an extradition warrant to the US, was a participating informant who, it was certainly plausible, had received benefits from the US Attorney, although Witness B was not able to confirm that it was $1,000,000, or that he had been made an offer of protective custody. Witness B was unable to confirm or deny that that man had previously been rejected as unreliable by a number of governments. It was possible that he had been involved in embezzlement from one of the Bin Laden family companies. Witness B was firm in his assessment that the Eidarous and Bari fax contained the time on it which supported their assessment that it was sent before the US African Embassy bombings took place and that they remained convinced of that fact.

211. He was aware that there had been concerns expressed by a number of people in the EIJ about Al Zawahiri signing the February 1998 fatwa. Witness B?s assessment was that Al Zawahiri was acting as a representative of a considerable section of the EIJ. Witness A, who gave evidence later, was the primary witness on the EIJ. However, he was of the view that Al Zawahiri had resumed the leadership, notwithstanding criticism of him for exceeding his authority and the development of a new constitution limiting the authority of the EIJ leader.

212. Witness B was asked about the broadening of the agendas of a number of organisations which had previously focused on national concerns and the associated fragmenting of certain organisations. He said that the threat which they posed to the United Kingdom had increased since that broadening of the agendas. He said it was a difficult issue but assessed that even when an organisation, group or network of individuals had been focused primarily on a national agenda or localised conflict, they could still, for a whole range of reasons, pose a threat to the national security of the United Kingdom. The national agendas had not necessarily been put to one side, but their agendas had been broadened, increasing and adding to the threat. The mere fact, however, that an individual had been associated with the EIJ at some point did not by itself mean that they necessarily then posed a threat to national security.

213. Witness B was then asked about the training camps in Afghanistan. He hazarded that there were probably somewhere between ten and one hundred significant camps. He was pressed as to the level of knowledge that so broad a range implied. The significant camps, he then said, were far fewer than the top end of the range, but he said that his knowledge of the camps that were not central to the evidence did not enable him to give a sensible numerical estimate. The number of significant camps was a matter for closed evidence.

214. The camps were originally set up to train Mujahaddin for fighting against the Soviet Army. The Taliban first emerged as an identifiable group in 1994. They took control of Kabul in 1996, and it was after that that the Northern Alliance came into existence. Accordingly, he was asked why he had said that once the Soviet forces had withdrawn in 1989 the camps were used to train fighters against the Northern Alliance. He agreed that after the Soviets left, the Mujahaddin groups turned their attention on the Soviet-backed regime of Najibullah and partly on each other. Broadly speaking, they continued to receive Western backing. There were people receiving American backing who subsequently fought in Chechnya, one of whom was Ibn Khattab. It was only after Kabul fell that the Northern Alliance was formed as a distinct fighting organisation, as resistance to the Taliban retreated into the northern region around the Panshir Valley. He accepted that there was a seven year period between 1989 and 1996 when the camps could not have been used to train Taliban for the fight against the Northern Alliance. He said that his sentence about them being used to train fighters for the Taliban against the Northern Alliance really related to the second half of the 1990s, once the Taliban had control of most of Afghanistan. By this time, they were largely controlled by Taliban and Al Qa?eda and that is the period which they became particularly important in furthering the international network of terrorists.

215. Although not every training camp in Afghanistan could be labelled Al Qa?eda or Taliban, most, if not all, of the significant camps were controlled or influenced by them to some degree. Some camps were much more firmly described as Al Qa?eda, but so far as the Taliban camps were concerned, they only controlled those in the sense that they controlled the country. There was more than that in the case of the Al Qa?eda camps. Witness B found it difficult to give an answer, both in terms of knowledge and in open, as to how many of the significant camps had been bombed in the action taken by the United States after August 1998. He was unable to give precise dates when individuals from various organisations such as the GSPC were present in those

camps, but he did say that they were used to train individuals for operations not only in countries like Algeria and Chechnya, but also for attacks and operations in Western Europe and the US.

216. The camps were also used to train fighters participating in the Chechnyan resistance in both the first and second wars. Volunteers came from different parts of the world to train in Afghanistan before the emergence of the Taliban, in order to resist the Russian occupation of Chechnya during 1994 and 1995. There were people trained there on behalf of non-Taliban Mujahaddin who took part in resistance in Chechnya and there were many during the Taliban period training in those camps, and the same training camps would have been used for Bosnia. The policy of global jihad, pursued by Bin Laden, had emerged during the second half of the 1990s and those camps represented part of that development. He accepted that individuals continued through the 1990s to be trained amongst other things for the conflict in Chechnya, but there were a significant number of individuals who were identified as contributing to the terrorist threat to the West or the United Kingdom who had been through training camps in Afghanistan such as Ressam, Abu Doha and Beghal.

217. Whether those who passed through the camps were part of the organisations posing a global threat to the West or to United Kingdom depended on the circumstances and who they were. Witness B was pressed to agree that the mere fact that somebody had been through military training in Afghanistan did not mean that they were a contributor to the global threat to the West or to the United Kingdom. Whilst witness B agreed that the simple fact that someone might have passed through a camp at some point, did not mean without any further context that they necessarily supported the concept of global jihad, the presence of certain individuals at certain camps at certain times was an indication that they fell into the category of contributing to the threat to the West and to the United Kingdom. This was not a matter, however, which required more than some very basic details about when and where they attended camps and what its nature was. However, the detail was a matter for the closed session. Witness B regarded the presence of people at the camps in the second half of the 1990s as of particular significance although he was unwilling to draw any clear-cut distinction as between the first and second half of the 1990s.

218. Turning to the conflict in Chechnya, witness B accepted that there was scope for genuine concern about the attitude of both sides to the conflict in relation to human rights. During the two periods of conflict between 1994 and 1996 and from 1999 until the present, some 200,000 Chechynan civilians had been killed by the Russians. There had been very significant damage to Grozny. There had been a treaty signed in May 1997 between Russia and Chechnya to secure lasting peace with a view to negotiating a long-term independence. He said that over the last two years or so the Russians had differentiated between certain groups fighting on the Chechynan side. The group about which witness B was particularly concerned was the Arab Mujahaddin, but he recognised that terrorist-type activities had been associated with all factions on the Chechnyan side of the conflict. There had been large scale killings by the Russian forces. This had led to wholesale international condemnation of their excesses.

219. He was asked about a reference by the Foreign Office to the modifying of its line to recognise the

links between some groups fighting in Chechnya and international terrorism, although the Russians had portrayed the whole of their action as part of the war against terrorism. Witness B said that the Security Service had for some time been aware of Arab Mujahaddin, who are part of a wider international terrorist network, fighting alongside both Chechnyan separatists and what might be described as Chechnyan extremists. This was not a very recent change. It was understood that the Arab Mujahaddin in Chechnya had an extremely significant role to play in the threat to national security posed by Al Qa?eda and the wider international terrorist network. A number of international terrorist networks linked to Al Qa?eda play a very important role with that relatively small group of Mujahaddin in Chechnya. He accepted that there were certainly some fighters among the Chechnyan separatists who had never been regarded as terrorists and the Security Service had never regarded all those fighting as terrorists.

220. He referred to the three groups namely, the Chechnyan separatists who were not jihadists, the militant extremists and mercenaries who might be Chechnyan or of Caucasian origin and who might include Islamists sympathetic to jihad issues, and thirdly a relatively small number of foreign, largely Arab, Islamic extremists pursuing an extreme interpretation of jihad, behind Ibn Khattab until his death in 2002. These latter numbered 250 to 300 people roughly. He agreed that large numbers of volunteers from Islamic communities around the world had travelled to join the Chechnyan resistance, but he was particularly concerned about the activities and people in the third category. There were Muslim volunteers in group two, but this was not the group of extreme concern to them, although there would be links between all three. They would have formed temporary alliances and in particular the second conflict involved quite close collaboration between the second and third groups. The first and second groups were not relevant to the state of public emergency directly; they did at times collaborate and share certain aims, but there were three fairly clear divisions. Witness B said that it was the support and assistance to group three which was directly relevant to the emergency, but he did not agree that it was essential to know whether they were providing support only to fighters in that category. What was important was that they provided some support to the Arab Mujahaddin in category three.

221. There was a variety of factors which led the Security Service to the conclusion that the third group formed a very significant part of the threat to the national security of the United Kingdom and certain specific aspects underpinned that assessment. Purely fighting the Russians was not the threat to national security in the United Kingdom. Their activities as a whole in Chechnya, as well as a range of other factors to do with the type of group they were and other matters, made them the significant threat. It was not their activities in fighting with the Chechnyan resistance. It was the other activities in which they were, or could in the future, become engaged. But he added that the importance of the experience of fighting in jihads around the world to extremist networks and groups was a contributory factor that made people a significant threat.

222. The third group saw their actions as a jihad, even though there were extremist Islamists from various parts of the world, possibly travelling to Chechnya via the Afghan camps, who were in category two and received a large degree of Muslim support around the world for what they were doing. Witness B did not know about logistical support from the United Kingdom to the

Chechnyan separatists; he knew about logistical support to the Arab Mujahaddin. Supporting and increasing the capability of the third group could well be a threat to the United Kingdom. It could be so even if the support was offered only because of their activities in resisting the Russian invasion. Such a person who assisted could well pose a threat to the United Kingdom. It was an individual?s support for the third group that contributed to the threat. The importance lay not so much in the materials that were sent, it lay in the person to whom it was sent. For example, boots or radio telephone equipment to group two would be viewed in a different light from the provision of the same equipment to group three. Group three and the Arab Mujahaddin can also be described as the Ibn Khattab faction.

