

[REDACTED]

Date: 20131025

Docket: DES-7-08

Citation: 2013 FC 1092

Ottawa, Ontario, October 25, 2013

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

IN THE MATTER OF A CERTIFICATE  
SIGNED PURSUANT TO SUBSECTION 77(1)  
OF THE *IMMIGRATION AND REFUGEE  
PROTECTION ACT (IRPA)*;

AND IN THE MATTER OF THE REFERRAL  
OF A CERTIFICATE TO THE FEDERAL  
COURT PURSUANT TO SUBSECTION 77(1)  
OF THE *IRPA*;

AND IN THE MATTER OF  
MOHAMED ZEKI MAHJOUR

[REDACTED] **REASONS FOR JUDGMENT AND JUDGMENT**

I. Introduction

[1] Mr. Mohamed Zeki Mahjoub, an Egyptian national, is the subject of a security certificate signed pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*] on February 22, 2008 by the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration. The security certificate states:

We hereby certify that we were of the opinion, based on a Security Intelligence Report received and considered by us, that Mohamed

Zeki Mahjoub, a foreign national, is inadmissible on grounds of security for the reasons described in sections 34(1)(b), 34 (1)(c), 34(1)(d) and 34(1)(f) of the *Immigration and Refugee Protection Act*.

The basis of the certificate is that Mr. Mahjoub poses a threat to national security. The Ministers believe that Mr. Mahjoub has engaged in terrorism and subversion, that he is a high-ranking member of organizations that have engaged in terrorism and subversion, namely Al Jihad (AJ) and the closely related Vanguard of Conquest (VOC), and that he is a danger to the security of Canada because he has and will continue, while in Canada, his involvement in terrorist activities.

[2] Pursuant to subsection 77(1) of the *IRPA*, the Ministers shall sign and refer the security certificates to the Federal Court so that a designated judge of that Court may determine whether the certificate is reasonable. That decision is this Court's ultimate task in these proceedings.

[3] In essence, the Court is to decide whether the named person, Mr. Mahjoub, a Convention refugee, is entitled to remain in Canada. Unlike in a criminal proceeding, the named person is not charged with a crime, and the Court is not to determine the named person's guilt or innocence. As such, the only remedy available to the Ministers, if successful in these proceedings, is the removal of Mr. Mahjoub from Canada on the grounds that he is a threat to national security, subject to deportation proceedings.

[4] After taking into consideration all of the evidence and the actions of the Ministers throughout these proceedings and leading to these proceedings, I find the security certificate signed pursuant to subsection 77(1) of the *IRPA* to be reasonable. While the Ministers have

failed to establish reasonable grounds to believe that Mr. Mahjoub is or was directly engaged in terrorism or subversion, they have established reasonable grounds to believe that Mr. Mahjoub was a member of a group that engaged in terrorism and subversion, namely Al Jihad (also known as Egyptian Islamic Jihad) and its splinter or sub-group, the Vanguard of Conquest (also known as Tala al-Fath). I am satisfied that these groups targeted Canada and Canadians with their terrorist activities, and consequently as a member of this group, Mr. Mahjoub was a danger to the security of Canada. It was therefore reasonable for the Ministers to certify that Mr. Mahjoub was inadmissible to Canada pursuant to paragraphs 34(1)(f) and 34(1)(d) of the *IRPA*.

## II. Background

[5] To provide context, I shall provide a brief summary of the events leading up to these proceedings and the procedural history of the proceedings. A lexicon of acronyms is appended to these Reasons for ease of reference.

### *1. History Prior to these Proceedings*

[6] Mr. Mohamed Zeki Mahjoub is an Egyptian national born in Al-Sharkiya, Egypt, at the beginning of April 1960. Mr. Mahjoub arrived in Canada via Toronto Pearson International Airport during the night of December 30 and 31, 1995. He was traveling on a false Saudi Arabian passport. At the airport, Mr. Mahjoub claimed refugee status in Canada, which the Immigration and Refugee Board granted on October 24, 1996.

[7] Mr. Mahjoub came to the attention of the Canadian Security Intelligence Service (CSIS or the Service) in [REDACTED] 1996 [REDACTED]  
[REDACTED]  
[REDACTED]. The Service conducted an investigation into Mr. Mahjoub's past and present activities and associations pursuant to section 12 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 (*CSIS Act*). [REDACTED]  
[REDACTED]  
[REDACTED] the Service sought a warrant at the Federal Court of Canada (as it then was) to collect further information on Mr. Mahjoub pursuant to section 21 of the *CSIS Act*. The Service obtained this warrant and subsequent warrants expanding its warrant powers. The warrants were in force from [REDACTED]  
[REDACTED]

[8] As a result of the information collected during its investigation, the Service prepared a Security Intelligence Report (SIR) recommending that the Solicitor General of Canada and the Minister of Citizenship and Immigration sign a security certificate pursuant to section 40.1(1) of the *Immigration Act*, R.S.C. 1985, c. I-2. The Solicitor General of Canada, the Honourable Lawrence MacAulay, and the Minister of Citizenship and Immigration, the Honourable Elinor Caplan, signed the first security certificate naming Mr. Mahjoub on May 17 and June 12, 2000 respectively.

[9] Mr. Mahjoub was arrested on June 26, 2000. The first security certificate was referred to the Federal Court of Canada in DES-1-00, and Justice Marc Nadon determined the first security

certificate to be reasonable in a decision released on October 5, 2001 (*Canada (Minister of Citizenship and Immigration) v. Mahjoub*, 2001 FCT 1095). Mr. Mahjoub remained in detention pending his deportation. On July 30, 2003 and November 25, 2005, Justice Eleanor Dawson dismissed Mr. Mahjoub's applications pursuant to subsection 84(2) of the *IRPA* to be released from detention. In the meantime, Mr. Adil Charkaoui, another named person subject to a security certificate, appealed to the Supreme Court of Canada challenging the constitutionality of the security certificate regime.

[10] On February 23, 2007, the Supreme Court of Canada released *Charkaoui v. Canada*, 2007 SCC 9 [*Charkaoui I*], its first decision on the constitutionality of the regime. The Supreme Court's ruling declared the security certificate regime under what was then section 77(1) of *IRPA* to be unconstitutional for two reasons: the named person did not sufficiently know the case to meet or have the means to meet it as required by section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Sch. B to the Canada Act 1982 (UK), 1982 c. 11 [*Charter*], and the regime made a discriminatory distinction between foreign nationals and permanent residents in its detention provisions, violating section 15 of the *Charter*. The Supreme Court suspended its declaration of invalidity of the security certificate scheme for one year to enable Parliament to bring the scheme into line with the constitution.

[11] Mr. Mahjoub was first released from detention on stringent conditions on June 14, 2007 by Order of Justice Mosley which followed his Reasons for Order on February 15, 2007 (2007 FC 171). The conditions required the supervision and monitoring of all of Mr. Mahjoub's activities.

[12] Prior to the expiry of the year-long suspension of invalidity for the security certificate regime, Parliament passed Bill C-3, which came into force February 22, 2008, the last day of the old legislation's validity. Bill C-3 made the following changes to the security certificate regime:

- a. A new disclosure process;
- b. A new process for closed hearings and classified information;
- c. A provision for the appointment of Special Advocates to represent the named person's interests in closed hearings, and
- d. Elimination of the distinction between permanent residents and foreign nationals for the purposes of detention review.

[13] In the weeks leading up to the coming into force of Bill C-3, the Service prepared an updated SIR, concluding that Mr. Mahjoub was inadmissible to Canada. The Service submitted the SIR to the Minister of Public Safety and Emergency Preparedness, the Honourable Stockwell Day, and the Minister of Citizenship of Immigration, the Honourable Diane Finley. The Ministers signed the new security certificate, the subject of this proceeding, on February 22, 2008.

[14] On June 26, 2008, the Supreme Court of Canada released *Charkaoui v. Canada*, 2008 SCC 38, its second decision relating to the security certificate regime, also known as *Charkaoui II*. The Supreme Court declared the Service's policy of destroying its operational notes to be a serious breach of the Service's duty to retain and disclose information. The decision outlined the Service's disclosure obligations in a security certificate proceeding, adapting the principles in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 to the distinguishable security certificate

context, while confirming that the named person's right to disclosure is not absolute and is subject to national security privilege (*Charkaoui II* at paragraphs 48-63).

## 2. *Procedural History*

[15] The following is a summary of the procedural history of this case from its beginnings in spring 2008.

[16] The first schedule for the proceedings was set at the end of April 2008. Justice Carolyn Layden-Stevenson was appointed the designated judge for Mr. Mahjoub's file, DES-7-08. Mr. Mahjoub retained Ms. Marlys Edwardh and Ms. Barbara Jackman, the same counsel as another person subject to a security certificate, Mr. Mahmoud Jaballah. The Special Advocates, Mr. Anil Kapoor and Mr. Gordon Cameron, were appointed in July 2008. In the late summer and fall of 2008, the Ministers and several of the named persons and special advocates litigated a motion to implement the Supreme Court's *Charkaoui II* decision.

[17] The Ministers' case opened on September 29, 2008 with *in camera* evidence in support of the reasonableness of the security certificate and the threat that the Ministers alleged in support of maintaining Mr. Mahjoub's conditions of release. On October 3, 2008, the Court issued a disclosure order implementing the *Charkaoui II* decision. The Ministers' evidence continued until October 20, 2008, when the proceeding was suspended. The Special Advocates elected not to continue their cross-examination, reserving it until they had access to the *Charkaoui II* disclosure. The Ministers delivered two phases of classified *Charkaoui II*

disclosure to the Special Advocates, the first on December 15, 2008 and the second on January 15, 2009.

[18] Justice Layden-Stevenson was elevated to the Federal Court of Appeal on December 12, 2008. She subsequently ordered that issues of “variation of conditions of release” and reasonableness of the certificate be bifurcated to avoid undue complication and delay. The learned judge went on to complete the outstanding detention reviews and issued her reasons therein on December 18, 2008, and then again on March 9, 2009. By Communication dated December 19, 2008, Justice Layden-Stevenson also noted the unanimous agreement of all counsel that evidence adduced on the detention review relating to Mr. Mahjoub’s threat assessment can be read into the record of this proceeding.

[19] In early 2009, by agreement, a number of issues, including constitutional issues, were litigated before Justice Dawson with the view of having her determinations apply to the outstanding certificate proceedings, including Mr. Mahjoub’s proceedings. Justice Dawson issued her decisions on these matters in March 2009, January 2010 and February 2010 (*Almrei (Re)*, 2009 FC 240; *Jaballah (Re)*, 2010 FC 79 and *Jaballah (Re)*, 2010 FC 224; the latter two decisions were adopted in this proceeding by orders dated March 11, 2010 and March 15, 2010).

[20] On March 17, 2009, Mr. Mahjoub’s supervising sureties, his wife and stepson, withdrew their consent to act as sureties for Mr. Mahjoub. The Court convened on an urgent basis, and Mr. Mahjoub consented to return to detention, which he did on April 30, 2009.



[21] Throughout the spring, summer, and fall of 2009, the Court dealt with a number of contentious issues. These issues related to the lack of compatibility between the electronic formatting of the *Charkaoui II* disclosure and the systems used by the Special Advocates to review this disclosure, litigation over national security privilege and disclosure of *Charkaoui II* materials to Mr. Mahjoub (including a late change of position by the Ministers over the content of their own proposed summaries), Mr. Mahjoub's constitutional challenge to the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, and Mr. Mahjoub's detention review.

[22] Mr. Mahjoub went on a hunger strike in July 2009 to protest the conditions of his detention. In September 2009, the Court was informed that his medical condition was deteriorating, requiring the Court to urgently reschedule a detention review hearing approximately one month earlier. By the end of September, Mr. Mahjoub had ended his hunger strike. On November 30, 2009, the Court released Mr. Mahjoub on strict conditions that nevertheless permitted him to live without supervising sureties. The passage of time and Mr. Mahjoub's essential compliance with his conditions of release resulted in the relaxation of these conditions in subsequent detention reviews.

[23] Ongoing litigation concerning disclosure required the reasonableness hearings, originally scheduled for February 2010, to be adjourned to March 2010. In the first few months of 2010, Mr. Mahjoub received summaries of most of the *Charkaoui II* disclosure and a revised public summary of the SIR. The reasonableness hearings were adjourned again because the Special Advocates' expert, Dr. Omar Ashour, failed to disclose his conflict of interest when approached in January 2010 by the Ministers to be retained as their expert. By reason of this unexpected

delay and with the consent of the parties, the Court heard the Special Advocates' motion to exclude evidence for which there are reasonable grounds to believe it was obtained from torture or cruel, inhuman and degrading treatment or punishment pursuant to subsection 83(1.1) of the *IRPA*. The Court released its Reasons for Order on June 9, 2010 (2010 FC 737) and its Order implementing the Reasons on August 31, 2010, excluding some of the Ministers' evidence.

[24] On June 1, 2010, counsel for Mr. Mahjoub brought a motion to be removed as Mr. Mahjoub's solicitors of record on the grounds of an irrevocable breakdown in the solicitor-client relationship. The Court granted the motion on June 14, 2010. In late June, the Court had a three-way case management conference call with Mr. Mahjoub's prospective counsel, including some individuals who would later become Mr. Mahjoub's retained counsel, informing them that the reasonableness hearing would resume by October 12, 2010, which it did. The Ministers closed their public case on November 2, 2010.

[25] In July 2010, the Court also clarified that preliminary matters and motions were complete. Nevertheless, during September and October 2010, Mr. Mahjoub brought motions for further disclosure and informally advised of his intention to bring a motion challenging the admissibility of evidence obtained by warrants and a motion for a permanent stay of proceedings on the grounds of abuse of process. The Court granted a two-week adjournment and decided by Order dated November 3, 2010 to avoid the repetition of evidence and to mitigate the delay by hearing all of the evidence for the two motions and reasonableness prior to deciding the motions.

[26] After issuing additional subpoenas and making additional motions for disclosure, Mr. Mahjoub opened his case in late November 2010. The evidence continued until January 2011, and disclosure to Mr. Mahjoub, particularly in relation to the motions that he had brought in fall 2010, was ongoing. Mr. Mahjoub continued to make broad disclosure requests in support of his motions into April 2011. He also requested additional subpoenas to issue. The Ministers challenged the issuance of some of these subpoenas. This required litigation and as a result, no hearings relating to reasonableness were held from the end of January until June 2011. The hearing resumed in early June, 2011 until July 14, 2011.

[27] On September 8, 2011, the Court received notification from Mr. Mahjoub's counsel that the Ministers had seized Mr. Mahjoub's materials from a court breakout room beginning on July 15, 2011 and commingled those documents with the Ministers' documents. Mr. Mahjoub subsequently brought a motion for a permanent stay of proceedings and a motion for adjournment of the reasonableness proceedings. The Court adjourned the reasonableness proceedings and determined that the commingled documents needed to be separated before Mr. Mahjoub's motion could be dealt with. Prothonotary Aalto was designated to oversee the separation process and report to the Court at the conclusion of the process. Subsequently, the Court declined to grant a permanent stay of proceedings for the Ministers' negligent commingling of the documents, but instead removed eleven members of the Ministers' litigation team from the case to remedy the abuse of process.

[28] In the meantime, significant ongoing disclosure, including *tranches of Charkaoui II* disclosure, was released to Mr. Mahjoub. The most critical disclosure was the release to

Mr. Mahjoub in October 2011 of a number of allegations that were contained in the foreign agency information. The Service had received permission to disclose these allegations in response to the requests that it had sent to the foreign agencies in late 2010. Mr. Mahjoub also received responses to the Ministers' national security privilege objections made during several Service witnesses' testimony.

[29] In addition, Mr. Mahjoub had been gathering additional evidence to support his case as of March 2011 and throughout 2011. On the request of Mr. Mahjoub once the commingling issue was decided, the Court agreed to adjourn the reasonableness proceeding until July 2012. Mr. Mahjoub's request to adjourn until October 2012 was refused on the basis that there had been significant previous rescheduling of the proceeding, and given the increased number of witnesses since July 2011, it was important to move the proceeding forward. Witness testimony resumed on July 6, 2012.

[30] On June 19, 2012, the Court ruled on the Special Advocates' motion to exclude evidence pursuant to the Federal Court of Appeal's decision in *Harkat v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 122 [*Harkat*]. Evidence consisting of the Service's summaries of conversations to which Mr. Mahjoub was not privy was excluded.

[31] By consent of the Ministers, much of Mr. Mahjoub's remaining evidence was adduced by affidavit, and Mr. Mahjoub closed his case on September 13, 2012. On that day, Mr. Mahjoub sought to obtain final decisions in his late filed motion relating to abuse of process and his constitutional and warrant challenges, which would effectively postpone his decision whether or

not to testify. These issues have been explained at length in my reasons deciding the *Abuse of Process Decision* at paragraphs 340-346. The Court ordered Mr. Mahjoub to file a motion justifying why the schedule should be changed at this late stage. On September 19, 2012, Mr. Mahjoub decided not to testify. On October 2, 2012 the Court dismissed Mr. Mahjoub's motion to change the schedule on the basis that the process to be followed in the proceeding had been decided much earlier in the proceeding (the November 3, 2010 Order, re-confirmed in the June 28, 2012 Order) and that it was not appropriate or efficient to modify the process at that late stage.

[32] In addition, the Special Advocates brought a motion to exclude "unsourced intelligence" from the Ministers' evidence in the proceedings on September 28, 2012. The Ministers adduced evidence on this motion on October 24, 2012.

[33] The Ministers brought the remainder of their *in camera* evidence from October 9 to 12, 2012 and then closed their *in camera* case. The Court dismissed the Special Advocates' objection that the Ministers were splitting their case in bringing this evidence. The Ministers and Special Advocates agreed that no public litigation was required as a result of the *in camera* evidence.

[34] The Ministers continued to make required *Charkaoui II* disclosure, and Mr. Mahjoub continued to attempt to adduce new evidence until the eve of final submissions, which took place from November 26, 2012 to January 22, 2013.

[35] The Court reserved on all five outstanding matters: the motion to exclude evidence obtained by the *CSIS Act* section 21 warrants (*Warrants Decision*), the constitutional challenge to the *CSIS Act* and Division 9 of the *IRPA* (*Constitutional Decision*) the motion for a permanent stay of proceedings due to abuse of process (*Abuse of Process Decision*), the motion to exclude “unsourced intelligence” (*Foreign Agency Evidence Decision*), and the reasonableness of the security certificate (*Reasonableness Decision*).

### III. Legal Framework

[36] The certificate signed pursuant to subsection 77(1) of the *IRPA* naming Mr. Mahjoub states that he is inadmissible on grounds of security. Pursuant to section 78 of the *IRPA*, on referral of the certificate, the designated judge shall determine whether it is reasonable and shall quash the certificate if he or she determines that it is not.

[37] As Justice Dawson has explained in one of her decisions in the common issues proceedings (*Jaballah (Re)*, 2010 FC 79), the referral of a certificate may be characterized as follows:

[19] The Act requires the Ministers to refer security certificates to the Court. When a certificate is referred, the Ministers are required to file with the Court the information and evidence upon which the certificate is based, and a summary of such information and evidence that enables the person named in the certificate to be reasonably informed of the case made by the Ministers. There is no requirement for leave to proceed before the Court and the Ministers bear the onus of establishing that the certificate is reasonable. [Emphasis added]

[38] To determine whether the certificate is reasonable, the judge must be satisfied that the Ministers have established that, with respect to the person named in the security certificate, he or she meets the criteria set out in subsection 34(1) of the *IRPA*, which provides as follows:

<p><b>34. (1)</b> A permanent resident or a foreign national is inadmissible on security grounds for</p> <p>(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;</p> <p>(b) engaging in or instigating the subversion by force of any government;</p> <p>(c) engaging in terrorism;</p> <p>(d) being a danger to the security of Canada;</p> <p>(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or</p> <p>(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).</p>	<p><b>34. (1)</b> Emportent interdiction de territoire pour raison de sécurité les faits suivants :</p> <p>a) être l’auteur d’actes d’espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s’entend au Canada;</p> <p>b) être l’instigateur ou l’auteur d’actes visant au renversement d’un gouvernement par la force;</p> <p>c) se livrer au terrorisme;</p> <p>d) constituer un danger pour la sécurité du Canada;</p> <p>e) être l’auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d’autrui au Canada;</p> <p>f) être membre d’une organisation dont il y a des motifs raisonnables de croire qu’elle est, a été ou sera l’auteur d’un acte visé aux alinéas a), b) ou c).</p>
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[39] As Justice Mosley comments in *Almrei (Re)*, 2009 FC 1263 at paragraph 59: “[w]here a security certificate asserts inadmissibility on more than one ground, each ground must be read

disjunctively. If any one ground is established, the certificate is to be determined to be reasonable...”

[40] The standard of proof for the facts constituting inadmissibility is set out in section 33 of the *IRPA*:

**33.** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

**33.** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu’ils sont survenus, surviennent ou peuvent survenir.

[41] The wording of section 33 does not support Mr. Mahjoub’s and the Special Advocates’ submission that each fact alleged by the Ministers must be proven on a balance of probabilities and then holistically assessed as to whether the facts so proven constitute reasonable grounds to believe. Each fact alleged that constitutes inadmissibility need only be proven on a reasonable grounds to believe standard.

[42] The Supreme court of Canada makes this clear in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*] at paragraph 116 in which the Court states that because the reasonable grounds to believe standard applies to questions of fact, “[t]his means that in this appeal the standard applies to whether Mr. Mugasera gave the speech, to the message it conveyed in a factual sense and to the context in which it was delivered.” These are the type of facts constituting inadmissibility. While the Supreme Court was dealing with a



slightly different inadmissibility provision in the former *Immigration and Refugee Act*, in my view it also finds application to sections 33 and 34 of the current *IRPA*.

### 1. *Reasonable Grounds to Believe*

[43] *Charkaoui I* provides the definition of the “reasonable grounds to believe” standard as it applies in security certificate referrals as well as reviews of the named person’s detention. The standard “requires the judge to consider whether ‘there is an objective basis [for the belief] ... which is based on compelling and credible information’: *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, 2005 SCC 40, at para. 114.” The Supreme Court in *Mugasera* further explains at paragraph 114 that the standard is “something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities.”

[44] The named person may present a contrary version of the facts alleged by the Ministers, requiring the designated judge to examine which version is more probable. As established in the subsequent security certificate jurisprudence, in particular *Almrei (Re)*, 2009 FC 1263 at paragraph 101 and *Harkat (Re)*, 2010 FC 1241 at paragraph 64, if the “preponderance of the evidence” is contrary to the version of the facts alleged by the Ministers, the certificate cannot be upheld as reasonable. As Justice Dawson further explains in *Jaballah (Re)*, 2010 FC 79:

[43] The requirement that the belief be objectively grounded on compelling and credible evidence is an important protection. The standard connotes a degree of probability found on credible evidence, although the required degree of probability is less than a balance of probabilities. See: *Thanaratnam v. Canada (Minister of*

*Citizenship and Immigration*), [2006] 1 F.C.R. 474 (C.A.) at paragraph 22.

[44] I therefore disagree with Mr. Jaballah that, for example, it is possible to conclude that it is probable a person is not a member of a terrorist organization and still have a reasonable belief that the person is a member. If the evidence establishes a probability, that is, anything more likely than not, this would preclude reasonable grounds for belief of the contrary.

[45] Further, notwithstanding the interpretive rule contained in section 33 of the Act, where there is conflicting evidence on a point, the Court must resolve such conflict by deciding which version of events is more likely to have occurred. A security certificate cannot be found to be reasonable if the Court is satisfied that the preponderance of credible evidence is contrary to the allegations of the Ministers. [Emphasis added]

To be clear, this does not mean that the Ministers must prove that the facts as they allege on a balance of probabilities. The standard of proof is not changed. The guidance provided by Justice Dawson addresses how the Court should resolve circumstances involving conflicting evidence on a point. If the evidence establishes there are reasonable grounds to believe that certain facts occurred, are occurring or may occur, those facts may found the basis for inadmissibility. If however, on any given fact in support of an allegation by the Ministers, the preponderance of evidence is contrary to the Ministers allegation, there can be no reasonable grounds to support the allegation.

## 2. Temporality

[45] Justice Dawson in *Jaballah (Re)* 2010 FC 79 has further explained that because the designated judge is required to conduct “a searching examination of the reasonableness of the certificate on the material placed before” him or her, according to paragraph 38 of *Charkaoui I*:

[26] The question the Court is to determine is whether, on all of the information and evidence before it, the certificate is reasonable at that point in time. See: *Almrei (Re)*, 2009 FC 1263 at paragraph 6. The Court does not inquire as to whether the Ministers' decision was reasonable when made, based upon the evidence and information then before the Ministers.

[27] In light of the onus, the requirement that the Ministers adduce evidence in both open and closed proceedings, the right of the person concerned to cross-examine the Ministers' witnesses and to adduce evidence, the required searching examination of the evidence led in both the open and closed hearings by the designated judge and the fact the decision is to be made on a contemporaneous (not retrospective) basis, it is not accurate to characterize the proceeding as a judicial review on an expanded evidentiary basis. [Emphasis added]

[46] Justice Dawson held that the designated judge is not to consider the reasonableness of the certificate within the framework of a judicial review whereby the judge determines whether it was reasonable for the Ministers to sign the security certificate at the time the certificate was issued. Rather, the certificate is considered on the judge's *de novo* review of all of the evidence adduced since the Ministers signed the certificate. I agree with this assessment.

[47] Justice Dawson's comments do not, however, restrict the temporality of the grounds of inadmissibility found in section 34 of the *IRPA*. At paragraph 33 of *Jaballah (Re)*, 2010 FC 79, she further explains that the designated judge is to decide if there are “reasonable grounds to

believe that the relevant matters alleged in subsection 34(1) of the Act have occurred, are occurring, or may occur” (emphasis added).

[48] The Federal Court of Appeal in *Harkat* concurs with designated judge Justice Simon Noël’s view of the temporality of paragraph 34(1)(d) of the *IRPA*:

[152] I agree with the [designated] judge’s conclusion on the issue of security under section 34 of the Act. The scope of application of this section is governed by the rules of interpretation found in section 33. Unless otherwise provided, the facts that constitute inadmissibility include facts for which there are reasonable grounds to believe that they have occurred are occurring or may occur. Section 33 covers past, present and future facts. Therefore, there is no requirement under the combined effect of sections 33 and 34 that the danger to the security of Canada be current in order to be inadmissible on security grounds. [Emphasis added]

[49] With respect to membership pursuant to paragraph 34(1)(f), the Federal Court of Appeal does not comment on Mr. Harkat’s argument that “the absence of a temporal nexus between membership and the terrorist nature of the organization leads to an interpretation which offends sections 2 and 7 of the *Charter*.” Subsequently, the Federal Court has interpreted paragraph 34(1)(f) to require a temporal nexus between membership and the reasonable grounds to believe that the organization engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c) (see Justice Leonard Mandamin’s comments in *Werfalli v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 612 at paragraphs 61-78). This interpretation restricts the provision, for it will not capture individuals who are members of an organization before there were reasonable grounds to believe that the organization will engage in the enumerated acts, avoiding a situation where a member of a lawful group has a “Sword of Damocles suspended indefinitely over his or her head” in case that organization ever engages in

acts described in (a), (b) or (c) (*Werfalli* at paragraph 62). This interpretation is in my view reasonable. If at the time of membership it is established, on reasonable grounds to believe, that the organization is not engaged, has not engaged or will not engage in the enumerated acts, the member will not be captured by the provision.

### 3. Paragraph 34(1)(b): Subversion by force

[50] The Federal Court of Appeal accepted the Immigration and Refugee Board's (IRB's) definition of "subversion" as "accomplishing change by illicit means or for improper purposes related to an organization" (*Qu v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 399 at paragraph 12). This definition was used by the Federal Court in *Suleyman v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 780 at paragraph 63 and in subsequent paragraph 34(1)(b) jurisprudence such as *Jalloh v. Canada (Public Safety and Emergency Preparedness)*, 2012 FC 317 at paragraph 14 in defining the term "subversion by force".

[51] Justice Michael Phelan further elaborated on the term in *Oremade v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077. In that case, "by force" was broadly defined to include "coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and...reasonably perceived potential for use of coercion by violent means" (*ibid.* at paragraph 27). The learned judge concluded that the provision required that there be intent to "use such means to subvert the particular government" (*ibid.* at paragraph 24). This intention "is not to be measured solely from the subjective perspective of the applicant" but from an objective perspective of what the reasonable person would assume (*ibid.* at paragraph 26). Justice Phelan's

definition has been adopted in subsequent jurisprudence (see: *Eyakwe v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 409; *Jahazi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 242).

[52] As a final point, the Federal Court in *Alemu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 997 points out that “since [paragraph 34(1)(b)] delineates two possibilities – engaging in subversion by force or instigating subversion by force – some specificity is required” (at paragraph 31). The Court must therefore determine specifically whether the named person engaged in and/or instigated subversion by force of any government.

#### 4. Paragraph 34(1)(c): Terrorism

[53] The Supreme Court defines “terrorism” in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] at paragraph 98, as follows:

In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that “terrorism” in s. 19 of the Act includes any “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”. This definition catches the essence of what the world understands by “terrorism”. Particular cases on the fringes of terrorist activity will inevitably provoke disagreement...  
[Emphasis added]

[54] Justice Mosley incorporates the *Criminal Code*, R.S.C. 1985, c. C-46 definition of “terrorist activity” into this definition in *Almrei (Re)*, 2009 FC 1263:

[71] Any attempt to define “terrorism” in the immigration context must also now take into account the definition of “terrorist activity” found in subsection 83.01(1) of the *Criminal Code*: *Soe v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 671, [2007] F.C.J. No. 913. That definition is in two parts. The first part links the meaning of the term to the commission of certain listed offences enacted by Canada in the course of domestic ratification of international conventions and treaties against terrorism.

[72] The second part of the definition of terrorist activity in the *Criminal Code*, includes a number of elements which require proof of political, religious or ideological purpose, an intention to intimidate or compel action or inaction on the part of a government, organization or person and harmful consequences such as death, serious property damage or interference with essential services. [Emphasis added]

[55] Subsequent to the reasonableness decision in *Almrei (Re)*, the Supreme Court of Canada has upheld the constitutionality of the definition of terrorism in the *Criminal Code* in *R. v.*

*Khawaja*, 2012 SCC 69:

[62] I return to the central question: is s. 83.18 broader than necessary or does it have a grossly disproportionate impact, considering that the state objective is the prevention and prosecution of terrorism? It is true that s. 83.18 captures a wide range of conduct. However, as we have seen, the scope of that conduct is reduced by the requirement of specific intent and the exclusion of conduct that a reasonable person would not view as capable of materially enhancing the abilities of a terrorist group to facilitate or carry out a terrorist activity. On the other side of the scale lies the objective of preventing the devastating harm that may result from terrorist activity. When the tailored reach of the section is weighed against the objective, it cannot be said that the selected means are broader than necessary or that the impact of the section is disproportionate.

[63] I add this. The breadth of the impugned provisions reflects Parliament’s determination that “there is substantive harm inherent in all aspects of preparation for a terrorist act because of the great harm that flows from the completion of terrorist acts”: *R. v. Ahmad* (2009), 257 C.C.C. (3d) 199 (Ont. S.C.J.), at para. 60. In the context of the present analysis, it is appropriate to exhibit due

deference to this determination. The criminalization under s. 83.18 of a broad range of interactions that have the potential — and are intended to — materially enhance the abilities of terrorist groups is not grossly disproportionate nor overbroad in relation to the objective of prosecuting and, in particular, of preventing terrorism. [Emphasis added]

[56] Similarly, in *Harkat*, the Federal Court of Appeal upheld Justice Noël’s broad definition of “terrorism” that includes supporting activities, found at paragraphs 77-81 of the trial decision.

The Federal Court of Appeal comments:

[149] I see no merit in the appellant’s argument that the judge erred in concluding that the definition of terrorism includes materially supporting terrorist activities such as providing funds, false documents, recruitment and shelter even though such acts are not directly linked to violence. There is abundant jurisprudence supporting the judge’s conclusion: see *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 FC 592 (FCA); *Ikhlef (Re)*, 2002 FCT 263, at paragraph 54; *Toronto Coalition to Stop the War v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 957, at paragraphs 127-130. [Emphasis added]

##### 5. Paragraph 34(1)(d): Danger to the Security of Canada

[57] The Supreme Court of Canada also provides a definition of “danger to the security of Canada” pursuant to paragraph 34(1)(d) in *Suresh* as follows:

[85] ... we accept that a fair, large and liberal interpretation in accordance with international norms must be accorded to “danger to the security of Canada” in deportation legislation. We recognize that “danger to the security of Canada” is difficult to define. We also accept that the determination of what constitutes a “danger to the security of Canada” is highly fact-based and political in a general sense. All this suggests a broad and flexible approach to national security and, as discussed above, a deferential standard of judicial review. Provided the Minister is able to show evidence that



reasonably supports a finding of danger to the security of Canada, courts should not interfere with the Minister's decision.

...

[87] Whatever the historic validity of insisting on direct proof of specific danger to the deporting country, as matters have evolved, we believe courts may now conclude that the support of terrorism abroad raises a possibility of adverse repercussions on Canada's security: see *Rehman, supra, per* Lord Slynn of Hadley, at paras. 16-17. International conventions must be interpreted in the light of current conditions. It may once have made sense to suggest that terrorism in one country did not necessarily implicate other countries. But after the year 2001, that approach is no longer valid.

...

[89] ...while "danger to the security of Canada" must be given a fair, large and liberal interpretation, it nevertheless demands proof of a potentially serious threat.

[90] If he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threat and harm must be substantial rather than negligible. [Emphasis added]

[58] I adopt this definition for the purposes of this referral as Justice Noël did at paragraph 82 of the trial decision in *Harkat (Re)*.

#### 6. Paragraph 34(1)(f): Membership in an Organization

[59] Finally, in the *Harkat (Re)* trial decision, Justice Noël provides the following guidance relating to the terms "membership" in an "organization":

[85] Terrorist organizations do not issue membership cards. It is the belief in a cause and the actions of individuals in relation to that cause with the recognition of leaders that establish informal

membership. Therefore, many scenarios can be considered (see *Canada (M.C.I.) v. Singh* (1998) 151 F.T.R. 101 at para. 52).

[86] It has been the approach of courts to give an unrestricted and broad interpretation to the word “member”, and more so when national security is involved (see *Poshteh v. Canada (M.C.I.)*, 2005 FCA 85, para. 27; *Almrei (Re)*, 2009 FC 1263, para. 64).

...

[90] Terrorist organizations are loosely structured and extremely secretive. One part of the organization may not know what the other parts are doing. They have a common objective, and use dangerous means and they target innocent civilians. Their ranks vary in time. They change leadership, members and ways to attack and they adapt to new circumstances. No definition can be exhaustive since these organizations are always fluid. Therefore, the word “organization” calls for a broad reading (see *Sittampalam v. Canada (M.C.I.)*, 2006 FCA 326 at para. 38). [Emphasis added]

[60] The Federal Court of Appeal in *Harkat* upheld Justice Noël’s broad definition of organization. Justice Létourneau comments:

[150] I see no error in the judge’s conclusion that the term “organization” has to be given a broad interpretation in view of the loose structure and the fluid and extremely secretive nature of criminal or terrorist organizations: see *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, at paragraphs 38 and 39; *Ikhlef (Re)*, *supra*, at paragraph 64.

[61] This was also the approach adopted by Justice Mosley in *Almrei (Re)*. The learned judge explains:

[63] There is no definition of these terms in the statute and the courts have not attempted a precise and exhaustive interpretation of their meaning. As was stated by Justice Rothstein in *Canada (Minister of Citizenship and Immigration) v. Singh*, 1998 CanLII 8281 (F.C.), (1998), 151 F.T.R. 101 (F.C.T.D.), at paragraph 52:

The provisions deal with subversion and terrorism.  
The context in immigration legislation is public  
safety and national security, the most serious

concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of subparagraph 19(1)(f)(iii)(B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation.

[64] The Federal Court of Appeal cited this passage with approval in *Poshteh*, above, at paragraphs 27 to 29. In *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C. 297, [2000] F.C.J. No. 2043, the Court of Appeal held that being a member means simply "belonging" to an organization. This Court has consistently applied an unrestricted and broad interpretation to the meaning of "member": *Ahani (Re)* (1998), 146 F.T.R. 223, [1998] F.C.J. No. 507; *Ikhlef (Re)*, 2002 FCT 263, [2002] F.C.J. No. 352; *Harkat (Re)*, 2005 FC 393, [2005] F.C.J. No. 481. [Emphasis added]

[62] Justice Mosley also conducted a thorough overview of the jurisprudence on membership in *Krishnamoorthy v. Canada (Citizenship and Immigration)*, 2011 FC 1342 at paragraphs 21-26. I distill from his analysis that there are a number of factors to be considered when determining membership, namely:

- a. Both relatively benign and relatively serious activities done by the named person for an organization (*Suresh (Re)* (1997), 140 F.T.R. 88 at paragraphs 20-21);
- b. The named person's involvement with the organization, length of time involved, and degree of commitment to the organization and its objectives (*Tharmavarathan v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 985 at paragraph 28), and

- c. Whether or not the named person was coerced into joining or prevented from leaving (*Kashif Omer v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 478 at paragraph 13).

[63] In addition, it is clear from the jurisprudence that “actual or formal membership in an organization is not required” and that “there will always be some factors that support a membership finding, and others that point away from membership” (*Farkhondehfall v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 471 at paragraph 30, citing *Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642 and *Poshteh* at paragraph 36). In *Motehaver v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 141 at paragraph 30, the applicant was found inadmissible pursuant to paragraph 34(1)(f) of the *IRPA* although there was only evidence of his distribution of propaganda for a terrorist group and “his attempt to become a member...”

[64] Nevertheless, “there must at least be evidence of an ‘institutional link’ with, or ‘knowing participation’ in, the group’s activities” (*Sinnaiah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1576 at paragraph 6).

[65] In sum, in considering whether there are reasonable grounds to believe that a named person in a certificate is a member of an organization engaged in acts described in paragraphs 34(1)(a), (b) or (c) of the *IRPA*, the designated judge is to consider evidence of an “institutional link” with or “knowing participation” in the organization’s activities and need not determine that the individual was a formal or actual member. This evidence includes the

involvement of the named person, including all of the connections that the named person is alleged by the Ministers to have with the organization(s) at issue, including the length of time and degree of commitment, as well as any activities done for the organization(s) and whether or not the person was coerced into joining or prevented from leaving.

[66] The designated judge must also be satisfied that there are reasonable grounds to believe that the organization(s) exist as alleged by the Ministers, however amorphous, and whether there are reasonable grounds to believe that the said organization(s) is engaged, has engaged or will engage in the enumerated acts.

[67] With this legal framework in mind, I now turn to the specific allegations against Mr. Mahjoub.

#### IV. Allegations

[68] The Ministers allege that Mr. Mahjoub, as a foreign national, is inadmissible to Canada on security grounds, pursuant to section 34 of the *IRPA* for:

- Engaging in or instigating the subversion by force of any government, specifically the government of Egypt (paragraph 34(1)(a));
- Engaging in the subversion by force of the government of Egypt (paragraph 34(1)(b));

- Engaging in terrorism (paragraph 34(1)(c));
- Being a danger to the security of Canada (paragraph 34(1)(d)), and
- Being a member of organizations, namely Al Jihad and the Vanguard of Conquest, that there are reasonable grounds to believe engage and have engaged in the subversion by force of the government of Egypt and terrorism (paragraph 34(1)(f)).

[69] More specifically, in their written submissions, the Ministers allege, on the basis of the June 28, 2012 Public Summary of the SIR, that:

- a. Mr. Mahjoub was a prominent member of Al Jihad;
- b. Mr. Mahjoub was a high-ranking member of the VOC and its ruling Shura Council;
- c. Mr. Mahjoub had contacts with extremists in Egypt and was trying to induce them to travel abroad;
- d. Mr. Mahjoub actively recruited new VOC members after the Afghan-Soviet War, recruiting both Afghan and Egyptian individuals to enter Egypt and to form cells to assassinate some Egyptian officials;
- e. Mr. Mahjoub was the head of the VOC's military wing in the early 1990s during which he recruited a number of Egyptians to train in camps in southern Lebanon controlled by both Hezbollah and the Islamic Revolutionary Guards Corps;
- f. Mr. Mahjoub was responsible for the VOC's terrorist operations;

- g. Mr. Mahjoub is wanted by Egyptian authorities for his involvement in terrorist acts and was accused of the Egyptian embassy bombing in Islamabad and has been charged in numerous cases;
- h. Mr. Mahjoub was in contact with Mubarak Al Duri, Mahmoud Jaballah, Ahmed Said Khadr, Essam Marzouk, Ahmed Agiza and Ahmed Badiya, and these individuals are terrorists and Al Jihad, Vanguard of Conquest or Al Qaeda members.

[70] The Ministers' specific allegations in the June 28, 2012 classified SIR are as follows:

- a. Mr. Mahjoub was a high ranking member of the VOC;
- b. Mr. Mahjoub occupied a position of relative seniority with the Arab Mujahideen fighting against the Soviet forces in the 1980s and that during the Afghan-Soviet War, he was responsible for arranging the travel of AJ Mujahideen to Pakistan via Saudi Arabia;
- c. Since the end of the Afghan-Soviet War, Mr. Mahjoub operated from Pakistan/Afghanistan for his recruitment operations;
- d. [REDACTED]  
[REDACTED] [Mr. **Mahjoub continued to be a leader of the VOC while in Canada**] and
- e. Mr. Mahjoub is also known as Mahmoud Shaker.

### *1. Uncontested Facts*

[71] As I understand the parties' positions, the following facts are uncontested. Mr. Mahjoub was born April 3, 1960 in Al-Sharkiya, Egypt. He attended Al Azhar University in Cairo from 1979 to 1985, when he graduated with a B.Sc. in agriculture. Shortly after his graduation, Mr. Mahjoub entered compulsory service with the Egyptian military, training in weapons and receiving a posting monitoring aircraft movement. Mr. Mahjoub completed his military service with good conduct in December 1986.

[72] Mr. Mahjoub travelled to Saudi Arabia in June 1991. In or around September 1991, Mr. Mahjoub travelled to Sudan as a visitor. He became an illegal immigrant to Sudan when he lost his passport in February 1992. Also in February 1992, he began working on Al-Damazin, or Damazine Farm, a farm in the southern part of Sudan owned by one of Osama Bin Laden's companies. In May 1993, Mr. Mahjoub left his position on Damazine Farm.

[73] On December 30, 1995, Mr. Mahjoub made his way to Canada and arrived at Toronto Pearson International Airport. Once in Canada, he had contact with the Elsamnah family, the in-laws of Mr. Ahmed Khadr, and he shared an apartment with Mr. Sayed Fathi Mohammed El Jamal. He also sometimes went by the name "Abu Ibrahim." On September 26, 1996, Mr. Mahjoub married Ms. Mona El Fouli, who had been previously married and had a child from the first marriage, Mr. Hani El Fouli. In subsequent years, Mr. Mahjoub had sons Ibrahim and Yusuf by Ms. El Fouli. Mr. Mahjoub worked part-time teaching the Koran from January to March 1997, and then he obtained jobs moving furniture from July 1997 to September 1998, which he continued part-time while taking full-time English as a Second Language (ESL) classes



between May 1999 and January 2000. He then began a job at a grocery store. The Royal Canadian Mounted Police and Canada Border Services Agency (CBSA) arrested Mr. Mahjoub on June 26, 2000.

## *2. The Ministers' Account of Events Based on Alleged Facts*

[74] I summarize the Ministers' account of events as follows. After completing his military service in 1986, Mr. Mahjoub went to Afghanistan to fight in the Afghan-Soviet War as a Mujahideen fighter, where he attained a senior position. He also joined the AJ terrorist group, a Sunni Islamic extremist group whose goal was to overthrow the Egyptian government by the use of violence and establish a government that it considered to be truly Islamic. Sometime in the late 1980s, Mr. Mahjoub assisted the AJ in the Afghan-Soviet War by arranging the travel of AJ Mujahideen from Afghanistan to Pakistan through Saudi Arabia. At some point, Mr. Mahjoub also became a member of a radical offshoot of the AJ, the Vanguard of Conquest (VOC) and acquired the [redacted] [alias] Mahmoud Shaker. He also at some point acquired the alias "Mohammed Hasan." After the Afghan-Soviet War ended in 1989 and until 1991, Mr. Mahjoub operated from Pakistan and Afghanistan recruiting new members for the VOC. In addition, [redacted] [in the 1990s] Mr. Mahjoub recruited a number of Egyptians to the VOC for training in South Lebanon in camps operated by Hezbollah, a militant Palestinian extremist group, and the Islamic Revolutionary Guards Corps (IRGC, also known as the Iranian Revolutionary Guards Corps), a militant arm of the Iranian government.

[75] After obtaining a visa for his Egyptian passport to travel to Saudi Arabia on a pilgrimage in June 1991, Mr. Mahjoub went to Sudan in the fall of 1991 as part of the migration of the AJ and the closely associated and overlapping terrorist group Al Qaeda from Afghanistan to Sudan after the Afghan-Soviet War. This migration included leaders of these terrorist organizations, Dr. Ayman Al Zawahiri and Mr. Osama Bin Laden. At that time, the Sudanese government welcomed terrorist groups onto its territory. In February 1992, Mr. Mahjoub was trusted enough by Mr. Bin Laden to be appointed to the position of Deputy Director-General, or second-in-command, of Althemar Almubarakah Agriculture Company, owned by Mr. Bin Laden. He worked closely with Dr. Mubarak Al Duri, the Director-General of the company who was also a member of the AJ involved in Mr. Bin Laden's weapons of mass destruction program. Mr. Mahjoub was appointed manager of the Damazine Farm, a large farm that used agricultural activities as a front to hide AJ and Al Qaeda refresher training in weapons and explosives. He had knowledge of and was involved in these activities as manager of the farm. He held this position until May 1993

[76] In 1993, a large number of VOC members were arrested and tried by the Egyptian government. A conflict ensued between Mr. Ahmed Husayn Mustafa Agiza, leader of the VOC, and Dr. Al Zawahiri, the leader of the AJ. As a result, the two groups further split, and Mr. Mahjoub followed Mr. Agiza, becoming part of Mr. Agiza's faction. I note that the Ministers allege that Mr. Mahjoub recruited for the VOC from Pakistan and Afghanistan after the Afghan-Soviet War, and worked in Sudan in 1992 and 1993, while maintaining that the VOC was created in 1993 during the split. This inconsistency in allegations is not explained by the Ministers. Mr. Mahjoub left Mr. Bin Laden's company, Althemar, at about this time to pursue

his activities with the VOC. Sometime prior to coming to Canada, Mr. Mahjoub became a member of the [REDACTED] VOC Shura Council (ruling or advisory council) under Mr. Agiza's leadership. He was involved at this time in planning the November 19, 1995 bombing of the Egyptian embassy in Islamabad. Also involved in the bombing were Mr. Agiza, Mr. Khadr, **[and others]** [REDACTED]

[77] Also in the early 1990s, whether before or after arriving in Sudan and before coming to Canada, Mr. Mahjoub recruited [REDACTED] Egyptian Arab Afghans to enter Egypt, form operational cells and make preparations for assassinations of Egyptian government officials. [REDACTED]

[78] Because the Sudanese government had started turning against terrorist groups and expelling them due to pressure from the Egyptian and United States governments, Mr. Mahjoub permanently moved from Sudan to Canada on December 30, 1995. AJ, Al Qaeda, and VOC members moved to Arab countries and various countries in the West in 1995 and 1996. Like Mr. Al Duri and Mr. Essam Marzouk, Mr. Mahjoub arrived in Canada using a false Saudi Arabian passport. Mr. Jaballah arrived in Canada in May, 1996, also using a false Saudi passport. The use of false Saudi passports by Mr. Mahjoub and other members of terrorist groups was prevalent because Saudi passports did not require a visa at the time to enter Canada. Further, if the false passport were challenged, the terrorist could claim asylum, as did Mr. Mahjoub.