223. Ibn Khattab?s activities did not begin in Chechnya with the incursion into Daghestan which he led and which provoked the second Russian invasion of Chechnya. This had led to widespread killings by Russian forces of civilians immediately. Ibn Khattab?s forces were joined in that incursion by Chechnyan indigenous fighters under Bassayef. He accepted that part of the activity had been side-by-side fighting. The third group was significantly closer to the second in its relations than it was to the first. Witness B was asked whether it followed from his answers that if Appellant A sent communications equipment to Chechnya not knowing exactly where in the Chechnyan resistance groups the equipment would end up, his activities would be seen as a threat to national security if, unbeknown to him, it ended up in the Ibn Khattab faction. Witness B said that that was in a sense irrelevant because he was quite clear that Appellant A was aware that his support was for the third group; but even the unwitting support for the third group would still be of concern because, for example, high technology and communications equipment would enhance the capability of a significant part of a terrorist network.

224. That led to the submissions about the significance of knowledge. The suggestion was put that even if group three had wider activities, they could nonetheless be supported by people concerned with Chechnyan resistance without in any sense connecting the supporter to the wider activities. Witness B said that if they were supporting the third group then the Security Service assessment was that they were supporting a significant aspect of a wider international terrorist network and that in all conceivable cases they would be supporting that network in the entirety of its various aims. We asked whether someone could support the third group as the most effective fighters without supporting their wider philosophy. Witness B said that he found it hard to believe that someone who knew anything about that third group would wish to support them without supporting their wider philosophy.

225. He thought that anybody with knowledge of that third group would know of its nature as a group of Arab Mujahaddin with close links to Al Qa?eda. The mere fact that Ibn Khattab had fought side-by-side with Bin Laden in Afghanistan against the Russians would not of itself be a ground for concluding anything about the current threat, because the US and United Kingdom were supporting them at the time, but it would help to interpret later events. Bin Laden had also visited the training camps set up in preparation for the Daghestan incursion. More widely, Mujahaddin fighters in Chechnya have at times attended training camps in Afghanistan and that too is an indication in context that they could be part of a threat to the national security of the United

Kingdom. If anyone knew anything about Ibn Khattab and his faction they must know about the wider agenda beyond Chechnya, because they would know that the group was part of a wider international terrorist network with close links to Al Qa?eda and other matters which were for closed session. The distinction between the groups was precisely that the third group was a group of extremist Arab Mujahaddin which would be bound to be known to anybody choosing to support them. It was a matter for closed evidence whether that faction had engaged in terrorist activities unrelated to the conflict in Chechnya or that region.

226. Witness B agreed that one of the individual Algerians referred to in the generic evidence as having been taken into account in the assessment of the threat posed by Algerian militants was Raissi, an Algerian pilot arrested after 11th September 2001 on an extradition warrant from the US which alleged that he was connected to the attacks of 11th September. He accepted that Raissi had been released on bail in February 2002. The proceedings were dismissed against him by the Bow Street Magistrate who concluded that there was nothing whatever to implicate him on any of the alleged offences.

227. The second report of the Monitoring Group established pursuant to Security Council Resolution 1363 of 2001 (Open Generic C p69) was relied on strongly by the Respondent for the way it described the structure of Al Qa?eda. It described Al Qa?eda as a series of loosely-connected operational and support cells operating or established in at least forty countries and well entrenched in Europe. It continued to pose a significant international threat after the loss of its physical base and training facilities in Afghanistan. "This is in part due to its loose worldwide structure and its ability to work with and from within militant Islamic groups in numerous countries. Many of these extremist elements look to Osama Bin Laden and his shura, Majlis, a sort of ?supreme council?, for inspiration, and sometimes also for financial and logistical support." The shape and structure of Al Qa?eda and the absence of any centralised tightly knit command and control system made it extremely difficult to identify and scrutinise its individual members and component entities. "Its global network and links with various like-minded radical groups enables it to operate discreetly and simultaneously in many different areas." The cells, under the Al Qa?eda banner, often formed coalitions with local radical or splinter groups for specific purposes. It made extensive use of new information technology and the internet to maintain communications, disseminate information, to pass messages, instructions and to maintain the morale of its supporters and sympathisers. It had sought to link itself to the aspirations of different radical groups ranging from traditional nationalist ones to multi-national ones. It preached a general common cause painting a general common enemy on which those groups should focus. "Unlike almost any other terrorist organisation or movement, al-Qa?idah is able to motivate its followers and sympathizers to transcend their individual political, national and religious factional beliefs." At times they have been able to unite Shia and Sunni Muslims against the common enemy. "This appeal has been extended to disenchanted radical elements in Europe, the United States of America and elsewhere. It appears that special efforts have been made to find recruits from among second and third generation residents in Europe and the United States." It continued, "al-Qa?idah cells in Europe provide logistic support and financing for the attacks and are in a position to provide support and weaponry for other possible operations

worldwide. This support includes fundraising and the provision of finance; the supply of false, forged or stolen identity and travel documents; and safe houses. In addition, the recruiting of young men and women, inspired by a small number of extremist clerics preaching jihad, appears to be quite common in a number of locations in Europe, as in many other parts of the world."

228. C?s appeal involved consideration of the Egyptian Islamic Jihad (EIJ). The Respondent?s generic open submissions are a fair summary of the initial case, at least, which they put forward. The EIJ was described by them as a terrorist group, aiming to overthrow the Government of Egypt and proscribed under the Terrorism Act 2000. It had mounted a number of high profile attacks up to the mid-1990s and had merged in some form or other with Al Qa?eda in 2001. Indeed, from the late 1990s its leadership had been closely associated with Osama Bin Laden. For example, in February 1998 Al Zawahiri, its then leader, was the second signatory to the Bin Laden fatwa published in the name of "The World Islamic Front for the Jihad against the Jews and the Crusaders". He was one of Bin Laden?s closest associates. There were now organisational links, well established between the EIJ and Al Qa?eda. The majority of the group was fully merged with it. EIJ members were on Al Qa?eda?s ruling council and assisted with terrorist attacks. The EIJ was a good example of a terrorist group which had had originally a national agenda, but which had become a close supporter of the global agenda, which is capable of being pursued alongside or as an inseparable part of a national agenda.

229. Al Zawahiri has also supported the continuance of large scale attacks on western interests including Britain. In October 2002, Al Zawahiri said, during an interview on Al-Jazeera, that "America and its allies should know that their crimes will not go unpunished, God willing ... the Mujaheed youths have addressed a message to Germany and another to France. If the measures have not been sufficient, we are ready, with the help of God, to increase them". The Respondent attributed a car bomb attack against the Egyptian Embassy in Pakistan to the EIJ. It said that two leading members of the EIJ, Ibrahim Eidarous and Abdel Bari, together with a Saudi, Al Fawwaz, were connected to the August 1998 bomb attack on the US Embassies in Nairobi and Dar-es-Salaam in which more than 200 people were killed, and 4,500 were injured. These were Al Qa?eda attacks. It is likely that they involved active collaboration between Al Qa?eda and the EIJ, including EIJ members based in the United Kingdom.

230. Bin Laden, Al Zawahiri, Al Fawwaz and the Egyptians Eidarous and Bari have been indicted in the USA. The last three were based in the United Kingdom and are the subject of extradition requests. Al Fawwaz is said to have operated a media information office in London, acting as a conduit for messages from Al Qa?eda cells, publicising Bin Laden?s statements and engaging in other support activity including recruitment, disbursement of funds and procurement of a satellite telephone used by Bin Laden operatives. He was said to be Bin Laden?s representative here. Eidarous and Bari distributed the claim of responsibility, it is said, before the attacks were carried out. They had also been arrested but released in relation to an attack planned by EIJ activists in connection with possible terrorist planning against the US Embassy in Albania. Others detained included Al-Seba?i, Al Maqsud, a GI member working closely with the EIJ called Hasan and Moawad. The Respondent alleged that C had come to the United Kingdom to assume the

leadership of the EIJ after the arrest of Eidarous and Bari.

231. The willingness of the EIJ to support a wider Islamist extremist agenda, comparable to Bin Laden?s, appears from a statement issued in July 1996 and published in the London-based newspaper Al-Quds Al-Arabi. In it the EIJ threatened new attacks on the United States whose historic stupidity was said to have ignited the jihad in Egypt, Algeria, Palestine and the Arabian Peninsula against the Americans and the Jews, and threatening more to come. Thereafter, for example, it threatened retaliation for US involvement in extraditing several Egyptian militants from Albania after the plot against the US Embassy there in 1998. The EIJ and Al Qa?eda became closely linked. The co-operation between the two extended to members in the United Kingdom as shown by the arrest of Eidarous and Bari in connection with the claim of responsibility for the Al Qa?eda attacks on the US Embassies in East Africa.

232. The attacks followed a few months after Bin Laden and Al Zawahiri had signed the fatwa to which we have already made reference. Other groups from Pakistan and Bangladesh signed it as well. The front was said to represent an alliance between the organisations with each retaining its own identity. It was accepted that there was a range of EIJ concerns, both procedural and substantive, over the signing of the fatwa by Al Zawahiri. The particular concerns related to his authority to sign on behalf of the EIJ and the extent to which that would detract attention from the national agenda which the EIJ had been pursuing. There is scope for debate as to how far the concerns related at all to the obligation to kill indiscriminately Americans and their allies, civilian and military, wherever possible.

233. By September 1999, Al Zawahiri had resigned as leader of the EIJ following disagreement with others in the EIJ, but he remained closely engaged with both the EIJ and Al Qa?eda. He was influential within Al Qa?eda to the extent that he was thought to be the second most important person in the organisation. He later resumed leadership of the EIJ but there were no indications that at any time he severed his close links with Bin Laden. Like the other groups, the EIJ had been involved in training in the camps in Afghanistan. The Abu Doha group was also relevant to C?s case.

234. Ms Peirce gave evidence in her derogation witness statement about the relationship between the EIJ and Bin Laden. Her contention was that the fact of historical allegiance to the EIJ in 1998 did not mean that its members endorsed the views of Bin Laden merely because Al Zawahiri had done so. She also contested the allegation that Eidarous and Bari had in fact received knowledge of the bombings of the US Embassies in East Africa in 1998 before the bombings took place. She said this related to an error as to where the fax had been sent and to an alteration to the time on the fax. Her contention was that there had been a relationship between Al Zawahiri and Bin Laden, but not between the EIJ, its members and Bin Laden or Al Qa?eda.

235. Her evidence was that after the alignment of Al Zawahiri with Bin Laden and the 1998 fatwa, there were major problems between the EIJ founding council and Al Zawahiri over what he had

done, which was seen as creating a great rift. This led to a serious question over Al Zawahiri?s role, his need to be bound, as other members of the council saw it, by rules and majority decisions, not making press statements to which the organisation had not agreed, and only doing what the organisation wanted. The council had expressed extreme concern that what Al Zawahiri had done unilaterally might be construed as being approved by all those within the EIJ. The former members of the group based in London were yet more disaffected and in greater disagreement, she said.

236. Tyndallwoods, who acted for Appellant C, obtained a report of May 2002 from Nicolas Pelham, a freelance journalist with previous experience for the BBC and the Middle East Times in North Africa. He too identified that a key split had occurred in February 1998 following the publication of the fatwa, the "Declaration of Jihad against Crusaders and Jews". Until then, the EIJ?s activities had chiefly involved seeking the overthrow of the Egyptian Government by appealing to the Egyptian Army to overthrow the Government by a coup. Its activities were essentially therefore seditious. There had then been a mass round-up in late 1992, following which there had been some recourse to violence. Its attacks were rare and focused on the security forces. There had been one attack only outside Egypt which was in Islamabad in response to the extradition by Pakistan to Egypt of EIJ suspects. The EIJ had been radicalised away from a non-violent strategy by the mass detentions. By 1996, the EIJ?s activities had all but ceased in Egypt but it remained politically active in London.

237. He said that after the declaration of 1998, the majority of the committees in the three or four countries where the EIJ remained active wrote to Al Zawahiri criticising his alliance with Bin Laden. First, they said the EIJ was established to fight the Egyptian authorities and not to wage a worldwide campaign and, second, that he had no right to act independently, especially when many only learned about the statement through the media. The Shura and Judicial Committees of the EIJ were particularly incensed at the alliance. They rejected the declaration both in style and substance. Egyptian activists resented the Saudi takeover of an Egyptian movement. There was a difference of approach between those who saw themselves engaged in essentially a local armed struggle and whose limits were national, and Bin Laden?s followers who saw jihad instead as a global and ideological struggle against non-Muslims. EIJ rank and file regarded Bin Laden?s cause as a dangerous diversion of energy and there was concern that countries such as Britain, which had given sanctuary to fleeing Egyptian Islamists, would no longer do so and Al Zawahiri?s support for Bin Laden eroded the safety of that haven.

238. The divisions were resolved with the appointment in late 1999 or early 2000 of a new EIJ leader, Shihata. He had been Al Zawahiri?s deputy in Afghanistan, and had left Afghanistan in protest at the alliance with Bin Laden. It was reported in Al-Hayat that Shihata continued to hold Al Zawahiri in high esteem but rejected his global alliance with Bin Laden. Al Zawahiri finally resigned in January 2000. Mr Pelham?s report said that Shihata?s attempts to reactivate the movement were unsuccessful and that sympathisers in London said the organisation was in disarray. He was of the view that it appeared not to be functioning as a coherent organisation in the United Kingdom. The EIJ supporters had a local agenda for Egypt and were not interested in

attacks in the United Kingdom and remained angry at the betrayal of their cause by Al Zawahiri.

239. Mr Moubarak, he reported, gave evidence about the Military Tribunal headed by military officers which tried EIJ suspects. It was the Gamaat Islamiya which was responsible for the assassination attempt on Mubarak and the attacks on tourists in Upper Egypt. It was the GI which had assassinated Sadat as well. In an earlier article, Mr Pelham referred to the differing Islamic groups in Egypt, some of whom were not involved in politics directly. One, the Takfir, regarded the state and its political system as apostate, the enemies of Islam and therefore believed that violence against all of those was the only legitimate way to found a true Islamic state. The Muslim Brotherhood accepted some forms of violence as justifiable but did not declare society or the state apostate. Then there were the jihad groups which included the GI, the Jihad and Vanguards of the Conquest. The jihad groups included the EIJ, which operated in the Cairo and Delta area. They had turned away from the jihad groups after the assassination of Sadat. He said that the group now known as the EIJ had splintered into two sub-groups in 1998, one of which was the Vanguards of the Conquest led by Yasser Al-Sirri, based in London. This group was said to be without influence in Egypt and could be regarded as a mere fax organisation.

240. Mr Pelham provided a further report responding to the Home Office material. He did not accept their assessment that Al Zawahiri had regained his position as leader of the EIJ and referred to reports in the London based newspaper, Al-Hayat, of January 2002 saying that Shihata was the leader. He pointed out that there had been no jihad violence in the United Kingdom and the EIJ was not damned specifically in the way in which the US was. It was said that some members of the EIJ are trying to negotiate a truce with the Egyptian authorities, although a minority still remained in communication with Al Zawahiri and a smaller number still continued to hold him in high esteem.

241. Witness A gave evidence about the EIJ. Her evidence had been prepared in the same way as witness B?s. She said that the newspaper reports, as had been said before, were included so that they could put things into the open evidence which might not otherwise have been possible. They had highlighted those parts which they thought were reliable. She was asked about a number of reports from the press attached to the report prepared by Nicolas Pelham dated 22nd May 2002. She had not seen some of the articles before, but that was because there was a team within the Security Service which looked after Egyptian Islamist groups. There was an inconsistency between what the Egyptian Government was saying in 1990 after some arrests of fundamentalists for the assassination of the Speaker of the Egyptian Parliament, attributing the attack to the EIJ, but later reports said that the GI had been responsible. Mr Gill criticised her for failing to check and resolve that inconsistency. She had put in the information so that there was an open source for the assertion that it was the EIJ which had killed the Speaker. She was not surprised that there was reporting showing another group had claimed the killing, but, as it was, the Security Service assessment was that the EIJ had done it, they needed if possible an open source for it and so had put that in. They were not in effect comparing the reliability of differing reports in the public domain.

242. Broadly speaking, the EIJ?s agenda before February 1998 had been directed to an internal struggle within Egypt to replace the Government. The EIJ was a highly-stratified organisation. She was aware that Al-Seba?i, a former member of the EIJ, had said that members of the Shura Council had been demanding Al Zawahiri?s resignation since 1995 when he moved to Afghanistan or thereabouts, but she had not herself seen any documentary support for that. She recognised that there had been some dissent within the EIJ over the signing by Al Zawahiri of the February 1998 Bin Laden fatwa but said that the Security Service assessed that he had in fact signed it on behalf of the organisation and took the majority of the organisation with him, remaining its leader for over a year after he had done so. There was no official retraction from the EIJ to suggest that members did object to it, and the discontent was not so much with the central thrust of the fatwa; nobody was complaining about the fact that they were encouraged to kill Americans and their allies.

243. It was a mistake, she said, to suppose that Al Zawahiri had taken up with Bin Laden only in February 1998. He had, over the years since 1970, become more closely aligned with the Bin Laden global jihad ideology. Al Zawahiri had moved to Afghanistan in 1995. The co-operation went beyond the leader of the EIJ becoming a significant member of Al Qa?eda; in the United Kingdom, Al Fawwaz, the United Kingdom representative of Bin Laden, co-operated closely with the two leading EIJ members in the United Kingdom, Eidarous and Bari. They had been closely associated before the occasion on which they sent out the faxed claims of responsibility for the East Africa bombings. She recognised there was a dispute as to when the fax was actually sent, but the Security Service assessed that they were sent to the United Kingdom before the attacks took place and the faxes were actually sent before the attacks. No faction in the EIJ or movement within it objected to the principle of the fatwa. She was not aware that Al Zawahiri was castigated for signing the fatwa by the Shura Council. The group in the United Kingdom continued to carry out his instructions. They were happy to receive a faxed claim of responsibility in relation to the East Africa bombings and to send it to media agencies. They did not call the police; they sent the fax to claim responsibility in the name of the group that committed the attack.

244. Witness A had not heard until two weeks ago of the allegation that a new constitution had been adopted for the EIJ. From the Security Service point of view, they continued to see in the United Kingdom, from February 1998 onwards, co-operation between the Al Qa?eda member in the United Kingdom and EIJ members in the United Kingdom and contact between them and their overseas associates. She recognised that there was a reference to a new constitution for the EIJ in paragraph 44 of Ms Peirce?s witness statement, which she said she had read some time back. She assumed that what was said in that statement in that respect was true, but they continued to assess throughout that there was a very close relationship between EIJ and Al Qa?eda and that that did not change the position. They had been aware of differences of opinion within the group, but nonetheless the groups had continued to work together. She knew that Eidarous had resigned, but that was after he faxed the claim of responsibility.