[79] Mr. Mahjoub invented a story to tell to the Canadian authorities that he had been arrested, tortured, and later persecuted by the Egyptian security apparatus for having been associated with a suspected member of the Muslim Brotherhood, a political enemy of President Hosni Mubarak, who was then in power. The information that he gave to Citizenship and Immigration Canada (CIC) and the Immigration Review Board (IRB) contained some true facts, but he carefully omitted any details that could connect him with terrorism, such as his real role at Damazine Farm and the fact that the farm was owned by a Bin Laden company. [REDACTED]

[REDACTED] The VOC and the AJ were at the time expanding their presence in Canada. Mr. Agiza was instructed by the leadership of the VOC to move his cell from Syria to Canada [in 1997] [REDACTED]

[80] Mr. Mahjoub operated in Canada under the alias Ibrahim or Abu Ibrahim, along with other aliases. As a member of the Egyptian Islamic terrorist network, upon arrival, Mr. Mahjoub initially lodged with the Elsamnah family. The Elsamnahs were the in-laws of Mr. Khadr, who was a senior aide to Mr. Bin Laden and was involved in terrorist fund-raising efforts.

Mr. Mahjoub was also in direct contact with Mr. Khadr. While in Canada, Mr. Mahjoub maintained regular contact with Mr. Marzouk, [REDACTED] Mr. Marzouk went by the “Nom de Guerre” of Adnan. Mr. Marzouk had served as an AJ trainer in assassination techniques and had also been involved in transporting Islamist extremists to camps run by Hezbollah. Mr. Marzouk would later travel to Baku, Azerbaijan to conduct a terrorist attack on the American Embassy in Baku in 1998. Mr. Marzouk was caught planning this attack with several associates, including Mr. Saqr.

[81] While in Canada, Mr. Mahjoub also maintained contact with Mr. Al Duri, with whom he had a close relationship, and with Mr. Jaballah, a member of the AJ and close associate of AJ leader and founding Al Qaeda member Dr. Al Zawahiri [REDACTED]. In 1997 and 1998, Mr. Mahjoub also contacted Mr. Ahmed Hassan Badiya, a fellow member of the VOC [REDACTED] who [REDACTED] [had responsibilities] for the group in Kuwait. The Khadrs and Elsamnahs remained close family friends with Mr. Mahjoub.

[82] Mr. Mahjoub remained active as a member of the Shura Council [REDACTED] [REDACTED] while he resided in Canada [and] [REDACTED] [REDACTED] while AJ, the parent organization of the VOC of which Mr. Mahjoub was a member, signed on to the International Islamic Front for Jihad Against Jews and Crusaders (along with Al Qaeda) that issued a fatwa calling for members to kill Americans and their allies. This Front remained a danger to Canadian national security throughout this period and to this day. Upon Mr. Badiya's arrest in Kuwait and deportation in early 1999, Mr. Mahjoub took on even more leadership responsibility within the VOC Shura Council to direct terrorist activities.

[83] When the Service became interested in him, Mr. Mahjoub chose to lie and deny anything that he believed would lead the Service to discover his connection to terrorism unless he was confronted with the fact that the Service already knew a particular incriminating detail. He denied his travels to Afghanistan and Pakistan, his use of aliases, his participation in extremist activities, his support for violence, and his contacts with anyone connected to terrorism. Despite

specifically denying these facts, he later admitted when confronted with these facts that he used the alias Abu Ibrahim, resided with the Elsamnahs, and knew Mr. Khadr.

*3. Mr. Mahjoub's Account of Events Based on Facts Alleged in His Evidence*

[84] Below, I summarize Mr. Mahjoub's account of events derived primarily from his PIF, summaries of the multiple interviews with the Service, and Mr. Mahjoub's transcript of proceedings before the IRB, all of which have been adduced in evidence. This account of events diverges significantly from the Ministers' account.

[85] In April 1986, the Egyptian security apparatus arrested Mr. Mahjoub because his address had been found on a university schoolmate when the latter was arrested on suspicion of being a member of the Muslim Brotherhood, a political opponent to the Mubarak regime. Mr. Mahjoub was imprisoned and tortured for four months in an attempt to obtain a confession out of him, although Mr. Mahjoub had never had anything to do with the Muslim Brotherhood. He was released in August 1986 and allowed to complete his military service. Nevertheless, he continued to be persecuted as a suspected member of the Muslim Brotherhood and for his religious beliefs in Egypt from 1987 to 1991. By way of example, he was denied a job opportunity as an agricultural expert for the Egyptian Ministry of Justice because of the intervention of the ESS. He was also called in by the ESS several times in 1987 and 1988 and remained under close surveillance from 1998 on. His mother and brother Hamdi were arrested and interrogated about him. He was also prevented from traveling. As a result of his persecution, Mr. Mahjoub left Egypt in June 1991, taking advantage of an exception to his travel restrictions by going on a religious pilgrimage to Saudi Arabia. He had never travelled outside of Egypt before June 1991.

[86] In September 1991, Mr. Mahjoub made his way to Khartoum, Sudan because Sudan was a country to which he could travel without a visa as an Egyptian. Mr. Mahjoub expected to find work in Sudan because Sudan had a large agricultural sector, and his education was in agriculture. He found life difficult in Sudan, and it was difficult even for the Sudanese to find a job there. In addition, he was also under constant surveillance by Egyptian security agents, particularly in the market in Khartoum. He observed that many employees of institutions in Khartoum such as the Khartoum branch of Cairo University or Egyptian Irrigation in Sudan were working for the ESS. He had the intention of obtaining legal status in Sudan but lost his passport, and he feared going to the Egyptian embassy for a new one because it would bring him into contact with the Egyptian government. He obtained work on Damazine Farm as an agricultural engineer from February 1992 to May 1993, where he met Mr. Mubarak Al Duri, Director-General of Althemar. Mr. Mahjoub's work was legitimate work even though it was for Althemar, a company owned by Mr. Bin Laden, who had many legitimate business enterprises in Sudan and thousands of employees who had nothing to do with terrorism, which was kept secret. Because his wages were low at the farm, Mr. Mahjoub returned to Khartoum to trade goods in the market.

[87] Tensions rose between the Sudanese government and the Egyptian government, the Egyptian government accusing Sudan of harbouring Islamists, its political enemies. These accusations were fabrications of the Egyptian government. Mr. Mahjoub was followed by Egyptians living in Sudan, and threatening letters were left outside or under his door because they suspected that Mr. Mahjoub supported the Islamists. He feared that the Egyptian

intelligence service would assassinate him. Meanwhile, back in Egypt, his mother continued to be harassed by the Egyptian state security apparatus. She told Mr. Mahjoub not to return to Egypt for fear that he would be jailed or killed, and she told him that the Egyptian authorities had told her that they would find Mr. Mahjoub abroad and kill him. As the tensions rose between the two governments, he also feared extradition. He was perceived by the Egyptian government as a terrorist simply because he had lived in Sudan.

[88] Consequently, Mr. Mahjoub left Sudan on December 30, 1995 to come to Canada. He felt that in Canada, he would be safer and free to practice his religion. He claimed asylum upon arrival. By chance in the airport, he came across Mr. El Jamal who noticed that he only spoke Arabic and helped him with his lost luggage, which contained the only photocopies he had of his passport and identity card. Mr. Mahjoub resided with Mr. El Jamal and knew Mr. Khadr only since he came to Canada and because he was well-known. He also began using the name Abu Ibrahim soon after his arrival in Canada for religious reasons, and particularly because his wife was expecting a son who would be named Ibrahim. Mr. Mahjoub stayed in contact with Dr. Al Duri from Althamar, but they discussed only legitimate business. Mr. Mahjoub did not know Mr. Marzouk, Mr. Agiza or Mr. Jaballah. It may have been Ms. Mona El Fouli, Mr. Mahjoub's wife, or Mr. Hani El Fouli, Mr. Mahjoub's stepson, who were in contact with either these three men or their wives. He never contacted Mr. Badiya, who is now a leading member of a legitimate Islamist political party in Egypt

[89] Mr. Mahjoub was not open with the Service in his interviews because of his fear of the Egyptian authorities. His mother had told him that the Egyptian state security apparatus had



informed her that they knew his address in Canada and would find him. Mr. Mahjoub's two brothers were arrested in July 1997 by the Egyptian authorities. He was concerned that his refugee claim had come to the Egyptian authorities' attention and had been the reason for his brothers' arrest. He was also concerned that the Canadian authorities had provided Egypt with this information, and that providing the Canadian authorities with more information would lead to more trouble with the Egyptian authorities for himself and anyone he named. He was wrongfully convicted by an Egyptian military court of Islamic extremist activities in the Returnees from Albania trial in 1999 due to false confessions extracted by torture from detainees. Following the Arab Spring in early 2011 and the removal of the brutal Mubarak regime from power, the military court that convicted him has been found to have no jurisdiction over him, and others convicted in similar proceedings have since been exonerated in the Egyptian courts.

[90] Mr. Mahjoub has never been involved with any Islamic extremist activities or groups, and he believes that his religion does not support the use of violence. The Egyptian government was simply out to get him because it suspected on the basis of a connection with a schoolmate and his residence in Sudan that he was a political opponent of the Mubarak regime. The case against Mr. Mahjoub is a fabrication by the Mubarak regime, through the use of torture, against an innocent man that the regime perceived to be a political opponent. The Service believed this fabricated story because of its failure to conduct a proper investigation.

## V. Evidence

[91] Throughout this proceeding, there was a large volume of evidence adduced supporting and refuting the Ministers' allegations for the Court to process. It consisted of copies of physical evidence, witness testimony, expert witness testimony and reports, open source documentary evidence, classified Bibliographical Reference System (BRS, or their predecessor, NSR reports) including reports which summarized interviews with Mr. Mahjoub and other individuals, physical surveillance, intercepted communications, and information provided by foreign agencies. Where possible, summaries of the classified evidence were provided to Mr. Mahjoub and his counsel. By communication dated September 3, 2009, the Court indicated on consent, that "the Court will place no reliance on information tendered in private from human sources in support of the Ministers' claims."

[92] In this section of the decision, I propose to broadly set out the evidence adduced by the parties including physical and documentary evidence and the testimony of lay and expert witnesses. I will explain the approach adopted in assessing certain evidence and comment on its general reliability. It is not my intention to give an overview of every witness who testified in this proceeding, only those who testified primarily to the reasonableness of the certificate or the reliability of the evidence pertaining to reasonableness. I will first turn to the Ministers' evidence.

1. *The Ministers' Case*

a) *Physical Evidence*

[93] The Ministers' case relies heavily on physical evidence, including documents belonging to Mr. Mahjoub, obtained in the course of the Service's investigation at Mr. Mahjoub's arrest, in a subsequent search of his premises, and in the course of the DES-1-00 proceeding. Except for the reference letter discussed at (d) below, I have determined this evidence to be admissible in the *Warrants Decision* (at paragraphs 171-183). I also find it to be the most reliable evidence adduced by the Ministers. This evidence consists of the following items:

- a. Telephone toll records for Mr. Mahjoub and Mr. Marzouk (Exhibit A7, Tabs 1-13). These records are business documents made by the relevant telephone companies in the course of their normal business, and Mr. Mahjoub has not challenged their reliability.
- b. Mr. Mahjoub's "pocket litter", copies of the contents of his pockets obtained upon his arrest including his personal address book (Exhibit A7 Tab 16; see M. Guay testimony, 25 October 2010, p.20). The Ministers have provided evidence that these items were obtained from Mr. Mahjoub upon his arrest. While Mr. Mahjoub submits that these items might not be authentic or might not belong to him, it was open to him to adduce evidence in support of this submission. No witnesses were called by him, and no other evidence adduced. I therefore found the physical evidence obtained in Mr. Mahjoub's "pocket litter" to belong to Mr. Mahjoub and the copies of the address book to be a true copy of the original.

- c. The August 12, 1998 letter from Mr. Al Duri to Mr. Mahjoub discussing investments (Exhibit A2, Tab 83). The Ministers have provided evidence that this letter was obtained from a locked briefcase at Mr. Mahjoub's premises the day after his arrest. Apart from pointing out that this letter is adduced in evidence as a copy, Mr. Mahjoub does not appear to contest the reliability of this letter.
- d. The October 17, 1993 reference letter from Mr. Al Duri to Mr. Mahjoub providing details of his employment for Althamar (Exhibit A2, Tab 10). This evidence was adduced in DES-1-00 and re-adduced in this proceeding. Again, other than the fact that it is a copy, Mr. Mahjoub does not appear to dispute the reliability of this letter.

b) Documentary Evidence

[94] The Ministers' case relies in part on open source documents. While they are too numerous to list here, the broad categories of documents adduced to support the Ministers' case are news articles, periodicals, books, encyclopaedias, online database entries, NGO publications, think tank publications, and both foreign and Canadian government publications. I found these documents to be admissible pursuant to paragraph 83(1)(h) of the *IRPA*. I note that Mr. Mahjoub and his experts have also relied on numerous open source documents in these categories in support of Mr. Mahjoub's case. The Ministers also rely on the transcript of the *USA v. Osama Bin Laden* trial (United States District Court, S.D. New York, 2001 93 F.Supp.2d 484, Exhibit A12), particularly the evidence of Mr. Jamal Mohammed Al Fadl, the reliability of which I shall

examine when I discuss Mr. Joshua Dratel's evidence in Mr. Mahjoub's case later in these reasons.

[95] The use of open source documents by both parties in immigration proceedings is well-established, such as the use of country reports, and the practice can benefit the prospective immigrant as much as the government. In addition, in this case, both parties have called expert witnesses who have assisted the Court in assessing the reliability of the documents.

Mr. Mahjoub's suggestion that open source documents are inherently insufficiently reliable to support the Ministers' case is therefore without merit. Any reliability concerns with the open source documents, including the absence of testimony from the author of those documents, shall go to the weight I shall give to those documents.

[96] Mr. Mahjoub makes specific arguments about the reliability of the Ministers' open source documents based on the testimony of Professor Lisa Given. Mr. Mahjoub argues that in many instances, the Ministers' open source documents do not indicate the name of the author, a critical piece of information in assessing the context, credentials, objectivity and affiliations of the author of the open source document (L. Given affidavit, Exhibit R30, paragraph 26). He also argues, on the basis of Professor Given's concerns, that the absence of a date on some documents and the age of others are problematic in terms of assessing the currency of the information (*ibid.*). Additional problems with the Ministers' open source documents that Mr. Mahjoub points out are: a dearth of peer-reviewed academic writing with the exception of encyclopaedia entries and one university publication (L. Given testimony, 29 November 2010, pp.115, 121-123), the absence of the original documents or translator information when a document was presented in

translation (*ibid.* pp.97-98, 103), and the absence of references to the source of the information (for example *ibid.* pp.101-102). He submits that the Court should give the Ministers' documentary evidence little or no weight.

[97] The Ministers contend that the documentary evidence that they have adduced is reliable. They rely on Mr. Guay's testimony that the documents were compiled by the Service with the assistance of its Information Centre, staffed by individuals with masters' degrees in library science and experienced in research and the use of open source information (M. Guay testimony, 12 October 2010, pp.14-15, 40-42). To counter the points raised by Professor Given that not enough is known about the sources, the Ministers rely on the testimony of Mr. Guay that the analysts who selected the documents would have been provided with as much information as possible about the sources from the Information Centre in order to make an assessment of credibility and reliability. In addition, they submit that the documents are adduced as evidence for specific facts and that Mr. Mahjoub has failed to demonstrate that those facts are erroneous.

[98] Given the diversity of the Ministers' documentary evidence, I will weigh the individual documents adduced based on my assessment of their individual credibility and reliability. At this stage, it is useful to comment on the overarching approach that I have adopted in assessing the documents adduced by both the Ministers and by Mr. Mahjoub. It is of note that my general preference is to give more weight to the expert commentary on open source documents than on the open source documents themselves, given the experts' years of research and experience in their fields which enable them to situate the documents adduced and determine their importance in the context of the broader body of open source documents available.

[99] Professor Given and Professor Byman share approximately the same approach to evaluating documentary evidence. In assessing credibility and reliability of any document, they are both concerned with the publisher, the author, the author's sources, the currency, and the context of the document or as Professor Given repeatedly put it, "currency, coverage, and authority" (L. Given affidavit, Exhibit R30, paragraph 5). I agree that these are crucial factors in determining what weight to give a document. I share Professor Given's concern about translation: the reputation of that translator is also an important factor when assessing translated documents if the original is not available. These are all factors routinely considered by trial judges in assessing documentary evidence.

[100] Because of Professor Byman's expertise in the national security field and Professor Given's lack of expertise in this field (for example her lack of knowledge concerning the well-known British periodical *Jane's*, which has been used in the military and security field for many decades), I prefer Professor Byman's evidence on how the Ministers' documents should be evaluated. The point of departure of Professor Given's approach appears to be the health sciences field. On the basis of all of the evidence, I conclude that the rigour of open source documents available in health sciences is not often possible in the national security field. In addition, Professor Byman was familiar with the specific sources used by the Ministers and could speak to their reliability and credibility, whereas at times Professor Given did not have the requisite familiarity to be able to comment in any detail. In evaluating the Arabic language sources, Professor Gerges is the only witness who testified in these proceedings capable of specifically assessing their reliability and credibility due to his familiarity with the sources and his experience in the Arabic-speaking world.

[101] I agree with Professor Byman that secondary sources such as the periodicals, books, encyclopaedias, and online databases cited by the Ministers, him, and Mr. Mahjoub's expert witnesses can provide a helpful synthesis of a multitude of primary sources (D. Byman testimony, 26 October 2010, pp.157-158). I share his concern that some of the secondary sources cited by the Ministers in support of the SIR are outdated, but I shall also keep in mind that the bulk of what was written on a particular topic may only have appeared at a certain time (*ibid.* p.162). With respect to *Jane's* in particular, I am satisfied by Professor Byman's evidence that it is well-established and reliable for the information that it provides (*ibid.* pp.165-166). With the benefit of an expert more familiar with the national security field than Professor Given, the Court in this case may depart from *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568 at paragraphs 24-25 and give the *Jane's* evidence some weight. I note, however, that the reliability of the *Jane's* articles cited by the Ministers is diminished by the fact that they do not cite sources for their information (L. Given affidavit, Exhibit R30, paragraph 18).

[102] News articles may have value as a secondary source if they compile information on a particular topic or trend, but their greatest value is as a primary source. Professor Gerges uses news sources extensively in his research and in his expert report. I agree with Professor Byman that they are particularly useful for the basic facts of unfolding events or for specific statements made by individuals, but they have limited utility in providing detail or in-depth analysis (D. Byman testimony, 26 October 2010, p.159). While their currency may be an issue, given that news stories can change with additional information, they are always valuable as a report of what a particular news agency or reporter observed going on at the time of publication. Professor Byman as a practice relies on the reputation of the newspaper and its journalistic standards; he



does not generally research the background of a particular journalist unless there is specific cause for concern (*ibid.* p.150). I agree that the reputation of a newspaper and its journalistic standards are important factors in assessing such evidence.

[103] The Ministers have adduced the Canadian Press's statement of journalistic standards in evidence (Exhibit A28). The statement indicates that the Canadian Press is concerned above all with accuracy, even according it higher priority than speed, and with making observations rather than commentary in a news story. I am satisfied that many of Canada's and the world's major newspapers upon which the Ministers rely, from the *National Post* and the *Toronto Star* to the *New York Times*, *Reuters*, *Le Figaro* and *Der Spiegel* have similar standards. I am therefore satisfied that these newspapers would not knowingly publish radically biased, inaccurate or false information. The journalists are, however, limited by the bias and accuracy of the information they obtain. In my view, it is therefore of great assistance to the Court when a news article cites its sources. These sources, in turn, may be evaluated for their own reliability and credibility. At times, these sources must remain anonymous, but these news reports cannot be given the same weight as news reports naming and quoting their sources. I shall also consider the number and diversity of sources cited in an article as it provides not only corroboration, which is a critical factor (D. Byman testimony, 26 October 2010, p.151), but also an indicator that the news article is more balanced.

[104] Concerning translation, I note that the translator of the Ministers' foreign language newspaper articles is nearly always cited as the Federal Broadcast Information Service (FBIS). According to Professor Byman, this service is a United States government service that is used by

governments and academics and is generally considered to be of high quality (D. Byman testimony, 26 October 2010, pp.105-106). I accept Professor Byman's opinion and have no concerns about the accuracy of the translations performed by the FBIS. Similarly, I have no concerns about the accuracy of the translations, primarily adduced by Mr. Mahjoub, provided by certified translators.

[105] The reliability and credibility of the Arabic language news sources is not as obvious, but news agencies such as London's *Al-Sharq al-Awsat*, *Al-Quds al-'Arabi*, *Al-Hayah* and *Al-Wasat*, Paris's *Al-Watan Al-'Arabi*, and Egypt's *Al-Ahali* and *Al-Ahram Weekly Online* may be particularly valuable in that they have access to sources that non-Arabic news agencies sometimes do not have. Professor Gerges indicated that in his academic research, he would sometimes use interviews and memoirs given to some of these news agencies by militants (F. Gerges testimony, 19 January 2011, pp.146-147). Professor Gerges also knew that Arabic newspapers such as *Al-Hayah*, which he described as "one of the leading newspapers", directly covered the trials in Egypt (*ibid.* pp.66-67, 69). Professor Gerges says that this newspaper is "a London based newspaper owned by Saudi Arabia and it's a very popular, influential newspaper in the Arab world" (*ibid.* p.79). What Professor Gerges attacks is not the accuracy of the reporting, but instead the truth and the provenance of the statements made by individuals to the newspaper.

[106] Given the lack of freedom of the press in Egypt at the time that the *Al-Ahali* and *Al-Ahram Weekly Online* articles were published, I shall evaluate these articles assuming they reported in accordance with the Egyptian government's desired message. I shall also give less

weight to online or local news agencies whose reputation is unknown, such as *Nile News* and *Tirana ATA*.

c) *BRS and NSR Reports*

[107] In these proceedings, the preponderance of the classified evidence consists of summaries of intelligence known as BRS reports. These reports are authored by Service personnel and entered by them on the Service's database.

[108] By Order dated June 9, 2010, the Court excluded evidence for which there are reasonable grounds to believe was obtained from torture or cruel, inhuman or degrading treatment or punishment. As a result, a review of the record was conducted by the Ministers and the Special Advocates, and a number of BRS reports were excluded on consent. Similarly, by Order dated June 19, 2012 the Court excluded BRS reports concerning conversations to which Mr. Mahjoub was not privy, in accordance with the Federal Court of Appeal decision in *Harkat*. Again, the Ministers and the Special Advocates reviewed the record, and a number of BRS reports were excluded on consent.

[109] I shall first make some general comments concerning BRS reports. BRS reports were at all relevant times created by Service employees and subject to internal verification by any other personnel who were witnesses to what happened and the author's supervisor (M. Guay testimony, 15 October 2010, pp.140-142, 192-210). The Service cannot readily fulfill its mandate of advising the government on threats to the security of Canada if it does not accurately

report information in its internal holdings. In this sense, the documents are similar to documents created in the ordinary course of business. In addition, the Service was at all relevant times subject to audit by the Inspector General and the Security Intelligence Review Committee (SIRC). While Mr. Mahjoub has adduced an Inspector General report indicating that there were inaccuracies in reporting during the 2005-2006 audit period (Exhibit R22), the Inspector General determined that the root cause of the problem was a 2005/2006 change in electronic system, and that one such report flagging a discrete cause cannot establish a trend of inaccuracy. On the record, I have no reason to doubt that the authors of the BRS reports would be accurate in their reporting and that any errors in the reporting would be inadvertent.

[110] Nevertheless, the evidence indicates that in all BRS reports, the Service records only threat-related information in accordance with its mandate as understood at the time (P. Vrbanac testimony, 1 August 2012, pp.146-147). For this reason, the Service was selective in its reporting, and any omissions in the reports may not be discovered without access to other evidence, such as the testimony of the analyst. In considering the reports, I will therefore be cognizant that the reports may omit certain information.

[111] It is useful to consider the BRS reports in two categories: primary and secondary reports. Primary BRS reports contain summaries of direct information from interviews, physical surveillance, intercepted communications, meetings with foreign agencies, and documents sent by foreign agencies. Secondary BRS reports consist of summaries of other BRS reports, which are not part of the record, for internal use or to be sent to foreign agencies.

[112] Concerning primary BRS reports in evidence, these include reports of documents received from foreign agencies, reports of meetings with foreign agencies, reports of intelligence received from corporate sources, reports from Service interviews, and reports of intercepted communications. I will address each in turn.

[113] Reports containing information from documents provided by foreign agencies usually quote the documents verbatim. Unless information is omitted, these reports are not subject to the Service's editing and allow the reader to have direct access to the information that the Service received. Further, most of the BRS reports in this category are supported by the original documents from the foreign agencies which the Service has retained and are included in the record (Closed Exhibit [REDACTED]). These originals may be used to verify the accuracy of the BRS reports in this category. Consequently, these elements enhance the reliability of the BRS reports in this category.

[114] The Reports of meetings with foreign agencies consist of the Service Liaison Officer's (SLO's) or other Service personnel's first-hand account of the information provided at these meetings. Often, foreign agencies would only provide information to the SLO orally, [REDACTED] [REDACTED] ( [REDACTED] Closed Exhibit [REDACTED] ). On the record before me, I have no reason to doubt the accuracy of the account reported. There is nothing to suggest that the SLO or other Service employees in preparing reports is motivated to do anything but accurately reflect the meeting. In fact, since there were other participants at the meeting who could verify the accuracy of the report, the individual preparing the report would have an interest in accurately reporting the meeting.

[115] The reliability of the BRS reports may also depend on the agency from which its content was obtained. In the *Foreign Agency Evidence Decision*, I have expressed concerns about the reliability of evidence from [REDACTED] [certain agencies]. No arguments were raised concerning the reliability of other agencies, except to the extent that their information may have been obtained from [REDACTED] [other agencies]. When the evidence supports a finding that information obtained from an agency is no more than recycled information [REDACTED], it will be assessed as though it is information from [REDACTED] [the original] agencies. As a result of my concerns about the information obtained from [REDACTED] [agencies with which I have concerns], I will consider its probative value on the basis of its content and the extent to which it is independently corroborated. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[116] Concerning BRS reports summarizing information relating to foreign agency meetings, I have no reason to doubt the accuracy of the accounts of the information reported. Again, I shall keep in mind that the Service reports only threat-related information and may therefore have been selective in its reporting.

[117] Reports from Service interviews with Mr. Mahjoub and others consist of summaries of the interviews written by one of the interviewers present at the interview and verified by any other Service Personnel present (M. Guay testimony, 15 October 2010, pp.140-142, 192-210). In

the case of Mr. Mahjoub's interviews, [REDACTED] [the interviewer who testified publicly did not recollect] taking notes. Mr. Guay testified that had any notes been taken, they would have been destroyed or retained by special authorization, in accordance with CSIS policy in place at the time. [REDACTED]

[REDACTED] [When notes were retained,] [REDACTED] the BRS report essentially reflects the account in the interviewers' notes.

[118] I am satisfied that for the most part the BRS reports accurately report the content of the interviews conducted. It is noteworthy that individuals present at the interviews including the interviewee, or others present at the interview, could have been called to challenge the accuracy of the content of the interview. For instance, if Mr. Mahjoub did not wish to subject himself to cross-examination, Ms. Mona El Fouli [REDACTED] [who was] present during important interviews, could have been called to testify. In no instance was this done in this proceeding.

[119] [REDACTED] Mr. Guay [REDACTED] could [not] recall much about the conduct of the interviews beyond specific procedures and the purpose of the interviews. Consequently, no effective cross-examination was possible on comments in the report pertaining to the demeanor of the interviewees. Demeanour, in comparison with the answers that an interviewee gives to questions, is much more open to the interviewer's interpretation. Therefore, since I was not present and unable to independently assess the demeanour of the interviewees, I will give no weight to observations in the report relating to demeanour of the interviewees.

[120] The BRS reports concerning intercepted communications between Mr. Mahjoub and another individual consist of intercepted telephone conversations. Generally, I have no basis to question the accuracy of the reported summaries of the intercepted communications. In all instances, Mr. Mahjoub was present and in a position to challenge the accuracy of the account of the summary. In several instances, he could have called his interlocutors to testify. In addition, I note that for the most part, the intercepts of Mr. Mahjoub's conversations were not relied upon in support of the Minister's case.

[121] Concerning secondary BRS reports, one of their principal frailties is that they rarely indicate sources. Generally, the Service omits the source of information provided to foreign agencies to protect the source (L. Brooks testimony, 24 October 2012, [REDACTED]), and I observe that the summaries of intelligence for internal use also tend to omit sources. In addition, the secondary BRS reports are summaries of summaries and can be expected to contain less detail than the original report. It follows that secondary reports may be less reliable than primary reports depending on their content and the context in which they are adduced.

[122] In these proceedings, notwithstanding the Court's June 19, 2012 Order excluding evidence containing the content of intercepted communications to which Mr. Mahjoub was not privy, there remains on the record secondary BRS reports statements that likely derive from such evidence ([REDACTED] SIR Reference Indices Tab [REDACTED]). While the content of such intercepts will not be considered by the Court, logistical information to establish that a call was made between two numbers on a particular date will be considered.



[123] I now turn to consider the evidence of the Ministers' witnesses.

d) *Testimony of [REDACTED] [a CSIS Witness]*

[124] [REDACTED] [A CSIS witness] testified on September 29 and 30, October 1, 2, and 15, 2008, April 20 and 21, 2010, and October 9 to 12, 2012. [REDACTED] [The witness] has been employed by the Service since 1991, and [REDACTED] began [REDACTED] [his or her] career as an intelligence officer [REDACTED]

[REDACTED]

[REDACTED] [His or her] positions included Investigator in Sunni Islamic extremism,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [The witness] gave contextual evidence about the significance to the Service of the classified intelligence adduced in support of the Ministers' allegations, evidence concerning the Service's opinion of the reliability of foreign agencies, and evidence about the Service's methodologies, practices and policies.

[125] The Ministers rely extensively on the testimony of [REDACTED] [the CSIS witness]. The Special Advocates [REDACTED]

[REDACTED]

[REDACTED] point out that [the witness] [REDACTED] was not qualified as an expert in intelligence matters, although at times [the witness] [REDACTED] "provided expert opinion on how various

actors in the intelligence community operate”. They argue that the Court should give these opinions no weight.

[126] I find [the CSIS witness] ██████████ to be a truthful witness and ██████████ [his or her] evidence generally reliable. While [the witness] ██████████ was not adduced as an expert witness, [the witness] ██████████ was called as a representative witness for the Service. As such, [the witness’] ██████████ evidence on ██████████ [his or her] observations and experience as an intelligence analyst are helpful to the Court. Concerning the Special Advocates’ objections, these were raised and dealt with in my November 9, 2011 decision on the objection. At that time, I ruled that ██████████ [the witness’] evidence would be admissible. As a representative witness of the Service, an agency with considerable expertise and resources in the field of intelligence, I accept [the witness’] ██████████ evidence as reflecting the views of the Service on the matters noted above for which [the witness] ██████████ was called to testify. In the circumstances of this proceeding, where the record supports an inference that the Service was engaged in presenting the “best case possible for the government” (CSIS Witness #3 testimony, 26 July 2012, p.92), I will take into account the partiality of the Service’s evidence adduced through its witnesses when weighing [the witness’] ██████████ testimony.

[127] Specifically, ██████████ [the witness’] opinion with respect to the reliability of ██████████ ██████████ [certain foreign agencies] is suspect. ██████████ [The witness’] experience with other agencies besides [the foreign agencies in question] ██████████ provides a helpful comparator to ██████████ [his or her] experience with ██████████, and ██████████ personal views of their comparative experience and professionalism have some weight. Nevertheless, I find that ██████████ [his

**or her]** glowing account [redacted] **[of the foreign agencies']** deep knowledge and [redacted] **[his or her]** focus on their knowledge and expertise overlooks their questionable motivations and human rights abuses ([redacted]). As indicated in my June 9, 2010 Reasons for Order, I found this aspect of [redacted] **[the witness']** testimony not to be compelling.

*e) Testimony of Michel Guay*

[128] Michel Guay testified on October 12, 13, 15, 18-22, 25 and December 1, 2010. Mr. Guay joined the Service in January 1992, where he worked in headquarters as an analyst until 1995. He then became an investigator in counter-terrorism matters in Toronto until approximately 2001. At the time of his testimony, Mr. Guay worked in human sources and operations support for the Service's headquarters in Ottawa. As a representative witness for the Service, he testified in his capacity as an investigator on Sunni Islamic extremism and based on his experience interviewing Mr. Mahjoub in 1997. He gave evidence on the Service's policies and procedures, its reliance on summaries with an emphasis on corroboration, its information and views on the VOC and AJ including the Service's view of their threat to Canada, and its investigation into Mr. Mahjoub. Notably, he was unaware of the contents of the classified SIR.

[129] Mr. Mahjoub criticizes the fact that Mr. Guay did not examine any human rights reports, and the fact that Mr. Guay was not the author of the SIR, was not involved in the preparation of the SIR, did not have knowledge of what information in the SIR was destroyed, was not involved

in Mr. Mahjoub's arrest, and was not aware of the contents of the classified SIR. He notes that Mr. Guay had no independent recollection of the interviews with Mr. Mahjoub. Mr. Mahjoub takes issue with Mr. Guay's "willingness to blindly accept the translation results of Mr. Mahjoub's wife and a certified translator." Mr. Mahjoub contends that Mr. Guay's testimony was "based in large part on inadmissible evidence and allegations that have since been excluded." He appears to challenge the admissibility of Mr. Guay's testimony as neither reliable nor appropriate because he was not the Ministers' best witness, and he did not have the knowledge that CSIS Witness #3 had about the preparation of the SIR.

[130] The Ministers rely heavily on Mr. Guay's evidence without commenting on its reliability, except to defend their decision to adduce a witness who did not have knowledge of the classified SIR as a measure to avoid inadvertent disclosure.

[131] Mr. Guay provided his testimony late in 2010. Objections to the admissibility of his evidence should have been raised at that time. It is too late to challenge the admissibility of Mr. Guay's evidence two years after it was adduced. In any event, I find Mr. Guay to be generally credible and his evidence useful to the Court. Mr. Guay was adduced as a representative witness for the Service, providing the Service's views on the evidence. The shortcomings in Mr. Guay's testimony, alleged by Mr. Mahjoub, if accepted as such, will go to weight. I am of the same view with regard to the summaries of the interviews. The time to object to their admissibility has long since passed. As admissible evidence, I shall examine the interviews individually following the approach outlined at paragraphs 117-119 above.

f) Expert testimony and expert report of Professor Daniel Byman

[132] Professor Byman testified on October 25-27 and November 1-2, 2010. Professor Byman is a Professor at the School of Foreign Service, Georgetown University and a Senior Fellow at the Brookings Institute. The Court qualified Professor Byman as an expert concerning terrorist groups, counterterrorism policy and intelligence, Middle East security and United States national security as it pertains to the Middle East (Transcript of proceedings, 26 October 2010, p.141).

[133] Professor Byman gave evidence on the history of Egyptian Islamic extremist movements, in particular the evolution of the AJ, its terrorist activities, its relationship with Al Qaeda, and the existence of the VOC. He analyzed Mr. Mahjoub's patterns of travel and employment in the 1990s and compared them to the patterns exhibited by terrorist groups at the time. Professor Byman also commented on the significance of individual allegations in the SIR and how they supported the Ministers' allegations that he was a member of a terrorist organization. He emphasized the importance of corroboration in his testimony. It is noteworthy that Professor Byman gave his evidence explicitly assuming that all of the Ministers' allegations about Mr. Mahjoub's movement and activities, contained in the SIR, were true. The Ministers relied extensively on Professor Byman's testimony.

[134] Mr. Mahjoub points out that Professor Byman "... did little to no independent research on Mahjoub or the allegations against him." Mr. Mahjoub also criticizes Professor Byman for having omitted, in the original version of his report, the detail that in 2008, Mr. Agiza received three million kroner in compensation from the Swedish government for his rendition to Egypt. Mr. Mahjoub further argues that the deficiencies in Professor Byman's report have been outlined

by Professor Wark, and that Professor Byman's opinion on the existence, structure and organizational ties of the VOC are not based on independent research and "can only be seen to be speculation based upon a speculative theory of the supposed existence of the group." He argues that Professor Byman was not aware of the existence of the VOC prior to this case and that his "comments with respect to the VOC are purely inferential based upon a speculative theory of the supposed existence of the group." Finally, Mr. Mahjoub has adduced evidence to suggest that Professor Byman is in favour of extraordinary rendition and other controversial US government policies.

[135] I find Professor Byman to be a credible witness and his testimony helpful to the Court. I found no reason to question his objectivity. His views on extraordinary rendition and other policies, as provided in Exhibits R10, R19 and R20, do not demonstrate bias but merely a viewpoint with which many may not agree but that is nevertheless nuanced, particularly given his US government audience. To the extent that his opinions differed from the opinions of other expert witnesses, these differing opinions will be considered and weighed, and in my analysis I will explain why I prefer one over the other. I reject the argument that Professor Byman did not base his opinion on the existence of the VOC on independent research. I am satisfied that he conducted his own review of available sources and came to an independent conclusion. Further, Professor Byman admitted that he took certain of the Ministers' allegations as proven. Consequently, any of Professor Byman's opinions based exclusively on the Ministers' allegations without independently verifying them will only be considered if the Ministers establish the facts upon which the opinion is based. Finally, I acknowledge that Professor Byman's evidence was limited by his admitted lack of field work in Egypt and his unfamiliarity

with the Arabic language. However, I am satisfied that these limitations have not diminished the reliability of his opinions on the issues that he addressed.

2. *Mr. Mahjoub's case*

[136] Mr. Mahjoub also adduced a large volume of evidence in these proceedings, namely documentary evidence, two expert witnesses and a witness who was himself accused of being a VOC member in Egypt and had first-hand knowledge of a number of others accused of being members of the AJ and the VOC. Mr. Mahjoub chose not to testify in these proceedings.

a) *Documentary Evidence*

[137] Mr. Mahjoub adduced a large volume of open source documents as the Ministers did, and in my view, the same considerations apply concerning their reliability (see paragraphs 94-106 above). The preponderance of his documentary evidence consisted of reports from reviewing bodies, such as the SIRC, and reports from human rights organizations, such as Human Rights Watch and Amnesty International. These documents may be evaluated like any other open source documents, with particular attention to the reputation of the agency or institution reporting (I accept that the three examples I have given are reputable organizations).

b) *Expert testimony and expert report of Professor Wesley Wark*

[138] Professor Wark testified on November 23-25 and 30, 2010. Professor Wark is an associate professor of history at the University of Toronto, and a visiting research professor for the Graduate School of Public and International Affairs at the University of Ottawa. At the time

of his testimony, Professor Wark was a member of the Editorial Advisory Board of several journals including *Intelligence and National Security*. He was the commissioning editor for the *Studies in Intelligence* series published by Frank Cass and Co., London, U.K. from 1994 to 2002. He has had extensive experience in the field of security and intelligence, including appointments to the Prime Minister's Advisory Council on National Security, serving as a consultant for the Intelligence Assessment Secretariat of the Privy Council Office from 1996 to 1998, and his contributions to the Air India and Arar inquiries.

[139] The Court qualified Professor Wark as an expert on international terrorism, counter-terrorism and intelligence practices, sources of information available to the Service concerning terrorist organizations and activities rooted in Egypt and the Service's capacity to investigate and evaluate this information, the Service's use of open source information, the Service's assessment of terrorist threats, the nature of terrorist activity in Sudan from 1991 to 1996, Al Jihad and the VOC, the Returnees from Albania trial, the Service's threat matrix linking Mr. Mahjoub to Islamic extremist individuals, and counter terrorism and intelligence challenges. Professor Wark gave evidence critiquing the SIR and the Service's "threat matrix" concerning Mr. Mahjoub, explaining the history, activities and movements of the AJ and VOC, particularly in the "Sudan period" 1991 to 1996, and commenting on Damazine Farm and the testimony of Mr. Al Fadh in the *USA v. Bin Laden* case.

[140] The Ministers contend that "Professor Wark engaged in impermissible advocacy." They contend that he "was prepared to pronounce on the reasonableness of the allegations contained in the Public Summary without the benefit of the classified SIR, or the disclosure of summaries of



protected information which the Court has provided Mr. Mahjoub.” They argue that his report included commentary on whether the evidence meets the legal admissibility threshold and “purported to answer the ultimate legal question that the Court will have to decide” and argue that these comments “must be given no weight as they go beyond his expertise.” However, the Ministers rely on some of the other aspects of Professor Wark’s report and testimony.

[141] Mr. Mahjoub contends that Professor Wark was not engaging in advocacy but instead was pointing out deficiencies in the support for the Ministers’ allegations in the SIR and questions left unanswered by the SIR. Mr. Mahjoub argues that this is not advocacy but an independent assessment of the SIR.

[142] I find Professor Wark to be credible and his evidence helpful to the Court. Professor Wark did not, and could not have access to the classified SIR. The opinions he provides are based on the public SIR, and I accept them as such. Many of his criticisms of the Public SIR are real and are not undermined by any information contained in the classified SIR. To the extent that he opines on the sufficiency of evidence to establish any fact or whether the evidence meets the legal admissibility threshold, this evidence will be given no weight since it is for the Court as trier of fact to consider and determine such questions.

c) *Expert testimony of Professor Lisa Given*

[143] Professor Given testified on November 29, 2010. She was qualified to provide an assessment of the public sources used in the Public SIR and to provide evidence on Internet research and library science (L. Given testimony, November 29, 2010, p.2). Professor Given

gave evidence on the indicia of reliability of documentary evidence. In particular, she testified to what were in her opinion the five major indicia of reliability: coverage, objectivity, accuracy, currency and authority. She then testified about the reliability of some of the open source documents in the public reference indices, commenting in particular on the lack of available information about *Jane's* methodologies, the fact that many of the articles were not current, and the lack of author information for some of the articles. She testified to potential problems in the articles relied upon in the SIR. Often author information, sources, references, citations, translation information, and methodologies were absent from the articles. She noted that none of the articles relied upon by the Ministers were peer-reviewed.

[144] The Ministers concede that Professor Given is credible. The Ministers argue that it is significant that Professor Given acknowledged her lack of expertise “in the field of terrorism or intelligence studies, and consequently lacked knowledge of even non-contentious matters in those fields.” They also point out that Professor Given was unfamiliar with *Jane's* and could not dispute Oxford University’s librarians’ approval of the publication (Exhibits A25, A26 and A27). The Ministers further argue that “Dr. Given’s evidence amounted to advising the Court on how to weigh the evidence – a cornerstone of this Court’s role as trier of fact. This is a task the Court is very well equipped to undertake without the assistance of an expert.”

[145] I find Ms. Given to be credible and her evidence helpful to the Court. While her testimony setting out a rigorous approach to follow when evaluating open sources is instructive, it is only useful to assist the Court in its own assessment of the evidence.

d) Expert testimony and affidavit of Joshua Dratel

[146] Mr. Dratel testified on December 14-15, 2010. Mr. Dratel is a New York attorney and one of the defence attorneys for Wadhi El Hage, a defendant convicted on terrorism charges for involvement in the 1998 bombings of the American embassies in Kenya and Tanzania in the *USA v. Bin Laden* trial. Mr. Dratel was qualified as an expert on United States national security and terrorism cases, in particular the embassy bombings (*USA v. Bin Laden*) case, and Al Qaeda-related activities in Sudan from 1991 to 1996. He testified in particular to the credibility of the prosecution's star witness in the *USA v. Bin Laden* trial, Mr. Jamal Al Fadl.

[147] The Ministers submit that "Mr. Dratel's evidence was not impartial or consistent and should be afforded little weight..." They argue that since he was counsel for one of the convicted defendants, he "arguably has an interest in disparaging the reliability of witnesses whose evidence led to his client's conviction." They also argue that his "evidence was inconsistent with much of the evidence that was adduced in, and accepted by, the United States District Court...and the US Court of Appeals for the Second Circuit in the East Africa Embassies bombings case." In addition, the Ministers point to the expert evidence of Professor Wark who testified that Mr. Al Fadl was debriefed and underwent a polygraph test (W. Wark testimony, 24 November 2010, pp.59, 82). They also indicate that on appeal, the US District Court and the US Court of Appeals for the Second Circuit found that Mr. Al Fadl's testimony was corroborated by information found on the hard drive of Mr. El Hage's computer (US District Court, *USA v. Bin Laden et al*, 2 November 2005, Exhibit A37; US Court of Appeals for the Second Circuit, *USA v. Bin Laden et al*, 24 November 2008, Exhibit A38). Finally, the Ministers submit that Mr. Al Fadl's testimony about what happened at Damazine Farm is relied upon by academics and

experts in the field. They argue that Mr. Dratel's "opinion on the credibility of the witnesses in the Embassies bombings trial should not replace the US District Court's findings or this Court's assessment of the same."

[148] Mr. Mahjoub contends that Mr. Dratel was not partial because "even though he said having [sic] professional obligations toward Mr. El-Hage, Mr. Dratel assured the Court about the absence of conflict in relating his expertise in the present case and he also assured the Court to be [sic] well aware of his duty to assist the Court impartially." Mr. Mahjoub further submits that Mr. Dratel conducted specific research into court materials and had expertise in US national security and terrorism cases, in particular the *USA v. Bin Laden* case. As such his information is useful to the Court. In addition, Mr. Mahjoub points to Mr. Dratel's knowledge and access to the information beyond the access of the Court such as the classified information adduced in US national security cases.

[149] Mr. Mahjoub argues that the Court should accept the argument of defence counsel in the *USA v. Bin Laden* trial that videoconference statements by Mr. Al Fadl during the defence investigation impugned his credibility. Mr. Mahjoub argues this particularly in light of the fact that the Court of Appeals pointed to "ambiguities and also elements that could have been fertile ground for impeachment defense". Mr. Mahjoub also acknowledges, however, that the US Court of Appeals found these elements did not rise to the legal standard required for a new trial.