245. Witness A was not aware of the allegation in the report produced by Nicolas Pelham that the

majority of the committees in the three or four countries where EIJ remained active, had written to Al Zawahiri criticising his alliance with Bin Laden. The EIJ?s agenda changed over time and he had signed on behalf of the EIJ. To all the points put, she said that he had in fact remained the leader and she believed that he had taken the majority of the organisation with him. As a highly organised group they would have been in a position to force his resignation had the support been there for it. The resignation in 1999 did not break ties with the EIJ. In the United Kingdom they saw continued co-operation between the EIJ and Bin Laden?s representative here. They saw attacks in East Africa and a direct connection between the two of them, in the turning round of the faxed claim of responsibility. The resignation, in her view, had a lot to do with the response to the public alignment between Bin Laden and EIJ because after the East Africa bombings, so many members of the EIJ worldwide were arrested. His resignation was not the result of discontent previously built up. It was the fact that the arrests took place as a result of his having become aligned in such a way that, after the East Africa bombings, the association between him and Bin Laden meant that EIJ members were at risk. Thereafter, he sought to distance himself but nonetheless maintained his ties with the group. Nonetheless, she recognised that some members were discontented but she could not think of any who said that they were only interested in the national agenda, as opposed to the global jihad ideology.

246. The focus of the EIJ outside Egypt had been there for a number of years, probably much to do with the fact that many EIJ members themselves were no longer in Egypt and consequently developed a broader outlook. There was evidence that Eidarous in 1995 was forming an EIJ cell in Azerbaijan. She had seen no complaint that the disagreements about the fatwa were that the group should concentrate only on matters in Egypt. She recognised that there had been simmering divisions over the shift from the original goal in relation to Egypt, to fighting a broader war, but said that that did not constitute a schism within the organisation. These divisions were related to Al Zawahiri?s departure from the EIJ.

247. Witness A was referred in cross-examination by Mr Gill to a translation of an article in Al-Hayat (1B, page 58) which referred to Al-Seba?i, who was reported as saying that the resignation of Al Zawahiri had left the organisation exhausted and beset with problems and that members of the various committees and the Constituent Assembly had been calling for his resignation since 1995, an appeal intensified after he signed the February 1998 fatwa. Al-Seba?i explained that the Shari?a Committee had ceased military activity because of a lack of capability, but that its youth group wanted military operations taken after the arrests of those who had not been engaged in violence. The meaning of the article is not entirely clear as to whether the decision in relation to military operations taken begrudgingly was to cease them or to start them up again. This halt was said to have remained until Al Zawahiri returned to Afghanistan and the catastrophe was resolved when the 1998 fatwa was signed, according to this report. We consider it difficult to make sense of much of it.

248. Mr Gill put to witness A that Al-Seba?i had indicated, according to the report, that the leadership of the EIJ vehemently opposed Al Zawahiri?s appearance with Bin Laden and had said that the leadership did not agree with Bin Laden. They were opponents of the group surrounding him.

Members of the Legal Committee and the majority of the members of the Shura felt sidelined by not being represented in Al Zawahiri?s signing of the fatwa. They considered his behaviour, in view of the fact that they had bound him to the Shura, to be contrary to what had been agreed and contrary to the specific regulations of the group and in violation of its policy. They criticised the weak formulation of the fatwa, its legal drafting and protested the harmful effect on the group which it had. An Egyptian fundamentalist in Germany had called on members of the EIJ to stop violence inside and outside Egypt. Al-Seba?i considered that statement to contradict the EIJ?s code of conduct and if that initiative were to be given a name, it would be "appeasement" or according to the Appellants translation "an initiative to calm the situation". We consider that in view of the fact that Al-Seba?i appears, according to the newspaper report, to be criticising the call to stop violence, that the word appeasement better fits what he had to say. Witness A said that this report did not affect her view that no EIJ member had criticised the move towards global jihad. Al-Seba?i was a member of the EIJ when the fatwa was signed and continued to be a member until he came out of prison in July 1999. That was when he distanced himself. The article was put in for that purpose rather than because she accepted everything that Al-Seba?i had said. She considered that Al-Seba?i was not complaining about the substance of the fatwa, but rather the backlash that it would eventually lead to; Al-Seba?i was one of those arrested in September 1998 and who remained in custody until July 1999. This did not mean that members of the EIJ were not still, to some extent, focused on the Egyptian national agenda, but that that national agenda now joined with the broader global jihad ideology. Different factions might put more emphasis on one than on the other but there was no break with the global jihad ideology.

249. She did not accept Mr Pelham?s assessment that the demand for Al Zawahiri?s resignation grew from a dispute over the diversion of energy away from the local jihad to a global jihad. She thought that the activity in the United Kingdom of the EIJ, illustrated by the turning round of the faxed claim of responsibility for the East Africa bombings and the arrest of a number in the United Kingdom because of suspicion that they were involved in terrorist plans to attack American interests in Albania, showed that they were engaged in actions which would not come within an Egyptian national agenda. She did not accept Mr Pelham?s analysis that Shihata, the new leader, rejected outright the globalist alliance with Bin Laden. She took the view that the majority of the EIJ merged with Al Qa?eda under Al Zawahiri but what remained and did not fully merge would still be relevant in the context of this public emergency. She did not agree that Al Zawahiri had only had pretensions to lead the EIJ before the merger in 2001, which preceded the 11th September attacks.

250. There had been a lot of internal debate in the Security Service about the form of structure because the EIJ was a very different organisation from Al Qa?eda. It was thought unlikely that there would be a fully integrated structure. The assessment had developed to the view now that there had been a structural integration. The current assessment was that the majority of the organisation of the EIJ under Al Zawahiri had merged with Al Qa?eda. The initial assessment was made in mid-2001, shortly after the merger. The structural links had got closer so that organisations once in parallel were now wholly merged, apart from a rump minority. The facts had developed rather than there being a re-appraisal of the position as at June 2001. She agreed, however, that this

changing appraisal had not featured in any of the open generic statements.

251. In re-examination, she said that the views of Al-Seba?i were the personal views of someone very unhappy as a result of being arrested, which he saw as a direct result of the EIJ?s very public alignment with Bin Laden. Not all EIJ members were of that view. She said that even after he had resigned as leader in 1999, Al Zawahiri did not cut off his links with the EIJ. She was not able to assist with the passages in the Al-Hayat article dealing with a cessation of military capacity and the reason why. She did not accept that EIJ?s activities were totally a result of youth pressure. Members in the United Kingdom were involved in terrorist planning which led to some arrests including that of Al-Seba?i. She accepted that the EIJ?s activities in Egypt in 1995 were not her area of expertise, focused more on what they were doing in the United Kingdom and worldwide in the later 1990s onwards. Insofar as Al-Seba?i was suggesting that the leadership of the whole EIJ opposed Al Zawahiri going to Afghanistan, Al Zawahiri was perfectly happy with Bin Laden?s approach, and the leadership of the EIJ including Al Zawahiri agreed with Bin Laden?s broader agenda. There may have been discontented and sidelined elements but that did not affect their continued membership of the EIJ. The leading members of the EIJ in the United Kingdom continued to liaise closely with the Bin Laden representative here.

252. The problem, she said, was not so much the view that US nationals should be killed but the public alignment with such a statement. She said that there were also links showing that Eidarous and Bari were connected with Bin Laden in the form of letters between them and the arranging of interviews with him. There was also some evidence of telephone calls from the Bin Laden satellite telephone to Bari made by a co-conspirator indicted in the East Africa bombing case, which might have been Al Zawahiri or another significant Bin Laden associate. The indictment in the US Embassy bombings case also referred to efforts which Eidarous and Bari had made to facilitate the delivery of fake travel documents to co-conspirators in Holland and Albania, to Al Zawahiri sending a letter stating that Eidarous was the leader of the EIJ, and to a threat to retaliate against America issued by the EIJ for its claimed involvement in the apprehension of EIJ members in Albania, a threat issued a few days before the East African bombings. Those parts of the indictment she knew to be reliable, in part because much of the material used in it came from the arrests of those individuals in the United Kingdom. Al-Seba?i was not in custody in the United Kingdom and remained here. Moawad was in Germany, but she believed he had been bailed. Al Madani had gone to Afghanistan.

Submissions on generic material

253. Mr Williams reminded the Commission of the dangers inherent in placing undue weight upon one piece of intelligence or assessment; each had to be seen in the context of the whole. We agree. Individual pieces in isolation might be said to show little or nothing but should not then individually be laid aside and ignored. They should be looked at in the light of all the evidence; the individual pieces may then be seen to be part of a wider picture or to show a consistent pattern of significance. Likewise, we accept that a close and penetrating analysis of the material including the assessments and inferences is required, as the Appellants? advocates submitted.

254. Mr Williams submitted that the GSPC was an international terrorist group within the scope of the Act and derogation; it had been so identified in Security Council Resolution 1363. The links to Al Qa?eda and to the derogation were shown by Bin Laden?s involvement in naming it, and providing funding for it which continued. There were links between the GSPC and Abu Doha. The latter was also connected to the Arab Mujahaddin in Chechnya and through them to Al Qa?eda via Ibn Khattab. GSPC members or supporters had been involved in terrorist actions carried out or planned by people linked to Al Qa?eda; they were not necessarily directed by the GSPC. Abu Doha and the wider North African network or group had links to Al Qa?eda.

255. He referred to one of the documents relied on by the USA in the extradition proceedings against Abu Doha which was a sworn statement by an FBI agent,(A322), detailing the agreement reached between the US prosecutors and Ressam in which what Ressam had to say about Abu Doha was set out at some length. He relied on the extensive detail as itself showing the reliability of Ressam as well as illustrating the extent of the activities of Abu Doha. Abu Doha was a very senior terrorist with close and high level connections to Al Qa?eda. His group was implicated in a number of attacks against the west and some had been involved in recent planned attacks in the UK. The same was true for the wider North African network. Both were subject to outside influence or control.

256. Mr Williams submitted that the GIA had had links to Al Qa?eda through the training camps in Afghanistan and that there had been links between two of those involved in the Los Angeles plot, Ressam and Labsi, and the GIA. The GIA like the GSPC was a proscribed organisation, named on the UN list as associated with Al Qa?eda. It was assessed on all the evidence to remain an operational terrorist group. The fact that there was little intelligence to support organisational links at the operational level, was not inconsistent with saying that, on the ground, members or supporters of the GIA were linked with Al Qa?eda or its supporters. It would be a false view of what was happening to ignore the links which were in fact established between members or supporters of those two organisations. It was necessary to look beyond the top level of each group; they interlinked on the ground. It would not be possible to establish current high level links between GIA and Al Qa?eda, but that would be to ignore reality. They were linked lower down, but that link could also be described as constituting another group or network overlapping and loosely connected with others. What mattered was not so much what the GIA did in Algeria but what those individuals and groups linked to it did outside. There was a history of GIA support activity in Europe and of attacks, 1994-1996. The significance of GIA membership lay in the actions of those who had left Algeria, were radicalised, focused on an anti-western agenda and were involved with other Algerian extremists in planning terrorist attacks in the West. Some of these were also linked to Al Qa?eda. The co-operation between individuals had been seen to exist despite the fact that they might have originated in different factions of the GIA. We have drawn upon some of the closed submissions in summarising the Respondent?s position.

257. He did not rely on connections to any other identified group but it was in this context that in closed submissions in D?s appeal, Mr Williams identified the Beghal group. The evidence about

Beghal?s activities and contacts with those who were GIA and GSPC supporters, and indeed others, before his arrest in the UAE, exemplified what the Respondent was saying about co-operation between radicalised Algerian extremists in support of a global anti-west agenda. This could properly be called a group, one of those which overlapped with others pursuing the same agenda.

258. Beghal was the leader of the attack planned against the US Embassy in Paris. He was in contact with a range of Islamists in the United Kingdom including GSPC supporters. He lived in the United Kingdom before going to Afghanistan for what the Respondent says was training. Two of his associates in the United Kingdom, Issa, also known as Daoudi, and Abdullah, were arrested in Leicester in consequence of the plot. The Beghal cell is an example of an informal group with a variety of connections through other extremists and the training camps in Afghanistan to Al Qa?eda. It can properly be seen, said the Respondent, as a group associated with Al Qa?eda, but one needs to be careful about drawing a straight line from Al Qa?eda to associated group to person linked to associated group, because that is not how the overlapping networks operate. The associations are looser than that, in part inspired by a global terrorist agenda and in part relate to the personal contacts which are built up through the way in which Al Qa?eda has provided training, finance, support and inspiration for many individuals and groups. They operate with each other in pursuit of a global terrorist agenda against the West, without necessarily receiving direct operational assistance or instructions in relation to any particular terrorist plan, but knowing that their activities are capable of being exploited to support the agenda by Al Qa?eda and other groups and that their activities will receive the support of Al Qa?eda for their potential contribution to a global terrorist agenda. To look at it in any other way would be to miss the nature of the groups and individuals who make up the threat to this country. There is a common thread running through them through their religious ideology, their common experiences, their willingness to assist each other on an informal basis with the same general outlook formed from in part common experiences and a common acceptance of an agenda that is more than a simple national agenda.

259. Mr Emmerson submitted that, as it was alleged against Ajouaou, A and B that they had been involved with the supply of material and equipment to the Chechen Arab Mujahaddin, it was necessary for the Respondent to show that there were three groups, and that the Arab Mujahaddin were a distinct group with a wider agenda than simply fighting Russians. It would not be possible otherwise to show that the activities of such Appellants, as alleged by the Respondent, fell within the scope of the public emergency and of the derogation. However, it was unrealistic to categorise the fighters in Chechnya in so rigid a way. Mere military resistance to the Russians was agreed, by itself, not to constitute a threat to the UK, even where this included terrorist actions mounted by the second group as defined by the Respondent. Mere support for the Chechen resistance did not constitute or evidence a threat to the UK. There was a real risk of errors being made in categorising groups. The Russians treated the Chechen resistance as terrorists and had sought support on the basis of their wider links but the UK had not accepted that approach. There had been a recent change of line by the UK, as evidenced by the Foreign Office briefing in 2002 (Open Generic C p110), to recognise that there was a group fighting in

Chechnya which had a wider agenda which could be seen as part of international Islamic extremist terrorism. But that briefing was an insufficient basis for concluding that there was such a group. This three-fold classification had only emerged in response to the Appellants? evidence in the third generic statement. It was also necessary for the respondent to show reasonable grounds for suspecting that an Appellant supported that group and did so, at least knowing that it had a wider terrorist agenda, if not actually intending to support that wider aspect of its agenda. It was unrealistic to suppose that those engaged in taking collections in mosques would be aware of any secret Arab Mujahaddin agenda to attack the west. Mr Emmerson was hampered in dealing with the Respondent?s case on this point because it was so dependant upon closed evidence. All this had to be seen in the light of the 11th September 2001 attacks. Acts done before that date should be viewed in a different light in which such procurement and support activities would not have been regarded as terrorism. The equipment involved was not terrorist material but field combat material.

260. Such links as there might be between those Mujahaddin and Al Qa?eda derived from the personal and long-standing links between Ibn Khattab and Bin Laden were of no assistance in judging the motivation of those who might support that faction of fighters. Even if Abu Doha was the terrorist which he was said to be by the Respondent, it could not be said that contact with him over sending materials to Chechnya created any reasonable suspicion that an Appellant supported his wider activities.

261. Mr Emmerson made the point that witness B had accepted that the GIA as an organisation was not currently thought to be closely associated with Al Qa?eda at the organisational level, that as an organisation it no longer posed a threat to western interests outside Algeria, focusing instead on a national agenda. He accused the Respondent of just making the case up when it was submitted on his behalf that the GIA lay within the Al Qa?eda network and was a part of the public emergency.

262. Mr Gill, in Appellant D?s appeal made further submissions about the GIA. Mr Gill said that, although expressed in more cautious terms, the Security Service position was not very far from the Appellants? over infiltration by the Algerian Government into the GIA. Witness B had agreed that there had been some infiltration, and that it was not always clear where responsibility for an attack lay. Witness B acknowledged the belief that the Algerian Government had played a part in massacres to discredit the Islamic opposition in Algeria, and was aware that the French prosecution had acknowledged the role in the Paris bombing of an Algerian government agent. The infiltration might have gone beyond merely legitimate intelligence activities, possibly extending to involvement by certain elements of the government. But Mr Gill criticised witness B for not finding out more about those matters, although the witness had said that his interest lay less in Algeria than in the risk to the UK. Mr Gill said that in view of the degree of infiltration, it was not possible to know who was GIA or not. He was vigorous in his criticisms of witness B?s knowledge of important material about the infiltration of the GIA by the Algerian authorities, including Dr Robert?s report. Witness B, he said, should have looked at an alternative source who had wider experience than himself on that topic.

263. Mr Gill complained that the Security Service had shifted its ground in the third generic statement, in response to the Appellants? evidence in order to maintain the narrow position which it had adopted. There were contradictory ideologies in the GIA: the Takfirist at its centre, which was the core group which the Algerian Government had infiltrated and who in 1996 had tried to assassinate Bin Laden, and Hattab who declared jihad against them as witness B accepted. It was not credible that, on the ground in the UK, there could be links between the two warring groups in a jihad other than on a social level, where they knew nothing of each other?s background. They would not co-operate. Takfirists became westernised in appearance and behaviour so as to disguise their true views; neither D nor Beghal had done that. If Beghal was linked to GSPC, as the Respondent had suggested, D, if a GIA member, would not associate with him.

264. The links between Al Qa?eda and GIA, which it was agreed no longer existed at an organisational level, had not existed for some years, if they had ever existed at all. Al Zawahiri had withdrawn support for the GIA over its excesses at a time when he was becoming closer to Bin Laden in 1996, which made it unlikely that there had been subsequent connections. Witness B had not appeared to know that. The Respondent?s reliance on personal links between Al Qa?eda and those whose membership of the GIA evolved into membership of the GSPC, could not establish any link between the GIA and Al Qa?eda except through GSPC membership. This in turn had to be demonstrated and it was not even said that Appellant D was a GSPC member. In any event, personal links could not show organisational links. The GIA itself was agreed to be pursuing internal Algerian issues only.

265. In written submissions of 9th September 2003, Mr Gill suggested that the Respondent had changed the emphasis of his case in respect of the GIA, to present a different picture in the Abu Rideh appeal. There, it was said, the relevance of membership of the GIA was what individuals did on the ground and that the GIA had not disavowed or forbidden such activities. The GIA had provided a terrorist background for them.

266. Mr Blake submitted that in the light of the evidence, if the only group of which Appellant D was a member or a supporter was the GIA, there was no basis for a connection to the public emergency. It had not been said until the Respondent?s closed closing that there was such a group as the Beghal group which could fall within the definition of "international terrorist group" and which the Appellant was said to support or assist, although there was much discussion about his relationship to Beghal. This was not the basis upon which the Appellant had been certified and it was not open to the Respondent to change the basis of certification. But Mr Blake accepted that he had to deal with the issue because, if it were not dealt with on its merits, and the appeal were allowed, the Secretary of State could immediately issue another certificate on a different basis. Mr Gill was not initially able to deal with this matter because it arose only in the Respondent?s closed closing submissions. Mr Gill made further submissions on 9th September 2003 in response to the Commission?s invitation, following the notification to him by the Respondent at the Commission?s request, of the change in emphasis or position developed by the

Respondent in its closed written closing submissions in D?s appeal, about the position of D in relation to what was now being described and emphasised as the Beghal group to which D was linked.