[150] Finally, Mr. Mahjoub argues that Mr. Dratel's testimony is valuable in that it demonstrates a lack of connection between Mr. Mahjoub and any of the activities that were discussed in testimony during the *USA v. Bin Laden* trial.

[151] While I have no reason to doubt the credibility of Mr. Dratel *per se*, I have difficulty relying on his account of the evidence flowing from US national security cases in which he was involved because of his position as defence counsel for accused terrorists. Despite his assurances to the Court that he is not in a position of conflict, in the circumstances, I am not convinced that his assertion is credible. As such, I approach his evidence with caution and in the face of conflicting accounts on the issues he addresses; I will generally prefer the evidence of independent experts who have adduced evidence on the same issues.

[152] I adopt this approach when considering the transcript of Mr. Jamal Al Fadl's testimony. Professor Gerges expresses reservations about Mr. Al Fadl's testimony, opining that he is a "fortune seeker, a man who basically there are many question marks about him [sic]" (F. Gerges testimony, 19 January 2011, p.148). The Professor nevertheless relies on his testimony, being selective about which pieces of testimony he uses (*ibid.*). Professor Wark relies on Mr. Al Fadl's testimony significantly, opining that it is a "critical source, unique source, not without its own problems, of course, but unique source in terms of illuminating, to some degree, the activities of Al Qaeda in the early to mid-1990s" (W. Wark testimony, 24 November 2010, pp.35-36). He also opines that Mr. Al Fadl's testimony is "drawn on by what I regard as all of the authoritative commentators on the Sudan" (*ibid.* p.49). Professor Byman also relies on Mr. Al Fadl's testimony extensively and concludes that it "holds up very well over time" despite acknowledging a number of Mr. Dratel's criticisms (D. Byman testimony, 1 November 2010, pp. 71-75).

[153] The general criticisms that Mr. Dratel raises are as follows:

A. ...his penchant for personalizing things that didn't happen to him but happened to others, testifying at the trial as if he did it personally but when you dig deeper or in the videoconference transcripts...you find that, in fact, he didn't do the thing. It was, someone told him about it. Or it was another conversation that two other people had and he was present. His different versions of what happened in terms of training...is also typical or emblematic of his testimony, particularly when you compare it to his out of court statements...

(J. Dratel testimony, 14 December 2010, pp.213-214)

In essence, Mr. Dratel's opinion is that because Mr. Al Fadhil was being given large financial, sentencing, and immigration favours from the US government in exchange for his information, Mr. Al Fadhil was "manipulative to the extreme" and motivated "to wrangle more concessions and advantages in return for his continued cooperation" with the US government, which included exaggerating what he knew and his own importance in Al Qaeda (J. Dratel Affidavit, Exhibit R39, paragraphs 51-53). Mr. Dratel points out that Mr. Al Fadhil attempted to sell his information to many entities prior to presenting himself to the US government (*ibid.* pp.18-20). In addition, it is Mr. Dratel's opinion that Mr. Al Fadhil was deceptive in his testimony about leaving Al Qaeda because he had stolen a substantial amount of money from Al Qaeda, when in fact he had defrauded Sudanese banks and was working as much for the Sudanese National Islamic Front (NIF) as Al Qaeda (*ibid.* p.20).

[154] I observe on the basis of the transcripts that Mr. Al Fadhil exhibits behaviour inconsistent with someone exaggerating or falsifying his account. He refers to specific names, dates and locations that could be proven false. He also acknowledges the limitations of his knowledge,

albeit more often than not under cross-examination. I note the following nuanced response he gave to the controversy at the time of his testimony surrounding the membership in Al Qaeda of Mamdoh Salim, one of the indicted defendants in the *USA v. Bin Laden* trial:

Q. By the way, do you know the real name of Abu Hajer al Iraqi?

A. Yes.

Q. What is it?

A. Mamdouh Salim.

(J. Al Fadl transcript, Exhibit A12, p.230)

Q....How did you know when a person was a member of al Qaeda?

A. If you see him make bayat [a signed oath to serve Al Qaeda] or somebody tell you or he do al Qaeda agenda or duty.

...

Q. Did anyone at al Qaeda ever tell you that Abu Hajer was not a member of al Qaeda?

A. Some people say that.

...

A. He [an Al Qaeda member] say Abu Hajer, he's not al Qaeda member and he just work but he's not member, he's not al Qaeda.

Q. Did you see Abu Hajer among the al Qaeda people?

A. Yes.

Q. Were you ever told that there was anything you could not discuss in front of Abu Hajer?

A. No.

(J. Al Fadl transcript, Exhibit A12, pp. 420-421)

Mr. Al Fadl acknowledged the opinions of other Al Qaeda members although he had experience with Mr. Salim that is clearly indicative of Mr. Salim's membership, and likely founding membership, in Al Qaeda:

Q. Did you meet anyone besides Abu Nofal al Saudi when you were at this guesthouse in Afghanistan?

A. Yes, I meet Abu Hajer al Iraqi.

...

[Mr. Fadl also testified to meeting Mr. Bin Laden there]...

Q. And do you recall anything in particular that Abu Hajer al Iraqi said that day during the meeting after the prayer?

A. He say similar what Bin Laden talk about, but he make lecture for all new people [recruits for the Afghan war] about Jihad Fardh al Ein [the duty to assist Muslims at war who cannot repel the enemy].

(J. Al Fadl transcript, Exhibit A12, pp.175-177)

Q. Did there come a time when al Qaeda left the Pakistan-Afghanistan area?

A. Yes.

Q. Can you tell us where al Qaeda moved to?

A. To Sudan.

...

A. I remember in a guesthouse for al Qaeda people, or members, they start talking, in Afghanistan we don't have too much work because the Russians, they left.

...

Q. Do you know who he [Bin Laden] sent to the Sudan to find out about the National Islamic Front?

A. Yes.

Q. Who was that?

A....Abu Hajer al Iraqi...[among others, and Abu Hajer al Iraqi reported back in a meeting Mr. Al Fadl attended]

(J. Al Fadl transcript, Exhibit A12, pp.215-217)

In addition, Mr. Al Fadl's account of Mr. Salim as a member of the Al Qaeda Shura Council was corroborated by the statement of another defendant, Mr. Ali Mohammed, pleading guilty to terrorist charges (Allocution proceeding of Ali Mohammed, Exhibit R46).

[155] While I am aware that the US District Court requires an applicant to pass a high threshold to order a new jury trial, on the basis of the record, I nevertheless agree with some of US District Court Judge Duffy's comments on the specific credibility issues raised by Mr. Dratel. Judge Duffy found that the most concerning element of Mr. Al Fadl's videotaped statements was the suggestion "that he fears a *quid pro quo* may exist between his testimony and his immigration status in the United States" (US District Court, *USA v. Bin Laden et al*, 2 November 2005, Exhibit A37, p.77). However, the judge commented that:



El-Hage chiefly asserts that the videotaped statements reveal that, in his testimony, al-Fadl “personalized [ ] event[s] that happened to someone else, thereby making for more dramatic and effective testimony that was insulated from effective cross examination.” I cannot agree. Although al-Fadl’s statements and testimony are not identical, this seems to be largely a product of ambiguities (rather than genuine inconsistencies) in both the testimony and the recorded statements.

(US District Court, *USA v. Bin Laden et al*, 2 November 2005, Exhibit A37, pp.84-85)

The District Court further notes that “...independent evidence and testimony corroborated al Fadl’s testimony on almost all significant subjects relating to El-Hage” (*ibid.* p.101) and that his testimony on the structure and history of Al Qaeda “was significantly corroborated (and in many cases, surpassed) by other evidence” (*ibid.* p.106). The Court of Appeals agreed with the District Court’s analysis that Mr. Al Fadl’s testimony was largely corroborated (US Court of Appeals for the Second Circuit, *USA v. Bin Laden et al*, 24 November 2008, Exhibit A38, paragraph 136).

[156] Moreover, it is in essence the unanimous opinion of Professors Gerges, Wark and Byman that Mr. Al Fadl’s testimony was often corroborated and valuable despite being at times ambiguous and potentially motivated by the hope of US government concessions. In light of my own assessment of Mr. Al Fadl’s detailed and often corroborated but sometimes ambiguous testimony, I adopt this opinion as well. I shall approach Mr. Al Fadl’s testimony with caution, examining particular facts he testified to for potential embellishment or contradictions, but like the US District Court, I do not accept the opinion of Mr. Dratel that the testimony is generally untrustworthy because Mr. Al Fadl was falsifying his account.

e) *Expert testimony and expert report of Professor Fawaz Gerges*

[157] Professor Gerges testified on January 19-21, 2011. Professor Gerges is a social scientist with a Ph.D. in philosophy from Oxford University, specializing in Arab and Islamic politics, social movements, political Islam, American foreign policy towards the Muslim world and relations between the West and the world of Islam. He also holds a Masters degree in international history from the London School of Economics and Political Science, London University. From 1994 to 2009, he held the Christian A. Johnson Chair in Middle Eastern Studies and International Affairs at Sarah Lawrence College in New York. He authored *Journey of the Jihadist: Inside Muslim Militancy* (Orlando: Harcourt Press, 2006), and *The Far Enemy: Why Jihad Went Global* (Cambridge: Cambridge University Press, 2005). Professor Gerges has spent several years conducting field research in Egypt and interviewing political activists and civil society leaders.

[158] The Court qualified Professor Gerges as an expert in Arabic and Islamic politics, social movements and history of Islam, as well as history and development of jihad and jihadist movements in Egypt (F. Gerges testimony, January 19, 2011, p.2). Professor Gerges gave evidence on the reliability of sources, the history and development of Islamic extremist movements in Egypt, in particular the AJ, and on the existence of the VOC. He also commented on the deficiencies of the SIR. It is noteworthy that Professor Gerges took a “macro” approach to his evidence, commenting primarily on broad trends, changes and continuities in the history of these movements and deliberately avoiding comment on specific operations or individuals within these movements, save where he made them a focus of his academic study.

[159] Mr. Mahjoub contends that Professor Gerges is more reliable than Professor Byman because he has experience on the ground in Egypt. The Ministers argue that Professor Gerges's evidence is flawed in that he "admitted that his expert report had more holes than he could fill and likely omitted information that would have assisted the Court." They also contend that he "acknowledged that his interest was in social movements and not the specific elements of the groups himself", a focus which limited the utility of his evidence to these proceedings. The Ministers take the position that it is significant that Professor Gerges testified that he had no "deep knowledge" of the operations of the AJ or "Mr. Mahjoub's case in particular."

[160] I find Professor Gerges to be a credible witness whose evidence was helpful to the Court, particularly because of his direct knowledge of Egypt, his facility in Arabic and his interactions with significant players in the Islamist milieu. I reject the Ministers' submission that Professor Gerges's evidence is less valuable because it adopted a historical approach examining general trends in the Islamist movement. On issues within the scope of his reports, I found him to be both specific and rigorous. I found that Professor Gerges was transparent about the limitations of his expertise and research. While he did not testify to all of the issues before the Court, I nevertheless found his evidence generally compelling on the issues he did address.

*f) Testimony of Magdy Salem*

[161] Mr. Magdy Mohamed Mohamed Salem testified on September 9-13, 2012 by videoconference from Cairo, Egypt. Mr. Salem is a lawyer in Egypt who has specialized in representing individuals who were convicted by Military or State Security Tribunals in Egypt under the Mubarak regime. According to his testimony, he began his legal studies at the

University of Cairo in 1993, but his studies were interrupted because he was imprisoned by the Mubarak regime as a result of his conviction in the 1993 VOC trial (Egyptian case 18/93, M. Salem testimony, 9 September 2012 pp.9, 11). He had previously been detained in 1982 in the “jihad case” for two years (*ibid* p.14). While in prison, he continued to study law by working closely with the lawyers of detainees. He completed his studies in 1998-2001, and he was qualified to practice law in 2001. Since his release following the 2011 Arab Spring, Mr. Salem has been working on behalf of those detained or convicted during the Mubarak regime, in particular by the state security apparatus or the Military and State Security Tribunals. At the time of his testimony, he was the head of the Egyptian Bar Association’s General Committee for Human Rights.

[162] Mr. Salem was not qualified as an expert witness and gave evidence based on his personal experience, his contact with individuals involved, and his work as a lawyer, on:

- a. the Mubarak regime’s Military and State Security Tribunal trials, including the nature of the proceedings, the evidence, his knowledge of the accused persons;
- b. the use of torture by the Mubarak regime, including taking an individual’s family hostage, particularly in the context of these trials;
- c. his personal history of arrests and detention in 1982-1983, 1990 after his extradition from Saudi Arabia, and 1993-2011;
- d. the VOC trial (cases 18/93, 21/93, 23/93 and 24/93) and the trial of alleged AJ elements following the Egyptian embassy bombing in Pakistan (case 718/96);
- e. his own work on the Returnees from Albania trial (case 8/98);

- f. his knowledge of persons accused by the Mubarak regime of being members of the VOC and AJ;
- g. the post-Arab Spring acquittal of many individuals convicted in Egyptian terrorism-related trials;
- h. his knowledge and legal representation of Mr. Mahjoub's brothers, and
- i. Mr. Mahjoub's current "criminal status" in Egypt.

[163] Notably, Mr. Salem testified that Mr. Mahjoub was not a member of the VOC or AJ. He further testified that the Mubarak regime frequently framed individuals by fabricating accusations against them and then forcing detainees to provide confessions to support those accusations. He also testified that the VOC was a name created by Egyptian state security officials, and that no such organization ever existed. His view was that the VOC trials were conducted to justify the extended application of emergency laws in Egypt, and that he was chosen by the security apparatus as a leader of the VOC because he was older than most of the accused despite never having planned any violent or extremist activity. He testified that none of the individuals accused in the VOC trials were members of the AJ. In addition, he testified that the AJ was not a violent organization. He also testified that Egyptian case number 718/96 did not concern the Egyptian embassy bombing, as the Egyptian authorities claim, but rather served to round up accused members of Al Jihad. Finally, he testified that Dr. Ayman Al Zawahiri was not as the media portrayed him, and that Sheikh Rahman, an extremist religious figure, was convicted in the *USA v. Bin Laden* trial as a result of conspiracy between the United States and Egyptian intelligence services. Mr. Salem admitted to being friends with Mr. Al Zayat, his lawyer and brother-in-law, who had described him in an article following an interview as a

leading member of the Al Jihad. On cross-examination, Mr. Salem denied giving such an interview and explained that he is not a member of the AJ or VOC, yet this is how the security forces have portrayed him to the media.

[164] The Ministers argue that Mr. Salem's "evidence is not credible in many respects and should be given no weight" because it is "tainted by his admitted close association with many individuals in Egypt's militant Islamist movement and those involved in terrorism" as demonstrated by certain inconsistencies in Mr. Salem's testimony and his comments about his clients, Dr. Ayman Al Zawahiri, and Sheikh Rahman in his testimony. The Ministers have adduced evidence, in particular reports of interviews that Mr. Salem allegedly gave, suggesting that Mr. Salem is himself a terrorist leader.

[165] Mr. Mahjoub argues that Mr. Salem's evidence, given his "first-hand knowledge of the Vanguard of Conquest cases, the Returnees from Albania case and the individuals named therein" is valuable and "almost entirely supported by source documentation and first-hand accounts". Mr. Mahjoub also submits that the newspaper articles adduced by the Ministers do not undermine Mr. Salem's credibility as he denied giving interviews claiming to be a VOC leader and explained that the article written by Mr. Al Zayat does not establish that he was an AJ member. Finally, Mr. Mahjoub contends that Mr. Salem's credibility is not undermined by his close association with "members of the 'Egyptian Islamic movement'" because he was forthright about his association, and it is logical as a lawyer working in this field that he would be in contact with persons accused of crimes during the Mubarak regime.

[166] Mr. Salem's first-hand account of the trials and of the accused persons is invaluable. However, it must be understood in its context. Accused persons, the principal source for Mr. Salem's testimony, are motivated to protest their innocence whether they are guilty or not. In addition, individuals who have been involved in criminal and terrorist activity can seem like "good people" or victims of conspiracy in one's own experience, even individuals such as Dr. Ayman Al Zawahiri (M. Salem testimony, September 12, 2012 p.28) and Sheikh Rahman (*ibid*, pp.102-103) who have made public statements promoting terrorism.

[167] Mr. Salem's credibility is undermined when he spoke in glowing terms about Dr. Al Zawahiri, the current and publicly proclaimed leader of Al Qaeda who personally signed on to the World Islamic Front for Jihad Against Jews and Crusaders, signed the 1998 fatwa urging violence, and took responsibility for terrorist attacks in books that he authored (for example F. Gerges testimony, 19 January 2011, p.63). Professor Gerges's expert opinion was that Dr. Al Zawahiri favoured violent attacks and saw civilian casualties as collateral damage, and demonstrated a "disregard for life and decency" (F. Gerges testimony, 20 January 2011, pp.177-178). Professor Byman points out that in Dr. Al Zawahiri's memoirs, *Knights Under the Prophet's Banner*, Dr. Al Zawahiri states that maximum casualties is the only language that the West understands (D. Byman Expert Report, Exhibit A19, p.28). Mr. Salem's view that no individual accused in the Egyptian trials was a member of a terrorist group was blatantly contradicted by the expert testimony of Professor Gerges, who stated that individuals at Mr. Salem's trial were singing the praises of Dr. Al Zawahiri and naming him as their leader (F. Gerges testimony, 19 January 2011, p.67).

[168] Mr. Salem's credibility is also impugned when he portrays Sheikh Rahman to be above all a victim of conspiracy. Sheikh Rahman was a religious figure who issued fatwas urging crime and violence, including the one relating to the 1993 World Trade Center bombing, and who made public statements supporting terrorism as a legitimate means of jihad. While I have no reason to doubt that Mr. Salem has suffered torture and cruel, inhuman and degrading treatment and punishment during his detention by the Egyptian authorities, this terrible experience has had an understandably significant impact on his ability to assess the Egyptian regime and its opponents objectively, as these statements demonstrate.

[169] Further, certain elements of Mr. Salem's testimony raise concerns with his general credibility. First, Mr. Salem's credibility is put into question by statements that he made with respect to his role as counsel. I agree with Mr. Mahjoub's submission that Mr. Salem's explained association with accused and convicted persons as a lawyer and fellow inmate alone cannot serve to undermine Mr. Salem's credibility. However, while he was forthright about his association with and representation of accused Islamic extremists, Mr. Salem did not acknowledge the impact that his role as an advocate for these individuals might have on the objectivity of his testimony. Instead, when queried about his ethical duties as a lawyer, Mr. Salem testified as follows:

Q. Mr. Salem, I understand that you're a lawyer and your duties are to your clients, correct?

A. God willing.

Q. I take that as a yes?

A. I'd love to do that. I always try to say that and do that.

...

Q. If his clients face charges, it's his duty as a lawyer to defend them?

A. And the duty, as far as I'm concerned, in my work as a lawyer, is stipulated, basically that morale [sic] duty, by the morale



[sic] duty. And for this reason, I don't defend a person which the documents show that he is criminal or convicted?

(M. Salem testimony, September 12, 2012, p.26)

Q. It's your obligation to present your client's case in the best possible way you can, correct?

A. This is conditional on my convictions about the innocence of that person and that there must be a morale [sic] duty that I have to do.

(M. Salem testimony, September 12, 2012, p.106)

Q. ... Are there ethical limits, sir, with respect to how you are to present your client's case that you must abide by as a lawyer in Egypt?

A. Yes.

Q. Please explain?

A. In the beginning you are in front of two issues, first, the person who asked you to represent him, you have sufficient information about him and you know that he is a good person and that he is not a deviant person or extremist person for my morale [sic] duty to defend this person after I view the papers and to be sure of his innocence.

As for the second issue, if I don't know the person and I don't have sufficient information about him, then the morale [sic] and ethical duty requires that I have to collect enough information until I be sure, as far as I can get enough information, that he is a good person and, accordingly, I accept to defend him. In all cases, this is governed by - in all cases we should believe we try to reach the conclusion that this person is good and that he is innocent. In some cases a person might make a mistake, and then he realized that he made a mistake. Such a person, in this case we can defend him, not because he didn't do something, but because he is, because he admitted that he committed a mistake.

(M. Salem testimony, 13 September 2012, pp.52-53)

[170] If Mr. Salem's practice was to represent only individuals he believed were innocent or repentant, as he attested, his approach had the potential to discourage prospective clients from relating any details connecting them with the alleged crime or terrorism for fear he may not

represent them. Had he adopted this practice when he represented individuals he described in his testimony, I question whether those individuals were truthful in relating their personal circumstances to Mr. Salem. For this reason I impugn the reliability of Mr. Salem's testimony relating to the accounts of these individuals.

[171] Since he was not qualified as an expert and I have serious concerns relating to his objectivity and credibility, I give no weight to Mr. Salem's evidence with respect to the membership or involvement of individuals in terrorism. In addition, I will give little weight to his generalizations, such as his view that no one who was accused in the Egyptian trials was a member of a terrorist group or involved in violence, that the Egyptian regime was regularly involved in conspiracy and fabrication, and that the VOC did not exist. I shall approach his testimony concerning particular facts with caution, assessing their credibility in light of corroborating or contradicting evidence, if any, on the record.

#### V. Analysis

[172] I now turn to an analysis of the merits of this case. In these reasons, the following questions will be addressed:

- A. Was Mr. Mahjoub a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in the subversion by force of a government or terrorism?
- B. Was Mr. Mahjoub engaged in or did he instigate the subversion by force of a government or terrorism?

C. Was Mr. Mahjoub a danger to the security of Canada?

[173] I shall deal with these questions in turn. Before doing so, upon consideration of all of the evidence, including summaries, available to Mr. Mahjoub, I find that Mr. Mahjoub was reasonably informed of the case to meet and was able to meet that case.

A. *Was Mr. Mahjoub a member of an organization that engages, has engaged or will engage in subversion or terrorism?*

[174] In order to answer this first question I will consider whether the Ministers have established that:

1. the alleged terrorist organizations, the AJ and the VOC, exist and are involved in subversion by force of a government or terrorism;
2. Mr. Mahjoub is connected to these organizations, and
3. the nature of the connection establishes reasonable grounds to believe that Mr. Mahjoub was a member.

1. *Do the alleged terrorist organizations exist, and are they involved in subversion or terrorism?*

[175] Pursuant to paragraph 34(1)(f) of the *IRPA*, a permanent resident or a foreign national is inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in espionage, subversion by force of a government or terrorism as set out in paragraphs (a), (b) or (c) of subsection 34(1) (the enumerated activities). It is therefore necessary to consider the history and activities of the AJ and the VOC to see if they are indeed organizations that are engaged in, have engaged in or will

engage in the said enumerated activities. Further, since Mr. Mahjoub questions the very existence of the VOC, evidence supporting the existence of the VOC will also be considered.

[176] The Ministers allege that Mr. Mahjoub was a member of the VOC Shura Council. In order to determine this issue, I will first determine whether such a Council exists as part of this analysis.

[177] Understanding how the AJ and the VOC evolved and the key historic events that have impacted their formation and evolution is helpful in appreciating the issues before the Court in this proceeding. There is significant evidence on the record about the historic evolution of the Egyptian Islamic extremist movement and the two groups. Only the existence of the VOC is challenged by Mr. Mahjoub. This issue and the relevant evidence will be discussed more fully below. I do not propose to summarize evidence about historic evolution but only to provide the following indicators of the most likely historic chronology of these groups based on the record before the Court, in particular the testimony of Professor Gerges, and assuming the existence of the VOC. These are:

- Egyptian Islamist ideologue Sawid Qutb authored *Milestones*, the germinal text of the AJ, in the late 1950s and was executed in 1966, becoming the “living martyr” and an inspiration for future jihadists;
- The AJ was formed in 1970;
- The movement was strengthened by President Sadat’s domestic policies and attempted rapprochement to Islamists, and during the 1970s, Islamic groups formed in Egyptian universities;
- By 1979, the Egyptian Islamic extremist milieu was dominated by the AJ and Al Gam’aa Al Islamiya (AGAI);
- The Afghan-Soviet War began in 1979, prompting many Muslims, including AJ members, to travel to Afghanistan, train and fight to repel the Soviet invaders, becoming so-called “Mujahideen” fighters;

- The AJ and AGAI were united under Mohamed Farj, who authored *The Absent Duty*, the second text of the AJ that exhorted Muslims to violent jihad;
- The AJ and AGAI claimed responsibility for the assassination of President Sadat in 1981;
- The leaders of the AJ, Dr. Al Zawahiri and Dr. Sayid Fadl, in response to the apparently reckless assassination, adopted a strategy of training and cell formation for a military coup;
- Soviet troops in Afghanistan withdrew, and Al Qaeda began to form, under the leadership of Osama Bin Laden and Dr. Al Zawahiri in 1989, the AJ being a major influence on Al Qaeda's structure and membership;
- The Communist government of Afghanistan toppled in 1992, which led to an influx of Mujahideen in the AJ;
- The AJ facilitated the movement of Mujahideen out of Afghanistan;
- While the AJ focused on Egypt, Al Qaeda began to focus on Western targets in 1991, as a result of the Gulf War and especially American military presence in Saudi Arabia;
- As a result of the mass arrest and trials of AJ members in the so-called "VOC trials" before the Egyptian military courts, a major split occurred in the AJ in 1993 which can be described as either:
  - A radical faction of the AJ, led by Ahmed Husayn Agiza, splintered from Dr. Al Zawahiri's AJ and formed the VOC in 1993, or
  - While many members of the AJ renounced their allegiance to Dr. Al Zawahiri and left the organization, a radical faction within the AJ pressured Dr. Al Zawahiri to begin retaliatory attacks on Egypt, which he did under the name of the AJ's old military wing, the VOC;
- Both the AJ and the VOC shared common goals and targeted high-level government and military officials in Egypt;
- Both the AJ and the VOC staged terrorist attacks in the mid 1990s, claiming responsibility for the following:
  - The assassination of Egyptian President Anwar Sadat on October 6, 1981 (AJ and AGAI)
  - The assassination of Egyptian Parliamentary Speaker Rifaat el-Mahgoub in October 1990 (AJ)

- The attempted assassination of Egyptian Interior Minister Hasan al-Alfi in August 1993 (AJ and VOC)
  - The attempted assassination of Egyptian Prime Minister Atef Sedky in November 1993 (AJ and VOC)
  - The attempted assassination of Egyptian President Hosni Mubarak on June 25, 1995 (AJ and VOC)
  - The bombing of the Egyptian embassy in Islamabad on November 19, 1995 (AJ)
  - The Luxor Massacre of tourists in Egypt on November 17, 1997 (AGAI), and in response, the VOC warned that orders have “already been given for attacks on Americans and Zionists not only in Egypt but elsewhere” (*Al-Hayah*, Exhibit A2, Tab 21)
  - Members are suspected to have been involved in the bombing of the US embassies in Kenya and Tanzania on August 7, 1998 and the attempted bombing of the US embassy in Albania that year because the AJ had issued a statement warning of retaliation against the US for extraditions (*Al-Hayah*, Exhibit A2, Tab 32).
- If the VOC had ever separated from the AJ, it re-integrated in the late 1990s, in approximately 1995;
  - In July 1997, Abbud al-Zummur and five imprisoned leaders of the AGAI in Egypt called for a unilateral and unconditional cease-fire and an end to militant violence, a truce that Dr. Al Zawahiri rejected stating “[n]o truce can be made with apostates, who must repent or be killed” (*Agence France-Presse*, Exhibit A2, Tab 24), which pushed the AJ further towards Al Qaeda due to lack of resources;
  - In 1998, Dr. Al Zawahiri, on behalf of the AJ, signed a fatwa permitting members to kill Americans and their allies anywhere in the world, and the AJ joined the “World Islamic Front for the Destruction of Jews and Crusaders” (see text of the fatwa reproduced in *Al-Quds al-‘Arabi* 23 February 1998, Exhibit A3, Tab 20);
  - The AJ formally merged with Al Qaeda in June 2001, and
  - After the AJ’s merger with Al Qaeda in June 2001, Al Qaeda conducted the September 11, 2001 attacks on the World Trade Center in New York and the White House and Pentagon in Washington D.C.

[178] The record supports the Ministers’ contention that the AJ was a militant Egyptian Sunni Islamist organization with a blind cell structure and a strict policy of secrecy (F. Gerger)

testimony, 19 January 2011, p.109; 20 January 2011, pp.154-155). Both Professor Byman and Professor Gerges speak to the existence of the AJ and its involvement in terrorism. Professor Gerges testified that both the AGAI and the AJ were established, consolidated groups (F. Gerges transcript, 19 January 2011, p.50). Their goals were to overthrow the Egyptian regime through violent means (*ibid.* p.41). While there was some dissension within the AJ as to how to go about it, the AJ under the leadership of Dr. Al Zawahiri trained in a cell structure in the late 1980s and early 1990s, and from 1993 to 1995 conducted violent attacks on Egyptian officials and embassies until it no longer had the capacity to do so (F. Gerges testimony, 19 January 2011, pp. 45, 48; 20 January 2011, p.112; 21 January 2011, p.5).

[179] The evidence on the record is virtually unanimous that the AJ and the AGAI were responsible for the assassination of President Anwar Sadat in October 1981 (for example F. Gerges testimony, 19 January 2011, pp.28-29). The evidence confirms that the AJ was responsible for acts of terrorism against public officials in Egypt in the 1990s (for example D. Byman testimony, 28 October 2010, pp.33-34). The evidence also establishes that the AJ and the VOC both claimed responsibility for the November 1993 attempted assassination of the Egyptian Prime Minister (D. Byman testimony, 28 October 2010, p.170). The AJ and the Sudanese NIF attempted to assassinate President Mubarak in Ethiopia in June 1995 (D. Byman testimony, 28 October 2010, p.28). In November 1995, AJ operatives detonated a car bomb outside the Egyptian embassy in Islamabad, Pakistan, killing more than a dozen innocent people (M. Guay testimony, 12 October 2011, p.76). Dr. Al Zawahiri claimed the AJ responsibility for these attacks in his memoirs (D. Byman testimony, 28 October 2010, p.27). In 1998, the AJ was also involved in attacks on US embassies in Kenya and Tanzania. Indeed, the AJ also took credit

for this attack and announced that two of its operatives had carried out the attack (*Al-Hayah*, 9 August 1998, Exhibit A2, Tab 33).

[180] At that point, the AJ joined the “global jihad” led by Osama Bin Laden (D. Byman testimony, 28 October 2010, pp.38-39). The evidence establishes that the AJ had worked closely with Mr. Bin Laden in the 1990s and that AJ lieutenants made up a large part of Al Qaeda’s governing council at that time (J. Al Fadl transcript, Exhibit A12 pp.204-207). Professor Gerges testified that Al Qaeda was “a carbon copy” of the AJ and adopted its structure, and that the AJ leaders were trying to co-opt Al Qaeda for their own purposes (F. Gerges testimony, 19 January 2011, pp.22-23). Notably, the AJ was responsible for importing the tactic of suicide bombing into the Sunni Islamic terrorist repertoire, and Al Qaeda adopted this and other tactics from the AJ (F. Gerges testimony, 20 January 2011, p.169). For example, according to Lawrence Wright, Al Qaeda learned the tactic of having an initial explosion before the main explosion to draw people to their windows and inflict more casualties from the Islamabad embassy bombings (*The Looming Tower* excerpt, Exhibit A60). Under the leadership of Dr. Al Zawahiri, the AJ joined the “World Islamic Front the Destruction of Jews and Crusaders” in 1998, a well-known and outspoken terrorist organization that included Al Qaeda (W. Wark Expert Report, Exhibit R24, pp.25-26; *Al-Quds al-'Arabi*, Exhibit A2, Tab 19). Dr. Al Zawahiri signed the fatwa published stating that Muslims should kill Americans, American civilians, and their allies anywhere in the world (*ibid.*; *Al-Quds al-'Arabi* 23 February 1998, Exhibit A3, Tab 20).

[181] It is clear that in the 1980s and early 1990s before its merger with Al Qaeda, the AJ was a potent force in the Egyptian militant jihadist movement. Professor Gerges on cross-examination had this to say on the issue:



- Q. You state in your report at paragraph 182, and I don't think it's controversial, you state in the 1980s and early 1990s that EIJ was a potent force?
- A. Yes, very potent. It was a vanguard group, even though there was a lot of dissension and many of their operations failed dismally and they didn't have resources. You Jihad had well trained, very committed, ready to die.
- Q. It was one of the most aggressive and violent Jihad organizations?
- A. I would say EIJ was one of the most – used violence on huge scales, yes.
- Q. Just to clarify, would you agree one of the most aggressive and violent Jihadi organizations?
- A. That's correct.

(F. Gerdes testimony, 20 January 2011, p.184)

[182] The evidence of the existence and involvement of the AJ in the subversion by force of the government of Egypt and terrorism is overwhelming, compelling and disputed only in the testimony of Mr. Salem, which I do not find persuasive (M. Salem testimony, 12 September 2012, pp.33-34). I am therefore satisfied that the evidence supports a finding that at all times relevant to these proceedings, in particular 1981 to 2001, the AJ existed either as an independent entity or closely associated with Al Qaeda and engaged in the subversion by force of the government of Egypt and terrorism-related activities, including acts of terrorism resulting in the deaths of civilians, as contemplated in subsection 34(1)(f) of the *IRPA*.

[183] Although the Ministers need only establish membership in one organization described in paragraph 34(1)(f), and I am satisfied that the AJ is a quintessential example of such an organization, much of the evidence they have adduced goes to the allegation that Mr. Mahjoub

was a member of the VOC. I shall therefore also consider the evidence relating to the existence of the VOC and its alleged involvement in terrorism.

[184] The Ministers claim that the VOC was a group affiliated with the AJ that emerged from a division within the AJ in 1993. The Ministers contend that those that left the AJ formed the VOC, and were reportedly led by Mr. Agiza and Colonel Makkawi. The Ministers also contend that the VOC was recognized as the military wing of the AJ. The Ministers believe that the VOC existed independently of the AJ but acknowledge there was tremendous overlap between the two groups. They say “the exact extent of the overlap and cooperation between the VOC and Al Jihad is difficult to discern in part because Ayman Al Zawahiri has claimed the VOC as his own and because of individuals who claimed to be part of the VOC also appeared to have ties with the Al Jihad and the broader Egyptian Islamic extremist movement.” They allege that its goals, as expressed through its public statements, paralleled those of the AJ, and that its initial focus on Egyptian figures eventually shifted to a global, anti-Western focus.

[185] Mr. Mahjoub argues that the Ministers have failed to establish the existence of the VOC. He relies on the evidence of Professor Gerges as discussed below at paragraphs 191-194, pointing to the first of three hypotheses that Professor Gerges developed about the existence of the VOC, the hypothesis that Professor Gerges himself favours. Mr. Mahjoub contends that Professor Gerges’s first hypothesis, that the VOC was a fiction and that it did not really exist at all, is the most likely. Mr. Mahjoub also relies on the testimony of Mr. Salem on this point. Mr. Salem is the only witness in these proceedings who believes that the VOC is an invention of the Egyptian security apparatus (M. Salem testimony, 9 September 2012, pp.70-71). Mr. Salem was not qualified as an expert to give opinion evidence in this proceeding and I have concerns

about his objectivity on such questions as discussed above at paragraphs 161-171 in these reasons. Further, none of the experts who adduced evidence share his opinion including those adduced by Mr. Mahjoub. Consequently, I reject Mr. Salem's view on this point.

[186] Much has been written about the VOC and its purpose, goals and structure. The public evidence adduced on the VOC consists of public declarations by the VOC, newspaper articles, interviews with known jihadists, and books by authoritative authors. The Court also had the benefit of the opinions of the expert witnesses on this issue.

[187] Notwithstanding the different views held by the experts on the existence of the VOC, it is noteworthy that there are significant areas of agreement on the VOC. There appears to be no dispute that there is great deal of overlap between the VOC and the AJ both in terms of their membership and goals. The evidence supports that the VOC was formed as a result of disputes that occurred within the AJ over the years concerning leadership, operational tactics and strategic direction. Professor Gerges's evidence on this point is revealing. He writes in his report that:

Time and again, I was told by former mid-level and senior members of al-Jihad that despite Zawahiri's concerted efforts in the late 1980s and early 1990s to unify the organization, rifts continued to plague al-Jihad till its disappearance in 2001. Al-Jihad lacked the coherence and unity of al-Gama'a, as well as a viable social base and a centralized decision-making that directed the actions of most of its members. Decentralization and factionalism were the order of the day.

(F. Gerges Expert Report, Exhibit R57, paragraph 201)

Professor Gerges later explained on cross-examination that what he meant by “decentralized and factionalism” was that the AJ operated in decentralized cells or factions but all unified under Dr. Al Zawahiri’s dictatorial rule (F. Gerges testimony, 20 January 2011, pp.158-159).

[188] Professor Byman also describes the AJ as a “fissiparous group”, which he defines as “a tendency towards division and internal division, so it divides a lot.” (D. Byman testimony, 27 October 2010, p.203). Professor Gerges indicated that there was often a clash of strong personalities within the AJ that led to splintering (F. Gerges testimony, 20 January 2011, p.161). He explained that this led to some individuals renouncing the AJ’s cause, such as Dr. Fadl, but not all individuals abandoned the cause simply because of a disagreement with Dr. Al Zawahiri.

[189] The evidence is undisputed that Mr. Agiza and Colonel Mohammed Makkawi had a disagreement with Dr. Al Zawahiri in 1993, potentially because of the 1993 trials (F. Gerges testimony, 20 January 2011, p.57; *Al-Hayah*, 20 December 2001, Exhibit A2 Tab 75; statement from Mr. Agiza’s wife in *Al-Hayah*, 22 December 2001, Exhibit A2 Tab 73; Human Rights Watch, May 2005, Exhibit R7, p.34; *The Road to Al Qaeda*, Exhibit A55 pp.68, 93-94).

However, I agree with Professor Gerges’s view that due to the planning required for “spectacular” terrorist attacks such as the attacks on Egyptian officials in 1993 for which the VOC claimed credit, it is unlikely that the VOC was formed in 1993 due to this disagreement. More obviously, the Egyptian government was using the name “VOC” to describe the individuals charged in the 1993 trials, which have been cited in the evidence as the reason why Mr. Agiza and Colonel Makkawi split from Dr. Al Zawahiri.

[190] I am instead persuaded that the VOC emerged prior to 1993. The fact that the VOC claimed responsibility for terrorist attacks in 1993 and was named by the Egyptian authorities in the 1993 trials supports this conclusion. In addition, the memoirs of Hani Al Sebai, a former AJ author, while ambiguous on the issue of whether the name VOC was imposed on a group by the Egyptian government, stated that prior to 1993, the group that would be known as VOC had its own members and resources (F. Gerges testimony, 20 January 2011, pp.97-98, 106-107; September 2002 Interviews with Hani al-Sebai, Exhibit A57, pp.12-22). Professor Gerges considers Mr. Al Sebai, as a former member of the AJ, to be a reliable insider source, and I agree. Further, in his book *Spectrum of Islamic Movements* (Exhibit A53), Diia Rashwan affirms that the VOC was, at least until the end of 1992, the military wing of the AJ.

[191] Mr. Mahjoub argues that Professor Gerges's opinion is that the VOC does not exist. In my view, Professor Gerges's opinion is more nuanced than this. In his report, Professor Gerges writes that the VOC is "shrouded in mystery and confusion" and that its very existence is contested. However, he acknowledges that "one must be very careful not to draw definite conclusions about VOC and to maintain healthy skepticism." He indicates that the VOC "is an ambiguous entity that might have either existed for a brief moment or could have been invented for security reasons to confuse the Egyptian authorities and to divert attention from the mother group – al-Jihad" (F. Gerges Expert Report, Exhibit R57, paragraph 186).

[192] Professor Gerges asserts that there exist three competing viewpoints about the VOC, all of which in his opinion are plausible:

- a. that it never existed as an independent and autonomous group and was instead a name used to deceive outsiders;
- b. that it acted as an arm or a front, an extension of AJ, and that Dr. Al Zawahiri, its executive leader, used it to carry out attacks against the Egyptian state, and
- c. it was a tiny faction that broke away from AJ because of operational, as opposed to ideological or theological differences, and operated on its own within Egypt and without.

[193] In his report (Exhibit R57, paragraphs 189-92), Professor Gerges goes on to explain why he prefers his first theory or viewpoint. In an interview with Montasser Al Zayat (a former mid-ranking member of al-Gama'a in the 1970s and attorney for incarcerated radical Islamists), Mr. Al Zayat indicated to Professor Gerges that the VOC had not existed as an autonomous group and that its operators were loyal to Dr. Al Zawahiri, AJ's executive leader. Mr. Al Zayat stated that during the 1993 trials of VOC suspects the accused voiced their allegiance to Dr. Al Zawahiri and made clear that they did not belong to a separate organization. Mr. Al Zayat insinuated that the Egyptian security forces exaggerated the importance of the VOC in order to garner public support. Further, during the trial, a mid-ranking suspect named Magdi Mohammed Salem (the same Mr. Salem who testified in these proceedings) scoffed at a journalist when asked if VOC was a separate entity. This is consistent with Mr. Salem's testimony before the Court. Professor Gerges concluded that the VOC is more of a "rhetorical identifier for a number of militant groups' media publications than an autonomous entity."

[194] In response to questions on *The Spectrum of Islamic Movements* (excerpted at Exhibit A53) which affirms that the VOC was once the military wing of the AJ, Professor Gerges attested, on cross-examination, that the VOC was a “namesake” used as a tool by Egyptian Islamic Jihad to divert attention from the real players. “...it did not exist as a substantive, as a real as a physical, as material faction like Egyptian Islamic Jihad and the Islamic Group” (F. Gerges testimony, 20 January 2011, pp.19-20). He further noted that Al Qaeda had used the moniker “Islamic Front for the Liberation of the Holy Place” to claim responsibility for the attacks on the US Embassies in East Africa and to deceive the authorities (*ibid.* 19 January 2011, pp.84-85).

[195] In my view, none of the above reasons offered by Professor Gerges are necessarily inconsistent with the VOC’s existence in some form. If it existed as a diversion or moniker for the AJ, then it existed in some fashion and the evidence referring to the exploits of the VOC refer to the AJ or a sub-group of the AJ. Further, Professor Gerges makes clear that he is not prepared to discount his other two hypotheses. He attests: “...there are three plausible hypothesis [sic] and I think it would be extremely dangerous on my part to say that I dismiss the three hypothesis [sic]” (F. Gerges testimony, 21 January 2011, p.65).

[196] In contrast to Professor Gerges, Professor Byman views the VOC as a distinct organization that was really a faction or splinter group of the AJ; however, the rift between the views held by the experts is not that significant. Professor Byman acknowledges that the circumstances surrounding the VOC are “murky” and he testifies that the VOC overlaps tremendously with the main AJ movement led by Dr. Al Zawahiri to the point where many

operations were performed jointly and personnel were shared (D. Byman testimony, 27 October 2010, p.211). He also acknowledges that the VOC's goals seem to be identical to those of the AJ (*ibid.* p.220). His conclusion that the VOC exists in some form is, qualitatively, not that different than the view held by Professor Gerges.

[197] Professor Byman comments on the significance of the word "vanguard" in the title, "Vanguards of Conquest". He attests:

The "vanguard" context is one that, to go back again to Sayyid Qutb, he talks about the importance of a vanguard that will create the Islamic state and be the prime movers. And this concept is very important to Zawahiri in his thinking that this idea that a small group will seize power, be the leaders, and that you can't rely on mass mobilization. So the vanguard concept is one that's important to Zawahiri and more broadly to the jihadist community.

(D. Byman testimony, 27 October 2010, p.225)

[198] The meaning attributed to the word "vanguard" by Professor Byman is consistent with his view that the VOC is a distinct organization that was really a faction or splinter group of the AJ. The idea that a "small group will seize power, be the leaders" is consistent with the notion of creating a splinter group.

[199] Professor Byman points to two attacks for which the VOC claimed responsibility, the assassination attempts on the Interior Minister in 1993 and President Mubarak in 1995 (D. Byman testimony, 27 October 2010, pp.221-222). He also testifies that the VOC cooperated with other groups in its operations, fueling the debate as to where the VOC ends and the AJ begins. Professor Byman points to the 1995 attempted assassination of Mubarak, which also involved members of the AGAI as well as members of the AJ. This, in his view, suggests a



“combined front” (*ibid.* p.223). This evidence is consistent with his earlier evidence concerning the overlap between the VOC and the AJ. Nonetheless, Professor Byman opines that the VOC is a group that “has an independent existence to at least some degree” (*ibid.* p.225).

[200] There is also the book; *The Road to Al-Qaeda* (a chapter of which was adduced as Exhibit A55) by Mr. Al Zayat, one of the authors relied upon by Professor Gerges, who relates the circumstances leading to the formation of the VOC. Mr. Al Zayat writes at page 68 of his book that:

The disagreements with Ogayza (Agiza) led to the formation of the Vanguard of Conquest. This was a crisis that weakened the group, which was one of the reasons why I disagreed with those who broke away from Zawahiri. I announced at the time that the Vanguard of Conquest was not a separate group, and that Islamic Jihad and the Vanguard of Conquest were two names for the same group led by Zawahiri.

This account lends support to the Ministers’ allegation that there existed an organized group dedicated to a terrorist cause called the VOC.

[201] In *The Spectrum of Islamist Movements* (another excerpt of which was adduced as Exhibit A54), reference is made to the formation of the VOC. The author asserts that “Dr. Sayyid Imam (Dr. Fadl) continued to lead and guide the Jihad from Pakistan and Afganistan. In 1993, the organization was deeply shaken by the discovery of its military wing, the Vanguard of the Conquest...” (Exhibit A54, p.405). This provoked an internal crisis in the AJ leadership which eventually led to the resignation of Dr. Fadl and the selection of Dr. Al Zawahiri as the new,

undisputed leader. This account lends support to the existence of the VOC as a military wing of the AJ.

[202] On the record before me, I am satisfied that the VOC did exist. All of the theories advanced by the experts that testified before the Court accept that the VOC was, at a minimum, a name used in the media for a sub-group of the AJ or an organization used by Dr. Al Zawahiri as a front for the AJ. Even for this limited purpose, it can be said to exist. The evidence relating to its goals is undisputed. Whatever its level of independence from the AJ, the VOC shares the same terrorist goals adopted by the AJ which involve the violent subversion of the government of Egypt and terrorism.

[203] While I find both Professor Gerges and Professor Byman to be credible witnesses who have similar views on this point, I prefer the evidence of Professor Byman relating to the degree of independent existence of the VOC. In my view, the VOC was more than a propaganda tool used solely by the AJ to divert attention from the real players, the view that Professor Gerges espouses because the evidence for independent existence is not “iron-clad” (F. Gerges testimony, 19 January 2011, pp.62-63). I accept that, at least to some degree, it had an independent existence. The evidence indicates that both the VOC and AJ had common goals and overlapped significantly in terms of personnel and leadership. The complex history of these secretive organizations makes it difficult to know with a high degree of certainty much about the organizational structure of the VOC, its nature, and exact ties with the AJ. Secretive terrorist organizations do not publish their organizational charts, nor do they issue membership cards.

[204] Nonetheless, in my view, the most likely evolution of the VOC is, as related in *The Spectrum of Islamist Movements*, that it was the name of the military wing, or a set of militant cells, of the AJ prior to 1993. Whether this name was given to the sub-group to deceive the authorities is immaterial: the point is that the sub-group itself likely existed. After 1993, the name was adopted by a militant group that claimed responsibility for the 1993 attacks on the Egyptian Interior Minister and the Egyptian Prime Minister and the 1995 attempted assassination of President Mubarak in Ethiopia (F. Gerges testimony 19 January 2011, p.84). Whether that group was Dr. Al Zawahiri's militant sub-group of the AJ that chose to pursue violent attacks on Egyptian officials and caused a rift with the remainder of the AJ that supported the ceasefire, or whether that group was a militant splinter group created by Mr. Agiza and Colonel Makkawi, is also immaterial. To reiterate: a finding that the VOC exists as an organization for the purposes of paragraph 34(1)(f) does not require that it be independent from another such organization.

[205] The evidence reveals little about the organizational structure of the VOC, in particular about the existence of its Shura Council. Professor Gerges testified that there was no textbook on how Shura Councils are formed (F. Gerges testimony, 19 January 2011, p.53). However, he did acknowledge that in a book authored by "Abd al-Qadir's ibn'abd al-'Aziz", an alias of former AJ leader Dr. Fadl, among other aliases, titled *The Essential Guide for Preparation* and also known as "the manual" for jihadists, Shura Councils are discussed (F. Gerges testimony, 20 January 2011, p.43). Indeed, Professor Gerges confirms that the book is influential and informative and qualifies it as important and critical. Dr. Fadl is reported to be held in great esteem among his peers (*ibid.* p.44). According to Diaan Rashwan (*The Spectrum of Islamist Movements*, Exhibit A54, p. 403), some regard Dr. Fadl's scholarship and knowledge of the religious sciences as

second to none; for these groups, he is a religious authority of great standing. In Dr. Fadl's words, as cited in *The Spectrum of Islamist Movements*, the book is "a code for a Muslim vanguard, a unique and privileged generation who will bring change to the Islamic world." This "manual on Jihad" is comprehensive. The following excerpts of *The Spectrum of Islamist Movements* (Exhibit A54) deal with Dr. Fadl's treatment of leadership and the Shura Council in *The Essential Guide for Preparation*:

- "Any group of three or more must appoint a commander to preserve a unified voice. The one who appoints the commander or Amir is the responsible leader who must select several lieutenants in order of preference." (Third chapter)
- "The author discusses the duties of the Amir and his general responsibilities towards his followers." (Fourth chapter)
- "However, consultation as a duty of the Amir occupies a large part of the book and is one of its most important issues. Firstly Dr. Fadl approves of the Amir consulting with men of learning and sound judgment in difficult issues." (Fourth chapter)
- "The commander has the sole right to select the members of the consultative body or shura and there is no stipulation that those whose advice he's asked should be a fixed set of people." (Fourth chapter)

[206] Professor Gerges confirms that: "even a shadowy elitist, highly radical and structured group like Al Jihad had its own Shura council" (F. Gerges testimony, 19 January 2011, p.50).

[207] The above evidence establishes reasonable grounds to believe that any group, splinter group, or sub-group formed with the shared purposes and goals of the Islamic jihadist movement, including the VOC and the AJ, would have an executive structure, including a consultative body or Shura Council.

[208] There is no direct public evidence concerning the Shura Council of the VOC. The evidence indicates that the VOC took responsibility for three terrorist attacks against Egyptian officials, incidents for which the AJ also eventually claimed responsibility. The evidence is undisputed that the AJ and the VOC were at least closely related organizations. There is also evidence to show that the VOC was involved in joint missions with the AJ, with whom it shared its jihadi objectives. Considering that Dr. Fadl's manual for jihadists, used by the AJ, provides for leadership and a consultative body for "any group of three or more", it is reasonable to infer that the VOC, either as a splinter group or a wing of the AJ, had a Shura Council.

[209] One of the allegations against Mr. Mahjoub pursuant to paragraph 34(1)(f) of the *IRPA* is that he is a ranking member of the VOC, a radical wing of the AJ. The allegation does not call for a finding that the VOC is a stand-alone organization. The evidence here establishes that the VOC exists in some form as a splinter group, faction or military wing of the AJ with overlapping membership. In the circumstances, the extent of its independence from the AJ matters little. I am satisfied that the evidence establishes that there are reasonable grounds to believe that the VOC existed as an organization. As stated by Professor Wark in his expert report, whatever the form of the VOC's existence, whether as a briefly-existing splinter group or the military wing of the AJ, its purpose was the violent subversion of the government of Egypt (W. Wark Expert Report, Exhibit R24, p.52). I therefore also find that there are reasonable grounds to believe that the VOC was engaged in the subversion by force of the government of Egypt. Finally, I am also satisfied on the evidence that there are reasonable grounds to believe that the VOC, whether a sub-group of the AJ or not, engaged in the terrorist activities for which it took credit, which included the killing of civilians.

[210] I am therefore satisfied that the Ministers have established reasonable grounds to believe that the VOC existed, had a Shura Council, and engaged in both the subversion by force of the government of Egypt and terrorism.

2. Is Mr. Mahjoub connected to these organizations?

[211] In support of their allegation that Mr. Mahjoub is a member of these organizations, the Ministers submit that the evidence supports Mr. Mahjoub's connection to the organizations by reason of the following alleged facts that I have classified as follows:

- a) Mr. Mahjoub had contact with certain individuals;
- b) the individuals contacted are terrorists or members of the organizations;
- c) there is evidence, direct or indirect, that these contacts were made for the purposes of terrorism, subversion or related to membership in the organizations.
- d) the evidence of contact supports the allegation that Mr. Mahjoub is a member.
- e) there is other evidence of a connection between Mr. Mahjoub and the organizations to support the allegation that he is a member.

[212] I propose to address each of the above allegations of fact in turn. However, before doing so, I will deal with the following four preliminary issues, namely: foreign agency reports that have not been summarized, the provenance of the BRS report in the SIR Reference Indices, Tab [REDACTED], the relevance of certain allegations against Mr. Mahjoub, and Mr. Mahjoub's aliases.

a) *Preliminary issues*

i. *Foreign agency reports that have not been summarized*

[213] In my Reasons for Order dated February 19, 2010 at paragraph 53, I indicated that I would reserve on determining whether the inability of the Service to disclose summaries of the content of certain evidence sourced from the foreign agencies to Mr. Mahjoub, by reason of the third party rule, violated Mr. Mahjoub's fair trial right. I propose to address that issue at this time.

[214] I have reviewed all of the evidence at issue and for the reasons that follow; I conclude that even though Mr. Mahjoub did not receive summaries of certain foreign agency reports, this did not violate his right to know the case to meet.

[215] Many of the allegations contained in the foreign agency reports at issue were disclosed through identical or similar allegations contained elsewhere in the SIR. For instance, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. This allegation was therefore effectively disclosed to Mr. Mahjoub.

[216] In addition, allegations that could not be disclosed because of the third party rule were often disclosed through closely related open source information. For example, [REDACTED]

[REDACTED]

[217] Concerning the information contained in certain foreign agency reports not otherwise disclosed, none of the information would have any impact on Mr. Mahjoub's case to meet. To the extent that Mr. Mahjoub was not aware of the classified details, the Special Advocates were aware of all of the classified information and it was open to them to use or challenge the information as they saw fit in order to protect Mr. Mahjoub's interests.

ii. *Provenance of the BRS report in the SIR Reference Indices Tab*

[218] Although the admissibility of the BRS report [REDACTED]  
[REDACTED]  
[REDACTED] (SIR Reference Indices Tab [REDACTED]) has not been formally challenged by the Special Advocates, their invitation for the Court to infer [REDACTED] **[the provenance of this information]** raises concerns that the information was obtained as a result of torture and that the Court should consequently give it no weight. Consequently, I will consider the provenance of this report.

[219] [REDACTED]  
[REDACTED]



[220] Despite the fact that [the CSIS witness] [REDACTED] could not be certain of the source of this information on cross-examination ([REDACTED]), I find [the CSIS witness'] [REDACTED] analysis that this information came from an interview [REDACTED] compelling. [REDACTED]

[REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] (Closed Exhibit [REDACTED], Tab [REDACTED]) [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [In the preceding paragraph, the Court reviewed the evidence of the apprehension of detainees.]



[REDACTED]

It is therefore the Service's view that this information was obtained by [a particular source] [REDACTED]

[REDACTED]

[224] In light of [REDACTED] relevant evidence on the record, I do not agree with the Service's view that this information came from [a particular source] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[225] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[226] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This supports the likelihood that the detainees were in the custody of [REDACTED] and not in [REDACTED] custody at the time of the interrogation.

[REDACTED]

[REDACTED]

[227] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There is nothing on the record before me to suggest a plausible connection between [REDACTED] [the likely source] and torture or cruel, inhuman and degrading treatment.

[228] There is some indication that the information from [REDACTED] was obtained from ill-treatment [REDACTED]. Consequently, I will give no weight to [REDACTED] [specific] reported statements in the BRS report. There is no indication that the remainder of the report derives from the ill-treatment. This part of the report will be considered and weighed in these proceedings (SIR Reference Indices Tab [REDACTED] and Closed Exhibit [REDACTED], Tab [REDACTED]). [REDACTED]

*iii. Certain allegations against Mr. Mahjoub that the Court will not consider*

[229] I have deemed it unnecessary to consider two of the Ministers' allegations against Mr. Mahjoub: the allegation that Mr. Mahjoub is wanted by Egyptian authorities for his involvement in terrorist acts, and the allegation that Mr. Jaballah, one of Mr. Mahjoub's alleged contacts, was engaged in terrorism and a member of a terrorist organization.

[230] Concerning the first of the two allegations, the Ministers allege that Mr. Mahjoub is wanted by Egyptian authorities for his involvement in terrorist acts and was accused of the Egyptian embassy bombing in Islamabad and has been charged in numerous cases. Both parties

have adduced considerable evidence to establish or disprove the allegation that there have been charges against Mr. Mahjoub. However, even if the Ministers establish this allegation as a fact, the mere fact that he has been charged does not support a finding that Mr. Mahjoub committed the acts that he is wanted for. Consequently, this allegation on its own cannot support inadmissibility on security grounds pursuant to subsection 34(1). Without more information relating to evidence in support of these charges or about the Egyptian legal system, I give these charges no weight. Consequently, I shall not consider this allegation.

[231] Concerning the second allegation, upon reviewing all of the evidence on the record, I have determined that there is sufficient evidence to convince me that the security certificate is reasonable without deciding the issue of whether Mr. Jaballah was engaged in terrorism or a member of a terrorist organization. As this is the case, and as there is an ongoing security certificate proceeding against Mr. Jaballah, I shall therefore only lay out the evidence relevant to Mr. Jaballah's involvement in terrorism and terrorist organizations as it was presented to the Court and refrain from concluding on that evidence.

*iv. Mr. Mahjoub's aliases*

[232] The Ministers allege that Mr. Mahjoub used many aliases, including variant spellings and arrangements of:

- a. Mohamed Zeki Mahjoub (Mohammed Mahmoud, Mohamed Zeki Mohamed, or Mohammed Zeiki ██████ for his given names, and Mahgoub, Magoub, Mahjub, or Mahmoub for his surname);

- b. Mahmoud Shaker (and variants, namely Shakr and Shakir);
- c. Abu Ibrahim (or simply Ibrahim or Abraham), and
- d. Mohammed Hasan (and variants, [REDACTED])

[233] Determinations concerning the above aliases are important in this proceeding as some of the evidence supporting the allegations against Mr. Mahjoub refers to these aliases without referring directly to Mr. Mahjoub. I shall therefore examine whether the Ministers have established reasonable grounds to believe that Mr. Mahjoub was known by the following aliases or their variants: Mohammed Mahgoub, Mahmoud Shaker, Mohammed Hasan and Abu Ibrahim.

*Mohammed Mahgoub and other variant spellings*

[234] **[The Ministers have adduced classified evidence connecting Mr. Mahjoub to “Mohammed Mahgoub” and variants.]** [REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[237] [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]; Closed Exhibit [REDACTED] Tab [REDACTED] ). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[238]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference  
Indices Tab [REDACTED] )

**[The classified evidence connecting the name “Mahgoub” with Mr. Mahjoub uses a variety of unique identifying information to make the connection.]**

[239] Lastly, a letter sent to Mr. Mahjoub from his former employer identified him with this same spelling:

The Althemar Almubarakah Agriculture Company certifies that Mohamed Zaki Mohamed MAHGOUB worked as Deputy Director-General of the company and managed the Damazin Project for Pluvial Agriculture from February 1992 to May 1993...He is leaving on his own prerogative and due to personal circumstances. All the best to him in his future endeavours!  
Dr. Mubarak Ali AL DOURI

Director-General of the Althamar Almubarakah Agriculture  
Company...  
Khartoum  
Date: 17 October 1993  
[Emphasis added]

(Reference Letter to Mr. Mahjoub 17 October 1993, Exhibit A2,  
Tab 10)

[240] Mr. Mahjoub has adduced evidence of persons bearing the same or similar names to him who were convicted in Egypt (see the Interior Ministry's list of charges and convictions for Mr. Mahjoub, Exhibit R92). It is very unlikely that the individuals identified could possibly have been Mr. Mahjoub. He argues that given the number of people bearing similar names, it is likely that the Service has mis-identified Mr. Mahjoub. Mr. Mahjoub also challenges the Service's identification of him as a suspected terrorist because a fingerprinting comparison was not done, unlike in the *Jaballah* case (Excerpt of *Jaballah (Re)* transcript, 8 December 2011, Exhibit R69).

[241] I reject Mr. Mahjoub's argument that he has been mis-identified. The evidence adduced by the Ministers supporting the correct identification by the Service of Mr. Mahjoub as the individual in question is compelling. In my view, the divergences in spellings likely stem from transliteration issues from Arabic, in particular the Egyptian pronunciation of the "j" sound in Mr. Mahjoub's name as a hard "g" sound that I observed during the testimony of Egyptian national Mr. Salem. I am also satisfied with [REDACTED] [the CSIS witness'] explanation of the minor discrepancy in [REDACTED] [the identifier] Given the corroborating [details] [REDACTED]

[REDACTED]

[REDACTED] I find that when referring to the variant spellings for Mohamed Zeki Mahjoub listed at paragraph 232 above, [REDACTED]

[the evidence adduced by the Ministers pertains to] a person whom the Service has correctly identified as Mr. Mahjoub.

*Mahmoud Shaker and variant spellings*

[242] Mahmoud Shaker, Shaker, Shagr or Shakir are among the important alleged aliases of Mr. Mahjoub. Besides supporting the allegation that Mr. Mahjoub was a Mujahideen fighter

[REDACTED]

[REDACTED] ( [REDACTED] SIR

Reference Indices Tab [REDACTED]; Closed Exhibit [REDACTED] Tab [REDACTED]). [REDACTED]

[REDACTED].

[243] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference indices Tab [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]; Closed Exhibit [REDACTED] Tab [REDACTED]).

[244] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
[REDACTED]  
[REDACTED]

[245] [REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[The Ministers have adduced certain classified information as evidence identifying Mr. Mahjoub as “Shaker” or one of its variants].

[246] Mr. Mahjoub has specifically denied ever using the alias “Mahmoud Shaker”, stating that “he never used names other than his own, including Mahmoud SHAKER” (CSIS Interview 8 August 1997, SIR Tab [REDACTED]; Exhibit A2 Tab 21), “Mahmour Shaker” or “Mahmoud Shukri” (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23).

[247] The alias arose again during a third Service interview, and again he denied any association with this alias. The BRS report summarizes the interaction as follows:

...when asked if MAHJOUB was sure that the British authorities would not find the names and / or telephone numbers of Mohamed MAHJOUB, Mahmoud SHAKER, Abu Ibrahim, or Mohamed HASAN during any searches of the belongings of those arrested. MAHJOUB denied that any of these names were associated to himself. MAHJOUB clarified that he is known as Abu Ibrahim because that is the name of his youngest son.

(CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22)

[248] While I find Mr. Mahjoub’s clarification of his use of “Abu Ibrahim” suspect and convenient in the circumstances, and I find that [REDACTED] [the **classified information provides**] evidence of this alias, I am nevertheless of the view that there is insufficient evidence to establish that Mr. Mahjoub used the alias Shaker.

[249] In my view, it is critically important that no basis whatsoever is provided by [the **Ministers**] [REDACTED] for connecting Mr. Mahjoub with the alias Shaker. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[250] While I have no reason to doubt that someone used the alias Mahmoud Shaker [REDACTED] and it was likely a unique individual since the name was unusual [REDACTED]

[REDACTED] It could be based purely on [REDACTED] deductions and not on evidence. While I reject Mr. Mahjoub’s suggestion that Mahmoud Shaker was likely Ihab Saqr because of the similarity of the names, I accept the possibility that even rigorous agencies [REDACTED] could be wrong in deducing the true identity of an alias, as may have been the case with the FBI’s identification of Mohammed Ibrahim Makkawi as Saif al-Adel, a leading Al Qaeda member (*NBCNews.com* 23 November 2012, Exhibit R104; *biikyamasr.com* 2 March 2012, Exhibit R105; *BBC Online* 29 February 2012, Exhibit R106).

[251] [REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[252] In the result, without an evidentiary basis, independent corroboration, or other indicia of reliability of this information [REDACTED], I find that the record does not establish that Mr. Mahjoub employs the alias Shaker.

*Mohammed Hasan and variants*

[253] The Ministers allege that Mr. Mahjoub employed the name “Mohammed Hasan” or “Hassan.” There are also variants on the record including [REDACTED] [The] evidence of Mr. Al Fadl in the *USA v. Bin Laden* trial that a man named “Abu Hassan el Masry”, “El Masry” meaning “the Egyptian” according to Professor Byman (D. Byman testimony, 27 October 2010, p.89) was an Althamar employee whom Mr. Al Fadl witnessed working in the same office as Mr. Al Duri in Khartoum sometime during or after 1991. Mr. Al Fadl claimed that he was an AJ and Al Qaeda member. Mr. Al Fadl does not further identify this person (*USA v. Bin Laden* transcript, Exhibit A12, pp.246-249).

[254] Other than [REDACTED] there is no evidence on the record to link Mr. Mahjoub to the alias “Mohammed Hasan”. This name was included in a long list of aliases presented to Mr. Mahjoub in a Service interview. The Service observed that “when asked if MAHJOUR was sure that the British authorities would not find the names and/or telephone numbers of Mohamed MAHJOUR, Mahmoud SHAKER, Abu Ibrahim, or Mohamed HASAN during any searches of the belongings of those arrested”, Mr. Mahjoub, in the same exchange,



“denied that any of these names were associated to himself” [emphasis added] (CSIS Interview 5 October 1998, SIR Reference Indices Tab █; Exhibit A2, Tab 22). As I observed at paragraphs 246-248 above, the credibility of Mr. Mahjoub’s denials is questionable.

[255] Nevertheless, on the basis of this evidence I am not prepared to draw an inference that Mr. Mahjoub used the name “Mohammed Hassan” as an alias.

[256] █  
█  
█  
█  
█  
█  
█ (█ SIR Reference Indices Tab  
█).

[257] █  
█  
█  
█ (█  
█ SIR Reference Indices Tab █). █  
█

[258]

[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).

[259] Again, I find that the evidence is insufficient to establish that Mr. Mahjoub used the alias “Hassan” or its variants [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] In the result, I find that the record does not establish that Mr. Mahjoub employs the alias “Hassan”.

*Abu Ibrahim and variants*

[260] Another important alias allegedly used by Mr. Mahjoub is Abu Ibrahim, Ibrahim, or the variant spellings Abu Abraham or Abraham. Mr. Jaballah refers to an “Ibrahim” that he met at the home of Khadr’s in-laws, the Elsamnahs that the Ministers allege is Mr. Mahjoub (CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab [REDACTED]; Exhibit A2, Tab 15). Thus the connection of this alias to Mr. Mahjoub must be established before this evidence becomes probative.

[261] Mr. Mahjoub admits that he went by the name Abu Ibrahim or Ibrahim in his interviews with the Service, but he and Ms. El Fouli provided two different explanations for the use of this name. On August 8, 1997, Ms. El Fouli explained that Mr. Mahjoub used “Abu Ibrahim” because Ibrahim was to be the name of their child who would be born on August 29, 1997. Her explanation is summarized in the BRS reports as follows:

When asked if he ever used the name Ibrahim, MAHJOUB stated that he went by the name Abu Ibrahim. Given that MAHJOUB's only son (actually step son) is Hamed Hani, the writer was confused by the Abu Ibrahim appellation [*sic*]. ELFOULI quickly explained that Ibrahim was to be the name of their son, with whom she was pregnant.

(CSIS Interview 8 August 1997, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 21)

[262] The Service comment in the BRS report is that this reason was not believable. The Service persisted, asking Mr. Mahjoub again about this alias during his interview on January 13 and 20, 1998. The BRS summarizes Mr. Mahjoub's response as follows:

Subject initially stated that he has never used any other name, but then indicated he is known by the nickname ABU ABRAHIM or ABRAHIM. He started using this name in accordance to the Islamic tradition, which recognizes Abraham as a prophet, and especially after the birth of his Abraham on 1997 08 29. I asked when the subject started using this nickname.

(At this point, subject mentioned that he had been interviewed twice by the SECURITY OF CANADA...

Subject started using the nickname ABRAHIM or ABU ABRAHIM two or three months after he arrived in Canada [February or March, 1996]. I asked why subject had started using this name prior to the birth of his son in 1997.

(Subject stated that if he had known this was going to be a security interview he would not have brought his friend...).

Subject stated he is only known by the name ABRAHIM or ABU ABRAHIM by a few friends in Canada. Subject refused to provide the names of these friends because something may happen to me. Subject did not explain this statement, but added, at anytime I am expecting the Egyptian government will do something against me. He immediately referred to public information about the Egyptian government sending squads to eliminate opposition people outside Egypt.

(Subject then referred to my questions and those asked by the SECURITY OF CANADA people as being like the interrogations by the Egyptians...)

Subject stated he never used any other name in Egypt or Khartoum, Sudan, never used the named Mahmoud SHAKER, and only started using the name ABU ABRAHIM/ABRAHIM one and a half or two months after he came to Canada. Subject stated he started using this name right after he arrived in Canada because as a young Muslim man in a non-Muslim country I wanted God to give me a good wife and family.

[Emphasis added]

(CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23)

[263] The Service commented that Mr. Mahjoub:

was quite uncooperative, evasive and accusatory, while maintaining his pleasant façade. He refused to provide information (i.e. the names of his friends who know him as ABU ABRAHIM), repeatedly rambled off topic, referred to my interview as an interrogation similar to the ones he had experienced in Egypt, and accused Canada of causing the recent harassment and arrest of his family and friends.

(CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23)

While I give no weight to the Service's observations of Mr. Mahjoub's demeanour, it is clear from the sequence of responses in the above passage that Mr. Mahjoub was being evasive.

[264] Mr. Mahjoub explained his use of Abu Ibrahim again in October 1998. The BRS summarizes this explanation as follows:

... when asked if MAHJOUB was sure that the British authorities would not find the names and / or telephone numbers of Mohamed MAHJOUB, Mahmoud SHAKER, Abu Ibrahim, or Mohamed HASAN during any searches of the belongings of those arrested. MAHJOUB denied that any of these names were associated to himself. MAHJOUB clarified that he is known as Abu Ibrahim because that is the name of his youngest son.

(CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22)

[265] Since Mr. Mahjoub has, in several Service interviews, admitted to using the alias Abu Ibrahim, Ibrahim, Abu Abraham or Abraham, [REDACTED] there are reasonable grounds to believe that he used this alias in all of its variants.

[266] An inconsistency in Mr. Mahjoub's account makes pinpointing the date at which he began using this name difficult. He explains that he first used it in contemplation of his unborn son, which would have meant he started using the alias at the earliest in October 1996 when he was married to Ms. El Fouli, ten or eleven months before Ibrahim Mahjoub was born. Alternatively, he says that he began using it two or three months after he came to Canada, then he claims it was one and a half or two months after his arrival, and lastly he says as soon as he came to Canada "because as a young Muslim man in a non-Muslim country I wanted God to give me a good wife and family". Mr. Mahjoub's different accounts and inconsistencies explaining why and when he began using the alias Ibrahim raise questions as to why Mr. Mahjoub would be so imprecise on such a matter and causes me to question his credibility

on the issue. I find that the most likely version is that Mr. Mahjoub began using the alias soon after his arrival.

*b) Mr. Mahjoub's contacts with alleged terrorists*

[267] The Ministers allege that Mr. Mahjoub has maintained an extensive array of extremist contacts, namely: Mr. Ahmed Husayn Mustafa Agiza, Mr. Mubarak Al Duri, Mr. Mahmoud Jaballah, Mr. Ahmed Said Khadr, and Mr. Essam Hafiz Marzouk. I will deal with each of these contacts in turn by considering the evidence adduced, both public and classified, relating to whether or not Mr. Mahjoub had contact with these individuals.

*i. Mr. Agiza*

[268] The Ministers contend that Mr. Mahjoub had direct contact with Mr. Agiza. They base their claim on **[classified evidence]** [REDACTED]

[REDACTED]

[REDACTED]

(SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[REDACTED] There is no other evidence on the record to establish a direct connection between Mr. Mahjoub and Mr. Agiza.

[269] To accept **[the Ministers' evidence]** [REDACTED] that Mr. Mahjoub and Mr. Agiza were close associates [REDACTED], one would have to presume that membership is established [REDACTED] Membership is the very allegation

that the Ministers must establish; it cannot be presumed. I therefore conclude on the evidence that the contact between Mr. Mahjoub and Mr. Agiza is not established.

*ii. Mr. Al Duri*

[270] Next, the Ministers contend that Mr. Mahjoub was in contact with Mr. Al Duri (also spelled “Al Douri”), primarily on the basis of two letters, one found in a locked briefcase during a search of Mr. Mahjoub’s residence in the course of a warrant-authorized search on June 27, 2000, and the other provided to the Court during the previous security certificate proceedings by Ms. Mona El Fouli. The first letter, dated August 12, 1998, is addressed to Mr. Mahjoub at his former address at 25 St. Dennis Drive, Apt. 1710 (Letter from Mr. Al Duri to Mr. Mahjoub, 12 August 1998, Exhibit A2, Tab 83). It is signed “Your brother, Mubarak AL DOURI”. The second letter, a reference letter for the Althamar Almubarakah Agriculture Company dated October 17, 1993, mentions “Mohamed Zaki Mohamed MAHGOUB” by name as the manager of the “the Damazin Project for Pluvial Agriculture from February 1992 to May 1993”, and it is signed “Dr. Mubarak Ali AL DOURI” (Reference Letter to Mr. Mahjoub 17 October 1993, Exhibit A2, Tab 10). Mr. Mahjoub’s PIF (Mr. Mahjoub’s modified PIF, Exhibit A2, Tab 3) states in the work history section that from February 1992 to May 1993 he worked on the “Al-Damazin Farm,” providing corroborating detail that Mr. Al Duri and Mr. Mahjoub were working for the same company.

[271] Mr. Mahjoub’s address book, found in a search incidental to his arrest, also contained references to Mr. Al Duri. An entry refers to the “telephone number in London, England, friend

of Mubarak ALDOURI - 1 814 508637” (Addresses and telephone numbers on Mr. Mahjoub at the time of his arrest by CIC 26 June 2000 SIR Reference Indices Tab [REDACTED] Exhibit A7 Tab 16). Also, the two telephone numbers written next to the name “Mubarak” in Mr. Mahjoub’s address book are the same as the United Arab Emirates personal and cellular phone numbers (0097165335163 (535163) and 00971506505847) provided to Mr. Mahjoub in the August 12, 1998 letter (Letter from Mr. Al Duri to Mr. Mahjoub, 12 August 1998, Exhibit A2, Tab 83).

[272] There is no evidence that Mr. Mahjoub has ever denied that he was in contact with Mr. Al Duri.

[273] In my view, the above evidence clearly establishes that there was contact between Mr. Mahjoub and Mr. Al Duri.

### *iii. Mr. Jaballah*

[274] Further, the Ministers contend that Mr. Mahjoub was in contact with Mr. Jaballah on the basis of an entry found in Mr. Mahjoub’s address book, which read: “Abu Ahmed - 289-2361”. (Addresses and telephone numbers on Mr. Mahjoub at the time of his arrest by CIC 26 June 2000, SIR Reference Indices Tab [REDACTED] Exhibit A7 Tab 16). That entry proved to be Mr. Jaballah’s phone number. In an interview with the Service, Mr. Jaballah confirmed that his telephone number was (416) 289-2361 (CSIS interview of Jaballah 5 March 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 15). [REDACTED]



[REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).

[275] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices  
Tab [REDACTED]).

[276] The Ministers contend that Mr. Jaballah met Mr. Mahjoub at the Elsamnachs' home. [REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference  
Indices Tab [REDACTED]). [REDACTED]

[277] In an interview with the Service, Service personnel asked Mr. Jaballah whether he knew Mr. Mahjoub. The BRS report on the interview summarizes Mr. Jaballah's responses as follows:

JABALLAH was then asked when he first met Mohammed MAHJOUB. When JABALLAH did not recognize the name, the writer provided MAHJOUB's aliases as Mahmoud SHAKER, Mohammed HASSAN, and Abu Ibrahim. After a moment of reflection, JABALLAH indicated that although these names are not familiar to him, he had met an individual named Ibrahim on one occasion at the residence of Ahmed Khadr's in-laws, the ELSAMNAHs. JABALLAH said, further, that his wife was close to the ELSAMNAHs and visited them often. When asked if this as

the first and only time he had met Ibrahim, JABALLAH concurred.

(CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab [redacted]; Exhibit A2, Tab 15)

I note that Mr. Mahjoub was not living at the Elsamnahs' by the time Mr. Jaballah arrived in Canada in May 1996, for he had [already] moved out with Mr. El Jamal [redacted]. Nevertheless, since Mr. Mahjoub's address book included the Elsamnahs' contact information, it is possible that Mr. Mahjoub met Mr. Jaballah in a later visit to the Elsamnahs' home, and Mr. Mahjoub was the "Ibrahim" of which Mr. Jaballah spoke (Addresses and telephone numbers on MZM at the time of his arrest by CIC 26 June 2000, SIR Reference Indices Tab [redacted]; Exhibit A7 Tab 16). Ms. El Fouli testified in the previous security certificate proceeding that the Khadr and Elsamnahs were close friends of her family, making this possibility still more likely (Transcript of Proceedings DES-1-00 2 March 2001, Exhibit A45 pp.784, 786, 869-870).

[278] [redacted]

[redacted]

( [redacted] SIR Reference Indices Tab [redacted] ). [redacted]

[redacted]

[redacted]

[redacted]

[279] Mr. Mahjoub has twice denied knowing Mr. Jaballah to the Service during interviews.

The interviews are summarized in BRS reports as follows:

MAHJOUR was shown a photo of Mahmoud JABALLAH and asked if he had even seen this individual in Toronto, or if he had ever come into contact with him overseas prior to coming to Canada. Instead of answering directly, MAHJOUR spoke at length about how busy he was with his job. Because of this, MAHJOUR continued he had very little time even for his family let alone for socializing. MAHJOUR indicated that he did not have the time to attend mosque and since coming to Canada had not made any contacts in the local Muslim community. As neither MAHJOUR nor ELFOULI recognized the individual in the photo, the writer then asked if MAHJOUR recognized the name Mahmoud JABALLAH or Abu Ahmed', to which MAHJOUR responded in the negative, again citing his lack of time for socializing because of his employment."

(CSIS interview 24 October 1997, SIR Reference indices Tab [REDACTED]; Exhibit A2, Tab 25)

It was then explained to MAHJOUR that earlier same date (1999 03 31), Mahmoud JABALLAH (aka: Abu Ahmed) was arrested...MAHJOUR immediately denied knowing anyone named Mahmoud JABALLAH or Abu Ahmed. MAHJOUR continued that he had been questioned many times by the Service regarding JABALLAH and MAHJOUR was tiring of the questions. MAHJOUR became very angry and began to furiously point at the writer, accusing the writer of trying to meet with Mona ELFOULI behind MAHJOUR's back.

(CSIS Interview 31 March 1999, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 24)

[280] Concerning the first of these interviews, the Service commented as follows:

[REDACTED]

(CSIS Interview analysis 24 October 1997, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 25)

[281] Notwithstanding the above-discussed denials by Mr. Mahjoub, I am nevertheless satisfied that there are reasonable grounds to believe that contact between Mr. Mahjoub and Mr. Jaballah is established. In coming to this conclusion, the evidence that I find most compelling is Mr. Jaballah's telephone number found in Mr. Mahjoub's address book, which contained a limited number of entries. This evidence, considered in conjunction with the other evidence discussed above [REDACTED] and Mr. Jaballah meeting an individual named "Ibrahim" at the Khadr residence, provide a basis for finding reasonable grounds to believe that Mr. Jaballah was a contact of Mr. Mahjoub prior to Mr. Jaballah's arrest.

*iv. Mr. Khadr*

[282] The Ministers further submit that Mr. Mahjoub was in contact with Mr. Khadr, primarily on the basis that Mr. Mahjoub admitted to knowing Mr. Khadr. The BRS report of a Service interview with Mr. Mahjoub states that in response to a query about whether he knew Mr. Khadr, "MAHJOUB responded that both he and his wife were acquainted with KHADR, but he had not known KHADR before he (MAHJOUB) came to Canada" (CSIS interview 8 August 1997, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 21). This version of events is corroborated by Ms. El Fouli's testimony in the previous security certificate proceedings (Transcript of proceedings DES-1-00, 2 March 2001, Exhibit A45, pp.786, 789).

[283] In another Service interview a year later, Mr. Mahjoub denied that he knew Mr. Khadr, although he quickly reversed his position and confirmed that he knew Mr. Khadr. The BRS report describes Mr. Mahjoub's response to the same query as follows:

MAHJOUR denied knowing Ahmed KHADR. When the writer pointed out that this was surprising given that MAHJOUR resided with KHADR's in-laws the ELSAMNAH's, MAHJOUR suddenly recalled knowing KHADR and stated that 'everyone knows Ahmet KHADR'. MAHJOUR and ELFOULI both claimed that MAHJOUR met KHADR through ELFOULI as ELFOULI is friends with KHADR's wife. Neither MAHJOUR nor ELFOULI could explain how their claim could be accurate since MAHJOUR had stayed with KHADR's in-laws before meeting ELFOULI. MAHJOUR revealed that KHADR remains in Pakistan but did not know what KHADR was doing over there. MAHJOUR is unaware if KHADR intends to return to Canada.

(CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22)

[284] In my view, this misinformation provided to the Service by Mr. Mahjoub during the interview establishes that Mr. Mahjoub was attempting to conceal that he knew Mr. Khadr. This behaviour combined with the fact that Mr. Mahjoub resided with the Elsamnahs, Mr. Khadr's in-laws, supports an inference that Mr. Khadr was a contact of Mr. Mahjoub.

[285] In a further Service interview several months later, Mr. Mahjoub reportedly became angry after he was shown a magazine article that contained a photograph of Mr. Khadr.

When shown the MacLean's magazine about the Egyptian Embassy bombings, MAHJOUR immediately pointed to the accompanying news photo of Ahmed Said KHADR...and began to shout in Arabic. ELFOULI translated that MAHJOUR had discussed KHADR during the previous interview and had nothing to add. MAHJOUR was advised that aside from the photo of KHADR, the articles were about the EGYPTIAN embassy bombing in Pakistan in 1995 11.

(CSIS Interview 31 March 1999, SIR Reference Indices Tab [redacted]; Exhibit A2, Tab 24)

[286] Further [the Ministers have adduced classified evidence that Mr. Khadr used the Elsamnahs' residence as his address in Canada] [redacted]

[redacted]

[redacted]

[redacted] ( [redacted] SIR Reference Indices Tab

[redacted]). [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] Further, Ms. El Fouli indicates in her testimony that Mr. Mahjoub had contact with Mr. Khadr (Transcript of Proceedings DES-1-00, 2 March 2001, Exhibit A45, p.787).

[287] I am satisfied that the Ministers have established that there are reasonable grounds to believe that Mr. Khadr is a contact of Mr. Mahjoub.

*v. Mr. Badiya*

[288] Next, the Ministers allege that Mr. Mahjoub is a contact of Mr. Badiya, supporting this allegation with evidence that they were in telephone contact.

[289] At Mr. Mahjoub's Immigration Screening interview with the Service, Mr. Mahjoub reportedly affirmed that he lived at "25 St. Dennis Drive, Apt. 1710, Toronto, tel: 416-429-9951 since 1996 11 with his wife, stepson, and son. Subject [Mr. Mahjoub] has never had any visitors or friends stay with him" (Immigration screening interview 28 January 1998, SIR Reference Indices Tab [REDACTED]). Mr. Mahjoub used this telephone number, (416) 429-9951, registered to Ms. El Fouli, until his arrest in June 2000. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference indices Tab [REDACTED] )

**[Mr. Mahjoub made calls to a Kuwaiti number in 1997 and 1998, Exhibit A7  
Tabs 14 and 15]**

[290] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference

Indices Tab [REDACTED] ).

[291] [REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference  
Indices Tab [REDACTED]). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). [The  
Service learned that a Kuwaiti number called from Mr. Mahjoub's home telephone  
number belonged to an individual named Ahmad Hussein Badeta Alsaied, who was  
deported from Kuwait in January 1999 for his ties to the VOC.]

[292] Mr. Michel Guay, a Service witness, testified that he was unsure whether two people could be subscribed to the number in question (M. Guay testimony, 20 October 2010, pp.99-100). Nevertheless, [a CSIS witness] [REDACTED] testified that it was the Service's belief that "Badeta Alsaied and Badiya are the same person, Abu Khalid, [REDACTED] of the Vanguard's of Conquest" [REDACTED]. The Service provides no justification to found this belief. However, the record provides the following evidence connecting these names to the same person.

[293] [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference  
Indices Tab [REDACTED]). [REDACTED]



( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [The Ministers have adduced evidence that Mr. Alsaied was deported from Kuwait in January 1999 for his ties to the VOC.] Further, the Ministers provide an Arabic language newspaper article reporting that two suspects were extradited from Kuwait, “Badi” and a man by the name of “Fahmi”, at this time (*Al-Quds al-'Arabi*, 21 April 1999, Exhibit A2 Tab 79). It is the Service’s belief that “Badi” is Mr. Badiya ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

Mr. Magdi Salem testified that “Badi” (spelled in the List of Candidates of the Al-Nour Party, Exhibit R96, to which he was referring as “Badie”) is Mr. Badiya, the current leader of the Islamist Al-Nour political party in Egypt (M. Salem testimony, 10 September 2012, pp.51-52).

[294] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On the basis of this evidence, I am not prepared to find that Mr. Alsaied is an alias of Mr. Badiya. More than one individual was deported from Kuwait at that time due to alleged connections with the VOC, and more than one individual could have been registered to that telephone number. The evidence therefore does not establish that Mr. Alsaied is an alias of Mr. Badiya.

[295] Mr. Mahjoub denied knowing Mr. Badiya in a Service interview, summarized in the BRS report as follows:

The writer replied that they wished to inform MAHJOUB that, in addition to the arrest of JABALLAH, several open information articles stated that Essam MARZOUK (aka: ADNAN), Ihab SAQR and Ahmed BADIYA from Kuwait, were presently in Egyptian custody and standing trial on terrorism charges. Again MAHJOUB became very angry and denied knowing these individuals. The writer advised that this was not true and this was an opportunity for MAHJOUB to explain his relationship with these individuals before the Egyptians obtained this information through their own investigations. MAHJOUB was silent for a moment and then accused the Service of being worse than the Egyptian authorities.  
[Emphasis added]

(CSIS Interview 31 March 1999, SIR Reference indices Tab ■; Exhibit A2, Tab 24)

The evidence suggests that Mr. Mahjoub was in contact with either Mr. Badiya or Mr. Alsaied, both alleged members of the VOC. However, the record does not establish reasonable grounds to believe that Badeta Alsaied and Badiya are the same person and that Mr. Mahjoub was consequently a contact of Mr. Badiya.

*vi. Mr. Marzouk*

[296] Finally, the Ministers submit that Mr. Mahjoub was in contact with Mr. Marzouk, also founding this submission on evidence of telephone communications between them.

[297] The Ministers have provided evidence that Mr. Marzouk's residential telephone number was in contact with Mr. Mahjoub's residential telephone number (416) 429-9951. Mr. Marzouk's number at 6-13625 76th Avenue, Surrey BC, (604) 572-8151 made the following relevant calls:

(416) 429-9951	1997 05 11 - 1 minute
	1997 06 08 - 8 minutes

1997 07 13 - 27 minutes  
1997 07 27 - 1 minute  
1997 07 27 - 20 minutes

(Telephone toll records, Exhibit A7 Tabs 1, 3, 5-13)

[298] [REDACTED]  
[REDACTED]  
[REDACTED] Mr. Guay [REDACTED] testified that they were obtained from the telephone companies “via subpoena by the Department of Justice counsel in 2000 or 2001” (M. Guay testimony, 25 October 2010, p.20). It is evident from the toll records themselves that they come from BCTel and Cantel (see Exhibit A7, Tabs 1, 3-13).

[299] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). I am satisfied on the basis of this evidence that Mr. Marzouk likely made all of the above noted calls to Mr. Mahjoub.

[300] As outlined in paragraph 289 above, the Ministers have provided evidence from Mr. Mahjoub that his residential phone number from November 1996 to the time of his arrest in June 2000 was (416) 429-9951. He also stated in the interview that he had no visitors or friends stay with him at his home (Immigration Screening Interview 13 and 20 January 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23).

[301] Because Mr. Mahjoub has made submissions to the effect that the calls between the numbers associated with him and with Mr. Marzouk could have been made by Ms. El Fouli, the calls to Mr. Marzouk require greater specificity in determining the date at which Mr. Mahjoub began to use (416) 429-9951.

[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).

[REDACTED] the following telephone calls were made from (416) 429-9951, the telephone number registered to Ms. El Fouli at Mr. Mahjoub's residence:

[REDACTED]	
(604) 805-4017	1997 01 19 - 9 minutes
	1997 02 09 - 8 minutes
	1997 03 16 - 1 minute
	1997 04 17 - 1 minute
	1997 05 25 - 1 minute
	1997 06 08 - 1 minute
	1997 06 08 - 1 minute
	1997 06 29 - 1 minute
	1997 07 06 - 1 minute
	[REDACTED]

(Telephone toll records for Mr. Mahjoub [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] Sprint Canada  
telephone toll records, Exhibit A7 Tab 2)

[302] [REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]), [REDACTED]  
[REDACTED] (SIR Reference Indices Tabs [REDACTED])

and [REDACTED]).

[REDACTED] While Mr. Mahjoub claims that he moved in to 25 St. Dennis Drive, Apartment 1710, residential telephone number (416) 429-9951, with Ms. El Fouli and his stepson in November 1996 (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23), evidence in Mr. Mahjoub's application for permanent residence file indicates that Mr. Mahjoub resided there since October 1996 (see the CIC's request for security screening, 4 December 1997, Exhibit R54). Both of those statements appear to be estimates, and so both of them support an inference that Mr. Mahjoub moved to 25 St. Dennis Drive in late October 1996. He had also been married civilly since September 26 and religiously since the first week of October. Whether or not he had formally moved in with Ms. El Fouli, I find that Mr. Mahjoub had access to (416) 429-9951 for the purpose of making calls.

[303] [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]).

[REDACTED] **[The Ministers have adduced classified evidence of a contact between a phone number associated with Mr. Marzouk and a phone number Mr. Mahjoub had access to in late October 1996.]**

[304] [REDACTED]  
[REDACTED]  
[REDACTED]

[305] The second number, (604) 805-4017, was confirmed to be Mr. Marzouk's cellular telephone number **[in some of the telephone toll records in Exhibit A7]** [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[306] Mr. Guay was unable to identify Yasmien Elmaleh (or Elmaeh) on cross-examination (M. Guay testimony, 20 October 2010, p.105), **[but a newspaper interview identified her as Mr. Marzouk's wife]** [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]).

Mr. Guay admitted that the Service did not know which calls were made by Mr. Marzouk and which calls were made by Ms. Elmaleh.

[307] It is noteworthy that this cellular telephone number is registered to Mr. Marzouk [REDACTED] [REDACTED]. Consequently, although the service provider indicated that the user of this number is Yasmien Elmaeh, Mr. Marzouk's wife, I am satisfied that Mr. Marzouk also used and received calls from this number.

[308] Mr. Mahjoub submits that Ms. El Fouli was making and receiving the calls and could have been in contact with Mr. Marzouk's wife. It was open to Mr. Mahjoub to call Ms. El Fouli as a witness. As it stands, there is no evidence on the record to support his submissions. Instead, there is evidence to support the Ministers' assertion that it was indeed Mr. Mahjoub who was in contact with Mr. Marzouk. At the time that Mr. Mahjoub was arrested by the CIC on June 26, 2000, an address book was found during the incidental search with the following address next to the name "Esam": "105 10277 135th St. Box 150 Surrey BC V3T 4C3" (Mr. Mahjoub's address book, 26 June 2000, Exhibit A7 Tab 16). [REDACTED]

[REDACTED]

[REDACTED] ([REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ([REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). **[The Ministers adduced classified evidence that this address was used by Mr. Marzouk, and that it was a post office box in a large commercial building.]**

[309] Mr. Mahjoub twice denied knowing Mr. Marzouk in interviews conducted by the Service summarized by the Service in their BRS reports as follows:

When asked to explain his association with "ADNAN", MAHJOURB paused for a moment before responding that he did not know of anyone with that name. The writer remarked that perhaps MAHJOURB knew ADNAN as Essam MARZOUK...and produced MARZOUK's photo. MAHJOURB again stated that he did not know anyone named ADNAN or MARZOUK, nor did he know the person in the photograph. MAHJOURB continued that if the Service insisted on showing MAHJOURB such photos and asking about supposed relationships, MAHJOURB wondered if a lawyer was required. The writer inquired if this meant that MAHJOURB refused to answer any further questions without a lawyer present. MAHJOURB stated that he did not need a lawyer and the writer was free to ask any questions...MAHJOURB stated that it was "impossible for me (MAHJOURB) to know MARZOUK because" - and suddenly stopped speaking. MAHJOURB then inquired as to MARZOUK's residence. When advised that MARZOUK had previously resided in British Columbia, MAHJOURB noted that it was impossible for him to know MARZOUK as MAHJOURB resides in Toronto and has never travelled to BC. MAHJOURB... and had a momentary loss of words when it was suggested that MAHJOURB and MARZOUK may have met during one of MARZOUK's trips to Toronto. MAHJOURB laughed when shown a photo of Amr HAMED and immediately denied knowing the individual or anyone with that name.  
[Emphasis added]

(CSIS Interview 5 October 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 22)

The writer replied that they wished to inform MAHJOURB that, in addition to the arrest of JABALLAH, several open information articles stated that Essam MARZOUK (aka: ADNAN), Ihab SAQR and Ahmed BADIYA from Kuwait, were presently in Egyptian custody and standing trial on terrorism charges. Again MAHJOURB became very angry and denied knowing these individuals. The writer advised that this was not true and this was an opportunity for MAHJOURB to explain his relationship with these individuals before the Egyptians obtained this information through their own investigations. MAHJOURB was silent for a moment and then accused the Service of being worse than the Egyptian authorities.  
[Emphasis added]



(CSIS Interview 31 March 1999, SIR Reference Indices Tab ■;  
Exhibit A2, Tab 24)

[310] The Service commented with respect to the October 5, 1998 interview that it did not believe that Mr. Mahjoub was being truthful in denying that he knew Mr. Marzouk.