267. Mr Gill submitted that what he described as a new allegation should be ignored altogether. It had not previously been part of the Respondent?s case, which had been that Appellant D was a GIA member. This case was being advanced very late, and no reasons for its being advanced so late had been given. The allegation raised a new, mixed question of fact and law which had not been explored. It was an abuse of process for such an issue to be raised so late, and without any notice to the Appellant in open, such as could have been given. It was equivalent to allowing a new charge to be added at the very end of a criminal trial. Fairness could not be achieved without a complete rehearing of the appeal; that in itself would be unfair: in this draconian procedure, it was incumbent on the Respondent to decide what his case was, inform the Appellant and then to justify that case.

268. Matters of cross-examination, individual evidence from the Appellant, other lines of inquiry or investigation might have been pursued. There had been no possibility of communication with the Special Advocate about this aspect of the Respondent?s case.

269. In any event, the substance of the Respondent?s point was bad on its merits. No evidential foundation existed for the existence of such a network or group or for any conclusion that it was an Al Qa?eda-linked group, or that Beghal was a leading member, or that Appellant D was a member of it at all. It was merely an unproven and untested assertion. If the certificate were to be upheld on this new basis, the Commission should hold that the detention was unlawful up to that point because the certificate should never have been issued upon the basis which it was.

270. The GSPC, it had been agreed, submitted Mr Emmerson, did not target civilians unlike the GIA, and had not been involved in any actual attack outside Algeria. He was aware that there was closed evidence about two planned attacks, in France and Niger, but pointed out that all but two of those arrested in connection with the former had been released without charge, charges had been dropped against the two and that compensation had been paid to most of them. That had not been set out in the open material.

271. Mr Emmerson cautioned against the reliability of the closed evidence by referring to the weaknesses which he identified in the open evidence, some of which he said had only come to light through the happenstance of the previous involvement of himself or Birnberg Peirce in other cases about which incomplete evidence, at times misleadingly so, had been given by witness B. He instanced the failure properly to explain how the Kebilene trial collapsed, which was because security evidence relevant to the defence of self-defence was not forthcoming. Witness B seemed not to know the sort of details which cast the activities of Kebilene in a rather different light. The witness had not explained in his statement how the case against Al-Sirri had been thrown out after four days of argument, as incapable of leading to a conviction, because the documents relied

on to connect Al-Sirri to the assassins had been forged by them and not so supplied by him. The witness did not know of the decision of the Divisional Court in the extradition case of Ramda connected to the Paris bombing, which showed the confession of Bensaid to be unreliable on the grounds of ill-treatment in France. Indeed, he appeared not to know that the French had accepted that there had been Algerian Government or intelligence involvement in that attack.

272. He pointed to the problem of attaching weight to the confession of Ressam because he had been given a much reduced sentence in return for agreeing to become a co-operating witness. He had changed his story completely after conviction, from being the innocent driver of the car to being a major participant connected to and naming others as terrorists such as Abu Doha. He was a tainted source with a clear motive for lying. This sort of problem of hearsay or informant reliability was likely to be a feature of the closed evidence about which the Commission needed to be very aware. It was almost impossible to test their reliability. Beghal?s confession had been retracted in part amidst allegations of torture in the UAE. Abu Doha was contesting the allegations against him.

273. Mr Emmerson submitted that on critical areas the evidence was very far short of what was necessary. Witness B had given inaccurate evidence about the time at which the training camps in Afghanistan had been Taliban controlled and used to fight the Northern Alliance, as the witness had had to admit. His evidence about the number of camps was so vague, (between 10 and 100), as to show how limited his knowledge was.

274. Criticisms were also made in the closed session by Mr MacDonald and Mr Scannell. Mr Williams submitted that witness B had been fair-minded and objective throughout; he might have fought his corner at times but had come nowhere near crossing the line to become a partial witness. There were things which he had not known or known in detail, but the production of the evidence had been a team effort and in view of its scale, it was scarcely surprising that there were such shortcomings. He had tried to remedy them when possible. Every effort had been made to provide accurate and complete information but it was unrealistic to suppose in view of the scale of the task that there would be no shortcomings.

275. In relation to Mr Gill?s criticism of witness B in Appellant D?s appeal that he had been unfamiliar with leading figures in the debate over infiltration of the GIA, Mr Williams responded, in the closed closing, that the witness? role had not been one of academic research but one of risk and threat assessment based on the activities of the individual Appellants. He also was able to draw on a wide variety of material, including intelligence assessments which were not in the public domain. He had taken the claims into account, and there had been discussion and assessment within the Security Service about infiltration of the GIA by the Algerian Government or others, and the weight to be given to that assessment was not to be reduced by a lack of knowledge of two individuals, even if they might have been described as leading figures in the debate in the material produced for the Appellant.

276. Mr Williams submitted that the EIJ was a terrorist group also on the UN list. It was as closely linked to Al Qa?eda as could be. It had either merged in which case it had become part of Al Qa?eda itself or the rump led by Shihata was the EIJ and that had very close links to Al Qa?eda. Before the merger, the links were very close whether during the time of Al Zawahiri?s leadership or during the later intervening period of leadership by Shihata. It was misconceived to say that the EIJ was not linked to or merged with Al Qa?eda, or capable of terrorist activity. It was right at the centre of the threat to the nation. There were also strong personal links between senior members of the two organisations, however they might be described in terms of merger. Its activity after the East African attacks may not have been in carrying out actual terrorist attacks but it was engaged in a process of re-gathering its forces, financial, personal and organisational after the widespread arrests of 1998. It should not be discounted, because it was undertaking important work for any effective attacks to be mounted which required perhaps years of preparation. That was what the rump appeared to be doing. The East African embassy bombings appeared to have had a five year gestation period. It was also in part at least merged with Al Qa?eda which meant that it was engaged in the terrorist actions of that body.

277. Mr Gill criticised the Respondent for the way in which he had presented the material relating to the merger between the EIJ and Al Qa?eda, first referring to material which showed that there had been a merger, and then in response to the Appellant?s material, producing a report which antedated the earlier statements which suggested something less than a full merger, with the two organisations operating more in parallel. He did not refer to the explanation given by witness A that the earlier assessment had been superseded by the assessment in the later statements which had been served before this document. He was also critical of her for not having read Mr Pelham?s reports before she gave evidence. He said that these contradicted her views and showed the EIJ now to be no more than a fax organisation, inactive and, in Egypt, nothing more than a shell. It was Mr Pelham who had pointed out the resignation of Al Zawahiri, and in response that had been acknowledged, but it had been said that he had resumed the leadership. There was no open material to back up how or when he had regained the leadership. It was only in October 2002 that the Security Service in its third generic statement had recognised that Al Zawahiri?s signing of the February 1998 fatwa had caused a split in the EIJ which affected the whole way in which former members of the EIJ should be regarded after the merger. It would be necessary to show that they were part of the merged group for the public emergency. If there had been a survivor group, there was no clear evidence as to who was running it or as to its objectives. This was important because Eidarous was assessed to have resigned in September 1998 and the allegation was that C was his replacement. Helpful material had not been disclosed to the Appellants and the sort of approach to what material helpful to a defendant should be disclosed at a criminal trial had not been applied. He complained that the Security Service shifted its ground to meet the points which they made.

278. The evidence showed that there had not been a complete merger of the EIJ with Al Qa?eda. Mr Pelham?s evidence was that there had been a majority of the Shura Council against moving away from the national agenda towards the global agenda of Al Qa?eda. Many EIJ supporters in jail were against the move. Witness A just rejected that in a way which showed that she had a closed

mind. She ignored Al-Seba?i?s reports and the true interpretation of the word "appeasement" in the report. The evidence showed that after divisions in the Shura over military action through the 90s, such action had been abandoned and the EIJ had reverted to its strategy of trying to engineer a coup by the army through the sedition of officers. Its aim was to broaden its popular appeal. Opposition grew to Al Zawahiri the more involved he became with Al Qa?eda. This was a fundamental split although it took Al Zawahiri time to acknowledge it. In January 2000, Shihata had been appointed leader; he had an exclusively national agenda, rejecting the global agenda. It is therefore only the merged part and not the rest of the EIJ which comes within the scope of the emergency. The EIJ is defunct in the UK.

279. Mr Williams submitted that witness A had remained balanced and reliable throughout, not ducking difficult issues and acknowledging the limits of her knowledge. She had personally conducted a full review of the files in Appellant C?s case before giving evidence and that had led to the production of more material , some helpful to the Appellant and some not and which had led to further disclosure to Mr Gill. As with other appeals there were details which could and perhaps should have been followed up but none which affected the key assessments.

Generic conclusions

280. We regarded both witness A and B as highly competent, knowledgeable and objective. As we have said, because the Security Service deal in suspicion, belief, and risk evaluation, rather than proof as a court would normally expect, lines of inquiry had not always been pursued in a way which might confirm or compound those suspicions. At times, both were a little quick to attribute a conclusion or inference to "assessment", which might have implied that there was more information or analysis than we had seen, but in fact was no more than a simple judgment or inference. They did not have a detailed knowledge of the political background in Algeria or Egypt or of the various terror groups but that did not diminish their evidence to our mind. It is the significance and detail of what is said to have been done by the individuals outside Algeria and Egypt which matters and upon which they correctly focused. Witness A, in a later appeal, was surprisingly unaware of the detail of a number of common and public allegations about ill-treatment in Guantanamo Bay; she may have been being unduly cautious about what she knew generally and what specific and precise allegations she was unaware of.