[311] Based on the totality of the evidence on this point, and in particular, the telephone records and residential addresses associated with Mr. Marzouk and the presence of Mr. Marzouk's P.O. Box address in Mr. Mahjoub's address book, I find that Mr. Mahjoub's assertion that he did not know Mr. Marzouk is not believable. I am satisfied that Mr. Mahjoub knew Mr. Marzouk. I am also satisfied that there are reasonable grounds to believe that Mr. Mahjoub was in contact with Mr. Marzouk.

*c) The terrorist activities or membership in terrorist organizations of  
Mr. Mahjoub's contacts*

[312] I now turn to consider whether Mr. Mahjoub's established contacts, Mr. Marzouk, Mr. Khadr, Mr. Al Duri, and Mr. Jaballah are individuals engaged in terrorism or members of terrorist organizations as alleged by the Ministers. I shall examine the evidence adduced concerning three of these contacts in turn with the view of assessing their alleged terrorist activities and alleged membership in terrorist organizations.

[313] As stated earlier in these Reasons, in determining the reasonableness of the security certificate, I find that it is unnecessary for me to determine whether or not Mr. Jaballah was

engaged in terrorist activities or a member of a terrorist organization. I will nevertheless set out the evidence on this issue as it was presented to me on the record.

*i. Mr. Marzouk*

[314] The Ministers allege that Mr. Marzouk spent years fighting in [REDACTED] Afghanistan against Soviet forces with the Afghan Mujahideen. They allege that Mr. Marzouk “assisted Osama Bin Laden in relocating his camps from Afghanistan to Sudan [REDACTED] and arranged “transport for Afghan Islamist extremists on the way to Hezbollah camps in Lebanon.” Mr. Marzouk also allegedly trained in military camps in Afghanistan and was employed in Sudan as an instructor for the AJ in “assassination operations.” Mr. Marzouk was allegedly planning a terrorist attack against American interests in Baku, Azerbaijan when he was arrested there in 1998 and turned over to the Egyptian authorities. The Ministers allege that Mr. Marzouk used several aliases, namely “Adnan”, “Abu Their” or “Abu Their Al Masri”, “Fawzi Al Harbi” and “Essam Mohamed Hafiz.”

[315] Mr. Marzouk’s account of events bears little resemblance to the Ministers’ account.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Classified evidence adduced by the Ministers indicates that Mr. Marzouk claimed never to have crossed into Afghanistan, participated in any fighting, transported weaponry or smuggled while in Peshawar working as a “Human Rights Volunteer” with the Saudi Red Crescent in the late 1980s, early 1990s.] This story was also related in the *National Post* (13 October 2005, Exhibit A9 Tab 11).

[REDACTED]

The *National Post* reported his travel to Vancouver on a false passport (16 December 2002, Exhibit A9 Tab 10). [The name on the passport was Fawzi Msi Ibn Fahd Al Harbi]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED]).

[316] [REDACTED]

[REDACTED]

[317] The circumstances of Mr. Marzouk's arrival at the Vancouver International Airport are noteworthy. On June 16, 1993, Mr. Marzouk arrived on a false, photo-substituted Saudi passport bearing the name Al Harbi [REDACTED] ([REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[318] [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[The Ministers adduced classified evidence that Mr. Marzouk arrived at Vancouver International Airport with many suspicious items]. The *National Post* reported on the false identification documents (14 October 2005, Exhibit A9 Tab 12). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[319] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] )

[REDACTED] SIR Reference

Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]

[320] Mr. Marzouk's contact upon arrival in Vancouver was also noteworthy. When Mr. Marzouk was detained by immigration officials, Mr. Ali Abouelseoud Mohammed came looking for him (*The Globe and Mail* 22 November 2001, Exhibit A9 Tab 6; *National Post* 15 October 2005, Exhibit A9 Tab 13).

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[321] [REDACTED]

[Redacted]

( [Redacted] SIR  
Reference Indices Tab [Redacted] )

[322] [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted] ( [Redacted]  
[Redacted] SIR Reference Indices Tab [Redacted] ).

[323] [Redacted]  
[Redacted]

[Redacted]

[Redacted]



[REDACTED]

[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[324] [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ).

[325] Mr. Marzouk’s American friend, Mr. Mohammed, is a well-known terrorist and member of Al Qaeda. [REDACTED] [A CSIS witness] explained in [REDACTED] testimony:

[REDACTED]

[REDACTED]

[326] More specifically, Mr. Mohammed pleaded guilty to several counts in *United States of America v. Usama Bin Laden*, 92 F.Supp.2d 225 (US District Court of New York) in the aftermath of the 1998 bombings of the United States Embassies in Kenya and Tanzania that killed 224 people (Allocution proceeding of Ali Mohammed, Exhibit R46). Mr. Mohammed was accused of providing military and intelligence training to Al Qaeda members in military camps in Afghanistan, Pakistan and Sudan, and, along with American citizen Wadih El Hage, of assisting Al Qaeda by traveling and engaging in financial transactions on its behalf. On October 20, 2000, he pleaded guilty to five counts of conspiracy to kill Americans abroad and to destroy United States military installations and government buildings. He admitted that in 1992, he gave military, basic explosives and intelligence training to Al Qaeda members in Afghanistan, and that in late 1993 and 1994, he was in Khartoum, training Mr. Bin Laden's bodyguards and planning the attack on the American embassies (*ibid.* pp.27-28). He also admitted to being a double agent for the Federal Bureau of Investigation (FBI) and Al Qaeda (*ibid.* pp.29-30).

[327] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[328] [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[329] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED])

**[The Ministers have adduced classified evidence that Mr. Marzouk was involved in training with Mr. Mohammed and that the two of them helped to relocate Al Qaeda to Sudan in 1991.]** The allegation that Mr. Marzouk was assisting Mr. Mohammed in relocating Al Qaeda to Sudan in 1991 is also found in an article on him in the *Vancouver Province* (21 December 2001,

Exhibit A9 Tab 8). Mr. Mohammed gave approximately the same details to the RCMP, including an admission “that he had travelled to Vancouver, Canada, in the spring of 1993 to facilitate the entry of that individual [Mr. Marzouk] into the United States...[and] that he and the individual had transported Usama Bin Laden from Afghanistan to the Sudan in 1991” (FBI Special Agent D. Coleman Affidavit, Exhibit A9 Tab 27).

[330] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[331] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR

Reference Indices Tab [REDACTED]).

[332] While Mr. Mohammed seems to have been playing both sides (as he later admitted in his guilty plea), reporting to both Al Qaeda and the United States authorities, and was accused of lying on several occasions (as he also admitted), his information on Mr. Marzouk's terrorist ties is partly corroborated [by additional classified evidence] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED])

[REDACTED]

[REDACTED]

[333] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[334] [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED]

[REDACTED]

[REDACTED] [Classified evidence] and

Professor Wark’s expert report (W. Wark Expert Report, Exhibit R24, p.2) confirm that

Mr. Marzouk spent some time in Sudan.

[335] Moreover, Mr. Marzouk had a family connection to Mr. Al Duri [through Zeinab Khadr, Mr. Marzouk’s mother-in-law.] [REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ).

[336] While the Service confirmed that Mr. Marzouk did “nothing of concern” while in Canada (John’s testimony DES-5-08, 4 November 2008, Exhibit A24, pp.276-277; Professor Wark Expert Report Exhibit R24, p.49), Mr. Marzouk’s departure from Canada and subsequent travel is suspect.

[337] [REDACTED]

[REDACTED] ( [REDACTED]

SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[338] Mr. Marzouk later made his way to Baku, Azerbaijan on [REDACTED] 1998 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[339] [REDACTED] [The Ministers provided evidence indicating] that Mr. Marzouk was plotting attacks against American interests in

Azerbaijan [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )



( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[342] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] ). The Service [also believed]  
[REDACTED] that Mr. Marzouk was a sleeper agent (John's testimony DES-5-  
08, 4 November 2008, Exhibit A24, pp.276-277).

[343] There is reference on the record to direct evidence that Mr. Marzouk was connected to Al Qaeda. His contact information was found in the address book of Mr. El Hage (D. Byman Expert Report, Exhibit A19, p.63), and the business card of a business of which he was a director was found in an Al Qaeda guesthouse in Kabul (*The Guardian* 18 November 2001, Exhibit A9 Tab 30; *The Globe and Mail* 22 November 2001, Exhibit A9, Tab 6).

[344] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[345] [REDACTED]

[REDACTED]

[REDACTED] According to Mr. Guay and several secondary source articles, Mr. Marzouk was involved in bomb-making and the transportation of individuals out of Afghanistan (M. Guay testimony, 13 October 2010, p.76; Exhibit A9, Tab 9, 11, 12 and 13).

[346] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[347] [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[348] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[349] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[350] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[351] [REDACTED]  
[REDACTED] ([REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]; Closed Exhibit [REDACTED], Tab [REDACTED]).

**[The Ministers have adduced a significant body of classified evidence, some of which being of questionable reliability, concerning additional terrorist activities in which Mr. Marzouk allegedly participated.]**

[352] Nevertheless, I am satisfied that the Ministers have established reasonable grounds to believe that Mr. Marzouk was a member of the AJ and Al Qaeda network and engaged in terrorism.

[353] [REDACTED] [Mr. Marzouk] was friends with Mr. Mohammed, a terrorist planner and trainer, close associate of Mr. Bin Laden, and Al Qaeda member, all of which he admitted in his guilty plea before the New York District Court. Mr. Mohammed was in the Vancouver airport to meet him upon his arrival in Canada, and they had plans to travel to the United States together.

[354] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[The evidence establishes]** reasonable grounds to believe that Mr. Marzouk was in Afghanistan and Sudan, and that he was a volunteer fighter in the Afghan-Soviet War.

[355] [REDACTED]

[REDACTED] Mr. Marzouk admitted to being in the Peshawar area of Pakistan, near the Afghanistan border, during the Afghan-Soviet War, and he left the area for Canada in 1993, after the communist government in Afghanistan fell. His claims to have been a mere humanitarian relief worker who never left Pakistan, in light of all of the evidence, are not credible. In my view, he was likely engaged in the Afghan-Soviet War. [REDACTED]

[REDACTED]

Mr. Kherchtou's testimony that Mr. Marzouk's friend Mr. Mohammed (using the alias "Al Amriki") had an assistant trainer, a "fellow Egyptian" named "Adnan" (H. Kherchtou transcript, Exhibit A12, pp.1141), sufficiently corroborates this evidence to establish reasonable grounds to believe that Mr. Marzouk used this alias. I am also satisfied on the basis of the materials seized from Mr. Marzouk at the Vancouver International Airport that he was using and creating false identities. [REDACTED]

[REDACTED] Further, Mr. Kherchtou testified that "Adnan" was a member of the AJ along with Mr. Mohammed (H. Kherchtou transcript, Exhibit A12, pp.1149). In my view, this evidence establishes reasonable grounds to believe that Mr. Marzouk was a member of the AJ and Al Qaeda network.

[356] There are also reasonable grounds to believe that Mr. Marzouk was engaged in terrorist training. He was close friends with Mr. Mohammed who admitted to being the trainer of Mr. Bin Laden's bodyguards and who had extensive experience in training while in the United States military. [REDACTED]

[357] Finally, there are reasonable grounds to believe that Mr. Marzouk was involved in supporting or planning terrorist operations. [REDACTED]



[REDACTED]

[REDACTED] Carrying a false passport, forged identification papers, and the means to forge more, Mr. Marzouk planned to meet Al Qaeda member Mr. Mohammed in Vancouver and transit to the United States. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mr. Marzouk left Canada under another false identity and made his way to Azerbaijan. [REDACTED]

[REDACTED] Mr. Marzouk was then arrested in the company of suspected terrorists in Baku, Azerbaijan. [REDACTED]

[REDACTED] All of this evidence establishes reasonable grounds to believe that Mr. Marzouk was engaged in forging, financing and other support for terrorist activities, as well as planning violent attacks on United States interests.

*ii. Mr. Khadr*

[358] The Ministers allege that Mr. Khadr was a “senior Osama Bin Laden aide and fundraiser.” They note that in October 2003, Mr. Khadr died in a firefight with Pakistani security forces.

[359] Mr. Khadr allegedly used various aliases or variant spellings of his name, the primary alias being “Al Kanadi” or “Al Canadi” (“the Canadian”), [REDACTED]

[REDACTED]. This alias is mentioned in an article on Mr. Khadr in the periodical *Terrorism Monitor* (28 July 2005, Exhibit A9 Tab 23).

[360] The Service believed that Mr. Khadr went by the alias “Al Kanadi” ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] ([REDACTED] SIR reference indices Tab [REDACTED]), [REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). **[The Ministers have adduced significant classified evidence associating Mr. Khadr with this alias.]** Attributing this alias to Mr. Khadr makes sense given that Mr. Khadr was a Canadian citizen. On the basis of this information, I am satisfied that “Al Kanadi”, “Abdel Rahman Al Kanadi” or “Al Canadi” are aliases for Mr. Khadr.

[361] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ([REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[362] [REDACTED]

[REDACTED]

[363] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference

Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[364] [REDACTED] ( [REDACTED]

[REDACTED] SIR reference indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference indices, Tab [REDACTED]) [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]; Closed Exhibit [REDACTED] Tab [REDACTED]).

[365] [REDACTED] ( [REDACTED]

[REDACTED] SIR

Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] **[An article reported the following:]**

In an interview in January 1996..., Mr. KHADR admitted he was close to the main suspect in the Egyptian-embassy bombing, a Sudanese businessman named Khalid ABDULLAH. Mr. KHADR had tried to arrange a marriage for his 16-year-old daughter, Zaynab, to Mr. ABDULLAH, and had allowed him to live in their house in Peshawar for two months in 1995 before the bombing of the Egyptian Embassy...

*(The Globe and Mail article [REDACTED] SIR Reference Indices Tab [REDACTED])*

[366] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab )

**[The Ministers have adduced evidence of a connection between Mr. Khadr and Mr. Saqr.]**

[367] As we have seen at paragraphs [REDACTED] and 340 above, Mr. Saqr was also arrested with Mr. Marzouk in Baku, Azerbaijan for plotting to bomb the American Embassy in Baku. [REDACTED]

[REDACTED]

[368] [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab )

[369] [REDACTED]

[REDACTED]

( [REDACTED] SIR reference indices Tab [REDACTED] ).

[370] [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED] **[The Ministers have adduced classified evidence that Mr. Khadr was involved in financing activities for Mr. Bin Laden.]** Mr. Khadr's connection to Al Qaeda financing is further supported by evidence released by a Chicago judge that Mr. Khadr was in contact with Al Qaeda while he was holding a senior position in the charity, Human Concern International (*National Post* 1 February 2003, Exhibit A2, Tab 17). This lends further support to the Ministers' allegation that Mr. Khadr was involved in financing the Bin Laden network.

[371] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[372] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[373] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]



[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[The Ministers have adduced classified evidence that Mr. Khadr was involved with individuals who were planning violent attacks on the United States.] Open source information indicates that Ahmad Rassam was the so-called “Millennium Bomber” who planned to bomb the Los Angeles Airport on New Year’s Eve, 1999, and also connected Mr. Rassam to Mr. Khadr (W. Wark, Chapter 10, *The Views of Canadian Scholars on the Impact of the Anti-Terrorism Act*, Exhibit A32, p.87; *London Free Press* 11 September 2005, Exhibit A2, Tab 12).

[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[374] Two of Mr. Khadr’s sons, Abdullah Khadr and Omar Khadr, were captured by US military forces in 2002 during the invasion of Afghanistan. Omar Khadr has pleaded guilty to war crimes and is currently serving his sentence in Canada. Mr. Abdurahman Khadr, another of

Mr. Khadr's sons, has said in a media interview that Mr. Khadr sent him to Afghanistan to train to become an Al Qaeda suicide bomber (*National Post*, 6 March 2004, Exhibit A9, Tab 24; *Maclean's* 4 August 2006, Exhibit A9, Tab 26). Open source information indicates that Mr. Khadr was killed by Pakistani security forces during a shootout between them and Al Qaeda forces on October 2, 2003 (*London Free Press*, 11 September 2005, Exhibit A2, Tab 121). Upon his death, he was eulogized in the *Book of 120 Martyrs* as a military commander for Mr. Bin Laden in Lowgar, Afghanistan (Exhibit A9, Tab 25; M. Guay testimony, 13 October 2010, p.66). Professor Byman opines that this means that Al Qaeda saw him as important to the organization (D. Byman testimony, 28 October 2010, p.96).

[375] I am satisfied that there are reasonable grounds to believe that Mr. Khadr was a member of a terrorist organization, namely the AJ and Al Qaeda network, and engaged in terrorism. [REDACTED]

[REDACTED] **[The evidence]** that Mr. Khadr was a senior Osama Bin Laden network aide and fund-raiser is compelling and credible. [REDACTED]

[REDACTED] Mr. Khadr's network of contacts within the terrorist milieu was extensive as established by the evidence of his connections to Mr. Saqr [REDACTED]

[REDACTED] **[and others].**

[376] [REDACTED]

[REDACTED] **[Some of the Ministers' classified evidence that Mr. Khadr was involved in violent activities only raises a suspicion.]** Nevertheless, in the context of all of the

evidence, I find the *Book of 120 Martyrs* entry on Mr. Khadr to be compelling evidence that Mr. Khadr was involved in violent activities on behalf of Mr. Bin Laden.

*iii. Mr. Al Duri*

[377] The Ministers allege that Mr. Al Duri, as Director-General for the Althemar Almubarakah Company, one of Mr. Bin Laden's companies in Sudan, was an adviser and confidante of Mr. Bin Laden [REDACTED]. They allege that Mr. Al Duri worked for Althemar and another company believed to form part of Mr. Bin Laden's business apparatus, and his "real role" with Mr. Bin Laden was to spearhead Al Qaeda's weapons of mass destruction program. They also allege that Mr. Al Duri was in contact with a man named Mamdoh Mahmoud Salim, "a close associate of Osama Bin Laden," the manager of Mr. Bin Laden's finances, and "an important intermediary in the group's efforts to buy arms and material for nuclear weapons." Mr. Al Duri allegedly goes by several aliases and the variant spelling of his name "Al Douri." The most important alias is "Abdel Razak", but he also allegedly uses [other aliases] [REDACTED]

[378] I am satisfied that "Abdel Razak" is either an alias of Mr. Al Duri or [REDACTED] [REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). The envelope in which Mr. Mahjoub received a letter from Mr. Al Duri had a return address of "Dr. Mubarak A RAZAK" (Search 28/29 June 2000, SIR Reference Indices Tab [REDACTED]; SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). **[The Ministers have also adduced classified evidence connecting Mr. Al Duri to the name “Abdel Razak”.]**

[379] I am also satisfied that Mr. Al Duri was Director-General of the “Althemar Almubarakah Agriculture Company.” Mr. Al Duri signed his name “Dr. Mubarak Ali AL DOURI, Director-General of the Althemar Almubarakah Agriculture Company” on the reference letter to Mr. Mahjoub (Reference Letter to Mr. Mahjoub 17 October 1993, Exhibit A2, Tab 10). There is some discrepancy in the evidence as to when precisely Mr. Al Duri was Director-General or General Manager of Althemar in Sudan. [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). **[The Ministers have adduced classified evidence that suggests a different time period.]** Since the information included in the October 17, 1993 letter could not have been provided had Mr. Al Duri not been employed as Director-General of Althemar at the time it was sent, I give the letter and its information more weight on this point than I do **[classified information]** [REDACTED]. In addition, Mr. Al Fadl’s testimony indicates that Mr. Al Duri was working at Althemar’s head office as of his visits starting in 1991 (J. Al Fadl testimony, Exhibit A12, p.249). I am therefore satisfied that Mr. Al Duri was Director-General of Althemar Almubarakah as of October 17, 1993, and likely earlier.

[380] [REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). **[Some of the classified evidence adduced by the Ministers refers to different name spellings.]** The October 17, 1993 reference letter is signed “Al Douri”. Although I recognize that the letter is a translation from the Arabic, it is likely that there are variant transliterations of the name into English. On the basis of the information on the record relating to the usage of the names Al Duri and Al Douri, I am satisfied that “Al Douri” is a variant spelling of “Al Duri.” I am also satisfied that “Mubarak Al-Doori”, found in reference to a high-ranking person in Althemar in the *USA v. Bin Laden* transcript, is a variant spelling of Mr. Al Duri’s name (Exhibit A12).

[381] [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference  
Indices Tab [REDACTED]). [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab  
[REDACTED]). [REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). This evidence provides reasonable grounds to believe that Mr. Al Duri was also known [REDACTED] **[by another alias.]**

[382] Mr. Al Duri came to Canada in November 1989

(

SIR Reference Indices Tab ). He received Canadian citizenship in 1995

he lived and studied in Tucson,

Arizona and graduated in 1985 from the University of Arizona with a Ph.D. in agronomy (

SIR Reference Indices Tab ; *Arizona Daily Star* 25 July 2004,

Exhibit A9 Tab 38).

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SIR Reference Indices Tab ).

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Indices Tab SIR Reference Indices Tab

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[383]

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( SIR Reference Indices Tab ).

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( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ), [REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED] **[The fact that Mr. Al Duri moved to the United Arab**

**Emirates in the late 1990s is supported by]** the August 12, 1998 letter to Mr. Mahjoub discussing certain investments, wherein Mr. Al Douri confirms that he "...brought his family to the Emirates a few months ago ..." (Letter from Al Duri 12 August 1998, Exhibit A2, Tab 83).

[384] Mr. Al Fadl recounted that he personally worked for the "al Qaeda companies in the Sudan" including the Wadi al Aqiq Company (J. Al Fadl transcript, Exhibit A12, p.239). He described Althamar as a company "established by al Qaeda in the Sudan" that ran the Damazine Farm, a farm that grew "sesame and peanuts and white corn over there and at the same time they use bark [*sic*] of the farm for refresh training for the Qaeda members", with two-thirds of the 50,000 fadden (approximately 21,000 hectare) farm used to grow agricultural products (*ibid*, pp.241-242). Although he did not personally witness explosions on the farm, Mr. Al Fadl testified that he saw explosives on the Damazine Farm, Al Qaeda members - including explosives experts - in the vicinity of the explosives, and people training at the Damazine Farm. (*ibid*, pp.243-244).

[385] Concerning Mr. Al Duri specifically, Mr. Al Fadl testified about him during examination-in-chief on the subject of Al Qaeda's offices as follows:

Q....Where were the al Qaeda offices [in Khartoum] located?

A. We have offices in McNimr Street.

...

Q. Did you work inside the building on McNimr Street?

A. Yes.

...

A. In the first office on the left...Bin Laden, he got office, room over there.

Q. Did there come a time when Bin Laden moved his office?

A. Yes

...

A. We buy a building Riyadh City in Khartoum for Wadi Al Aqiq.

...

Q. After Bin Laden moved his office, who took over the first office on the left?

A. Abu Hassan el Masry and also shared with Dr. Mubarak al Doori.

Q. What about the next office, are those the two people who shared that office?

A. Yes, because they're on the Themar al Mubaraka Company.

Q. Was Abu Hassan el Masry a member of al Qaeda?

A. Yes.

Q. Was he a member of any other group?

A. Jihad group... Egyptian Jihad group.

...

Q. When you first went into the offices, what year was this?

A. This is in '91.

(J. Al Fadl transcript, Exhibit A12, pp. 246-249)

[386] The prosecutor did not ask Mr. Al Fadl if Mr. Al Duri was a member of Al Qaeda. In addition, Mr. Al Fadl testified that there were individuals in the McNimr Street offices who were not Al Qaeda members:

A. Most of the time when we talk about al Qaeda agenda, be guesthouse or the farm.

Q. Why would you not talk about it at McNimr Street?

A. Because we get other people, they're not membership, they're not membership of the al Qaeda, they work just for business.

(J. Al Fadl transcript, Exhibit A12, p. 264)



[387] Nonetheless, Mr. Al Fadl testified that when Mr. Bin Laden moved his offices to those of the Wadi al Aqiq Company in Riyadh City, Mr. Al Duri followed:

Q. You mentioned the offices of Wadi al Aqiq...where were they located?

A. They are in Riyadh City in Khartoum and near the Riyadh Street.

...

A. It's two floor, and when you go, first, the secretary, and after that, Themar al Mubarak, they move from McNair Street to the building and they got the right office.

...

Q. The offices for al Qaeda, on which floor were they?

A. Bin Laden, he got office in the second floor...and Dr. Mubarak al Doorri in the first floor, right of the secretary hall.

(J. Al Fadl transcript, Exhibit A12, pp. 419-420)

[388] Despite Mr. Dratel's concerns about the objectivity of Mr. Al Fadl which I have analyzed at paragraphs 151-156 above, I find Mr. Al Fadl's account on these points to be credible. While I have concerns about Mr. Al Fadl's potential to exaggerate his knowledge in order to curry favour with the United States authorities, Mr. Al Fadl appears to guard against exaggeration in this instance by testifying that while on Damazine Farm, unlike another Al Qaeda farm he visited in north Khartoum, he witnessed no explosions.

[389] In light of Mr. Al Fadl's testimony, it is possible that Mr. Al Duri was one of those individuals who was not a member of Al Qaeda but who "just work for business" in agriculture as Director-General or General Manager of Althemar. **[The Ministers have adduced classified evidence that]** Mr. Salim, who similarly ran one of the "al Qaeda companies", the al Hijra Construction Company that built a road between Damazine City and Kormuk City (J. Al Fadl transcript, Exhibit A12, pp.240-241), **[could also have just worked on the business side of Mr.**

**Bin Laden's enterprise]**

SIR Reference Indices Tab ).

[390] There is also evidence to the contrary on the record. Mr. Salim was extradited from Germany to the United States ( SIR Reference Indices Tab ). Mr. Salim was indicted in *USA v. Bin Laden* (Exhibit A2 Tab 37), and while incarcerated awaiting trial on November 1, 2000, Mr. Salim attempted to escape from prison and stabbed two prison guards, one of them in the eye ( *New York Times* 3 December 2008, Exhibit A9 Tab 47). Mr. Salim was convicted of attempted murder for the incident and convicted of various conspiracy charges related to the African Embassy bombings. As a founding member of Al Qaeda in *USA v. Bin Laden*, Mr. Salim is currently serving a life sentence for these crimes in the United States. It was Mr. Al Fadl's opinion that Mr. Salim was a member of Al Qaeda because he played a founding and leading role in Al Qaeda as a member of the Shura Council and the business committee, who was also a doctrinal leader of the group (J. Al Fadl transcript, Exhibit A12, p.177-178, 210, 217, 514, 517, 1002). It was also Mr. Mohammed's opinion that Mr. Salim was a member of the Al Qaeda Shura Council (Allocution proceeding of Ali Mohammed, Exhibit R46). **[There is also classified evidence that Mr. Salim was in contact with a Canadian company for subversive purposes.]**

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[391] Considering all of the evidence, I find that Mr. Salim’s denial of his own involvement with Al Qaeda and terrorist activities is not credible. The evidence on the whole, and in particular the evidence of other Al Qaeda members, supports a finding that Mr. Salim was a member of Al Qaeda and engaged in terrorist activities.

[392] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[REDACTED] I will address whether Mr. Al Duri was or was not an Al Qaeda member for the purposes of these proceedings later in these Reasons. I note here that Mr. Kherchtou, another member of Al Qaeda, testified that Mr. Al Duri was not a member of Al Qaeda (H. Kherchtou transcript, Exhibit A12, p.1376).

[393] Mr. Salim’s tenure at Althamar partly corresponds to Mr. Al Duri’s tenure as Director-General or General Manager of Althamar as proven by the 1993 reference letter to Mr. Mahjoub **[and corroborating classified evidence]** [REDACTED]. In addition, both individuals used the same business address. The business address on the 1993 reference letter to Mr. Mahjoub signed by Mr. Al Duri was “P.O. Box 10046, Khartoum, Sudan” (Reference Letter to Mr. Mahjoub provided by Mona El Fouli, SIR Reference Indices Tab [REDACTED]). **[The Ministers have adduced classified evidence that Mr. Salim used the same address.]** [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). On the basis of this evidence **[and other classified evidence]**, I am satisfied that Mr. Salim and Mr. Al Duri knew each other.

[394] As previously mentioned [Mr. Al Duri is also connected to Mr. Marzouk and another known terrorist.] [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]).

[395] Another known terrorist, Wadih El Hage, claimed to know Mr. Al Duri and to have spoken with him while they were both working at Althamar in his statement to the US District Court Grand Jury (W. El Hage transcript, Exhibit A12, pp.797-798, 882). While I find Mr. El Hage's testimony before the Grand Jury to be generally unreliable due to his perjury conviction as a result of that testimony, this particular aspect has been corroborated [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED])

[396] [REDACTED]

[REDACTED] In the indictment, Mr. El Hage was described as Mr. Bin Laden's personal secretary (*Washington Post* 22 September 1998, Exhibit A2 Tab 47; *USA v. Bin Laden* Indictment, Exhibit A2 Tab 37). Mr. El Hage, in addition to being indicted for the same crimes as the other defendants such as conspiracy to murder US nationals for his

involvement in the 1998 East Africa bombings, was indicted for recruiting American citizens in collaboration with Mr. Mohammed, and giving false statements (*ibid.*). He was convicted on all counts and sentenced to life in prison. Mr. Al Fadl testified that Mr. El Hage was working in the same offices in Khartoum as he and Mr. Al Duri. He testified that this was because Mr. El Hage replaced Mr. Al Fadl in his office job, and Mr. Al Fadl was responsible for training Mr. El Hage (J. Al Fadl transcript, Exhibit A12, p.259). Mr. Al Fadl knew Mr. El Hage as “Abu Abdallah Lubnani” (J. Al Fadl transcript, Exhibit A12, p.257). On the basis of this evidence, in particular his convictions, I find that Mr. El Hage was a member of Al Qaeda who was involved in the East Africa bombings.

[397] [REDACTED]

[REDACTED] [The **Ministers have adduced classified evidence of a connection between Mr. Al Duri and Mr. El Hage.**] Further, Mr. Al Fadl testified that Mr. Al Duri and Mr. El Hage worked in the same Bin Laden company offices. Mr. El Hage claimed that he knew Mr. Al Duri. On this basis, I conclude that there are reasonable grounds to believe that Mr. Al Duri was also a contact of convicted Al Qaeda terrorist Mr. El Hage.

[398] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]

[REDACTED] [Concerning the Ministers' allegation that Mr. Al

**Duri was involved with weapons of mass destruction],** Professor Wark observed that

The language replicates a footnote in the 9/11 Commission report which describes al-Duri as 'reportedly Bin Ladin's principal procurement agent for weapons of mass destruction.' It is possible that the source for this intelligence comes from Jamal al-Fadl, who testified in 2001 about his own involvement in Al Qaeda efforts to acquire material for a nuclear weapon in Sudan. It is also possible that this intelligence on al Duri may have come to the attention of the 9/11 Commission on the basis of information the Commission was provided derived from interrogations of so-called high-level detainees held by the CIA.

(W. Wark Expert Report, Exhibit R24, p.44)

Indeed, the 9/11 Commission report claimed that Mr. Al Duri served as the "principal procurement agent" for weapons of mass destruction, as reported in the *Arizona Daily Star* in an article about local Al Qaeda terrorism (25 July 2004, Exhibit A9, Tab 38).

[399] Even if Professor Wark's conjectures are correct, I find that the Ministers have failed to establish that Mr. Al Duri was involved in any Al Qaeda weapons of mass destruction program.

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] Although Mr. Al Fadl named as many of the members of Mr. Bin Laden's Shura Council as he could recall (J. Al Fadl

transcript, Exhibit A12, pp.204-207), and he remembered Mr. Al Duri by name, he did not name Mr. Al Duri as a member of Mr. Bin Laden's Shura Council.

[401] Notwithstanding my above expressed skepticism [REDACTED] about Mr. Al Duri's involvement in Al Qaeda's weapons of mass destruction program [REDACTED], I find on the basis of all of the evidence that there are reasonable grounds to believe that Mr. Al Duri was a member of Al Qaeda. I find that Mr. Al Duri's known terrorist contacts, particularly Al Qaeda members Mr. El Hage and Mr. Salim, his leadership of an Al Qaeda-founded company of 4,000 people owned by Mr. Bin Laden, and the sharing of his office with a person identified by Mr. Al Fadl as an Al Qaeda member, which office was at one point adjacent to Mr. Bin Laden's office, all to be compelling evidence of Mr. Al Duri's involvement with Al Qaeda. Even Professor Wark testified that if "refresher training" occurred on Damazine Farm at the time that Mr. Al Duri was Director of Althemar, he assumed that Mr. Al Duri would have known about it (W. Wark testimony, 25 November 2010, p.137).

[402] Mr. Al Duri might not have been an Al Qaeda member in the narrow sense understood by Mr. Al Fadl, a person who has "made bayat" or who overtly carries out the "Al Qaeda agenda" (see J. Al Fadl transcript, Exhibit A12, pp.420-421). This was likely how [REDACTED] and Mr. Kherchtou understood membership in Al Qaeda when they claimed that Mr. Al Duri was not a member. However, Professor Byman testified that Al Qaeda was willing to work with people who did not swear loyalty to the organization, as it had during the 1998 US Embassy bombings attack (D. Byman testimony, 27 October 2010, pp.19, 114-115). Mr. Al Duri was in Mr. Bin Laden's confidence as head of one of his companies, working in the same space as Mr. Bin



Laden and the same office as an Al Qaeda member. He was in close contact with leading and convicted Al Qaeda conspirators as well as [REDACTED] Mr. Marzouk. On this basis, I find that there are reasonable grounds to believe that Mr. Al Duri was an Al Qaeda member for the purposes of these proceedings.

*iv. Mr. Jaballah*

[403] The Ministers allege that Mr. Jaballah is a leading member of the AJ. The Ministers have signed a security certificate against Mr. Jaballah on the basis that Mr. Jaballah is a member of the AJ and engaged in terrorist activities, among other allegations. As stated earlier in these Reasons at paragraph 231, I will not make any finding concerning these allegations.

[404] Mr. Jaballah allegedly goes by two aliases, “Abu Ahmed” and “Mustafa.” In an interview with the Service, Mr. Jaballah reportedly admitted to using both of these aliases:

The writer began by asking JABALLAH if he had experienced any harassment at the hands of the EGYPTIAN INTELLIGENCE SERVICE (EIS) since arriving in Canada. JABALLAH responded that he was certain that the EIS was 'everywhere' in Canada, but was unable to provide specific evidence to back up his claim. When asked to provide names of individuals he suspected of working in Canada on behalf of the Egyptian government, JABALLAH could not. Despite not being able to provide any specifics, JABALLAH insisted that he felt uncomfortable due to the omnipotence of the EIS. As a result, JABALLAH explained that he did not like to use his real name in everyday interactions with people, preferring to use names such as Abu Ahmed and Mustafa.  
[Emphasis added]

(CSIS interview of Jaballah 5 March 1998, SIR Reference Indices Tab [REDACTED] Exhibit A2, Tab 15)

In addition, Mr. Mahjoub had a telephone number in his address book under the name “Abu Ahmed” that was subscribed to Mr. Jaballah (Addresses and telephone numbers on Mr. Mahjoub at the time of his arrest by CIC 26 June 2000, SIR Reference Indices Tab [REDACTED] Exhibit A7 Tab 16). On the basis of this evidence, I am satisfied that Mr. Jaballah used the aliases “Abu Ahmed” and “Mustafa.”

[405] Like Mr. Al Duri and Mr. Marzouk, Mr. Jaballah arrived in Canada on a false Saudi Arabian passport [REDACTED]. He came to Canada on May 11, 1996 and applied for refugee status. In his interview with the Service, Mr. Jaballah reportedly admitted to travel in Yemen and Azerbaijan prior to arriving in Canada, which he claimed that he did in order to search for employment as he had worked “for various relief agencies, in support of Afghan refugees and victims of the Afghan conflict” (CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab [REDACTED]; Exhibit A2, Tab 15). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). In the interview, Mr. Jaballah also reportedly stated that he worked as a teacher in Afghanistan. [REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).

[406] [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [The Ministers have adduced classified evidence that suggests that Mr. Jaballah was in contact with AJ members, including Dr. Ayman Al Zawahiri.]

[407] [REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[408] In an interview with the Service, Mr. Jaballah denied meeting Mr. Al Zawahiri in Afghanistan, but he acknowledged having seen him as follows:

JABALLAH was asked if he knew Dr. Ayman AL ZAWAHIRI..When JABALLAH did not recognize the name, the writer showed him a photograph of ZAWAHIRI. After closely studying the photograph, JABALLAH indicated that during his time at one of the refugee camps in Afghanistan (where he was a teacher) he had seen an individual who resembled the man in the photograph, but had never met the man. JABALLAH also

indicated that determining identities was difficult because no one in Afghanistan used their real names.

(CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab [REDACTED]; Exhibit A2, Tab 15)

[409] Mr. Salem provides the only evidence in this proceeding that questions Dr. Al Zawahiri's status as a leading member of a terrorist group (M. Salem testimony, 12 September 2012, p.28). As I explain at paragraphs 167 and 171 earlier in these reasons, I find that his skepticism is unsubstantiated. Dr. Al Zawahiri was indicted in the *USA v. Bin Laden* trial for leading the AJ from 1993 to 1999, being on the Shura Council of Al Qaeda, conspiring to kill U.S. nationals, being a signatory on behalf of the AJ to the fatwa published by the "International Islamic Front for Jihad on the Jews and Crusaders" in *Al Hayah* on February 23, 1998 stating that Muslims should kill Americans and American civilians anywhere in the world, conspiring to murder, kidnap, and maim US nationals outside of the U.S., and to use weapons of mass destruction on US nationals among other charges (*USA v. Bin Laden* Indictment, SIR Reference Indices Tab [REDACTED]). As Mr. Dratel points out, the indictment is not evidence; however, it is nevertheless based on evidence. Dr. Al Zawahiri personally signed the fatwa. Mr. Al Fadl testified in the *USA v. Bin Laden* trial that Dr. Al Zawahiri was among the fighters in Afghanistan who wished to establish the Al Qaeda group to continue the jihad after the Soviets left Afghanistan (J. Al Fadl transcript, Exhibit A12, p.193). He also testified that Dr. Al Zawahiri was both a member of the AJ and Al Qaeda (*ibid*, p.221). Dr. Al Zawahiri was announced on Al Qaeda websites to be the leader of Al Qaeda as of June 16, 2011 and is currently on the FBI's most wanted list. He has made statements calling for violence against Americans and their allies, including Canadians (*National Post*, 28 October 2006, Exhibit A2 Tab 62). Professor Gerges's expert opinion, as explained in paragraph 167 above, is that Dr. Al Zawahiri was an AJ leader with a disregard for life. On the

basis of record before me, I am satisfied that Dr. Al Zawahiri is a leading or founding member of the AJ and Al Qaeda.

[410] It is noteworthy that, according to the BRS report of his interview with the Service, Mr. Jaballah admits to seeing Dr. Al Zawahiri and does not categorically deny knowing him.

[REDACTED]

[411] There is also evidence that Mr. Jaballah may have been in contact with Mr. Khadr. Mr. Jaballah said during an interview with the Service that his wife was friends with the Elsamnahs, Mr. Khadr's in-laws:

After a moment of reflection, JABALLAH indicated that although these names are not familiar to him, he had met an individual named Ibrahim on one occasion at the residence of Ahmed Khadr's in-laws, the ELSAMNAHs. JABALLAH said, further, that his wife was close to the ELSAMNAHs and visited them often.

(CSIS interview of Jaballah 5 March 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 15)

[REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

[412] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED])

[413] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED])

[REDACTED]

[REDACTED]

[414]

[REDACTED]

( [REDACTED] SIR Reference  
Indices Tab [REDACTED] )

A review of the BRS report indicates that there is a risk that this information was obtained by intercepted communications. The original BRS report indicating the full information and its source is not before the Court, although it was open to the Ministers to adduce it or other evidence indicating the source of this material. While there is some evidence on the record that Abu Bari is an individual arrested on suspicion of terrorism in the UK and who may have been indicted in the *USA v. Bin Laden* proceedings, this same evidence indicates that it is uncertain whether or not Abu Bari was in direct contact with Mr. Jaballah (Excerpt from transcript in *Jaballah (Re)*, 8 June 2012, Exhibit R103 Tab 21, pp.97, 23-24). There is no further information before the Court that establishes whether or not these individuals, apart from Mr. Agiza, are connected with terrorism or terrorist groups. Although the source is unknown, there is a risk that

the information connecting Mr. Jaballah and Mr. Agiza came from intercepted conversations to which Mr. Mahjoub was not privy and may be inadmissible in these proceedings.

[415] An article from the *London Free Press* purports to describe key players in the “global terrorist threat.” Mr. Jaballah is described as wanted in Egypt and as a long-time member of the AJ. The article reports that Mr. Jaballah’s Egyptian lawyer was Tharwat Shehata, who later moved to Afghanistan where he operated the civilian branch of Al Qaeda. The article also reports that Mr. Jaballah obtained legal assistance from Ibrahim Eidaous while fighting his second certificate and that Eidaous was in jail in Britain, fighting extradition to the US for the 1998 US Embassy bombings in Kenya and Tanzania. Mr. Eidaous was believed to be the head of the AJ cell in London, and a search of Mr. Eidaous’s car in the course of a terrorism investigation resulted in the seizure of a document called “The International Islamic Front for Jihad against the Jews and Crusaders. A Legal Fatwah” (*USA v. Bin Laden* transcript, Exhibit A12, p.3895). Additionally, it is reported that Mr. Jaballah’s fingerprints matched those belonging to a notorious terrorist in Egypt, Mahmoud Said (*London Free Press*, 11 September 2005, Exhibit A2 Tab 12). Professor Gerges describes Mr. Shehata as the leader of the AJ who took over briefly from Dr. Al Zawahiri in 1999 (F. Gerges Expert Report at paragraph 137). Further a Scotland Yard witness in the *USA v. Bin Laden* trial testified to evidence connected with the US Embassy bombings found in Mr. Eidaous’s home and car (P. Webber transcript, Exhibit A12, starting at p.3374).

[416] [REDACTED]

[REDACTED]



[REDACTED]

( [REDACTED] SIR  
Reference Indices Tab [REDACTED] )

[REDACTED]

[The Ministers have adduced classified evidence of a connection between Mr. Jaballah, Hasan Farhat, Ali Hussein, Mustafa Krer and Kassem Daher.] The Ministers have established that “Abu Ahmed” was Mr. Jaballah’s alias, and (416) 289-2361 was his telephone number.

[417] During his interview with the Service, Mr. Jaballah denied knowing Mr. Farhat and Mr. Hussein before he came to Canada, and asserted that “he did not know them very well and had met them only a few times” (CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab ■ Exhibit A2, Tab 15). When asked whether he knew about Mr. Farhat’s or Mr. Hussein’s activities, he denied knowing anything about them except that they had moved away from Toronto. Mr. Jaballah further denied knowing anyone by the names Mustafa Krer or Abu El Fadhl, or Kassem Daher or Abu Dar. The Service informed Mr. Jaballah that it believed he was being disingenuous (*ibid.*, SIR Reference Indices Tab ■ Exhibit A2, Tab 15).

[418] There is no evidence on the record that establishes that Ali Hussein was connected with terrorism; however, the article from the *London Free Press* describes Hassan Farhat and Kassem Daher as having terrorist connections (*London Free Press*, 11 September 2005, Exhibit A2 Tab 12). The article alleges that Mr. Farhat was the former director of the Salaheddin Mosque in Scarborough and a member of the Islamic extremist group Ansar al Islam. He was also allegedly captured in 2003 in northern Iraq while fighting the People’s Union of Kurdistan. Mr. Daher was allegedly a member of Usbat al-Ansar, a Lebanese terrorist group believed to be linked to both

Hezbollah and Al Qaeda. Mr. Daher is alleged to have lived in Leduc, Alberta at this time but since moved to Lebanon and was wanted by the United States authorities.

(

SIR Reference Indices Tab ).

[419]

(

)

(

SIR Reference Indices Tab )

[420]

(

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[421] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[422] In addition, as the Service notes in the context of Mr. Jaballah's interview:

During the interview, JABALLAH ...never denied the allegations of jihad activity or the connections to individuals involved in attempting to bring down the MUBAREK government in Egypt.

(CSIS interview of Jaballah 5 March 1998, SIR reference indices Tab [REDACTED]; Exhibit A2, Tab 15)

[423] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[424] [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[425] [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[426] The Ministers have adduced [classified] evidence in support of their allegation that Mr. Jaballah is involved in terrorist activities pertaining to Mr. Jaballah's behaviour. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[427] This section comprises the evidence on the record supporting or refuting the Ministers' allegation of Mr. Jaballah's involvement in terrorism or membership in terrorist organizations. As stated earlier in these reasons, it is not necessary to make a finding.

*d) Evidence connecting Mr. Mahjoub to a terrorist organization*

[428] Having established that there are reasonable grounds to believe that three of Mr. Mahjoub's contacts were members of terrorist organizations and some of them were engaged in terrorism, it is important to examine these contacts in the context of the other evidence linking Mr. Mahjoub to one or more terrorist organizations, in particular the AJ and the VOC. In considering if a foundation exists for these links, I shall set out the evidence in a chronology of Mr. Mahjoub's travel, activities and contacts. This will enable me to examine the evidence holistically with a view to finding whether or not there are reasonable grounds to believe that Mr. Mahjoub was a member of an organization described in paragraph 34(1)(f) of the *IRPA*.

[429] It is not disputed that Mr. Mahjoub was born on April 3, 1960 in the Al-Sharkiya Governorate in Egypt, that he went to elementary school in Al-Kess from 1966 to 1972, middle school in Al-Souma from 1972 to 1975, and the Institute of Abohammad/Azhary in Abohammad from 1975 to 1979 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3).

*i. Mr. Mahjoub's activities from 1979 to 2000*

*1979-1986*

[430] It is uncontested that Mr. Mahjoub began university at Al Azhar University in Cairo, enrolling in a Bachelor of Science program in agriculture, in September 1979 and attended university through the assassination of President Sadat in 1981 and the early years of President Mubarak's administration as well as the Afghan-Soviet War (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). Mr. Mahjoub claimed that he wanted to enter the Faculty of Aviation but

says he did not have the right connections, and while he was at university, he also studied computers (*ibid*).

[431] It is also undisputed that Mr. Mahjoub graduated from Al Azhar University with a B.Sc. in agriculture in June 1985 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). Mr. Mahjoub claimed that he could not start his compulsory military service right away because of flu, but that he started his training in Dashur, Egypt in fitness and Kalashnikov weapons on October 9, 1985 (*ibid.*; CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23). He claimed that he was then posted to Esmaeliya to work on air defence near the Suez Canal at a Command Post operations room which monitored Egyptian aircraft movement, and he was promoted to Sergeant (*ibid*).

[432] Mr. Mahjoub claimed that he was then arrested at the beginning of April 1986 for the following reason:

Unfortunately, the Egyptian security forces found my name with one of my former schoolmates, Ahmed Ismael Abonar. We had been students together at Al-Azhar University, no more and no less. We both majored in Agriculture. Towards the end of the academic year in 1985, our last year of university, he told me that he was going to the United States to do his post-graduate studies. He asked me for my home address in order to correspond with me. I gave him my address for this reason only. After our graduation, we went our own separate ways.

Ahmed did not contact me, and I did not contact him because I did not have his address. I thought that he had gone to the United States to continue his studies, as he had told me he would do. There was no contact between us.

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)



He reportedly repeated this account during his interview with the Service (CSIS Interview 8 August 1997, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 21).

[433] Mr. Abonar was, according to Mr. Mahjoub, an alleged member of the Muslim Brotherhood. In his PIF, filed with his refugee claim, Mr. Mahjoub recounted being tortured at the hands of the Egyptian security services because he was also suspected of being a member of the Muslim Brotherhood, as follows:

...I was summoned to the headquarters of the military intelligence in the city of Esmaeliya. It was at the beginning of April 1986...Exactly at 5 p.m. they called me in and I was taken to the interrogation room on the third floor of the building. Before I left the reception room, they blindfolded me, I was pushed and then they started psychological war and pressure against me until the beginning of the inquiry which started at 2 a.m...

After this, and exactly at 2 a.m., they started the interrogation with me. I entered the interrogation room, already completely exhausted from the torture...The first interrogator entered and started a series of questions. The second, third and fourth interrogator entered together. They started asking about basic personal information, names of family and relatives back as far as seven generations. They asked if I had been detained before, if my relatives had been detained, if I was a member of any political or religious organizations, who were my friends at University, who are my friends in the military, what mosques do I attend...Sometimes, when they weren't happy with the answers, they would slap me from behind. I remained blindfolded throughout the interrogation... The situation remained the same for 14 days continuously. They threatened to kill me without telling anyone and they threatened to detain all my brothers and sisters. The threats continued even to the point that they threatened to detain my mother and take off all her clothes and my sisters' clothes as well if I did not say what they wanted to hear...

During the four months from the beginning of April 1986 until August 1986, I would ask them what I was charged with or accused of, but nobody would answer my question. I didn't find out the reason until one day before I left. I saw in the inquiry branch of the military intelligence that I was not alone, that there were many

others from different military ranks who were detained there. Among them were Lieutenant Colonels, Sergeants, and conscripted officers, among them engineers, doctors, etc.

During all this time, my family did not know anything about me. They went to my military unit and were informed that I had gone on a training course to another military unit. By chance, when I was transferred from the investigation branch to the headquarters of the military intelligence branch...one of my colleagues from my unit passed by me, talked to me, I told him what happened and I told him to inform my family about my situation and to retain a lawyer to help me to file a petition to the President of the country or to the Minister of Defence.

During my incarceration, I was subjected to different kinds of torture. Beginning when I arrived...They call this a reception party, the introduction to a series of torture for a new detainee, intended to make the detainee think about what happened and to make him confess to everything, even if he is not guilty...Sleep deprivation for long periods, as long as two or three days, was used to put pressure on me to admit things that I didn't know anything about, that is that I belong to the Muslim Brotherhood. Because they found my name with my colleague they did all this to me... The cell that I was detained in was about one and a half metres long and about three quarters of a metre wide, and it was about two and a half metres high. Its location was in the basement of the building, underneath the investigations branch...The food they brought was comprised of about 60 % of insects, the rest food. This is another way to humiliate the detainees...The cell was very hot in the summer and cold in the winter because it was made of concrete.

Other means of torture and humiliation included taking off my clothes during the investigation. By doing this the individual is forced to think about suicide because of this dehumanizing treatment. This is for the detainee to be humiliated and to lower the resistance of the detainee.

...They wanted me to confess to everything they said or to work for them by spying on people. They told me this more than once and when I refused to confess or to work for them they beat me the same way I was beaten during the reception party... They also tortured me by taking off all my clothes, making me lie down on a foam pad, still shackled and handcuffed, and then applying an electrical current, all in the presence of a doctor in order not to kill the detainee...

...

After all this torture, I was transferred in August 1986 to the national headquarters of the military intelligence, known as Group 13, in the Nasr area of Cairo. An accused person is transferred to Group 13 after a series of investigations. A letter is sent from the branch where the person was detained...I entered an investigation room and they started a series of questions, first about personal information from the day I was born right through until that day, even though my file had all this information already...

After all this torture and interrogation, I was detained for two days at the national headquarters of the military intelligence in the area of Nasr in Cairo...after a long period of interrogation I was asked about one of my colleagues, Ahmed Ismael Abonar...I told them that he was my colleague at the university, we were in the same specialty for four years and that I know him well because we lived in the same building...This investigator told me that Ahmed Ismael Abonar had been arrested and that they had found my name with him...The investigator told me that this man was arrested and was accused of being with the Muslim Brotherhood...I was then threatened that I would be dismissed from my compulsory military service and detained the rest of my life, but god's wish was that I should be released in August 1986 without being charged and without any accusations proved. After two days, I was told that I could leave and I did so. I went back to my military service and I finished it with good conduct.

[Emphasis added]

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)

[434] Mr. Mahjoub first came to the Service's attention [in 1996] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ([REDACTED])

[REDACTED] SIR Reference Indices Tab [REDACTED]).

[435]

[The Ministers have adduced classified evidence that Mr. Mahjoub's account of his torture may not be credible]. Mr. Mahjoub was indirectly questioned about this before the IRB panel, which did not feel it necessary to pursue the matter further (IRB transcript, Abuse of Process motion record Tab K, pp.44-45). There is insufficient evidence upon which to infer that Mr. Mahjoub [was falsifying his account], as suggested by the Ministers. In any event, the Ministers have not subsequently disputed Mr. Mahjoub's statements concerning his incarceration and torture in 1986

[436] Mr. Mahjoub claimed that he was released in August 1986 and completed his military service with good conduct in December 1986 (CSIS Interview 8 August 1997, SIR Reference Indices Tab [redacted]; Exhibit A2, Tab 21).

[437] I find that there is no compelling reason to doubt Mr. Mahjoub's story up to 1986.

*1987-1991*

[438] In his PIF, Mr. Mahjoub claimed that he remained in Egypt, continually harassed and interrogated by the Egyptian state security apparatus, from 1987 to 1991 as follows:

...After I was released from the military in December 1986, a new stage of observation started in a very clear and explicit way by the state security organization as I was a civilian and under the jurisdiction of the state security organization.

After I was released from my military service I was summoned to the state security organization in the city of Zakazek many times. Each time they would detain me for a whole day. During that time they would intensively interrogate me with more than one investigator and for roughly seven hours continuously...

To me, this meant that the state security had many informants, and it seemed to me that they would put two or three informants to follow one individual. I say this because for instance they would ask me why on a certain day I went to a certain place and I would have to explain to them, even when I went to a public place or to another city...The investigators told me that I should either leave Egypt or be imprisoned where they would not leave me alone no matter what I did...They assigned two individuals to watch me. These two individuals were collaborators with the state security organization. These two were from my village. They wrote periodic reports for the state security organization in the city of Zakazek.

After I was released from the military, many times my mother and my brother Hamdy were summoned to be interrogated about me...

From 1987-1991 there was continuous severe harassment by the state security forces...Whenever I looked for a job to support myself, the employer would ask for a report from the state security. This is required by some companies but not all. For example I applied for a job at the Ministry of Justice to work as an agricultural expert. After I went to an interview and took an exam which I passed, I was not given the job. When I asked why, one of the people in charge told me that they got a recommendation from the state security organization not to hire me...

...When I considered traveling, I was refused permission because of the problems I had with the state security.

This continued until I was finally able to leave in 1991. I took advantage of an exemption which allowed me to leave the country on a pilgrimage, for religious reasons...

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)

[439] Mr. Mahjoub's statements before the IRB add some specifics to this account. He claimed that he was called in by the Egyptian state security four or five times between 1987 and 1988; while he was never called in after 1988, "there was [still] the aspect of surveillance" (IRB transcript, Abuse of Process motion record Tab K, p.72).

[440] In his immigration screening interview with the Service, Mr. Mahjoub mentioned that he "left Egypt because he was being persecuted by the Egyptian government due to his religious beliefs" (CSIS Interview 13 and 20 January 1998, SIR Reference indices Tab [REDACTED]; Exhibit A2, Tab 23). He also claimed "that all of his problems with the Egyptians were the result of his Muslim beliefs" (CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22). While there is no reference to persecution on the basis of religious beliefs in Mr. Mahjoub's PIF, this is not necessarily inconsistent with his prior accounts. Suspected membership in the Muslim Brotherhood could, for the Egyptian authorities, also entail fundamentalist religious beliefs in addition to Islamist political views. In my view, there is no real difference between claiming persecution by reason of membership in the Muslim Brotherhood and claiming persecution by reason on religious belief. **[Further, there is evidence on the record that Mr. Mahjoub had claimed to CIC that he was arrested and tortured because of his Islamic faith.]** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] ([REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). Consequently, I reject the Ministers' argument that Mr. Mahjoub subsequently changed the basis of his persecution.

[441] There is a lack of clarity about Mr. Mahjoub's efforts to obtain passports for travel to escape his alleged harassment. In his PIF, Mr. Mahjoub mentions an authentic passport that he lost in Sudan, which was issued in December 1987 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). He does not mention any other Egyptian passport. However, he made reference to two passports in an interview with the Service:

Subject obtained a legitimate Egyptian passport in his own name in 1988 or 1989 (previously said 1985 and the 1980's). Subject explained the discrepancy in dates by stating that he actually applied for two Egyptian passports. Subject obtained the first passport because he was being hassled by the Egyptian government. He wanted to leave Egypt and felt he would be able to go on a pilgrimage to Saudi Arabia. However, he was on the Egyptian 'Black List' and his passport had already been stamped prohibiting him from leaving Egypt...He had no difficulty getting the second passport and was not asked any questions. Subject then obtained a Saudi Arabian visa from a travel agency and went to Saudi Arabia and onto Sudan.

[Emphasis added]

(CSIS Interview 13 January 1998 and 20 January 1998, SIR Reference Indices Tab [redacted])

[442] [redacted]  
[redacted] ( [redacted]  
[redacted] SIR Reference Indices Tab [redacted]). [redacted]  
[redacted]  
[redacted]  
[redacted] SIR Reference Indices Tab [redacted]). [redacted]  
[redacted] [The Ministers adduced classified evidence that Mr. Mahjoub's passport was issued in 1989, and] it is consistent with Mr. Mahjoub's claim that he obtained a passport in "1988 or 1989". I therefore accept the information as credible that this evidence establishes that

[Mr. Mahjoub was issued a passport in 1989].

[443] Mr. Mahjoub claimed in his PIF that he traveled from Egypt to Saudi Arabia in June 1991 and then made his way to Sudan in August 1991. He remained in Sudan until coming to Canada on December 30, 1995. In his PIF, he recounted the narrative of his travels to Sudan as follows:

...I was finally able to leave in 1991. I took advantage of an exemption which allowed me to leave the country on a pilgrimage, for religious reasons. In June 1991, I left on a pilgrimage to Saudi Arabia. I then went to Sudan in August 1991 because there is no visa requirement for Egyptians to go to Sudan and Sudan is an agricultural state. With my studies in agriculture, I hoped to find a job in agriculture in Sudan and to live in peace.

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)

Mr. Mahjoub reiterated this account during an interview with the Service (CSIS Interview 8 August 1997, SIR Reference Indices Tab [redacted]; Exhibit A2, Tab 21).

[444] The Service did not find the above account credible in light of the ongoing problems that Mr. Mahjoub claimed to have with the Egyptian security services. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[445] I [REDACTED] find Mr. Mahjoub's account that he was still of interest to the Egyptian authorities after his release in 1986 to be suspect. Mr. Mahjoub was allowed to complete his military service "with good conduct" in December 1986. Further, as outlined above at paragraph 441, Mr. Mahjoub claimed to have no difficulty obtaining a second passport under his true name even though his first passport was "stamped", and he was on a "black list", prohibiting him from traveling outside of Egypt. This puts the credibility of Mr. Mahjoub's claim to have been of continued interest to the Egyptian authorities into question, in particular after 1988 when he was last "called" upon by the Egyptian authorities. On the basis of this evidence, I find that there are reasonable grounds to believe that the Egyptian authorities were no longer concerned with Mr. Mahjoub between 1986 and 1991, in particular 1989 and 1991, and that his account of continued harassment is not credible.

[446] Since Mr. Mahjoub obtained a passport [REDACTED] [in] 1989 (and was therefore likely still in Egypt at that time), and the Ministers are not disputing that Mr. Mahjoub traveled to Sudan in late 1991, this is the most likely time frame during which Mr. Mahjoub might have fought in Afghanistan as the Ministers allege. These dates are significant. If Mr. Mahjoub was fighting in Afghanistan during this period, he was not fighting the Soviet invasion because the Soviet Union announced that it would withdraw all troops from Afghanistan on February 15, 1989. After that, the Mujahideen fighters, Muslims who had come

from abroad to assist the people of Afghanistan in the war, sought to topple the communist government that was then in power in Afghanistan. Consequently, if the Ministers' allegation is correct, this would be the war that Mr. Mahjoub was fighting.

[447] Of still greater concern is that, according to the testimony of Mr. Al Fadl, Mr. Bin Laden and Dr. Al Zawahiri, among others, conceived of Al Qaeda at this time in order to continue the jihad elsewhere. Both Al Qaeda and the AJ operated largely from Afghanistan in this period, 1989 to 1991. They were at that time contemplating relocation to Sudan, and the AJ was still active in terrorist operations, including the assassination of Egyptian People's Assembly Speaker Dr. Rif' at al-Mahjub and five of his security guards on October 12, 1990. Again, if correct, the Ministers' allegation in this time frame would strongly support an inference that Mr. Mahjoub was involved in the AJ. However, as my reasons below will demonstrate, the evidence does not support the Ministers' allegation.

[448] Mr. Mahjoub claimed, contrary to the Ministers' assertions, "that he did not leave Egypt prior to going to Saudi Arabia, Sudan and then Canada" (CSIS Interview 13 January 1998 and 20 January 1998, SIR Reference Indices Tab [REDACTED]). Further, Mr. Mahjoub claimed that he spent a "few months" in Saudi Arabia, June to August 1991 (CSIS Interview 8 August 1997, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 21; Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). He then went directly to Khartoum, Sudan, in September 1991 ([REDACTED] [REDACTED] SIR Reference Indices Tab [REDACTED]).

[449] Mr. Mahjoub, in an interview with the Service, “denied ever traveling to countries such as Pakistan, Afghanistan...” (CSIS Interview 8 August 1997, SIR Reference Indices Tab █; Exhibit A2, Tab 21). It was the Service’s view that Mr. Mahjoub was lying when he claimed that he had not traveled to Afghanistan (CSIS Interview analysis 24 October 1997, SIR Reference Indices Tab █; Exhibit A2, Tab 25).

[450] The Ministers’ evidence that Mr. Mahjoub fought in Afghanistan or assisted from Pakistan is thin. The Service concluded that Mr. Mahjoub occupied a position of relative seniority with the Arab Mujahideen fighting against the Soviet forces in the 1980s on the basis of ██████████ **[classified evidence that does not specifically indicate]** that he was a Mujahideen fighter **[but instead indicates that he arranged for the travel of AJ elements to Pakistan via Saudi Arabia, so as to engage in the Afghani Jihad, and arranged travel of Al Jihad Mujahideen to Pakistan via Saudi Arabia in the late 1980s].** ██████████

██████████ (██████████  
██████████ SIR Reference Indices Tab █). ██████████  
██████████  
██████████  
██████████  
██████████ (██████████  
██████████ SIR Reference indices Tab █).

[451] ██████████

[REDACTED]

( [REDACTED] SIR Reference Indices  
Tab [REDACTED] )

**[The Ministers also adduced classified evidence that Mr. Mahjoub was active in recruiting for the VOC and that in the early 1990s, Mr. Mahjoub operated from Pakistan and Afghanistan and recruited Egyptian Arab Afghans to enter Egypt, form operational cells and make preparations for assassinations of Egyptian government officials.]**

[452] None of this evidence except for **[one piece]** [REDACTED] [REDACTED] supports the allegation that Mr. Mahjoub was in Afghanistan or Pakistan or was a Mujahideen fighter. Arranging travel [REDACTED] need not be done from within Afghanistan or Pakistan. I am not persuaded that the **[one piece of evidence]** [REDACTED] that Mr. Mahjoub was based in Afghanistan and Pakistan is sufficient to establish reasonable grounds to believe that Mr. Mahjoub was in either of these countries.

[453] Concerning Mr. Mahjoub’s alleged transportation and recruitment activities, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] I am

unable to conclude that [the classified evidence adduced by the Ministers to support this allegation] is reliable.

Consequently, I find that there is insufficient evidence to support a finding that Mr. Mahjoub was involved in making arrangements for the travel of AJ elements to Pakistan via Saudi Arabia, so as to engage in the Afghani Jihad as alleged by the Ministers. The evidence supporting Mr. Mahjoub's alleged VOC recruiting activities is also insufficient.

[454] The Ministers further allege that Mr. Mahjoub was involved in recruiting Egyptian members of the VOC for training in Lebanese camps operated by Hizballah and the IRGC. I am satisfied that Hizballah, with the influence of the IRGC at times, ran terrorist training camps in South Lebanon in the early 1990s (Magnus Ranstorp, "The Hizballah Training Camps of Lebanon", Exhibit R21, pp.245, 261). The fact that there were Hizballah-run training camps in South Lebanon, where Al Qaeda and Al Jihad members went to train, is corroborated by Mr. Al Fadl's testimony (J. Al Fadl testimony, Exhibit A12, p.290). Nevertheless, the allegation of Mr. Mahjoub's specific involvement is supported by a single BRS report of questionable reliability.

[REDACTED]

( [REDACTED] SIR Reference Indices  
Tab [REDACTED] )

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[455] [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices  
Tab [REDACTED] )

[456] [REDACTED]  
[REDACTED]

Mr. Mahjoub submits that he was in Sudan working for Althamar and then in the market for most of the early 1990s and could not have been involved in these activities. This is not the case, for Mr. Mahjoub could have been involved in recruiting from anywhere in the world. However,

the Ministers' allegation is only supported by [that one piece of classified evidence] ■

■  
■. I therefore find that the Ministers have failed to establish that Mr. Mahjoub was involved in recruiting VOC members to train in South Lebanese camps run by Hizballah and the IRGC in the early 1990s.

[457] To conclude, the Ministers have failed to establish reasonable grounds to believe that Mr. Mahjoub fought in the Afghan-Soviet War, assisted with transport of AJ elements to fight in the jihad in Afghanistan, or recruited VOC members for terrorist training in South Lebanese camps. They have also failed to establish that Mr. Mahjoub left Egypt prior to his departure for Saudi Arabia in June 1991.

*1991-1995*

[458] As Professor Byman, Professor Gerges, and Professor Wark's expert reports as well as Mr. Al Fadl's testimony all demonstrate, Al Qaeda and Al Jihad relocated in 1991 from Afghanistan, where the jihad was ending, to Sudan (D. Byman Expert Report, Exhibit A19, p.7; F. Gerges testimony, 21 January 2011, p.64; W. Wark Expert Report, Exhibit R24, p.4; J. Al Fadl transcript, Exhibit A12, p.219). The relocation to Sudan is essentially not disputed in these proceedings. Professor Byman states in his expert report, relying on Lawrence Wright's book, that Mr. Bin Laden was expressly invited to come to Sudan in 1990 by Islamist Sudanese leader Hassan al-Turabi (D. Byman Expert Report, Exhibit A19, p.7). In addition, Professor Byman

reports that “by the end of 1991 about a thousand Egyptians affiliated with EIJ [AJ] and IG [AGAI] lived in Sudan” (*ibid.* p.9).

[459] Direct and indirect terrorist contacts of Mr. Mahjoub were also traveling to Sudan at this time. Mr. Bin Laden, who would become Mr. Mahjoub’s employer, moved to Sudan around this time (W. Wark Expert Report, Exhibit R24, p.14). Mr. Al Duri, the Director-General of the company for which Mr. Mahjoub would work, [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED] began working for Althamar in Sudan in 1992. [**The classified evidence indicates that**] Mr. Salim, who used the same business address as Mr. Al Duri, [**went to Sudan around 1991**] [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). Mr. Al Fadl’s testimony corroborates this account, adding that Mr. Salim was sent ahead of Mr. Bin Laden to “find out about the National Islamic Front” (J. Al Fadl testimony, Exhibit A12, pp.217-219). Mr. Mohammed told the FBI that Mr. Marzouk, one of Mr. Mahjoub’s contacts in Canada, assisted with Mr. Bin Laden’s relocation to Sudan [REDACTED]

[460] Professor Byman opines that for “an educated and skilled person, it would be an unusual choice if your motive was economic” to travel to Sudan (D. Byman testimony, 28 October 2010,



p.145). Indeed, upon arrival in Sudan in August or September 1991, Mr. Mahjoub claimed that he experienced difficulties and made the following observations in his PIF:

When I arrived in Sudan, I found that life was very difficult, living conditions were very difficult, especially for someone not used to the hot climate...

...I found a huge Egyptian community working in many areas since before Sudan became independent. For instance there is Cairo University, Khartoum branch and also the Egyptian Irrigation in Sudan. I was shocked when I found out that a large portion of the employees at these institutions worked with the Egyptian intelligence service.

...At first when I was in Sudan, I felt and I saw that I was under severe surveillance by the Egyptian people, especially when I was in the market. I preferred not to speak to the Egyptians...

It was very difficult to find a job in Sudan, even for Sudanese. Because wages are very low, after working on a farm from February 1992 until May 1993, I preferred to buy and sell goods in the market.

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)

[461] Mr. Mahjoub came to Khartoum as a visitor. This is confirmed both in his PIF and his subsequent interview with the Service (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3; CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23). About six months later, he claimed in the Service interview, he lost his passport but could not relate the details. He believed that it was stolen because Sudan was very poor, and foreigners were considered wealthy. He subsequently found the bag that had contained his personal papers open and the contents scattered. Mr. Mahjoub asserted in his PIF that his status in Sudan became illegal as of February 1992 and remained so until his departure in December 1995 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3).

[462] In his PIF narrative, Mr. Mahjoub stated that “it was very difficult to obtain a job in Sudan, even for Sudanese.” Yet, as an “illegal migrant” he secured a position on “Al-Damazin Farm”. In his PIF, under “Work History” he listed being employed at “Al-Damazin Farm, Middle Region, Sudan”, as an Agricultural Engineer from February 1992 until May 1993.

[463] Mr. Mahjoub held a BSc. in agriculture and claimed to be an agricultural engineer. However, his title while he worked at Damazine Farm was in fact “Deputy Director-General” of the Althamar Almubarakah Agriculture Company and manager of the “Damazin Project for Pluvial Agriculture” between February 1992 and May 1993. Mr. Al Duri stated this explicitly in his reference letter to Mr. Mahjoub (Reference Letter to Mr. Mahjoub 17 October 1993, Exhibit A2, Tab 10). Mr. Mahjoub did not include this information in his PIF.

[464] There is no other information on the record relating to the “Damazin Project for Pluvial Agriculture”. However, Professor Wark reports that Althamar and Damazine Farm were owned by Mr. Bin Laden, who was at that time the “emir” or leader of Al Qaeda (W. Wark Expert Report, Exhibit R24, pp.17-18). His opinion is confirmed by the testimony of Mr. Al Fadl and has not been disputed. Moreover, I have already determined at paragraphs 401-402 above that there are reasonable grounds to believe that the Director-General or General Manager of Althamar, Mr. Al Duri, was a member of Al Qaeda. Further, according to Mr. Al Fadl’s testimony before the New York District Court, the farm was a venue for Al Qaeda members to obtain “refresher” weapons training:

Q. And you mentioned that there was refreshed [*sic*] training going on in the Damazine farm. Can you tell the jury what kind of training that was?

A. Refreshed for general weapons and for explosives.

Q. And to your understanding, did you ever visit the Damazine farm?

A. Yes.

Q. Did you see people training at the Damazine farm?

A. Yes.

Q. And did you see explosives, explosions conducted at the Damazine farm?

A. I see just refreshed, but not with noise.

Q. You didn't actually see an explosion yourself?

A. Yes.

Q. Did you see explosives at the Damazine farm?

A. Yes.

...

Q. When you saw the explosives, did you see people in the vicinity of explosives?

A. Yes.

Q. Did you know who they were?

A. Al Qaeda membership.

Q. Do you know their names?

A. I know a few of them.

Q. Can you tell us for the record?

A. Salem el Masry.

Q. Is that the same person you told us was an explosives trainer this morning?

A. Yes.

...

Q. Who else did you see in the vicinity of the explosives?

...

A. Saif al Adel.

Q. ...Can you tell the jury who Saif al Adel is?

A. He's Egyptian.

Q. Is he a member of al Qaeda?

A. Yes.

Q. Can you tell the jury what role he played in the al Qaeda?

A. He trained people for explosives.

(J. Al Fadhli transcript, Exhibit A12, p.243-245)

Professor Gerges testified that at this time Al Qaeda and the AJ were intertwined organizations because "al Qaida itself was basically constructed by Egyptian Islamic Jihad" (F. Gerges

testimony, 19 January 2011, p.22). Indeed, the leader of the AJ, Dr. Al Zawahiri, was a founding member of Al Qaeda.

[465] Professor Wark opines that Mr. Mahjoub could be among one of the thousands of employees of Mr. Bin Laden's enterprises in Sudan who had no knowledge of any terrorist operations (W. Wark Expert Report, Exhibit R24, pp.14, 18). Mr. Dratel, in his affidavit and in his testimony, points to evidence given in the *USA v. Bin Laden* trial by several defendants and witnesses that no terrorist operations occurred on Mr. Bin Laden's farms in Sudan (J. Dratel Affidavit, Exhibit R39, paragraphs 40-45). He gave the following testimony on this point:

Q. ...what can you tell us about Althamar's operations on the Damazine farm?

A. Well, there are a few competing versions of what happened at Damazine, and it's not, it's not corroborated by any independent, non-testimonial evidence one way or the other. On the one hand, you have Al-Fadl's testimony. On the other hand, you have the statements that we obtained in terms of through interviews of the people, the two people that are mentioned here, Dr. El-Tayeb and Khalid Ali Walleed, who worked in the Sudan in that capacity, one who worked for Wadi al Aqiq; and also testimony from Kherchtou, L'Houssiane Kherchtou, one of the other witnesses at trial; and testimony from Essam Al-Ridi, who is another witness at trial who was there in the Sudan during this time period, not continuous, but did some crop-dusting and then flew planes from the United States and made a couple of visits in the Sudan and was offered a position by bin Laden. They – their testimony is, essentially, that Damazine was, in fact, an agricultural operation, to their knowledge...

...  
Q...Now, explain to us how these other witnesses either corroborate or contradict what the Al-Fadl statement was.

A. ...if we just limit it to Damazine. Mr. El-Hage had testified in the grand jury that he said that the Sudanese government had not let bin Laden open any camps in Sudan and he had never witnessed training or firearms at the Soba Farm. And he had heard other rumours with respect to training, but he said he knew that bin Laden had not been permitted by the Sudanese – the Sudanese government would not permit bin Laden to operate camps.

And, just as an aside, while there were 30 counts of perjury charged against El-Hage, what I quote from the grand jury testimony is not the subject of any, in this report, is not the subject of any perjury counts.

...

Q... What about the other individuals you mentioned? You mentioned Mr. El-Tayeb, Al-Ridi and Khalid Ali Walleed and Kherchtou.

A. Right. Dr. El-Tayeb worked for Wadi al Aqiq as a salaried agricultural consultant during this period, and included collecting information about agricultural methods and opportunities in the Sudan. And coordinating between the company, Wadi al Aqiq and the relevant Sudanese ministries and departments designed to promote Mr. bin Laden's investment in agricultural products in the Sudan.

He told the defence investigators that he was fully familiar with bin Laden's investments and the purchase of farms in the Sudan and the operations of equipment at those locations, and he visited the farms regularly and stated, to his knowledge, military training did not occur at any of those farms.

Mr. Ali Walleed was chief accountant for the businesses in Sudan during this period and who reported directly to bin Laden. And he regularly visited one of the farms and did not see or hear of any military training at the farm.

Mr. Al-Ridi testified that he was hired by bin Laden to develop a crop-dusting operation for the agricultural businesses in the Sudan and that bin Laden made it clear that the offer was not to participate in jihad but, instead, was strictly business. And that's from his trial testimony.

Q. And does the evidence of Mr. Kherchtou touch on this point as well?

A. I am not sure because I can't find it here... I don't have it here. It may have been a misrecollection.

...

A... He testified that he performed crop-dusting functions for one of Mr. bin Laden's farming companies, and that many of the employees were not members of Al Qaeda and were not involved in terrorist or weapons training and were performing legitimate business services for legitimate business purposes...

[Emphasis added]

(J. Dratel testimony, 14 December 2010, pp.204-212).

[466] Mr. Dratel argues that Mr. Al Fadl's account of seeing explosives and "refresh" training on Damazine Farm is not to be trusted for the reasons set out in paragraph 153 above (J. Dratel Affidavit, Exhibit R39, paragraphs 51-58). Further, the defence lawyers in *USA v. Bin Laden* on cross-examination elicited testimony from Mr. Al Fadl that appeared to contradict earlier statements that he had made to US government officials. In particular, Mr. Al Fadl had apparently said that he only visited Damazine Farm "on a couple of occasions" when speaking with the government officials (J. Al Fadl transcript, Exhibit A12, p.980). In court, on cross-examination, he testified that he had been to Damazine Farm more than four times, perhaps up to seven times (*ibid.* p.933). He claimed that his previous statement to the government may have been wrong, but the defence lawyers sought to undermine his credibility with his conflicting answers.

[467] In his report, Professor Wark opines that Mr. Al Fadl "had a working relationship with many al Qaeda members in the Sudan and was entrusted with a wide variety of tasks" (W. Wark Expert Report, Exhibit R24, p.8). This included, according to Professor Wark, "keeping the National Islamic Front (NIF) party in Sudan informed of al Qaeda activities in the Sudan." According to Professor Wark, on one occasion, Mr. Al Fadl was arrested because of complaints about noise made by explosives training at a farm in Khartoum North. Regarding the Damazine Farm, Professor Wark confirms that Mr. Fadl testified that several Al Qaeda members participated in explosives training there, but no mention was made of Mr. Mahjoub or his alias Mahmoud Shaker being involved (*ibid.* pp.9-12).

[468] I acknowledge that Mr. Al Fadl appeared to recant an earlier statement about the number of times that he visited Damazine Farm and as such, it is unclear whether his testimony in court was an exaggeration. I also acknowledge that Mr. Al Fadl received significant consideration from the US government, financial and otherwise, in exchange for his testimony and may have had an interest in providing the United States government and the New York District Court with exaggerated accounts of Al Qaeda members weapons training and the presence of explosives on Damazine Farm as alleged by Mr. Dratel. However, the evidence of Professor Wark is that the US government took great pains to confirm that Mr. Al Fadl was not lying (W. Wark Expert Report, Exhibit R24, p.5), and Mr. Al Fadl would also have an incentive to tell the truth in order to maintain his credibility with the US government.

[469] Further, many of the individuals identified by Mr. Dratel and relied upon to support his argument were defendants facing terrorism charges in a criminal trial with the prospect of stiff sentences upon conviction, including his own client. These individuals may have had an interest in minimizing the terrorist activities of Al Qaeda while they were members. In addition, those witnesses who were not charged but visited Mr. Bin Laden's farms in Sudan, and the "thousands of individuals" to whom Professor Wark referred, could have had an interest in claiming they knew nothing about terrorist activities conducted under the guise of the companies for which they worked. If they admitted to witnessing such activities, they could be subject to charges as Mr. Al Fadl was.

[470] More specifically, I have concern regarding the credibility of Mr. Dratel's client, Mr. El Hage. He testified to the grand jury in the US trial that Sudan did not allow Mr. Bin

Laden to set up camps, and that he never witnessed weapons training on Soba farm (W. El Hage Grand Jury transcript read in, Exhibit A12, pp.858-859). However, his counsel, Mr. Dratel, acknowledged that Mr. El Hage was convicted of perjury for his testimony at trial, although not with respect to this element of his evidence. Further, other information on the record contradicts the testimony of Mr. El Hage on this point. [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [The Ministers have adduced some classified evidence to this effect,] and Professor Byman's expert report also indicates that Mr. Bin Laden was operating camps in Sudan (D. Byman Expert Report, Exhibit A19, pp.7-8). Professor Gerges's thesis that Dr. Al Zawahiri and Dr. Fadl were focused on training for a military coup at the time also supports Mr. Al Fadl's testimony that the AJ was training in Sudan at the time.

[471] As mentioned earlier in these Reasons, Mr. Al Fadl provided detailed information, including names, places, dates, wages, and so forth that made him vulnerable to verification. He provided such details with respect to his visits, however many, to Damazine Farm. He also precisely qualified some of the activities and observations he made, behaviour that is inconsistent with someone intent on falsifying his account. While there is a potential inconsistency in his statements with respect to the number of times he visited Damazine Farm, brought out in cross-examination, the level of detail in his account is evidence that he is telling the truth, that he went to Damazine Farm and that he observed training activities at the farm. In addition, the two statements may not actually have been inconsistent since his first statement indicated that he had visited Damazine Farm "a couple" of times and the cross-examination revealed that Mr. Al Fadl did not understand "a couple" to mean only twice (J. Al Fadl transcript, Exhibit A12, p.980).



[472] Moreover, despite the ample details in Mr. Al Fadl's testimony regarding his visit to Damazine Farm, which could have been refuted, none of the other individuals' accounts are, in fact, directly contradictory to Mr. Al Fadl's. Further, none of the accounts are as detailed. None of these individuals testified to visiting Damazine Farm specifically, and Althamar and other Bin Laden-owned companies may have owned farms that were not venues for terrorist training. Even Dr. El-Tayeb, who said he visited "the farms" regularly, worked for Wadi al Aqiq and not Althamar, and there is no specific evidence that he visited Damazine Farm. Simply because these individuals never saw terrorist training on Bin Laden-owned farms does not mean that terrorist training was not occurring on some of them, including Damazine Farm. As Mr. Al Fadl testified, Damazine Farm was approximately 21,000 hectares in area. Two-thirds of this space was used for agricultural production (J. Al Fadl transcript, Exhibit A12, pp.241-242). There may well have been many employees working on Damazine Farm or visitors to Damazine Farm who did not know that the "back" 7,000 hectares of the property were used for "refresh" weapons training. It was Professor Wark's opinion that this training was conducted quietly following the disturbances reported at Khartoum North. Accordingly, the testimony of these individuals does not necessarily contradict the evidence of Mr. Fadl.

[473] In addition, even if I were to find Mr. El Hage's testimony that Sudan had forbidden Mr. Bin Laden from setting up terrorist training camps to be credible, and I do not, Mr. El Hage qualified this statement by saying that he had heard rumours with respect to training. This would lend support to Professor Byman's assertion that there was a serious possibility that training activities were occurring in defiance of Sudan's prohibition and with the collaboration of the

National Islamic Front as Mr. Al Fadl attests, or that the prohibition was only Sudan's "official" position and training was in fact tolerated by Sudanese intelligence (D. Byman Expert Report, Exhibit A19, p.8).

[474] Mr. Al Fadl's testimony about what he witnessed at Damazine Farm is detailed, compelling and credible. To the extent that the accounts may conflict, I prefer his account over the account supported by the individuals referred to and relied upon by Mr. Dratel. On the basis of this evidence, I therefore find that the Ministers have established reasonable grounds to believe that Al Qaeda weapons and explosives refresher training occurred on "the back one-third" of Damazine Farm.

[475] I now turn to consider whether Mr. Mahjoub was working on Damazine Farm at the time that there are reasonable grounds to believe that the training referred to by Mr. Al Fadl was taking place and whether Mr. Mahjoub knew that the weapons training was taking place.

[476] Professor Wark's analysis of Mr. Al Fadl's testimony is that Mr. Al Fadl visited the North Khartoum Farm, on which explosions occurred and for which Mr. Al Fadl was arrested, in "late '91". Professor Wark opined that Mr. Al Fadl subsequently visited Damazine Farm when the "training at various Al Qaeda operated farms came to be done quietly, presumably so as to avoid raising concerns with local inhabitants and Sudanese authorities" (W. Wark Expert Report, Exhibit R24, p.12; J. Al Fadl transcript, Exhibit A12, p.223). I agree that Mr. Al Fadl's visit likely occurred after he was released by the Sudanese authorities. Indeed, the dates given by Mr. Al Fadl for his visits on cross-examination were 1992, 1993 and 1994 (*ibid.* p.933).

Mr. Mahjoub began working at Althemar as the head of the Damazin Project for Pluvial Agriculture, as his PIF indicates, in February 1992 and left in May 1993 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). Even assuming that Mr. Al Fadl only visited the farm twice, it is likely that he visited the farm at least once during Mr. Mahjoub's 15-month tenure at the farm. It is even more likely that the activities that Mr. Al Fadl observed overlapped with Mr. Mahjoub's tenure, even if Mr. Al Fadl did not visit during that precise period. It is therefore reasonable to infer that the training observed by Mr. Al Fadl on Damazine Farm was occurring while Mr. Mahjoub was working at Althemar.

[477] Mr. Mahjoub's PIF attests that when he arrived in Sudan, it was difficult to find a job in Sudan, even for Sudanese nationals, and that Mr. Mahjoub had illegal status in Sudan as of February 1992. It also indicates that he started working for Althemar in February 1992, the same month that he became illegal in Sudan. Moreover, the reference letter from Mr. Al Duri indicates that Mr. Mahjoub was Deputy Director-General of Althemar and manager of the Damazine Project for Pluvial Agriculture as of February 1992, the same month that he began working for Althemar.

[478] In his undertakings in Sudan, Mr. Bin Laden adopted significant security measures and took great care in screening prospective employees. Mr. Al Fadl testified to Mr. Bin Laden's security concerns about individuals migrating to Sudan from other countries. He testified at length about his personal collaboration with the Sudanese intelligence services on behalf of Mr. Bin Laden (J. Al Fadl transcript, Exhibit A12, pp.232-236). Mr. Al Fadl attests that he worked on behalf of Mr. Bin Laden in the so-called "delegation office" where he conducted

interviews and background checks of individuals coming in to Sudan to see whether or not they were trustworthy, a position he claimed to have held from 1992 to 1994 (*ibid.* pp.237-238).

Mr. Al Fadl testified that Mr. Bin Laden had the following concerns prior to Mr. Al Fadl beginning work with the “delegation office”:

Q. What did he [Bin Laden] tell you about the delegation office?

A. The delegation office, because he tell me a lot of people came under Islamic Group but they try to get information to other country and we want to make sure, we don't want any problem, we don't want anybody come, and he work for other country.

Q... What did Usama Bin Laden tell you about people coming to the Sudan from other countries?

A. He say that the Sudanese government and the Islamic National Front, they open the door for all the groups come to Sudan, and some group, we don't know, and we afraid somebody come besides those groups and he take information about going on in the work in Sudan and he give it to other country.

Q. So what did he indicate that you should do to prevent that problem?

A. If intelligence officer they find somebody they don't know, he was in Afghanistan but they don't know him very well, they ask me if I know him, if I saw him over there, and sometimes we make interview for him, we ask him about jihad, about fatwah, when he in began which group he work, if inside work over there, which company he train...

[Emphasis added]

(J. Al Fadl transcript, Exhibit A12, pp.235-236)

At one point, Mr. Al Fadl testified that he was Mr. Bin Laden's chief of security, and that as chief of security he checked out all of Mr. Bin Laden's workers as follows:

A. Our companies also if anybody come to the company he should sign his name...put his name and we see his ID card. We want to see who, also, we do that in all the companies.

Q. Anything else?

A. We make report about a lot of other groups in Sudan, and some groups the workers name is Bin Laden group and again.

Q. Anything else?

A. And we work try to make sure he good.

(J. Al Fadl transcript, Exhibit A12, pp.933-934)

Mr. Bin Laden exhibited security consciousness about Sudan in general. He had Mr. Salim scout out Sudan before going there, and others question Mr. Salim about his prospective Sudanese hosts because the Islamic scholar with whom Mr. Salim had been in contact had studied in the West (at the Sorbonne) (J. Al Fadl transcript, Exhibit A12, pp.216-219). This evidence indicates that Mr. Bin Laden had a preoccupation with the ideological purity of his associates. In addition, in Sudan, Al Qaeda maintained contact with the facilities in Damazine by radio, provided by Mr. Salim and an associate, rather than telephone because it was more secure, and Mr. Bin Laden personally used a satellite telephone (*ibid.* pp.308, 454-455). Concerning new personnel, Professor Byman opines that “if someone is not known, a group would worry that he was a plant for an intelligence service or otherwise a danger to the groups”; if the history of the individual is known, Mr. Bin Laden would know his behaviour and his ideas (D. Byman testimony, 27 October 2010, p.126).

[479] There is also evidence that Mr. Bin Laden had a particular concern about Egypt. Mr. Al Fadl testified that he was told never to go to Egypt, not even for a stopover, for fear of arrest and questioning by the Egyptian authorities (J. Al Fadl transcript, Exhibit A12, pp.369-370). As Mr. Mahjoub states in his PIF, many Egyptian nationals in Sudan were in the employ of the Egyptian security or intelligence services (Mr. Mahjoub’s modified PIF, Exhibit A2, Tab 3), and as such they could easily have been one of the infiltrators against whom Mr. Bin Laden was guarding. Egyptians also did not want to be seen to be associated with Mr. Bin Laden at the time in Sudan, as Egyptian Al Qaeda member Essam Al Ridi testified in the *USA v. Bin*

*Laden* trial (E. Al Ridi transcript, Exhibit A12, pp.591-592). This is further evidence that Mr. Bin Laden had special cause for concern vis-à-vis Egypt and Egyptians.

[480] The high priority placed on security by Mr. Bin Laden in Sudan and his wariness of Egypt is not disputed. Given these concerns, it is reasonable to infer that before hiring an Egyptian national to occupy a top executive position in one of his companies, such as Deputy Director-General of Althamar in the case of Mr. Mahjoub, Mr. Bin Laden would have made the necessary inquiries and taken the necessary steps to ensure that Mr. Mahjoub was thoroughly vetted to establish that he was trustworthy. Such screening would likely have occurred as described in the testimony of Mr. Al Fadl discussed above. In my view, there is a clear inference to be drawn from Mr. Fadl's evidence that an important component of Mr. Bin Laden's assessment of "trustworthiness" would include a commitment by the candidate to his views and ideology, and a known history within the extremist movement. Professor Byman labels this establishing an individual's "identity and orientation" (D. Byman, 27 October 2010, p.74). I am further of the view that these safeguards were put in place by Mr. Bin Laden to guard against infiltrators from foreign governments, including Egypt.

[481] At the time of his employment with Althamar, Mr. Mahjoub described himself in his PIF as an illegal Egyptian national who was targeted within Sudan for surveillance by the Egyptian security apparatus. In these circumstances, with no evidence of prior experience in managing an enterprise, Mr. Mahjoub was hired as Deputy Director-General of Althamar, a large agricultural enterprise owned by a Bin Laden company. Clearly, given Mr. Bin Laden's security concerns, Mr. Mahjoub could only have been hired had he been considered "trustworthy".

[482] Mr. Mahjoub would also have had to have some reason for trusting Mr. Bin Laden. I infer this from the fact that Mr. Mahjoub was willing to risk working for Mr. Bin Laden when an association with Mr. Bin Laden was dangerous for Egyptian nationals if it was known to the Egyptian authorities (E. Al Ridi transcript, Exhibit A12, pp.591-592). I also infer this from Mr. Mahjoub's willingness to associate with other Egyptians in Althamar but nowhere else in Sudan. As stated in his PIF, while in Sudan, Mr. Mahjoub claimed that he had serious concerns about associating with other Egyptian nationals as he felt that he was under surveillance from the Egyptian security services (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). There is some indication that other Egyptians worked in the upper echelons of Althamar or were present on Damazine Farm. According to Mr. Al Fadl's testimony, Mr. Al Duri had an office-mate named "Abou Hassan Al Masry." In his testimony Professor Byman explained that "Al Masry" means "the Egyptian" (D. Byman testimony, 27 October 2010, p.89). Mr. Al Fadl also testified to seeing Salem el Masry and Saif al Adel, two Egyptians, on Damazine Farm during his visits (J. Al Fadl transcript, Exhibit A12, p.244). This evidence indicates that Mr. Mahjoub worked for Althamar and on Damazine Farm with Egyptians notwithstanding his general avoidance of Egyptians. I infer from this behaviour that Mr. Mahjoub trusted the other Egyptians working for Mr. Bin Laden because he knew about Mr. Bin Laden's vetting process that would prevent foreign government infiltration.

[483] I find that the Ministers have adduced sufficient evidence to support a finding on reasonable grounds to believe that Mr. Mahjoub knew about the terrorist weapons training occurring on Damazine Farm while he was Deputy Director-General of Althamar and the

manager of the Damazin Project for Pluvial Agriculture. I acknowledge that much of the evidence on the record indicates that Al Qaeda activities were conducted with a degree of secrecy, even in Sudan. Professor Gerges generally describes both the AJ and Al Qaeda as “secretive underground para-military organizations” (19 January 2011, p.109). Nevertheless, Mr. Mahjoub’s senior position is a critical factor in this analysis. I agree with Professor Byman that Mr. Mahjoub’s seniority in Althemar, and particularly on Damazine Farm, “is suggestive” that Mr. Mahjoub knew about the activities (D. Byman Expert Report, Exhibit A19, p.62).