281. We did not feel, notwithstanding occasional complaints and concerns about disclosure of material to the Special Advocates, that there had been any unfair holding back of material, although of course we are not in a position to know for sure. But there is a disclosure system in place, it is operated honestly, so far as we could judge, and we were not persuaded by anything which emerged that there had been a failure to appreciate significant material which would help an Appellant, although again the Respondent was not best placed to judge how particular material might be used by an advocate.

GIA:

282. We accept the Respondent?s evidence and submission to the effect that this is a functioning terrorist organisation. We also accept that it is not currently linked at an organisational level with Al Qa?eda. It poses no threat to western interests outside Algeria. Those threats, disturbing though they are, are not the basis of, nor truly part of, the Al Qa?eda linked emergency. As an organisation it is difficult to see that it is currently part of the threat to the United Kingdom underlying the public emergency. It focuses on Algeria currently. We recognise that it is proscribed, seemingly for very good reasons. It is also on the UN list of those linked to Al Qa?eda, but that fact alone cannot be a substitute for the intelligence with which we have been provided. No material in support of that link has been provided. It is not even that there is an absence of evidence which the list makes good. It is rather that the evidence is against a present connection to Al Qa?eda. The GIA is significant in these appeals either as the precursor to the GSPC, or as the original terrorist group supported by those who are said now to be significantly connected to other looser networks, and in that different way linked to Al Qa?eda.

283. It follows that whilst someone who is a GIA member or who supports or assists it may fall within the scope of Part 4 of the 2001 Act, he would not fall within the public emergency, without more. He would also be liable to deportation on the section 2 SIAC Act appeal on the grounds that his presence was a risk to national security, as a supporter of a violent, terrorist extremist group which targeted civilians and had in the past been engaged in terrorist attacks and support activities in Europe. There may be arguments about the defence of Islamic communities but the GIA is not wholly engaged in that form of self-defence on any view. We do not accept Mr Gill?s submission that the Respondent had changed his stance in the Abu Rideh appeal from the one he had earlier maintained. It had always been an important component of his analysis that the GIA provided a terrorist background, but that what mattered was what the individuals did on the ground and how those on the ground were connected to the public emergency. It was not the simple argument that a member of the GIA was for that reason alone an Al Qa?eda-linked terrorist.

284. In the light of those conclusions, it may not matter very greatly what view we take of the debate about the infiltration of the GIA by the Algerian Government. However, it seems to us probable that there will have been infiltration by Algerian Security Services for intelligence gathering. It is perfectly possible that elements of the Security Services have themselves, or through participating informants or renegade elements, sought to manipulate the GIA and its operations. This may have been to discredit the GIA, to encourage dissension so that it split or turned upon itself, or so as to encourage it to attack FIS supporting areas. We can see how the French prosecutor might conclude in any of those circumstances that there had been Algerian Government agent involvement in the Paris bombings. There is much in what Dr Roberts says about the likelihood, purpose and degree of Algerian Government infiltration which makes good sense of the material which he produces and differs only in emphasis and degree from the Security Service.

285. But we were less than persuaded by his somewhat speculative view that the Algerian

Government?s role in the civilian massacres could be deduced from a supposed internal power struggle and the fact that he could see no advantage to the GIA for the massacres. Nor would we accept that it was originally the creature or subsequently became the tool of the Algerian Government. As an analysis, it fails to look at matters through the perspective of a radical extremist Islamic terrorist group. There was both a religious and a political aim to civilian massacres. Although Hattab rejected the Zouabri espousal of civilian massacres, whether as justified by Abu Qatada in 1995 or otherwise, and said that the GIA had been infiltrated, it cannot be gainsaid but that the indiscriminate killing of civilians was regarded by the 1998 fatwa as a religious duty. The difference between the GIA and GSPC was not so much a distaste for killing civilians as such: the latter regarded the civilians as Muslims who were not as a body legitimate targets; the former regarded them as apostates and legitimate targets, or, if unhappily innocent of apostasy, they should be regarded as martyrs. This analysis is supported by closed material and the Abu Qatada fatwa. The GIA fatwa was not just about killing civilians; it was about the deliberate, indiscriminate killing of civilians whom others regarded as Muslims. To the extremist GIA, the Algerian Government, its supporters and those who were not with the GIA were apostates. "Apostate", in extremist Islam, can cover anyone whose views differ from the one, pure way of those who are using the term.

286. The political aim was destroying opposition to the GIA?s brand of Islamic extremism; those opponents could be seen as apostates. The FIS were not comrades of the GIA; driving people from the FIS by killing their civilian supporters was a legitimate policy to the GIA. They wanted nothing to do with, rather they wanted to destroy those who stood for any form of democratic election; there is closed evidence to that effect. Additionally, although Hattab claimed in 1997 that the GIA had been infiltrated, and it may have been an insult rather than an assessment, there is no record of any earlier such claim by him, notably when the GIA bombing campaign in France was under way in 1994 to 1996.

287. We regard witness B?s assessment, which was thoroughly tested in open and closed sessions in both these appeals and that of Appellant D, as the one to be preferred for the reasons which he gave. The politico-military memorandum (Open Generic C) of September 1999 was compelling. The GIA was by then following a Takfirist approach. Dr Roberts was too rationalist, too expectant of conduct which made political sense from the viewpoint of a western terrorist group, to have really got to grips with the real, radical Islamic outlook of the GIA. We also accept the assessment of witness B that, notwithstanding any jihad in Algeria between GSPC and the GIA, there was co-operation at a lower level in the United Kingdom and Europe between adherents of both groups, directly and through others. The evidence in its totality plainly supported that. Whatever their disagreements about killing Muslim civilians in Algeria, no such disagreement would inhibit co-operation in the pursuit of an anti-West agenda. The GSPC may have baulked at the deliberate adoption of a strategy of the massacring of Muslim civilians but it had not espoused some fastidious notion that all civilian targets, howsoever defined, whether western or not, were to be avoided even as accidental casualties. The evidence is clearly to the contrary. The individuals are part of the overlapping network of terrorist groups in the United Kingdom, and in that way may become part of the emergency rather than through the GIA itself.

GSPC:

288. We accept the general assessment of the Security Service that the GIA and GSPC had not really appeared as two groups outside Algeria, and that what matters also with this group is what its adherents in the United Kingdom are doing with others in pursuit of a wider agenda.

289. However, it is clear that the GSPC is an international terrorist group. We consider the evidence, open and closed, supports the conclusion that it is active in pursuit of both a national agenda, including fighting the Algerian regime and the Zouabri-led GIA, and a wider anti-Western agenda. We reject the suggestion that its attention is confined to Algeria or that it can be regarded as not part of the Al Qa?eda-linked threat because it does not target civilians. The latter proposition resulted from a series of questions designed to highlight the difference between the GIA and the GSPC. But there is no evidence at all to support the curious implicit proposition that GSPC terrorism excluded any civilian targets, or that attacks on non-civilian targets in the West are excluded from the scope of the emergency. The distinction itself is over simple: how do police, civil servants in the Ministry of Defence or Security Services? buildings fare? There was evidence, particularly in closed, about GSPC-linked civilian attacks outside Algeria, in France and Niger.

290. The GSPC was also linked to Al Qa?eda through training, and funding and in other ways, from all the material which we had. Here the UN list is supportive of the evidence given to us and can add to the weight of evidence as to those links. It is controlled or influenced by people outside the United Kingdom, as for that matter is the GIA.

EIJ:

291. We accept that the position over the EIJ is not entirely clear. However, we prefer the Security Service assessment to Mr Pelham?s. There is no dispute but that it was a terrorist organisation, and that its activities were more violent than simply the peaceful sedition of Egyptian Army officers. We regard the assessment that there was a disagreement rather than a total schism over the signing of the 1998 fatwa as correct. The dispute appears to have been many faceted, but it was not in reality a religious or moral dispute, more a procedural and hierarchical one, with the risk at least with hindsight to the well-being of the organisation and a focus away from the national agenda. But Al Zawahiri remained leader for well over a year, resigning so as to distance himself from the EIJ as it faced a widespread crackdown. Even then he did not break his links with the EIJ. His successor was close to him; there was no official retraction of the fatwa. There was continued evidence in the United Kingdom of EIJ members co-operating with the Al Qa?eda representative in the United Kingdom. They co-operated in the United Kingdom over the claim of responsibility for the East Africa bombing; it is at least a reasonable though disputed assessment that the fax preceded the incident.

292. We found witness A?s analysis of the merger persuasive. The majority merged with Al Qa?eda; the rump under Shihata maintains a separate existence, close to Al Qa?eda, with strong leadership contacts. The changing assessments were perfectly explicable and understandable. The rump is not exclusively focused on Egypt as all the evidence showed. Moreover, after the crackdown, we regard the explanation for the lack of attacks carried out since 1998 as being, not that it is a shell in Egypt and just a fax machine in London, but that it is regrouping, re-gathering all its forces, financial, personal and organisational. We do not accept Mr Gill?s later written submissions that in the Abu Rideh appeal, there was any significant difference between that and the evidence in C? s appeal.

293. The EIJ is either part of Al Qa?eda, having merged in part, and thus a terrorist group directly at the heart of the emergency, or it is the Shihata rump. That rump is an international terrorist group, closely connected to Al Qa?eda. We agree with Mr Williams that support or assistance for either suffices, for the purposes of the Act and the public emergency.

Abu Doha Group:

294. There is ample evidence to support the conclusion that this group falls within the Act, has links to Al Qa?eda and is a very important part of the emergency. It is not a group with an exclusive membership; its members or supporters or some of them may form part of other networks or groups, as well. It is the paradigm group, loosely co-ordinated but overlapping with other groups or cells of North African, principally, Algerian, extremists. It may overlap with groups centred around Abu Qatada or around Beghal. It too is controlled or influenced by people outside the United Kingdom.