Mr. Mahjoub held a similar rank and responsibility in a Bin Laden company to Mr. Salim, who was one of Mr. Bin Laden’s most trusted associates and a member of the AJ and Al Qaeda.

Mr. Mahjoub was also an associate of Mr. Al Duri, whom I have found to be a member of Al Qaeda, and who was, by virtue of his title, Mr. Mahjoub’s immediate superior while he worked at Althemar. Notwithstanding Mr. Bin Laden’s security consciousness and Mr. Mahjoub’s history of problems with the Egyptian authorities, he trusted Mr. Mahjoub to manage the Damazine Farm, an important enterprise also used for terrorist training. This training would have been difficult to hide given the requirement that it be done in the daylight or under strong artificial light (D. Byman testimony, 27 October 2010, p.53). While the farm was very large and the training activities may have been kept separate from the agricultural activities, I find that there are reasonable grounds to believe that Mr. Mahjoub, who managed a project at Damazine Farm and who was second-in-command of the company running the farm, was aware of these activities. There are also reasonable grounds to believe that, in his position of authority over the company and the farm, Mr. Mahjoub was complicit in these activities.



[484] Mr. Mahjoub's PIF also states that "[b]ecause wages are very low, after working on a farm from February 1992 until May 1993; I preferred to buy and sell goods in the market." This assertion by Mr. Mahjoub is difficult to reconcile with other evidence on the record relating to wages and salaries in Sudan at that time. Mr. Mahjoub occupied the position of Deputy Director-General of Althamar. While there is paucity of evidence on what Mr. Mahjoub earned at the time, it is reasonable to infer that his salary as a top executive at Althamar was comparatively higher than other workers in Sudan.

[485] From the testimony of Mr. Al Fadl, we know that Mr. Salim, a known Al Qaeda member who ran Mr. Bin Laden's construction company al Hijra, earned \$1,500.00 US per month (J. Al Fadl transcript, Exhibit A12, pp.241, 252-257). This would include, according to Mr. Al Fadl, a top-up paid to Al Qaeda members. Mr. Fadl indicated that he earned a salary of \$200.00 US per month from Taba Investments & Laden International, another Bin Laden Company, plus a \$300.00 US Al Qaeda top-up (*ibid.* pp.252-253). Applying this ratio, Mr. Salim would have earned \$600.00 US as a salary with a \$900.00 US Al Qaeda top-up. Given Mr. Mahjoub's comparable position with the Althamar Company, using the same ratio, his earnings would have likely been in the same range as that of Mr. Salim, that is, in the range of \$600.00 US monthly excluding any Al Qaeda top-up. This may be a conservative estimate since Lawrence Wright comments in *The Looming Tower* that Mr. Bin Laden was considered a generous employer and paid his top executives between \$1,000.00 and \$1,500.00 US per month (excerpt, Exhibit A10, Tab 49).

[486] Mr. Al Fadl testified that wages for the average Sudanese employee were less than \$50 US per month at the time, at least twelve times less than an executive like Mr. Salim or Mr. Mahjoub in a Bin Laden company, and foreign nationals were prohibited from owning property in Sudan (J. Al Fadl transcript, Exhibit A12, pp.891, 906). Given the salary likely earned by Mr. Mahjoub at Althamar and the restrictions on economic activity that he would face as a foreign national without status in Sudan, I find his explanation for leaving Althamar to buy and sell goods in the market not to be credible because it is unlikely that he, especially as an illegal migrant, could have earned as much there.

[487] Further, in his PIF, Mr. Mahjoub mentioned “I felt and I saw that I was under severe surveillance by the Egyptian people, especially when I was in the market” (emphasis added). Nevertheless, he claims that he resigned from a well-paying job, in his field, with a high level of responsibility, at Althamar because he “preferred to buy and sell goods in the market” (emphasis added). Mr. Mahjoub fails to explain why he was willing to return to the market, a milieu in which he feared “severe surveillance”. Given this concern, this is not a credible account of how the circumstances of his departure from Althamar unfolded.

[488] Apart from [some classified information] [REDACTED], and Mr. Mahjoub’s claim that he was involved in buying and selling goods in the market, there is no other evidence that could relate to Mr. Mahjoub’s professional activities from May 1993 when he left Althamar to December 1995 when he left Sudan.

[489] If Mr. Mahjoub was involved in terrorist activities after he left Althamar in 1993, as the Ministers allege, rather than simply buying and selling goods in the market as he claimed in his PIF, it is possible that Mr. Mahjoub could have [REDACTED] traveled to **[Pakistan or Afghanistan and recruited Egyptian Arab Afghans to Enter Egypt, form operational cells and make preparations for assassinations of Egyptian government officials or recruited a number of Egyptians for training in South Lebanon in Hizbollah and IRGC camps]**

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ). As I mentioned at paragraphs 454-456 above, **[the evidence on dates is vague]** [REDACTED]

[REDACTED], so these activities could have occurred at this time as well as before Mr. Mahjoub arrived in Sudan. In addition, as mentioned at paragraph 115 above, I have serious concerns with respect to the reliability of the **[evidence supporting these allegations]** [REDACTED]. [REDACTED] **[The evidence does]** not establish reasonable grounds to believe that Mr. Mahjoub engaged in the specific training and recruitment activities as alleged by the Ministers during this period either.

[490] Nonetheless, I do not find the account in Mr. Mahjoub's PIF of why he left Althamar and of his subsequent business buying and selling goods in the market to be credible. First, he claims that work was difficult to find, even for Sudanese nationals, and wages were low in Sudan. Next, he claims that during the period when he was an illegal migrant, he obtained work for Althamar

as an agricultural engineer, a few months after his arrival. The reference letter from Mr. Al Duri confirms that his position was as Deputy Director-General of the entire company, a position with a high level of responsibility, and the evidence supports an inference that he received a high salary in that position, particularly in comparison to other Sudanese workers. Even assuming that Mr. Mahjoub obtained that position by extraordinary serendipity, he then claims that he decided to throw that opportunity away because his “wages are very low” and to go straight back to the place where surveillance from other Egyptians had been the most intense to buy and sell goods. I find that Mr. Mahjoub’s account stretches credulity, and I therefore reject it.

[491] Consequently, there is no compelling and credible evidence on the record as to precisely what Mr. Mahjoub was doing for a living between May 1993 and December 1995. During this same period there is evidence of important developments in the terrorist milieu. Professor Gerges testified that this was the period in which Dr. Al Zawahiri decided to give in to radical pressure within the AJ and launch terrorist attacks in the wake of the 1993 VOC trials (for example F. Gerges testimony, 19 January 2011, pp.58-59). The VOC had a “re-emergence” in 1993 ( [REDACTED] SIR Reference Indices Tab [REDACTED]; [REDACTED] SIR Reference Indices Tab [REDACTED]; D. Byman Expert Report, Exhibit A19, p.39). Subsequently, both the AJ and the VOC claimed responsibility for several high-profile attacks, such as the attempted assassination of the Egyptian Prime Minister and Interior Minister in 1993. Mr. Marzouk arrived in Canada in June 1993 to meet Mr. Mohammed and travel to the United States, ostensibly to assist Mr. Mohammed in terrorist activities [REDACTED].

All of these developments, related to the re-emergence of the AJ and the VOC, occurred at or around the same time that Mr. Mahjoub left Althamar in May 1993.

[492] There is evidence from both parties relating to the timing of Mr. Mahjoub's departure from Sudan. Mr. Mahjoub claims that he left Sudan because of deterioration of relations between Egypt and Sudan and personal harassment. The Ministers rely on the evidence of Professor Byman who opined that Mr. Mahjoub's departure from Sudan coincided with the Sudanese government's "crackdown" on Islamic extremists.

[493] In his PIF, Mr. Mahjoub sets out his reasons for leaving Sudan for Canada:

After a while, the Egyptian government started to verbally attack the Sudanese government alleging that the Sudanese government was housing the Islamists. After the beginning of the propaganda war between the two governments, I felt the danger more and more, especially after I was followed by Egyptians living in Sudan. It got to the point where I started to receive threatening letters outside my door or under my door. The harassment had continued outside of Egypt, as they suspected that I supported the Islamists. I feared that the Egyptian intelligence service would assassinate me at any moment.

The relationship between these two countries deteriorated, and as they exchanged continuous accusations, war was imminent...The Egyptian government accused Sudan of housing the Egyptian opposition and of training them and financing them. I know that these accusations against the Sudanese government were false and had no basis whatsoever because the Egyptian regime does not like the Al-Bashir regime and would prefer to impose its authority on Sudan and to run Sudan.

...

It continued to deteriorate to the point that the Egyptian government sent an assassination team many [sic] countries including Sudan to assassinate the Egyptian opposition. This was published in many newspapers like Al-Hayat and was broadcast on the radio. The deterioration of the relationship between the

governments continued after the assassination attempt on Mohammed Hosni Mubarak in Ethiopia. Following this attempt, the Egyptian government accused the Sudanese government of responsibility and Hosni Mubarak himself threatened the Egyptian Islamic opposition in Sudan...

The situation between Egypt and Sudan deteriorated to the point where the ambassadors were expelled and we were on the verge of war. I felt that I could stay in Sudan no longer. I came to Canada on December 30, 1995.

(Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3)

[494] As the quotation above demonstrates, the Ministers' allegation that Mr. Mahjoub left Sudan due to increased cooperation between the Egyptian and Sudanese governments and the fact that Egyptian nationals were becoming increasingly unwelcome in Sudan in late 1995 is consistent with Mr. Mahjoub's PIF narrative.

[495] Further, it is noteworthy that this account of events by Mr. Mahjoub does not mention the significant impact on Egyptian/Sudanese relations of the high profile AJ and VOC attacks occurring at this time, in particular the attempted assassination of President Mubarak and the deaths of several young Egyptians executed by the AJ as spies, the so-called "boy spies" incident (F. Gerges testimony, 20 January 2011, pp.134-136; D. Byman Expert Report, Exhibit A19, p.9). It is clear from the expert evidence that during this period these attacks caused the head of the NIF, Mr. Hassan al-Turabi, to lose influence and the Sudanese government of President Bashir to begin expelling jihadists and eventually to expel many Egyptians from Sudan (D. Byman Expert Report, Exhibit A19, p.9).

[496] The Ministers allege that the main reason for Mr. Mahjoub's departure was that he was a member of a terrorist group. The Ministers submit that Mr. Mahjoub continued to work for

terrorist groups in Sudan until Sudan began to “crack down” on these groups, particularly AJ and Al Qaeda, which the government had formerly harboured. They rely on the expert report and testimony of Professor Byman on this point (D. Byman Expert Report, Exhibit A19, p.9), and on the Service’s view that Mr. Mahjoub left Sudan after his participation in the bombing of the Egyptian embassy in Islamabad on November 19, 1995.

[497] Professor Wark contests Professor Byman’s evidence that Mr. Mahjoub’s departure from Sudan coincides with the Sudanese government “crackdown” on terrorist groups. Based on his research, Professor Wark opines that the “crackdown” began against Egyptians in February 1996, when the Sudanese government required all Egyptians in the country to register with the police, and in April 1996 when Egyptian militants were asked to leave (W. Wark Expert Report, Exhibit R24, pp.18-19). Mr. Mahjoub left Sudan on December 30, 1995, before the Sudanese government required registration.

[498] However, both Professor Wark and Professor Byman agree that Sudan had expelled Libyan fighters from Sudan in 1995 (*ibid.*; D. Byman Expert Report, Exhibit A19, p.9). Professor Wark ignores the possibility that Mr. Mahjoub, if he was involved with a terrorist group, might attempt to leave Sudan at the first sign of a “crackdown” on extremists in general and might not wait until he was required to register with the police. Professor Byman also mentions that although Mr. al-Turabi, the leader of the Sudanese NIF and one of Al Qaeda’s and the AJ’s main supporters in the Sudanese government, praised the AJ’s assassination attempt on President Hosni Mubarak in June 1995, “President Bashir began a crackdown on Turabi’s supporters and eventually Turabi...” (*ibid.*). Professor Byman adds that at this time, terrorist

groups based in Sudan were looking for a base abroad (D. Byman testimony, 28 October 2010, pp.30-31) although in his experience and research, terrorist groups and leaders had not relocated to Canada specifically (D. Byman testimony, 1 November 2010, pp.191-194).

[499] Other individuals in Sudan associated with terrorism, some with direct or indirect connections to Mr. Mahjoub, traveled or moved abroad around this time. [REDACTED]

[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] SIR  
Reference Indices Tab [REDACTED]). [REDACTED]

Dr. Al Zawahiri left Sudan for Europe in 1996 (D. Byman Expert Report, Exhibit A19, p.10).

Mr. El Hage left Sudan in 1994 (J. Dratel Affidavit, Exhibit R39, paragraph 27). [REDACTED]

[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). **[The Ministers have adduced  
classified evidence that other individuals left as well.]**

[500] While I cannot infer from this coincidence alone that Mr. Mahjoub left Sudan because he was a member of one of the terrorist groups at issue, I am satisfied that Mr. Mahjoub's departure from Sudan coincided with the departure of these terrorist groups and many of their leading members. This timing lends support to the Ministers' allegations of Mr. Mahjoub's association with these groups.



[501] [The Ministers have adduced classified evidence] that Mr. Mahjoub may have participated in the bombing of the Egyptian embassy in Islamabad

[Redacted]

[Redacted]

( [Redacted] SIR Reference Indices Tab )

[502] [Redacted]

( [Redacted] SIR Reference Indices Tab [Redacted]

[Redacted] ). [Redacted]

[Redacted]

[Redacted]

[Redacted]

[503] The Ministers have not provided sufficient evidence to establish reasonable grounds to believe that Mr. Mahjoub was involved in the Islamabad embassy bombing, and that this was his reason for leaving Sudan. I find the [Ministers' evidence] [Redacted] to be insufficiently compelling or credible to support such an inference.

[504] To conclude, the Ministers have established reasonable grounds to believe that Mr. Mahjoub was Deputy-Director of Althemar and manager of the Damazine Project for Pluvial Agriculture at Damazine Farm when Al Qaeda was conducting terrorist "refresher" training in

weapons and explosives on the farm. As an individual with such a high level of responsibility, who had the trust of Mr. Bin Laden, there are also reasonable grounds to believe that he knew about this training and was, by reason of his position of authority, complicit in the training. I accept both Mr. Mahjoub's account that he left Sudan because Egyptians were becoming increasingly unwelcome in Sudan and the Ministers' evidence that Mr. Mahjoub's departure coincided with that of AJ, Al Qaeda, and many of their prominent members. The Ministers have failed to establish that Mr. Mahjoub left because of his involvement in the Egyptian embassy bombings in Islamabad. I now turn to the period from Mr. Mahjoub's arrival in Canada until his arrest.

*1996-2000*

[505] I propose to canvass, in roughly chronological order, the events surrounding Mr. Mahjoub's residence and activities since his arrival in Canada in 1995 and how they relate to Mr. Mahjoub's alleged membership in the AJ and the VOC.

[506] The parties do not dispute that Mr. Mahjoub came to Canada from Sudan on December 30, 1995. He landed at Toronto Pearson Airport alone and using a false Saudi Arabian passport "in the name Mohammad Aith (ph) Abbas EL MARZOOQI" (Immigration screening interview, SIR Reference Indices Tab [REDACTED]; see also Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3). This passport was seized by CIC officials at the airport. [REDACTED]

[REDACTED]

[REDACTED]

**[The Ministers adduced classified evidence that terrorists often used false Saudi Arabian passports to enter Canada and gave examples. The Ministers also adduced evidence that if their documents were challenged, they would make an immediate refugee claim.]**

Mr. Mahjoub made his refugee claim at this time (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23).

[507] I accept Public Counsel's submission that Mr. Mahjoub's behaviour in securing a false Saudi Arabian passport and making a refugee claim when he was challenged upon arrival does not, on its own, support the Ministers' allegations since refugees sometimes have no option but to make use of false documentation in order to come to Canada. Nevertheless, I accept **[the Ministers']** [REDACTED] evidence that several established or suspected terrorists have used this strategy to enter Canada. This, along with Mr. Mahjoub's timing in entering and leaving Sudan,

is another example of Mr. Mahjoub's behaviour coinciding with that of other individuals found in these Reasons to be terrorists.

[508] Through his interaction with CIC at the Pearson airport, Mr. Mahjoub met a man named Hassan Razgar who worked as a CIC interpreter, a man whom Mr. Mahjoub listed as a friend at a subsequent Service interview two years later. Mr. Mahjoub claimed that they kept in touch, and Mr. Razgar helped him through the immigration process (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23). It was Mr. Razgar who translated Mr. Mahjoub's PIF.

[509] Mr. Mahjoub claimed in this Service interview that he lost his luggage upon arrival at the Pearson Airport, and that a man named Said Fathi Mohammed El Jamal overheard him speaking Arabic, helped him retrieve his luggage, and then offered to put Mr. Mahjoub up (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23). Mr. Mahjoub also claimed that he began residing with Mr. El Jamal at his apartment, Apartment 1722, 7 Crescent Place, Scarborough (*ibid*). Mr. Mahjoub reportedly claimed that he "first met EL JAMAL at the Toronto Airport when he (subject) arrived in Canada; they did not know each other prior to this chance meeting" (*ibid*). This is consistent with Mr. Mahjoub's account related at a previous interview (CSIS Interview 8 August 1997, SIR Reference Indices Tab ■; Exhibit A2, Tab 21).

[510] The Ministers contend that Mr. Mahjoub was lying in his Service interviews about his initial residence in Canada. They maintain that, in fact, Mr. Mahjoub initially resided with the

Elsamnah family, Mr. Khadr's in-laws, and that he did not begin to reside with Mr. El Jamal until [later] [REDACTED]. In another Service interview, Mr. Mahjoub reportedly did not dispute the Service's suggestion that he resided with the Elsamnahs:

MAHJOUB denied knowing Ahmed KHADR. When the writer pointed out that this was surprising given that MAHJOUB resided with KHADR's in-laws the ELSAMNAH's, MAHJOUB suddenly recalled knowing KHADR and stated that 'everyone knows Ahmet KHADR'. MAHJOUB and ELFOULI both claimed that MAHJOUB met KHADR through ELFOULI as ELFOULI is friends with KHADR's wife. Neither MAHJOUB nor ELFOULI could explain how their claim could be accurate since MAHJOUB had stayed with KHADR's in-laws before meeting ELFOULI.

(CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22)

[511] [REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
[REDACTED] [In addition, The Ministers have adduced classified evidence to support their allegation that Mr. Mahjoub resided with Mr. Khadr's in-laws.]

[512] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[513] [REDACTED]  
[REDACTED]

[514] I agree with the Ministers that Mr. Mahjoub was deceptive when he claimed that upon his arrival in Canada, he resided with Mr. El Jamal and omitted the fact that he had resided with the Elsamnahs. While it is true that Mr. Mahjoub resided with Mr. El Jamal at Mr. El Jamal's residence, the evidence indicates that he did not do so **[upon his arrival]** [REDACTED]. I find that in **[early]** [REDACTED] 1996 Mr. Mahjoub resided at the Elsamnahs' home at 3 Khartoum Avenue in Scarborough. [REDACTED]

[REDACTED] At the time that Mr. Mahjoub was residing at **[the home of Mr. Khadr's in-laws]** [REDACTED], Mr. Khadr and his associates were already being investigated for involvement in terrorist activities. [REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] ). **[The Ministers have adduced classified evidence that Mr. Khadr was being investigated in connection with the November 1995 Islamabad Embassy bombings.]**

[515] Mr. Mahjoub claimed in his interview that he knew Mr. Khadr because “everyone knows Ahmet Khadr”, not because of a terrorist connection (CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22). Ms. El Fouli’s account seems to corroborate this account, that Mr. Mahjoub had seen Mr. Khadr at the mosque, and nothing more to her knowledge (Transcript of Proceedings DES-1-00, 2 March 2001, Exhibit A45, p.787). Nevertheless, this account does not explain why Mr. Mahjoub was not candid with the Service about knowing Mr. Khadr and residing with the Elsamnahs until he was confronted with this fact. It also does not explain his statement in his interview with the Service that I have found to be untruthful that he only knew Mr. Khadr and the Elsamnahs through Ms El Fouli, whom he met after residing with the Elsamnahs. I find that Mr. Mahjoub’s account of his relationship with Mr. Khadr is not credible.

[516] As I concluded at paragraph 265 above, there are reasonable grounds to believe that upon arrival in Canada, or shortly after his arrival, Mr. Mahjoub began using the alias “Ibrahim” or “Abraham”, and “Abu Ibrahim” or “Abu Abraham”. As I also noted, many of his contacts that I have found to be connected to terrorism knew him by this alias. It is noteworthy that Mr. Mahjoub did not share this alias with his friend, Mr. Razgar, who worked for the government of Canada.

[517] Mr. Mahjoub resided with Mr. El Jamal from [early] 1996 until at least late October 1996.

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED] )

[REDACTED]

[518] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[519] On May 11, 1996, during the period in which Mr. Mahjoub and Mr. El Jamal resided together, Mr. Jaballah, a contact of Mr. Mahjoub [REDACTED] who is also suspected of terrorism, arrived in Canada.

[520] Later in 1996, Mr. Mahjoub met his future wife, Ms. El Fouli, an individual who claimed in a Service interview to know the Elsamnahs from before she met Mr. Mahjoub (CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22). Ms. El Fouli is a Muslim-Canadian who had a 12-year-old child from her previous marriage, Hani El Fouli.



[521] Mr. Mahjoub and Ms. El Fouli's marriage was reportedly arranged by a man that Mr. Mahjoub met at the Jami Mosque, "Abdullah Albarbari (ph)" (CSIS interview 13 January 1998 and 20 January 1998, SIR Reference Indices Tab [REDACTED]). They were married in a civil service in Toronto on September 26, 1996 (Mr. Mahjoub's modified PIF, Exhibit A2, Tab 3) and then in a Muslim ceremony at the Jami Mosque approximately ten days later (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23). [REDACTED]

[522] On October 24, 1996, the IRB granted Mr. Mahjoub asylum in Canada (Decision of the IRB 24 October 1996, SIR Reference Indices Tab [REDACTED]). [REDACTED]

[523] [REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]  
In [REDACTED] 1996, Mr. Mahjoub first came to the attention of the Service [REDACTED]

[524] At the beginning of 1997, Mr. Mahjoub reportedly obtained a job working one day a week at the Islamic Foundation teaching the Koran, a job that he would maintain until March 1997 (CSIS Interview 13 January 1998 and 20 January 1998, SIR Reference Indices Tab [REDACTED]). His next job began on July 4, 1997, when Mr. Mahjoub reportedly obtained a job at Nienkamper Furniture in North York due to his wife's friendship with a Nienkamper employee, Abdul Rahim (*ibid.*). In February 2000, he began to work at a company called Food World ([REDACTED] SIR Reference Indices Tab [REDACTED]). The Ministers do not make any allegations concerning Mr. Mahjoub's employment during this period.

[525] Earlier in these reasons, I have found that there are reasonable grounds to believe that Mr. Mahjoub was in contact with Mr. Marzouk by telephone between January 1997 and July 1997. There are reasonable grounds to believe that during this time, Mr. Mahjoub and Mr. Marzouk communicated by telephone on the following dates as explained at paragraph 301 above:

- a. January 19, 1997;
- b. February 9, 1997;
- c. March 16, 1997;
- d. April 17, 1997;

- e. May 11 and 25, 1997;
- f. June 8 and 29, 1997;
- g. July 6 and 13, 1997 and twice on July 27, 1997.

The calls then stopped and did not resume until [the following year] [REDACTED].

[526] [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

[REDACTED]

[527] [REDACTED]

[REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ).[The

Service obtained a number of important pieces of evidence on Mr. Mahjoub at this time.]

[528] In a Service interview, Mr. Mahjoub recounted that sometime in July 1997 two of his brothers were arrested in Egypt, Wajih Zeki Mahjoub, a teacher who also used the nickname “Abu Baset,” and Jamal Zeki Mahjoub, a doctor. Reportedly, in Mr. Mahjoub’s opinion, “Wajih and Jamal were arrested, along with some of the subject’s friends and cousins, because subject [he] had claimed refugee status in Canada.” Mr. Mahjoub’s third brother, Hamdi Zeki Mahjoub, was reportedly not arrested “but is contacted from time to time by Egyptian authorities and had all his personal documents seized. Hamdi works as a Moazin(ph) which is the person who calls Muslims to prayer, but also owns some land and had his own business selling vehicle oil” (CSIS Interview 13 January 1998 and 20 January 1998, SIR Reference Indices Tab ■). Mr. Mahjoub’s account is corroborated by statements obtained from Mr. Mahjoub’s brothers in Egypt and by letters of complaint about their arrests and detention made by the brothers’ lawyers (for example, Exhibits R99, R101 and R102). While the Ministers dispute that Mr. Mahjoub’s refugee claim was the reason for his brothers’ detention in Egypt, in my view the reason for their detention is not relevant to the merits of the reasonableness proceeding. I therefore decline to make a finding on this issue.

[529] On August 8, 1997, Mr. Mahjoub had his first interview with the Service (CSIS Interview 8 August 1997, SIR Reference Indices Tab ■; Exhibit A2, Tab 21). According to the BRS report of that interview, Mr. Mahjoub recounted a narrative consistent with his PIF of how and why he came to Canada. He claimed to have met Mr. El Jamal at the Toronto airport who helped him to settle, which is deceptive because he omitted the detail that he was living with the Elsamnabs. In addition, he claimed that he and his wife knew Mr. Khadr, but they had not known him before coming to Canada. He denied traveling to Afghanistan or Pakistan and denied using aliases, but

then admitted to using Abu Ibrahim, which his wife said that he used because of their unborn son. Mr. Mahjoub's son Ibrahim was born on August 29, 1997. Further, he "denied ever participating in any violence in Egypt and belonging to any groups such as AL JIHAD (AJ)...or AL GAMAA AL ISLAMIYA (AGAI)..." (*ibid.*).

[530] Mr. Mahjoub did not call Mr. Marzouk's cellular telephone in August or for the rest of 1997, nor did Mr. Marzouk call Mr. Mahjoub, although they had connected approximately every month since January 1997 (Exhibit A7 Tabs 1-13; Telephone toll records for Mr. Mahjoub [REDACTED] [REDACTED] SIR Reference Indices Tab [REDACTED]). The Service at the time conjectured that this was security consciousness prompted by the August 8, 1997 Service interview (*ibid.*).

[531] The record indicates that following an interview by the Service in October 1997, Mr. Mahjoub briefly resumed his telephone calls to Mr. Marzouk. [REDACTED]  
[REDACTED]  
[REDACTED] (Telephone toll records for Mr. Mahjoub [REDACTED] SIR Reference Indices Tab [REDACTED]; Exhibit A7 Tabs 1-13). The fact that [REDACTED] Mr. Mahjoub and Mr. Marzouk ceased calling one another after Service interviews tends to support the Service's contention that the two men exhibited security consciousness. Nonetheless, in my view the evidence is inconclusive on the issue.

[532] On October 24, 1997, Mr. Mahjoub had his second interview with the Service (CSIS interview 24 October 1997, SIR Reference indices Tab [REDACTED]; Exhibit A2, Tab 25). During this interview, Mr. Mahjoub reportedly denied traveling to Afghanistan. He also denied knowing Mr. Jaballah by name, by his alias, "Abu Ahmed", or by a photograph shown to him. In addition, he claimed to be too busy at work to socialize. [REDACTED]

[REDACTED] As I determined at paragraphs 279-281 above, I agree with the Service that Mr. Mahjoub was likely untruthful when he denied knowing Mr. Jaballah by his alias "Abu Ahmed", given the "Abu Ahmed" telephone number registered to Mr. Jaballah found in Mr. Mahjoub's address book. To be clear, I make this finding in the context of Mr. Mahjoub's credibility and not in relation to allegations of terrorism against Mr. Jaballah.

[533] [REDACTED] calls to Kuwait were made from Mr. Mahjoub's residential telephone. I have considered these calls at paragraphs 289-294 above. [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference indices Tab [REDACTED]). [REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED] [A] number was identified [REDACTED] as belonging to Ahmad Hussein Badeta Alsaied. [REDACTED]

[Redacted line]

[Redacted line]

[Redacted block]

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[Redacted line]

[Redacted line]

[534] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[535] In addition, there is no further evidence on the record as to Mr. Alsaied's past besides [REDACTED] **[his deportation from Kuwait]** for an association with the VOC, and the Service's bald assertion that Mr. Alsaied is Mr. Badiya [REDACTED]. On the other hand, there is **[classified]** evidence on the record that Mr. Badiya may have been [REDACTED] **[a member]** of the VOC at that time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED] ).

Professor Gerges further confirms that “Ahmed’ Badi” was a senior cohort of Dr. Al Zawahiri according to the account of Kamal Habib (F. Gerges Expert Report, Exhibit R57, paragraph 202).

[536] I found at paragraph 295 above that there was insufficient evidence to establish that Mr. Alsaied and Mr. Badiya were the same individual. Nevertheless, this evidence demonstrates that Mr. Mahjoub once attempted to contact or contacted Mr. Alsaied or Mr. Badiya, both individuals suspected of being a member the VOC and deported from Kuwait to Egypt for that reason. I therefore find that Mr. Mahjoub was in contact with a telephone number associated with the VOC in Kuwait.

[537] On January 13 and 20, 1998, Mr. Mahjoub had his third interview with the Service (CSIS Interview 13 and 20 Janaury 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 23).

Mr. Mahjoub had reportedly brought a friend as an interpreter, Mahmoud Nasr, a Palestinian refugee who had come to Canada in 1994, even though he had requested the presence of an interpreter provided by the government. Mr. Mahjoub claimed that if he had known the interview

was a security interview, he would not have brought Mr. Nasr. He accused the Service of being worse than the Egyptian authorities and Canada of being responsible for the arrest of his family and friends in Egypt.

[538] In this lengthy interview, Mr. Mahjoub reportedly gave biographical details similar to his PIF about how and why he came to Canada, except that this time he claimed to have applied for and received two passports, in contrast to his PIF (as explained above at paragraphs 441-442). Further, Mr. Mahjoub stated that he studied under Ahmad Al Zahhar and Eid Ismael at Al Azhar University. In the same interview, he claimed that Mr. Al Zahhar had died in 1969. His account does not hold since Mr. Mahjoub was not at university at that time; he was nine years of age in 1969. Mr. Mahjoub claimed to have met Mr. El Jamal at the Toronto airport, where he offered to put Mr. Mahjoub up at his apartment, an offer that Mr. Mahjoub accepted. As I concluded at paragraph 514 above, again Mr. Mahjoub was not being candid about his residence with the Elsamnahs when he related this story. Mr. Mahjoub again denied traveling outside of Sudan and Egypt prior to coming to Canada, and he denied using the alias “Shaker”.

[539] Mr. Mahjoub also reportedly gave the explanation for his use of the alias “Abu Ibrahim”, explaining that “as a young Muslim man in a non-Muslim country I wanted God to give me a good wife and family” as well as a reference to the name of his son. At paragraph 266, I found this explanation to lack credibility. He also gave conflicting accounts of when he used this alias.

[540] He stated that “a few friends in Canada” knew him as Abu Ibrahim, but he refused to give their names for fear that the Egyptian authorities would take action against him. He also feared

that the Service would interview his friends, and they would, as a result, be targeted by the Egyptian authorities. In my view, Mr. Mahjoub's explanation does not have a ring of truth. Later in the interview, he identified two individuals who knew him as Abu Ibrahim: Mr. Nasr and Mr. El Jamal. He also stated that Mr. Razgar, the interpreter from CIC who he identified as a friend and who was helping him in the immigration process, did not know him as Abu Ibrahim. His willingness to provide their names is surprising given that Mr. Mahjoub was concerned that they would be targeted by the Egyptian authorities. It is also noteworthy that Mr. Mahjoub's friend who worked for the Government of Canada did not know his alias.

[541] In addition during his interview and testimony before the IRB, Mr. Mahjoub reportedly gave details about his beliefs and his opinions of extremist figures as follows:

When asked about Sheikh Abdel RAHMAN, subject denied knowing such a person. I then referred to Sheikh RAHMAN as the Egyptian currently in jail in the United States for his role in the WORLD TRADE CENTRE (WTC) bombing. Subject asked me to refer to Sheikh RAHMAN by his full name, Sheikh Umar Abd-Al-RAHMAN, and acknowledged that he knew of this person. Subject described Sheikh RAHMAN as a holy man and a blind person, who is opposed to Egypt. Subject did not see how Sheikh RAHMAN could have been involved in, or planned, the WTC bombing because he is blind. When asked about terrorist activities, subject stated there is no word terrorist in Islam. When asked if he would bomb the WTC (or another facility) if the Muslim religion told him to do it, subject stated no religion teaches this. When asked if he supported the use of violence, subject stated: my religion does not support the use of violence. Subject stated he did not agree with Ayatollah KHOMEINI's decree against Salman RUSHDIE, became quite agitated and added, 'how would you feel if someone insulted your Religion?' Subject stated he would not allow anyone to insult his religion....Subject feels strongly that Egypt should be governed by the Islamic religion and, as a Muslim, he would like his country's government to be Muslim. He does not go to Mosque regularly since working, but prays 5 times a day and fasts, makes donations to charity through his family in Egypt but "does not know how this is done."

[Emphasis added]

(CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ■; Exhibit A2, Tab 23)

MEMBER NO. 1: ...Do you support the policies of the Muslim Brotherhood?

THE CLAIMANT: I would like to state that I am a graduate of an Islamic university, and I would like to be governed by Islam. So whether I am governed by Islam...by a Muslim Brotherhood or any other group - or based on the fact that I am a Muslim, I graduated from a Muslim university, whoever is going to govern me justly would be fine with me, whether brotherhood or any other group, because I don't believe any one in the world dislikes freedom, democracy and freedom of expression.

[Emphasis added]

(IRB transcript 24 October 1996, Abuse of Process motion record Tab K, p.64)

MEMBER NO. 1: What is your opinion of Hassan al-Turabi?

THE CLAIMANT: He is a man who is an advocate, who is a scholar like any other scholar, a Muslim scholar.

[Emphasis added]

(IRB transcript 24 October 1996, Abuse of Process motion record Tab K, p.49)

PRESIDING MEMBER: Did he head any kind of national liberation group?

THE CLAIMANT: I didn't...I don't know about that, none whatsoever happened.

PRESIDING MEMBER: You didn't read about it? You didn't read about him in the newspapers?

THE CLAIMANT: Very much so. Like any educated person, I read, I hear.

...

What I was reading stated that the Egyptian government had constantly accused or viewed him as being the head of the Sudanese government, as being the powerbroker...

...

In my personal view, this accusation is being fabricated by the Egyptian government because the Egyptian government is attempting to assert its control over the Sudanese government.

...

MEMBER NO. 1: ...what did you observe about the influence of the NIF in the Sudan, while you were there?

THE CLAIMANT: My personal observation is that they are normal people, like any other people living in the society. No major changes appeared within the Sudanese society... There was nothing new from the Islamic perspective.

(IRB transcript 24 October 1996, Abuse of Process motion record Tab K, pp.52-55)

[542] I find that the above-reported accounts support the Ministers' allegations. Mr. Mahjoub holds defensive views of Sheikh Rahman, Hassan al-Turabi and the NIF-backed government in Sudan. I also find that Mr. Mahjoub's attempt to defend a convicted terrorist and a radical Islamist regime and leader that was supportive of terrorist activities is difficult to reconcile with his expressed non-violent views. It is not likely that an educated and well-read individual such as Mr. Mahjoub would be completely ignorant of how extremist these individuals and the NIF-backed regime were. Radical opinions alone do not establish membership. Nevertheless, Mr. Mahjoub's opinion that extremists are just "normal" people is of concern, particularly in the context of the evidence that Mr. Bin Laden was only willing to trust those who had been vetted for their religious and political views and that he trusted Mr. Mahjoub with a high level of responsibility. In the context of all of the evidence, I find that Mr. Mahjoub's political views and defensive views of Sheikh Rahman, Mr. al-Turabi, and the NIF-backed regime in Sudan lend support to the Ministers' allegations.

[543] In mid-1998, the Ministers allege that a number of Mr. Mahjoub's contacts became active in the terrorist milieu. The first was Mr. Marzouk, who [in May] [REDACTED] 1998, several months after Mr. Mahjoub had ceased telephone communications with him, left Canada for Turkey [REDACTED] ([REDACTED] SIR Reference Indices

Tab [REDACTED]). He then traveled to Afghanistan [REDACTED] and Azerbaijan [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED]).

Mr. Marzouk was arrested in Baku, Azerbaijan on August 20, 1998 for allegedly attempting to attack U.S. interests in Baku [REDACTED]

[REDACTED].

[544] The evidence does not connect Mr. Mahjoub with this particular terrorist plot considering that their phone contact appears to have dropped after [early] [REDACTED] 1998 and that Mr. Marzouk did “nothing of concern” while in Canada according to the Service (W. Wark Expert Report, Exhibit R24, p.49; John’s testimony DES-5-08, 4 November 2008, Exhibit A24, p.276). Nevertheless, Mr. Marzouk’s then ex-wife, Yasmin Elmaleh, gave interviews to newspapers claiming that while they were married, Mr. Marzouk invited confessed American terrorist Mr. Mohammed to his home, and she was forced to leave the home for the duration of Mr. Mohammed’s stay (*The Province*, 21 December 2001, Exhibit A9, Tab 8). Mr. Marzouk and Ms. Elmaleh were living together at the time that Mr. Mahjoub was in contact with Mr. Marzouk, for Ms. Elmaleh was listed on Mr. Marzouk’s Cantel telephone records as a cellphone user (Exhibit A7, Tabs 1, 4). Given this evidence, taken in the context of the circumstances of Mr. Marzouk’s entry to Canada, his association with Mr. Mohammed [REDACTED] [REDACTED] and his departure from Canada in May 1998 for the purposes of terrorism, I am satisfied that Mr. Marzouk was still involved in terrorist activities at the time during which Mr. Mahjoub was in contact with him.

[545]

[REDACTED]  
[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]). On August 7, 1998, the American Embassies in Kenya and Tanzania were bombed by the AJ, killing more than 200 people and wounding more than 5,000 people (*Al-Wasat*, Exhibit A2 Tab 34). [REDACTED]

[REDACTED] **[The Ministers have adduced classified evidence that one of Mr. Mahjoub’s contacts may have been involved in the bombing, but I find it unlikely.]**

[546] Also in mid-August 1998, the American Embassy in Albania was closed due to what the US authorities perceived to be a credible threat of an AJ attack (*Agence France-Presse*, Exhibit A2, Tab 10). [REDACTED]

[REDACTED]  
[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED]).

[547] On August 12, 1998, Mr. Al Duri wrote a letter to Mr. Mahjoub using the alias “Mubarak A. Razak” on the return address on the envelope. The Ministers allege on the basis of this letter that Mr. Mahjoub and Mr. Al Duri had a close relationship. The letter discussed investments as follows:

...I hope that you are on the verge of or have finished the matter of the official papers, i.e. getting the citizenship and the passport. My generous brother, to start with, I apologize for prolonging the time of correspondence for I had told you that I will write to you in

case I moved to the Emirates. However I had to face some circumstances which kept me very busy and in constant travel... Living costs here a monthly amount three four times more than it was in Khartoum...

Concerning work, it is at its beginning. I have invested your amount in a (business) deal which according to my previous calculations should have brought a gain of around 20%. However it brought a very small percentage (of gain) to such an extent that I feared to lose the capital invested. Thank God, I was able to recover the invested amount by trading in spare parts with Iraq...I was certain that trade with Iraq was somewhat risky, that is why I invested your amount of \$2134, along with three times that amount from my own money, in a company which exports scarfs [*sic*] and hijabs...Along with some other brothers, I started a company of shareholders where every one of us enters with a certain amount of shares and ensures his gains by the amount of his shares, after having extracted the administrative costs for the workers...

Your brother,  
Mubarak AL DOURI

(Letter from Mr. Al Duri to Mr. Mahjoub, 12 August 1998, Exhibit A2, Tab 83)

I agree with the Ministers that this letter supports the alleged relationship. Mr. Al Duri saw fit to write to Mr. Mahjoub five years after his employment with Althamar ended. Mr. Mahjoub had moved to Canada and Mr. Al Duri had moved to the United Arab Emirates. Mr. Al Duri apologizes for not corresponding with Mr. Mahjoub more often, suggesting that he had intended to or should have corresponded more frequently. Mr. Al Duri also speaks of investing Mr. Mahjoub's money for him, indicating that Mr. Mahjoub entrusted Mr. Al Duri with his money and that their relationship was therefore close.

[548]

SIR Reference Indices Tab ; Addresses and telephone numbers on



Mr. Mahjoub at the time of his arrest by CIC 26 June 2000, SIR Reference Indices Tab [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[549] On October 5, 1998, Mr. Mahjoub had his fourth interview with the Service (CSIS Interview 5 October 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 22). Ms. El Fouli was present. During this interview, Mr. Mahjoub was reportedly confronted with the arrest of the so-called “British 7” Islamic extremists that had recently occurred and claimed that he was unaware of this event. When the Service suggested that the authorities might find the names and telephone numbers of Mohamed Mahjoub, Mahmoud Shaker, Abu Ibrahim, or Mohamed Hasan in searches of the extremists’ belongings, Mr. Mahjoub denied that any of these aliases were associated to him. Mr. Mahjoub then clarified that he was known as Abu Ibrahim because of his youngest son. Above, I found at paragraph 266 that this explanation lacks credibility. I note that this is not the first occasion when Mr. Mahjoub denied using aliases and then qualified his denial.

[550] Mr. Mahjoub reportedly denied knowing Mr. Marzouk or his alias “Adnan”, and said that he did not recognize Mr. Marzouk’s photograph. Before providing a reason, Mr. Mahjoub asked the Service where Mr. Marzouk lived, and then gave the reason that he could not have met Mr. Marzouk because Mr. Marzouk lived in B.C., and he had never travelled to B.C. He did not answer when the Service suggested that Mr. Mahjoub had met with him in Toronto, and he denied knowing Mr. Hamed. Although there is no evidence that Mr. Mahjoub actually met

Mr. Marzouk in Toronto, as I have concluded at paragraph 311 above, Mr. Mahjoub's denial of knowing Mr. Marzouk was not credible.

[551] Mr. Mahjoub also reportedly denied knowing Mr. Khadr until confronted with the fact that he had lived at the Elsamnabs'. Mr. Mahjoub and Ms. El Fouli explained that Mr. Mahjoub had met Mr. Khadr through her because she was friends with the Elsamnabs but could not explain how this was so if Mr. Mahjoub lived at the Elsamnabs' prior to meeting Ms. El Fouli. Mr. Mahjoub claimed that Mr. Khadr was in Pakistan but did not know his current whereabouts. I find that Mr. Mahjoub was being untruthful when he denied knowing Mr. Khadr.

[552] Upon the arrest of Mr. Jaballah on March 31, 1999, Mr. Mahjoub had his fifth interview with the Service (CSIS Interview 31 March 1999, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 24). Ms. El Fouli was present. Prior to this interview, the Service had attempted to interview Ms. El Fouli alone, without success. Mr. Mahjoub had reportedly learned of this and was angry that the Service had attempted to contact her behind his back. When confronted with the fact of Mr. Jaballah's arrest, Mr. Mahjoub reportedly denied knowing Mr. Jaballah or his alias, "Abu Ahmed." As I found at paragraphs 279 and 281, Mr. Mahjoub was not truthful in his denial. When confronted with a *Macleans*' magazine article about the Egyptian embassy bombing in Islamabad, Mr. Mahjoub reportedly pointed to the photograph of Mr. Khadr in it and began shouting in Arabic. Ms. El Fouli translated that Mr. Mahjoub had already said all that he would say on Mr. Khadr. He also denied knowing Mr. Marzouk, which I have found to be untruthful at paragraphs 309-311. In addition, he denied knowing Mr. Saqr and Mr. Badiya.

[553] In late 1998 and early 1999, a series of extraditions and renditions to Egypt from various countries resulted in several trials. For example, in January 1999, Kuwait extradited Mr. Alsaied and Mr. Badiya to Egypt for their alleged membership in the VOC ( [REDACTED] SIR Reference Indices Tab [REDACTED]; [REDACTED] SIR Reference indices Tab [REDACTED]). The Returnees from Albania trial began in February 1999, in which Mr. Mahjoub was accused of terrorism-related offences. On April 18, 1999, Mr. Mahjoub was convicted by an Egyptian military court to fifteen years' imprisonment *in absentia*. As I concluded in the decision to exclude evidence pursuant to subsection 83(1.1) of the *IRPA*, there are reasonable grounds to believe that this conviction was secured by evidence obtained through torture or cruel, inhuman and degrading treatment and was consequently excluded from the record. It cannot therefore be used to support the Ministers' allegation of membership in the AJ or the VOC. In addition, a ruling of the Egyptian Fifth Circuit Superior Military Court on March 19, 2012 declared that the court did not have jurisdiction over case number 8/98 in the first place (Exhibit A79).

[554] From late 1998 until June 2000, the Service conducted physical surveillance on Mr. Mahjoub. The physical surveillance personnel reported several incidents that the Service interpreted as security consciousness on the part of Mr. Mahjoub. First, Mr. Mahjoub walked from his home and

...stopped at a bank of phones located on the south/east corner of Don Mills and Gateway, where he used the pay phone [REDACTED] [REDACTED] During his walk from the phone booth to the residence MAHJOUB was observed to shoulder check on three separate occasions for no apparent reason.

(Physical Surveillance [REDACTED] December 1998, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 11)

Mr. Guay confirmed that individuals would use pay telephones if they believed that their home telephones were being monitored (M. Guay testimony, 13 October 2010, p.102). He also indicated that since the reports were made by individuals trained in surveillance and counter-surveillance techniques, a report that someone was looking over his shoulder for no apparent reason was significant as an indicator of security consciousness (*ibid.*, p.105).

[555] In January 1999, Mr. Mahjoub and [an acquaintance] “were observed within the Yonge Eglinton Center milling about on the main level...They then went to the upper level of the center where MAHJOUB used the pay telephone... (Physical Surveillance January 1999, SIR Reference Indices Tab ; Exhibit A8, Tab 12).

[556] In May 1999, the following incident took place:

prior to boarding the bus, MAHJOUB walked through the Flemingdon Park Shopping Centre lot and looked back towards the area of Grenoble on several occasions. because it was not busy with pedestrian or vehicular traffic, this would have afforded MAHJOUB with a good view of anyone in his vicinity.

(Physical Surveillance May 1999, SIR Reference Indices Tab ; Exhibit A8, Tab 13)

[REDACTED]

[557] Later in May, Mr. Mahjoub allegedly exhibited more security consciousness when the following incident occurred:

MAHJOUR left Bata Shoes with no visible purchase...He walked north in the mall passing a bank of telephones...He then u-turned and headed directly back to the pay phones at 1641 hours...