The Chechen Mujahaddin:

295. We do not regard it as unrealistic for the Security Service to regard them as a distinct group, however much they may collaborate with in particular the second group, which is also quite extreme in outlook and tactics. There is obviously also an objective, fighting Russia for Chechen independence or the defence of Muslims, which is shared. The Security Service analysis that the group exists, is composed of Arab Mujahaddin and pursues a wider anti-West agenda, with which its Chechen activities may fit, was persuasive.

296. We also accept as reasonably soundly based the assessment that support for such a group would be given by people who were aware of its wider agenda, and not by people ignorant of it. This stems from the nature of the group, as an Arab force, closely connected to the Arab Mujahaddin in Afghanistan. It is a small group whose supporters would know of its senior personnel and their links to Al Qa?eda. It is reasonably said to be unrealistic to suppose that those who support it in those circumstances do so only for its efforts in fighting Chechnya - the support is for the group and its activities. In any event, whether the support is intended only for Chechnya in the mind of the supporter or not, the support is reasonably assessed to be given with an awareness of the

group?s whole agenda, and in fact provides it with support capable, directly and indirectly, of deployment in pursuit of an anti-West and anti-United Kingdom cause.

297. The Chechen Mujahaddin are an international terrorist group, controlled or influenced from outside the United Kingdom. We accept as reasonable the assessment that its supporters are part of the public emergency. The evidence is clear that its activities are not confined to Chechnya but that, through groups such as the Abu Doha group with which it is connected and with which it overlaps, it presents a threat to the United Kingdom. Support for and participation in a jihad in Chechnya through this group is a threat through training and the fighting experience there gained, and through the prestige which having been an active jihadist affords when recruiting for that group or gaining support for it, or through radicalising impressionable young men. But there is closed evidence which goes somewhat beyond that.

The Beghal Group:

298. As to Mr Blake and Mr Gill?s submissions about changing the basis of certification, we accept that the appeal is against the certificate. However, the certificate does not itself state the international terrorist group to which an Appellant is said to belong or to support or assist. The group or sometimes groups are identified in an accompanying letter which gives short reasons for the issuing of the certificate. That position is then enlarged upon through all the evidence, which is intended to make clear what the Respondent is alleging against an Appellant. In these cases it has been clear from even the earliest material that the group or groups referred to in the letter do not constitute the complete expression of the Respondent?s case. The evidence refers to the involvement of Appellants with the loosely connected and overlapping networks of Islamic extremists present in this country. In many cases links to the Abu Doha group are asserted and the significance of that group has been flagged up by the Respondent for some time. We do not think that Mr Blake and Mr Gill have a sound point of appeal to us as a matter of principle, even if the Respondent does change the basis or the emphasis of the case upon which he maintains that the certificate should be upheld. After all, it is universally agreed in relation to those detained that the Commission has to judge matters on the evidence before it as at the date of its decision. Indeed it is only realistic for them to deal with the case as it is in fact mounted by the Respondent at the hearing because, as Mr Blake recognised, the Secretary of State could re-certify on the changed basis and he would otherwise achieve only the briefest of victories. This is not to be judged by the same approach as applies to a criminal trial. We do not consider either, if the newly expressed basis is a sufficient basis for certification, that that indicates that the certificate should not have been issued originally; it shows that it should have been issued, but with a differently or better expressed reason.

299. The real issues are whether there has been a change which Appellant D has not had a proper chance to address in open or closed sessions and whether the changed basis or emphasis is sound on its merits. It is plain that there has been a change to some extent revealed in the Respondent?s closed closing submissions. He continues to place reliance on the GIA, but, perhaps in recognition of the open evidential problems as to the current activities of the GIA itself and the

absence of current organisational links to Al Qa?eda, has sought to show the links to an international terrorist group which is related to the public emergency, by elevating the associates of Beghal into a group which qualifies under the Act and the emergency. There is no doubt that D?s association with Beghal formed a significant part of the case against him in open evidence. Mr Blake does not complain that he has been unable to deal with any closed material relevant to this point; his complaint is about the fact that there has been an additional emphasis on what hitherto had not really identified as a group as such. Likewise, Mr Gill and Appellant D himself have been able to deal with the association asserted between him and Beghal, and any other members of what the Respondent characterises as the group, both as to the nature and the significance of any associations with D or between Beghal and those others. He has been able to deal with the notion of a loosely co-ordinated network of mainly North African radical Islamists with anti-western terrorist agenda. Mr Gill refers to cross-examination and evidence which he was unable to provide; no particular aspect was identified. We do not regard this as a realistic point. It is not new facts or evidence which are being dealt with. It is a different way or a different emphasis in the characterisation of the associations upon which the Respondent always relied. Whether that is justified or not is a matter of the application of the statutory language to the facts, which were already identified and asserted. It is therefore a matter of submission. We do not see how evidence, let alone expert evidence, could make any difference.

300. We now turn to the substance of the Respondent?s point. The Beghal group within the Act can properly be called a group even though the Respondent was slow in applying that description to it.

301. As we have explained, "group" is a word in this Act of very wide ambit. The Beghal group overlaps with a group around Abu Qatada; indeed it may reasonably be seen as a sub-group of Abu Qatada?s group. Like Abu Doha?s group, it can be identified by reference to the individual around whom activity seems to coalesce, without necessarily implying any particular leadership structure. It can reasonably be seen as existing in the United Kingdom before Beghal?s departure. There are reasonable grounds for suspecting that it was at that stage at least influenced from abroad. This is in part because of later events largely described in closed evidence, to which some reference was made in Beghal?s confession in the UAE, and which casts a relevant light on what was happening beforehand in the United Kingdom. It is supported also by the nature of Beghal?s links to other extremists, notably Abu Qatada, who, on the evidence at present before us, had close links to Al Qa?eda and other terrorist groups based abroad. It is in that way connected to the public emergency. Our approach to the Beghal group is of a piece with the next point.

The overlapping groups or cells:

302. We accept the broad assessment by the Respondent that there is a network, largely of North African extremists, in this country which makes up a number of groups or cells with overlapping members or supporters. They usually have origins in groups which had or may still have a national agenda, but whether that originating group does or does not have a national agenda, whether or not it has direct Al Qa?eda links, whether or not the factions are at war in the country

of origin, such as the GIA and GSPC in Algeria, those individuals now work together here. They co-operate in order to pursue at least in part an anti-West terrorist agenda. Those less formal groups are connected back to Al Qa?eda, either through the group from which they came which is part of what can be described as the Al Qa?eda network, or through other extremist individuals connected to Al Qa?eda who can be described as part of Al Qa?eda itself or associated with it. They are at least influenced from outside the United Kingdom. These informal, ad hoc, overlapping networks, cells or groups constitute "groups" for the purpose of the 2001 Act.

303. It does not matter whether the individuals support all the means of war or terror urged by Al Qa?eda, including the deliberate mass killing of civilians by suicide actions. They can still support or assist a group connected with Al Qa?eda and in some way increase its capability for launching terrorist operations of whatever sort which threaten the United Kingdom.

The closed material

304. The closed material justifies the significance attributed to activities by Arab Mujahaddin in Chechnya in a number of ways.

305. It confirms the importance of the Abu Doha group, and of informal groups, overlapping and providing support for terrorist groups, without formal or substantial demarcation based on former national allegiances. The description of a network of North African Islamic extremists is justified. The existence of the Beghal group is supported by closed evidence.

306. The Respondent?s closed evidence of terrorist attacks and plots since 1993 provided more detail and in a number of ways provided or implied connections direct or indirect between them and various Appellants.

307. The gist of the closed evidence about the EIJ and its links to Al Qa?eda, and the merger is in the open material. The essential features of the GIA and GSPC are dealt with in the open material but the closed material is somewhat more detailed on their links to Al Qa?eda.

308. The importance of support networks is based on evidence, the essence of which is in the open material, again supported by closed material.

309. The closed material supports the open conclusions and shows there to be sound material justifying the Respondent?s conclusions and assessments. They provide together more than reasonable grounds for the generic conclusions of the Secretary of State. There are reasonable grounds, at least, for considering that there is a continuing direct terrorist threat to the United Kingdom from a group or groups or network of largely North African Islamic extremists, linked in various ways to Al Qa?eda. The second part of the judgment draws upon these conclusions for the decision in respect of the individual Appellants.

CONTEMPT OF COURT ACT 1981

There is an Order in force preventing the publication of this material.

APPENDIX 1

The Respondent gave evidence to the effect that since September 2002 there had been evidence that networks of Islamic extremists planned to carry out terrorist attacks in the UK. This evidence was derived from searches and arrests mainly related to Algerian extremists in London and Manchester. In a London search, possible remnants of the poison ricin and other toxic materials were recovered. In another, a police officer was killed by one of those who had been arrested. The Security Service assessed that a significant threat to the UK came from the plans and intentions of a network of extremists including members of Abu Doha?s group, as well as members of the wider North African Islamic extremist community in the UK linked to several Appellants. There was evidence of recipes for explosives and of links to Abu Doha.

Further material found in January 2003, when the Finsbury Park Mosque which had been used by many Islamic extremists over the last few years was searched, further evidenced the risk of chemical attack. Likewise, evidence from other arrests in France and Spain was contended by the Respondent to lend further weight to the assessment that cells of North Africans in Western Europe intended to carry out terrorist attacks in the UK or in Europe. These would use poisons and other means. The network was regarded as a long-standing network of Algerians, to which a number of the Appellants were linked, as creating a significant terrorist threat and was an example of individuals working together in pursuit of the global Al Qa?eda agenda.