MAHJOUR began to utilize the pay phone at the west end.  
COMMENTS: In this pay phone area there are 4 phones.  
MAHJOUR lifted the receiver and placed a call

...MAHJOUR then finished this call and began another one...

(Physical Surveillance [REDACTED] May 1999, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 14)

[REDACTED]

[REDACTED]

Mr. Mahjoub used a pay phone again in June (Physical Surveillance [REDACTED] June 1999, SIR Reference Indices Tab [REDACTED]).

[558] Mr. Mahjoub made use of pay phones at the mall and the coffee shop in February 2000 (Physical Surveillance [REDACTED] February 2000, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 16) and twice in May 2000 (Physical Surveillance [REDACTED] May 2000, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 17; Physical Surveillance [REDACTED] May 2000, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 18).

[559] In June 2000, Mr. Mahjoub “left his new residence at 1908 Bloor via the east doors...He made a phone call from a public phone booth located on High Park, just north of Bloor...” (Physical Surveillance [REDACTED] June 2000, SIR Reference Indices Tab [REDACTED]; Exhibit A8, Tab 19).

[560] Mere use of a pay phone, such as Mr. Mahjoub is reported to have done in the BRS reports [REDACTED], is normal behaviour for an individual away from home and not evidence of security consciousness. I am nevertheless satisfied, on the basis of the Service’s expertise in surveillance and counter-surveillance techniques, that Mr. Mahjoub was exhibiting security consciousness by using pay phones right outside his apartment, shoulder-checking for no reason, crossing a vacant parking lot and looking back, and performing “u-turns”.

[561] In early 2000, Mr. Mahjoub exhibited behaviours that the Service has again interpreted as security consciousness. The Service currently interprets the following intercepted conversation between Mr. Mahjoub and a man [REDACTED] as security consciousness because it referred to the civilian and military intelligence services, the “Moukhabarat”:

**[In January 2008, MAHJOUB and Acquaintance 50 agreed to meet arond 1800 hours. When Acquaintance 50 inquired about MAHJOUB’s news, MAHJOUB stated that he preferred to talk face to face. Acquaintance 50 wanted to know the latest developments regarding the subject of “the beautiful one or the sugar”, but MAHJOUB reluctantly explained that he could not delve into the subject right then because of the presence of the “Miygabarrat” In turn, Acquaintance 50 laughingly asked whether MAHJOUB was referring to the civil or the military “Moukhabarat” towich MAHJOUB repled both.]**

[REDACTED]

( [REDACTED] SIR Reference Indices  
Tab [REDACTED]; Exhibit A8, Tab 8)

[562] I am not persuaded that this conversation is an example of security consciousness. [REDACTED]

As the couple was having marital difficulties at the time, I [REDACTED]

[redacted] [am of the view that Mr. Mahjoub was referring to his wife.]

[563] Mr. Mahjoub was arrested on June 26, 2000. In his “pocket litter” upon his arrest was information related to his contacts (Addresses and telephone numbers on Mr. Mahjoub at the time of his arrest by CIC 26 June 2000, SIR Reference Indices Tab [redacted]; Exhibit A7 Tab 16). Among them were contacts related to Mr. Al Duri, “telephone number in London, England, friend of Mubarak ALDOURI - 1 814 508637” and the telephone number entries next to “Mubarak” in his address book that corresponded to Mr. Al Duri’s numbers in the UAE. Mr. Mahjoub also had an entry for “Abu Ahmed - 289-2361”, referring to Mr. Jaballah’s alias and an entry for “Esam”: “105 10277 135th St. Box 150 Surrey BC V3T 4C3”, corresponding to Mr. Marzouk’s post office box address. Further, Mr. Mahjoub had the Elsmans’ telephone number at 3 Khartoum Avenue, Mr. Khadr’s Canadian address, among his contacts, “Haj Abu Saeed [redacted] 265-5232.”

[564] I reject the Special Advocates’ submission that the telephone numbers lacking area codes cannot be linked with the 416 area code and that, in particular, the number for “Abu Ahmed” cannot be linked with Mr. Jaballah. It is reasonable to infer that since Mr. Mahjoub lives in the 416 area code and has a number with a 416 area code, numbers without area codes in his records would also bear the 416 area code. Mr. Jaballah also admitted to the alias “Abu Ahmed.”

[565] In addition, the August 12, 1998 letter from Mr. Al Duri addressed to Mr. Mahjoub was found in a locked briefcase in Mr. Mahjoub’s home the day after his arrest (Letter from Mr. Al



Duri to Mr. Mahjoub 12 August 1998, Exhibit A2, Tab 83). The envelope had a return address bearing Mr. Al Duri's alias, "Dr. Mubarak A Razak" (Search 28/29 June 2000, SIR Reference Indices Tab [REDACTED]).

[566] These items of physical evidence bearing contact information support the inference that Mr. Mahjoub maintained important contact with Mr. Al Duri, Mr. Jaballah, Mr. Marzouk, and Mr. Khadr's in-laws. If Mr. Mahjoub did not have important contact with these individuals, they would not appear in his address book, on his person, or in his briefcase. Moreover, it is noteworthy that most of these contacts are found under first names or aliases. The first names, "Mubarak" and "Esam", indicate friends or close colleagues. The aliases, "Abu Ahmed" and "Mubarak A. Razak", as well as the P.O. Box address associated with Mr. Marzouk, indicate contacts that Mr. Mahjoub or his contacts wished to conceal from third parties.

[567] On the whole, Mr. Mahjoub's work and activities in Canada, aside from a few incidents of security consciousness, are not suspect. While the AJ and the VOC continued to be active abroad, there is no evidence linking Mr. Mahjoub to violence or any specific AJ or VOC activities in this period. The only evidence before the Court that could support an inference that Mr. Mahjoub was involved in terrorist activities for the groups is the [REDACTED] [the Ministers' evidence] that these groups were setting up cells in Canada and that Mr. Mahjoub was [involved in leadership] [REDACTED]. These [REDACTED] assertions alone [REDACTED] do not establish reasonable grounds to believe that Mr. Mahjoub was involved in the particular alleged AJ or VOC activities during this period.

[568] Most of the inculpatory evidence that the Ministers have adduced in relation to Mr. Mahjoub's residence in Canada is evidence of his ongoing associations with established or suspected members of the AJ, VOC, Al Qaeda, and **[a related terrorist group]** [REDACTED]. This evidence is compelling, and it establishes that Mr. Mahjoub maintained contact with Al Qaeda terrorist Mr. Khadr, a friendship with established Al Qaeda terrorist Mr. Al Duri [REDACTED], and a close and active association with established Al Qaeda/AJ terrorist Mr. Marzouk, and contact with a telephone number linked to the VOC in Kuwait. A number of these contacts were still active in the terrorist milieu, particularly Mr. Khadr and Mr. Marzouk. These contacts were routinely concealed by the use of aliases. Mr. Mahjoub also concealed these contacts from the Service in one or more interviews [REDACTED]

[REDACTED]. Mr. Mahjoub's fear of the Egyptian authorities and belief that the Service was conspiring with them does not explain his dishonesty. Mr. Mahjoub's denials are insufficient to rebut the Ministers' evidence of his terrorist contacts. I conclude that there are reasonable grounds to believe that Mr. Mahjoub's contact, given the individuals' backgrounds and Mr. Mahjoub's unwillingness to be candid about his contact with them, related to the terrorist network to which these individuals were associated.

*ii. Direct Evidence*

[569] The Ministers allege that Mr. Mahjoub is a member of the AJ and a member of the VOC and its Shura Council. They maintain that he was leader of the military wing of the VOC in the early 1990s and **[remained a member of the VOC Shura Council]** [REDACTED] once he arrived.

[570] The only direct evidence supporting these allegations of membership adduced by the Ministers consists of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED] [classified evidence], and

d. an intercepted conversation between Mr. Mahjoub and an acquaintance discussing the sentencing of a “number of members, including himself, to many years of imprisonment.”

[571] Mr. Mahjoub denies being a member of the AJ or VOC or any Islamic extremist groups. He contends that the Egyptian authorities are the source of these allegations and that they are set on pursuing him because he is perceived as a political opponent.

[572] The direct evidence supporting Mr. Mahjoub’s position consists of:

a. Mr. Mahjoub’s denial, in his interviews, of any involvement with the AJ, the VOC or any Islamic extremist groups, and

- b. the testimony of Mr. Salem that Mr. Mahjoub was not a member of the AJ or the VOC.

[573] The direct evidence consists essentially of opposing statements [in the classified evidence] [REDACTED], or from interviews of Mr. Mahjoub or the testimony of Mr. Salem. I first turn to the Ministers' evidence [REDACTED].

*The Ministers' direct evidence*

[574] There are six BRS reports that provide direct evidence on the issue of membership. [REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED] (Closed Exhibit [REDACTED] Tab [REDACTED] ). [REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED] (Closed Exhibit [REDACTED] Tab [REDACTED] ). [REDACTED] (tab [REDACTED] ) [REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ; Closed Exhibit [REDACTED] Tab [REDACTED] ) [REDACTED] [REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ) [REDACTED] I will consider each of these reports in turn.

[Redacted] *[First Report]*

[575] This report claims that Mr. Mahjoub is a prominent member of the “Al Jihad”. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Much of the important information in the report is otherwise corroborated. This also speaks to the reliability of its contents. For example [Redacted]

[Redacted]

[Redacted]

[Redacted] *[Second Report]*

[576] This report is the first report that claims that Mr.Mahjoub was a member of the VOC Shura Council. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[577] [REDACTED]

[578] While I am not prepared to discount the evidence contained in the above report, [REDACTED]  
[REDACTED]  
[REDACTED] the evidence will be given less weight.

[REDACTED] *[Third and Fourth Reports]*

[579] These reports claim that Mr. Mahjoub is a member of the VOC and its Shura Council.  
[REDACTED]

[REDACTED]

[REDACTED]

[580] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[581] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[582] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a result, I give these reports no weight.

[REDACTED] *[Fifth Report]*

[583] This report [claims that Mr. Mahjoub is an AJ leader] [REDACTED]

[REDACTED]

[REDACTED] this [report] undermines in my view the claim made in [one of the earlier reports] [REDACTED].

[584] [REDACTED]

[REDACTED]



[I find that **this report's assertion**] that Mr. Mahjoub is leading member of the AJ further supports the Ministers' allegation that Mr. Mahjoub is a member of the AJ.

*Intercepted conversation of Mr. Mahjoub*

[585] The Ministers have adduced a report of Mr. Mahjoub's intercepted conversation with an acquaintance, dated May 1999, that states that "MAHJOUB indicated that while surfing the Internet, he had found the article which mentioned the sentencing of a number of members, including himself, to many years of imprisonment" (Exhibit A8, Tab 6). Mr. Mahjoub was sentenced to fifteen years of imprisonment in April 1999. The accused in the Returnees of Albania Trial were accused of being members of the AJ. In the context of all of the evidence, I find that it is likely that Mr. Mahjoub was referring to AJ or VOC members when he mentioned "members, including himself." I find that this reported statement made by Mr. Mahjoub lends support to the Ministers' allegations.

*Mr. Mahjoub's direct evidence*

[586] I now turn to the direct evidence against the Ministers' allegation of membership.

*Mr. Salem's evidence*

[587] Mr. Magdy Salem testified that Mr. Mahjoub was not a member of the AJ or the VOC.

He based his assertions on:

- a. his personal experiences, in particular conversations with Mr. Mahjoub's brothers;
- b. the absence of any convictions against Mr. Mahjoub;
- c. his lack of confidence in the Egyptian military justice system, and
- d. the fact that Mr. Mahjoub was not charged in the 1993 VOC trial and his opinion that the VOC did not exist.

Significantly, Mr. Salem testified that he did not know Mr. Mahjoub prior to these proceedings and that he was not aware of what Mr. Mahjoub did in Sudan. In addition, as explained at paragraphs 162-171 above, I have serious credibility concerns relating to Mr. Salem's evidence with respect to the membership or involvement of individuals in terrorism. Consequently, I give his evidence on the issue of membership no weight.

*Mr. Mahjoub's denials*

[588] Mr. Mahjoub denied being a member of the AJ and the VOC in two interviews with the Service. I have found Mr. Mahjoub to have been untruthful about his terrorist contacts, his use of aliases, and his activities at the Damazine Farm. I also found that Mr. Mahjoub was motivated to

conceal any links he may have had with terrorist or terrorist activities. On this basis I find Mr. Mahjoub's credibility wanting when he denies membership.

*Conclusion on the direct evidence*

[589] The only direct evidence supporting or refuting membership that I find persuasive is the evidence [REDACTED] that Mr. Mahjoub is a member of the AJ and Mr. Mahjoub's self-identification as a "member" in his intercepted conversation. This evidence supports the Ministers' allegations. Due to reliability concerns and a lack of truly independent corroboration, I give the remaining direct evidence no weight.

3. *Does the connection establish reasonable grounds to believe that Mr. Mahjoub was a member?*

[590] In the legal framework of these Reasons, beginning at paragraph 36, I reviewed the jurisprudence concerning the definition of membership. In essence, the Courts have consistently applied an unrestricted and broad interpretation to the meaning of "member". While actual or formal membership in an organization is not required, there must at least be evidence of an "institutional link" with, or "knowing participation" in, the group's activities. I adopt this definition developed in the jurisprudence.

[591] Most of the evidence on the record relating to the issue of membership is circumstantial or indirect evidence supporting or refuting the allegations by inference. As such, I will first

review how the indirect evidence supports Mr. Mahjoub's "institutional link" with or "knowing participation" in a group engaging in the subversion by force of a state or terrorism.

*a) Summary of Findings on Membership*

[592] In determining the issue of membership, I propose to first briefly review and summarize my earlier findings made following my review and analysis of the indirect evidence relating to the key elements of membership, namely:

- i. The existence of the AJ and the VOC as terrorist organizations;
- ii. Facts linking Mr. Mahjoub to these organizations, including:
  - a) Mr. Mahjoub's terrorist contacts; and
  - b) Mr. Mahjoub's activities his travel and work.

I shall then do the same for my findings concerning the direct evidence connecting Mr. Mahjoub to the AJ or the VOC.

*i. The existence of the AJ and the VOC*

[593] Earlier in these reasons (at paragraph 182) I found that the AJ existed and engaged in terrorism and subversion related activities as contemplated in subsection 34(1) of the *IRPA*. I also found, at paragraphs 202 and 209 above, that the VOC exists in some form as a splinter group, faction or wing of the AJ with overlapping membership and that there are reasonable grounds to believe that the VOC existed as a subversive and terrorist organization. I also found at

paragraphs 207-210 above, that it is reasonable to infer that the VOC, like the AJ, had a Shura Council.

*ii. The facts linking Mr. Mahjoub to the AJ and the VOC*

[594] I found that there is no compelling reason to doubt Mr. Mahjoub's account of his life from April 3, 1960 when Mr. Mahjoub was born until May 1986 when he was released from prison in Egypt.

[595] Concerning the period from Mr. Mahjoub's release to his departure for Sudan in 1991, I found that given the fact that Mr. Mahjoub was allowed to complete his military service "with good conduct" in December 1996, the fact that the Egyptian authorities stopped calling him in after 1988, and the ease with which Mr. Mahjoub later obtained a passport to leave the country in 1989, there are reasonable grounds to believe that the Egyptian authorities were no longer concerned with Mr. Mahjoub by 1989. This is contrary to Mr. Mahjoub's assertion that he was consistently persecuted by the Egyptian authorities.

[596] Concerning the Ministers' allegation that Mr. Mahjoub participated in the Afghan-Soviet War during the period 1987 to 1991, I found that the evidence was insufficiently compelling to support a finding that Mr. Mahjoub was a senior Mujahideen fighter in Afghanistan in the 1980s and that in the early 1990s, involved in transporting AJ Mujahideen out of Afghanistan, or recruiting for the VOC.

[597] I found, on the basis of undisputed evidence, that in 1991 Al Qaeda and the AJ relocated their leadership from Afghanistan, where the jihad was winding down, to Sudan whose National Islamic Front-backed regime harboured them. Mr Mahjoub arrived in Sudan in the late summer of 1991.

[598] It is not disputed that Mr. Mahjoub was Deputy Director-General of a company owned by Mr. Osama Bin Laden, Althamar, and was manager of the Damazine project for Pluvial Agriculture from February 1992 to May 1993. I found that there were reasonable grounds to believe that:

- a. terrorist weapons training occurred on Damazine Farm;
- b. the training occurred while Mr. Mahjoub held a senior management position, a position of responsibility, in both the company and on the farm;
- c. Mr. Bin Laden trusted Mr. Mahjoub, which entails an ideological commitment to jihad and a known participation within the Islamic extremist community, and consequently,
- d. Mr. Mahjoub was aware of the training and, by reason of his authority as Manager and Deputy Director-General, he was complicit in the training.

[599] Concerning the period from May 1993 when Mr. Mahjoub left Althamar to December 1995 when he departed from Sudan, I found Mr. Mahjoub's account of his reasons for leaving Althamar, buying and selling goods in the market because his wages at Althamar were low, not to be credible. However, I found that the Ministers' allegation that Mr. Mahjoub engaged in terrorist training and recruitment activities had not been established on the evidence.

[600] Concerning Mr. Mahjoub's departure from Sudan, I found that there was insufficient evidence to establish reasonable grounds to believe that he was involved in the Islamabad Embassy bombing, and that this was his reason for leaving Sudan as alleged by the Ministers.

[601] I was satisfied, however, that Mr. Mahjoub left Sudan due to increased cooperation between the Egyptian and Sudanese governments, and the fact that Egyptian nationals were becoming increasingly unwelcome in Sudan in late 1995. I also found that Mr. Mahjoub's departure coincided with the departure of many terrorists from Sudan due to Sudan's shift in policy towards harbouring terrorists.

[602] It is not disputed that Mr. Mahjoub came to Canada from Sudan on December 30, 1995 on a false Saudi Arabian passport. I found that several other established and suspected terrorists, including contacts of Mr. Mahjoub, also used false Saudi Arabian passports to enter Canada.

[603] I found that Mr. Mahjoub used the alias "Ibrahim" or "Abu Ibrahim" shortly after his arrival in Canada. I also found that Mr. Mahjoub's conflicting explanation in his August 8, 1997, January 13 and 20, 1998 and October 5, 1998 Service interviews of the use of this name was not credible.

[604] I agreed with the Ministers that Mr. Mahjoub was deceptive when he claimed in his interview with the Service on January 13 and 20, 1998 that upon his arrival in Canada, he initially resided with Mr. El Jamal and omitted to mention his residence with Mr. Khadr's

in-laws, the Elsamnahs. I found that in [REDACTED] 1996 that Mr. Mahjoub resided at the Elsamnahs' home at 3 Khartoum Avenue in Scarborough.

[605] Concerning Mr. Khadr, I am satisfied that there are reasonable grounds to believe that "Al Kanadi", "Abdel Rahman Al Kanadi" or "Al Canadi" are aliases used by Mr. Khadr. I was also satisfied that there are reasonable grounds to believe that Mr. Khadr was a member of a terrorist organization and engaged in terrorism, specifically, that he was a senior member of the Bin Laden Network. Further, I found that Mr. Mahjoub, while telling the truth about knowing Mr. Khadr in his August 8, 1997 interview with the Service, untruthfully denied knowing Mr. Khadr in his October 5, 1998 interview. I found that the evidence indicates that Mr. Khadr's family and Mr. Mahjoub's family were close, and I inferred that Mr. Mahjoub had direct contact with Mr. Khadr. Mr. Khadr was active in the Bin Laden network at the time. In addition, given Mr. Khadr's terrorist background and Mr. Mahjoub's unwillingness to be frank with the Service about his contact with Mr. Khadr, I found that there are reasonable grounds to believe that their association related to the terrorist network of which Mr. Khadr was a leading member.

[606] I found that Mr. Mahjoub resided with Mr. El Jamal [REDACTED]  
[REDACTED] from [REDACTED] 1996 until late October 1996. [REDACTED]  
[REDACTED]

[607] Concerning Mr. Jaballah, I found that, on the basis of a phone call and pocket litter found on Mr. Mahjoub at the time of his arrest, Mr. Mahjoub was in contact with Mr. Jaballah. I found that, by his own admission, Mr. Jaballah used the aliases "Abu Ahmed" and "Mustafa.". By



reason of the pocket litter found on Mr. Mahjoub identifying Mr. Jaballah's contact information including Mr. Jaballah's alias, Abu Ahmed, I found that Mr. Mahjoub was untruthful when he denied knowing Mr. Jaballah during his October 24, 1997 interview with the Service. I also found that Mr. Mahjoub was untruthful during his March 31, 1999 interview when he denied knowing Mr. Jaballah by his alias "Abu Ahmed". These findings relating to Mr. Jaballah establish yet another example of Mr. Mahjoub's lack of credibility and candour.

[608] It is not disputed that Mr. Mahjoub married Ms. El Fouli on September 26, 1996. I was satisfied for reasons explained at paragraphs 301-303 above that Mr. Mahjoub had access to Ms. El Fouli's residential telephone by the time a call was made from it to Mr. Marzouk. On the basis of this and subsequent telephone contacts from January 1997 to ██████████ 1998, as well as the pocket litter containing Mr. Marzouk's address found on Mr. Mahjoub at the time of his arrest, I found that Mr. Mahjoub and Mr. Marzouk were in contact. I also found that Mr. Marzouk used the aliases "Adnan" and "Abu Their" and was a terrorist at that time involved in supporting or planning terrorist operations. I found that Mr. Mahjoub was untruthful when he denied knowing Mr. Marzouk at his October 5, 1998 and March 31, 1999 Service interviews, and I also found that the evidence established that a close association existed between Mr. Mahjoub and Mr. Marzouk. Further, because of Mr. Marzouk's background, Mr. Mahjoub's use of Mr. Marzouk's P.O. Box number, and Mr. Mahjoub's untruthfulness about his contact with Mr. Marzouk, I found that there are reasonable grounds to believe that Mr. Mahjoub's contact with Mr. Marzouk related to the terrorist network in which Mr. Marzouk was associated. For the reasons stated at paragraph 540 above, I rejected Mr. Mahjoub's explanation offered in his interviews that he was not candid about his associations because of his fear of Egypt alone.

[609] I found that the evidence did not establish reasonable grounds to believe that Mr. Mahjoub used the aliases Mahmoud Shaker, [REDACTED] [a specific variant alias of **Mohammed Hassan**], Mohammed Hassan or any of the variants of these aliases alleged by the Ministers. [REDACTED]

[REDACTED] I found that the record does not establish reasonable grounds to believe that Mr. Mahjoub was a contact of Mr. Badiya because the evidence relating to the telephone calls was inconclusive as to the identity of the Kuwaiti number's subscriber. [REDACTED]

[610] I was satisfied, however, that the evidence establishes that Mr. Mahjoub once attempted to contact or contacted Mr. Badiya or Mr. Alsaied, two names of individuals suspected of being members the VOC and who were deported from Kuwait for that reason.

[611] Further, I found on the basis of Mr. Mahjoub's account of his views in his January 13 and 20, 1998 interview with the Service and in his IRB hearing that Mr. Mahjoub held Islamist political views and defended supporters of terrorism such as Sheikh Rahman, Mr. al-Turabi, and the Sudanese NIF. This finding is further supported by the reasonable inference drawn from Mr. Mahjoub's employment as one of the highest ranking officers of a Bin Laden-owned company, Althamar. Mr. Mahjoub would not have secured this position had Mr. Bin Laden not

trusted him as a member of the Islamic extremist community who held views acceptable to Mr. Bin Laden.

[612] Moreover, I found, based on the October 17, 1993 reference letter and August 12, 1998 letter from Mr. Al Duri and pocket litter found on Mr. Mahjoub, that Mr. Mahjoub and Mr. Al Duri had a close association or friendship.

[613] It is not disputed that Mr. Al Duri was the Director General of Althemar while Mr. Mahjoub was Deputy-Director General of Althemar. I found that “Abdel Razak” was either an alias of Mr. Al Duri or **[otherwise associated with him]** [REDACTED]

[REDACTED] In addition, I found that there are reasonable grounds to believe that Mr. Al Duri was a member of Al Qaeda, a terrorist organization. On the basis of the evidence adduced and in particular, Mr. Al Duri’s background and his use of the “Mubarak A. Razak” alias on the envelope of his correspondence to Mr. Mahjoub, I found that there are reasonable grounds to believe that Mr. Mahjoub’s association with Mr. Al Duri related to the terrorist network of which Mr. Al Duri was a member.

[614] Concerning the physical surveillance of Mr. Mahjoub from late 1998 to early 2000, I was satisfied, on the basis of the Service’s expertise in surveillance and counter-surveillance techniques, that Mr. Mahjoub was exhibiting security consciousness by using pay phones right outside his apartment, performing “u-turns”, and crossing a vacant parking lot and looking back. In addition, I was not satisfied that Mr. Mahjoub’s use of pay phones while away from home or his conversation regarding the “Moukhabarat” were examples of security consciousness relating

to terrorists activities. At that point it is just as plausible that he was attempting to conceal certain other activities from his spouse.

[615] Lastly, I found that the evidence does not establish reasonable grounds to believe that Mr. Mahjoub was involved in any particular activities conducted by the AJ or VOC as alleged by the Ministers while in Canada from 1996 to 2000.

*b) Analysis*

[616] Having found that the AJ and the VOC existed as terrorist organizations at all times relevant to these proceedings, I will now turn to consider whether Mr. Mahjoub is a member of the said organizations. In so doing, I will assess the following elements that I consider relevant to my determination including:

- i. the credibility of certain assertions made by Mr. Mahjoub;
- ii. Mr. Mahjoub's employment at the Damazine Farm;
- iii. the timing of Mr. Mahjoub's travels;
- iv. Mr. Mahjoub's terrorist contacts;
- v. Mr. Mahjoub's security consciousness; and
- vi. the direct evidence affirming or denying that Mr. Mahjoub is a terrorist and member of the VOC Shura Council.

*i. Mr. Mahjoub's credibility*

[617] Mr. Mahjoub elected not to testify in this proceeding; his general credibility therefore could not be assessed. However, his PIF submitted with his application for refugee status is on the record. In his PIF, Mr. Mahjoub sets out his account of circumstances that led to the filing of his application for protection in Canada including his travels and activities prior to his coming to Canada. The narrative in his PIF essentially canvasses the relevant periods that occupy us within the security certificate proceeding. Mr. Mahjoub relies on his PIF to establish his circumstances before coming to Canada. The transcript of proceedings before the IRB concerning Mr. Mahjoub is also on the record. It generally corroborates and expands upon the account given in Mr. Mahjoub's PIF. Mr. Mahjoub was also interviewed on five different occasions by the Service. The information that he provided during these interviews is also before the Court. It is essentially on the basis of information provided by Mr. Mahjoub in these interviews and in his PIF that the credibility of his account can be assessed.

[618] The following is a summary of my earlier findings relating to the credibility of Mr. Mahjoub's various accounts:

- a. Mr. Mahjoub was not truthful when he denied knowing Mr. Marzouk, Mr. Khadr, Mr. Jaballah or their aliases. In particular, during his fourth interview in October 1998, he denied knowing Mr. Khadr despite having admitted to knowing him in an earlier interview. When confronted with the fact that he had resided with the Elsamnabs, Mr. Khadr's in-laws, another fact he did not disclose to the Canadian authorities, he then admitted knowing Mr. Khadr.

- b. Mr. Mahjoub was not truthful when he denied ever using an alias. I found Mr. Mahjoub's explanation of how he came to use the alias "Ibrahim" when he admitted to using it, not credible for the reasons expressed at paragraph 539 above.
- c. Mr. Mahjoub's explanation that he did not provide the names of individuals who knew him by the alias Ibrahim to the Service for fear that the Egyptian authorities would target him and these individuals was not credible as explained at paragraph 540 above.
- d. Mr. Mahjoub omitted to disclose to Canadian authorities the true nature of his occupation and his employer at the Damazine Farm while in Sudan, indicating only that he was employed as an agricultural engineer at the Farm. This omission further impugns his credibility.
- e. Mr. Mahjoub's explanation for leaving the Farm to buy and sell goods in the market was not credible, given the salary he was likely earning at the time in comparison to average wages in Sudan as explained at paragraphs 484-486 and 490 above.

[619] In my view, the above omissions and lies by Mr. Mahjoub are crafted and designed to consistently conceal any facts that could connect Mr. Mahjoub to known terrorists, terrorist activities or known terrorist related enterprises such as Althamar. The fact that Mr. Mahjoub would lie about the use of aliases is of particular concern. The use of aliases is well known in the terrorist milieu and serves to conceal the true identity of individuals involved.

[620] The above omissions and lies by Mr. Mahjoub in the circumstances lead me to conclude that his innocent account of events and activities in Sudan and in Canada is not credible. This finding lends support to the Ministers' allegations.

*ii. Mr. Mahjoub's employment at the Damazine Farm*

[621] In Sudan, Mr. Mahjoub lost his passport in February 1992 and remained in that country without status as an illegal migrant in a difficult job market. That month he was hired as Deputy Director-General of Althamar and manager of the Damazine Project for Pluvial Agriculture at the Damazine Farm, owned by Mr. Bin Laden. He adduced no evidence of managerial experience, and the evidence does not explain how Mr. Mahjoub was able to secure such a top executive position in his circumstances. As explained at paragraphs 477-481 above, the evidence instead supports a finding that Mr. Mahjoub was known and trusted by Mr. Bin Laden. It also supports a finding that he knew of the ongoing weapons training Damazine Farm. The evidence also supports an inference that, at this time, Mr. Mahjoub would have worked closely with the Director-General of Althamar, Mr. Al Duri, a member of Al Qaeda.

[622] I find that Mr. Mahjoub's employment at the Damazine Farm, in the circumstances, supports the Ministers' allegation that Mr. Mahjoub is a member of the AJ. At this time, as explained at paragraphs 180 and 464 above, the AJ and Al Qaeda were overlapping organizations.

*iii. The timing of Mr. Mahjoub's travels*

[623] Mr. Mahjoub's travels to Sudan in September 1991 coincide with the movement of AJ and Al Qaeda elements to Sudan. Mr. Mahjoub's departure from Sudan to Canada also coincides with the exodus of those elements from Sudan to the West and other countries in the Muslim world. I accept that during this period terrorist organizations were intent on finding a base abroad and their membership scattered to places including Europe and North America. I find that the timing of Mr. Mahjoub's travels supports the Ministers' allegation that Mr. Mahjoub was a member of the AJ.

*iv. Mr. Mahjoub's terrorist contacts*

[624] A number of Mr. Mahjoub's contacts are important players in the terrorist milieu. Mr. Mahjoub's contacts with Mr. Al Duri, Mr. Khadr and Mr. Marzouk have been close and enduring. A number of these individuals were still demonstrably active in the militant AJ and associated Al Qaeda milieu when Mr. Mahjoub was in contact with them. The frequent use of aliases, lies and omissions to conceal these relationships from the authorities is indicative of the terrorist nature of these contacts. I find that these contacts support the Ministers' allegations of Mr. Mahjoub's membership in the AJ and the VOC. In addition, Mr. Mahjoub [REDACTED] [REDACTED] contacted a telephone number associated with the VOC.



v. *Mr. Mahjoub's security consciousness*

[625] There is evidence that Mr. Mahjoub exhibited security consciousness related to terrorism on occasion while in Canada. For instance, anti-surveillance tactics when making phone calls or being followed by the Service, his use of aliases, and his lack of cooperation with Canadian authorities is consistent with an individual concerned with concealing his activities and contacts. I find that this behaviour supports the Ministers' allegations of Mr. Mahjoub's membership in the AJ and the VOC.

vi. *The direct evidence affirming or denying that Mr. Mahjoub is a terrorist and member of the VOC Shura Council*

[626] As indicated above, the direct evidence relating to the Ministers' allegations that Mr. Mahjoub is a member of the VOC and its Shura Council or a member of the AJ, consist of:

[REDACTED]

[REDACTED]

- c. [REDACTED] **[certain classified evidence]** and
- d. an intercepted conversation.

I found that the **[classified]** reports [REDACTED] were not sufficiently persuasive to support the Ministers' allegation of membership; however, I found that [REDACTED] **[one piece of evidence indicating that Mr. Mahjoub was an AJ leader]** and Mr. Mahjoub's self-identification as a

“member” in the context of the Returnees of Albania Trial lends support to the allegation of membership.

*c) Conclusion on membership*

[627] Upon considering the evidence holistically, and on the basis of substantiated and reasonable inferences, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub is a member of the AJ and its splinter or sub-group, the VOC.

[628] In so determining I rely on my findings set out above which include:

- a. That the AJ and VOC existed as terrorist organizations at the relevant times;
- b. Mr. Mahjoub had contact in Canada and abroad with AJ and VOC terrorists;
- c. Mr. Mahjoub used aliases to conceal his terrorist contacts;
- d. Mr. Mahjoub was dishonest with Canadian authorities to conceal his terrorist contacts;
- e. Mr. Mahjoub worked in a top executive position in a Bin Laden enterprise alongside terrorists in Sudan at a time when key terrorist leaders were in Sudan;
- f. Mr. Mahjoub was dishonest in concealing from Canadian authorities the nature of his position at Damazine Farm;
- g. Mr. Mahjoub travelled to and from Sudan at the same time as AJ and Al Qaeda elements, and
- h. [REDACTED] **[Some of the direct evidence]** that Mr. Mahjoub was a member of the AJ and Mr. Mahjoub’s intercepted conversation support the Ministers’ allegation.

[629] In my determination, I have also relied upon the following inferences relating to Mr. Mahjoub's travels and activities. These include:

- a. Mr. Mahjoub's contacts were of a terrorist nature;
- b. Mr. Mahjoub had a close and long-lasting relationship with a number of his terrorist contacts;
- c. Mr. Mahjoub was trusted by Mr. Bin Laden on the basis of his ties to the Islamic extremist community;
- d. Mr. Mahjoub was aware of and complicit in Al Qaeda weapons training occurring at Damazine Farm, and
- e. Mr. Mahjoub's travels to and from Sudan at the same time as AJ elements were not coincidental.

[630] I am satisfied that even without the direct evidence [REDACTED] and from the intercepted conversation, my decision would not change.

[631] On the basis of the above findings, I am satisfied that Mr. Mahjoub had an institutional link with the AJ and knowingly participated in that organization. While there is a dearth of compelling and credible evidence explicitly linking Mr. Mahjoub with the VOC, I am satisfied that the evidence establishes an institutional link and knowing participation in the faction of the AJ led by Dr. Al Zawahiri, which eventually aligned itself with Al Qaeda and continued to be militant after many members of the AJ had declared a ceasefire. I have found that this faction was likely known as the VOC, at least at some point in its history. Mr. Mahjoub was linked with this faction of the AJ and Al Qaeda through his employment at Althamar, his travels, and his

terrorist contacts in Canada. This link was active and enduring for many years. He knowingly participated in this network through his involvement in the Damazine weapons training, whether passive or active, and in maintaining contact with individuals who were active terrorists who were connected to either Mr. Bin Laden or Dr. Al Zawahiri. Although actual formal membership has not been established, which would require proof that Mr. Mahjoub swore allegiance to the group, such proof is not necessary in the context of a security certificate proceeding. I am satisfied that Mr. Mahjoub's links and participation fit within the unrestricted and broad interpretation of "member" for the purposes of paragraph 34(1)(f) of the *IRPA*.

[632] On the basis of the above evidence as reflected in my findings, applying the principles of law discussed in the legal framework section of these reasons, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub was a member of the AJ and its splinter or sub-group the VOC. Consequently, the Ministers have satisfied the requirements of paragraph 34(1)(f) of the *IRPA*.

[633] Since the requirements provided for in section 34 of the *IRPA* are disjunctive, my above finding is determinative of the reasonableness of the certificate. I therefore find, on the basis of the above conclusion, that the security certificate issued against Mr. Mahjoub pursuant to subsection 77(1) of the *IRPA* is reasonable.

[634] Although there is [REDACTED] evidence to the effect that Mr. Mahjoub was a member of the VOC Shura Council, I find this uncorroborated evidence not sufficiently compelling to support the Ministers' allegation that Mr. Mahjoub was a member of the VOC Shura Council.

[635] Notwithstanding my above determinative finding, for completeness, I will proceed to consider the remaining allegations raised by the Ministers against Mr. Mahjoub.

*B. Engaged in Terrorism and Subversion*

[636] The Ministers, in their final submissions, make a focused allegation that Mr. Mahjoub engaged specifically in subversion, rendering him inadmissible pursuant to paragraph 34(1)(b) of the *IRPA*. They focus on the testimony of Professors Wark and Gerges that, in their words, “Al Jihad had as its primary goal the forcible overthrow of the former Egyptian regime and its replacement by an Islamic one.” As the security certificate itself and the SIR is broader and encompasses terrorism pursuant to paragraph 34(1)(c), I shall also examine whether or not there are reasonable grounds to believe that Mr. Mahjoub engaged in terrorism.

[637] The Ministers’ paragraph 34(1)(b) argument hinges on Mr. Mahjoub’s membership in the AJ or the VOC. They submit that “Mr. Mahjoub’s membership in, and activities in the cause of both Al Jihad and the VOC, bring him within the inadmissible class of subsection 34(1)(b)” and invite the Court to “impugn to him the subversive activities of Al Jihad and the VOC by virtue of his membership in both organizations.” In particular, they allege that Mr. Mahjoub arranged for “the transportation of operatives out of Egypt to Afghanistan for training to prepare them for future attacks in Egypt, including the assassination of public figures.”

[638] On the basis of the June 28, 2012 SIR, the Ministers allege that:

- a. Mr. Mahjoub was senior among the Arab Mujahideen ranks during the Afghan-Soviet War and was responsible for arranging the travel of AJ Mujahideen to Pakistan via Saudi Arabia [REDACTED].
- b. Mr. Mahjoub was active in recruiting for the VOC and in the early 1990s operated from Pakistan or Afghanistan and recruited Egyptian Arab Afghans to enter Egypt, form operational cells and make preparations for assassinations of Egyptian government officials [REDACTED].
- c. Mr. Mahjoub led the military wing of the VOC in the early 1990s, and during that time he recruited a number of Egyptians for training in South Lebanese camps controlled by Hezbollah and the IRGC [REDACTED].
- d. Mr. Mahjoub **[is accused of having]** [REDACTED] participated in the Egyptian embassy bombing in Islamabad in November 1995 [REDACTED].
- e. After his arrival in Canada, Mr. Mahjoub **[continued to be a VOC leader]** [REDACTED]  
[REDACTED].

[639] Mr. Mahjoub submits that the Ministers have not proven these allegations. The Special Advocates argue that the direct allegation that Mr. Mahjoub has engaged in terrorism rests on evidence that [REDACTED] is therefore unreliable.

[640] I have already canvassed much of the evidence that supports the Ministers' allegations in my determination of membership. Nevertheless, it is useful to revisit the evidence briefly for the

purpose of determining whether there are reasonable grounds to believe that Mr. Mahjoub engaged in terrorism or subversion.

1. Transporting AJ Mujahideen to Pakistan via Saudi Arabia

[641] The Ministers allege that Mr. Mahjoub was a Mujahideen fighter in the Afghan-Soviet War and transported AJ Mujahideen to Pakistan via Saudi Arabia in the 1980s. They have adduced [classified evidence] [redacted] in support of this allegation:

[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
( [redacted] SIR Reference  
Indices Tab [redacted] )

[642] The Ministers also rely on [other classified evidence] [redacted] making the same claim. [redacted]  
[redacted]  
[redacted] ( [redacted]  
[redacted] SIR Reference Indices Tab [redacted] ).

[643] My concerns [about the classified evidence] [redacted]  
[redacted] expressed [redacted] above, hold for this particular [evidence] [redacted]

as well. The information about travel arrangements is almost identical in both sources. I therefore find that the [classified sources] cannot independently corroborate one another.

[644] As I mentioned at paragraph 449 above, Mr. Mahjoub, in an interview with the Service, “denied ever traveling to countries such as Pakistan, Afghanistan...” (CSIS Interview 8 August 1997, SIR Reference Indices Tab ; Exhibit A2, Tab 21). He also claimed that he “did not leave Egypt prior to going to Saudi Arabia, Sudan and then Canada” (CSIS Interview 13 and 20 January 1998, SIR Reference Indices Tab ; Exhibit A2, Tab 23). It was the Service’s view that Mr. Mahjoub was lying when he made these claims.

[645] The Ministers have adduced insufficient evidence to establish that Mr. Mahjoub transported AJ Mujahideen to Pakistan via Saudi Arabia in the 1980s. [The classified evidence] is insufficiently compelling on its own to establish the fact. While I have found that much of what Mr. Mahjoub said in his interviews is not credible (see paragraphs 617-620 above), I accepted the account in Mr. Mahjoub’s PIF that he was in Egypt until at least 1989 (see paragraph 446 above). While Mr. Mahjoub’s whereabouts are unknown from 1989 to 1991, there is insufficient evidence to prove that he was in Afghanistan or Pakistan. While Mr. Mahjoub was in Saudi Arabia during the summer of 1991, as I found at paragraph 597 above, [the classified evidence] without independent corroboration nevertheless does not establish Mr. Mahjoub’s involvement in transporting Mujahideen.



2. Recruitment for the VOC in the early 1990s

[646] All of the evidence that the Ministers adduce concerning Mr. Mahjoub's alleged recruitment activities in the early 1990s [is classified] [It states that Mr. Mahjoub was active in Pakistan in the early 1990s and recruited Egyptian Arab Afghans to enter Egypt and form cells with the aim of assassinating Egyptian government officials.]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab )

[REDACTED]

( [REDACTED] SIR Reference Indices Tab )

[647] As I have concluded above at paragraph 115, [I have concerns with this evidence]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[648] Without independent corroboration, [REDACTED] [the evidence] is not sufficiently compelling to establish that Mr. Mahjoub engaged in recruitment activities related to assassinations, the VOC, Hezbollah or the IRGC.

3. Participation in the Bombing of the Egyptian Embassy in Islamabad in November 1995

[649] The Ministers advance [classified evidence] [REDACTED] in support of their allegation that Mr. Mahjoub [is accused of having] [REDACTED] participated in the bombing of the Egyptian embassy in Islamabad, Pakistan, on November 19, 1995. [REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices  
Tab [REDACTED] )

[REDACTED]

[REDACTED]

[REDACTED] [The Ministers also attach significance to the timing

**of the bombing and how it roughly coincides with Mr. Mahjoub's arrival in Canada in late December 1995.]**

[651] Mr. Mahjoub was specifically asked about the bombing in a Service interview, and he refused to answer questions about it without first speaking to a lawyer. The exchange reportedly occurred as follows:

MAHJOUR was then shown the 1996 01 29 issue of MCLEAN's magazine and a 1998 09 05 article from the GLOBE AND MAIL detailing the 1995 11 bombing of the Egyptian Embassy in Islamabad, Pakistan, allegedly by supporters of Osama BIN LADEN...MAHJOUR immediately pointed to the accompanying news photo of Ahmed Said KHADR...and began to shout in Arabic. ELFOULI translated that MAHJOUR had discussed KHADR during the previous interview and had nothing to add. MAHJOUR was advised that aside from the photo of KHADR, the articles were about the EGYPTIAN embassy bombing in Pakistan in 1995 11. MAHJOUR was then asked if he had been in Pakistan around that time. MAHJOUR responded he would not answer any other questions without first consulting a lawyer. Then, inspite [sic] of this statement, MAHJOUR continued talking and asked what it was the investigators wanted.

(CSIS Interview 31 March 1999, SIR Reference Indices Tab [REDACTED]; Exhibit A2, Tab 24)

The Service did not pursue this line of questioning any further.

[652] As I concluded at paragraphs 501-503 above, the evidence [REDACTED] is insufficient to establish that Mr. Mahjoub participated in the November 1995 embassy bombing. While the timing of Mr. Mahjoub's departure from Sudan and arrival in Canada roughly coincides with the bombing, there is no evidence of any causal connection between the two events.

[653] I am also unable to draw any inferences from Mr. Mahjoub's responses to Service questioning on this point. He seemed more concerned about Mr. Khadr than the bombing when shown *Maclean's* and *The Globe and Mail* articles. He did not answer when asked about the bombing or whether he had lived in Pakistan. The interview evidence does not support the Ministers' position.

[654] Consequently, there is insufficient evidence on the record to establish that Mr. Mahjoub participated in the November 19, 1995 bombing.

4. Participation in the Leadership and Supervision of the VOC or AJ

[655] I found at paragraph 634 above that the Ministers had adduced insufficient evidence to establish that Mr. Mahjoub was a member of the VOC Shura Council. Again, the evidence linking Mr. Mahjoub to a leadership role [is classified] [REDACTED]

- a. [REDACTED]  
[REDACTED] ([REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).  
[REDACTED] ([REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).  
[REDACTED]  
[REDACTED]  
[REDACTED] SIR Reference Indices Tab [REDACTED]).

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] ).

[656] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[The evidence is insufficient to establish that Mr.**

**Mahjoub had a leadership role in the AJ].**

[657] [REDACTED]

[REDACTED] At paragraphs 626 and 634 above, I

was not persuaded by the **[classified]** [REDACTED] evidence on the issue of Mr. Mahjoub’s alleged

membership on the Shura Council; I am likewise not persuaded by its evidence on the issue of

Mr. Mahjoub's leadership activities, whether **[exercising leadership responsibilities in the VOC]** [REDACTED] or leading the military wing of the VOC. While it is plausible that Mr. Mahjoub could assume a military leadership position given his training in the Egyptian armed forces, this possibility is not substantiated by compelling and credible evidence.

[658] To conclude, I find that the Ministers have adduced insufficient evidence to establish Mr. Mahjoub's participation in the leadership of the VOC or the AJ.

##### 5. Conclusion on Terrorism and Subversion

[659] The Ministers have failed to establish that there are reasonable grounds to believe that Mr. Mahjoub directly engaged in any specific terrorist or subversive activities. What remains is their invitation to the Court to draw an inference that because Mr. Mahjoub was a member of the AJ and/or VOC, he was also engaged in subversion or terrorism. I am not prepared to draw such an inference in the complete absence of established facts with regards to Mr. Mahjoub's participation in any specific terrorist or subversive activities. In the absence of such findings, I can make no finding of subversion or terrorism.

[660] Consequently, the Ministers have failed to establish reasonable grounds to believe that Mr. Mahjoub engaged in terrorism or subversion pursuant to paragraphs 34(1)(b) and (c) of the *IRPA*.

*C. Danger to the Security of Canada*

[661] Finally, the Ministers allege that Mr. Mahjoub is inadmissible to Canada pursuant to paragraph 34(1)(d) of the *IRPA* because he is a danger to the security of Canada. They argue that “[t]here is compelling evidence that before and after he entered Canada, Mr. Mahjoub engaged in activities that posed a threat to Canada’s national security.” The Ministers contend that mirroring the language of the Court of Appeal decision in *Suresh v. Canada* (2000), 2 F.C. 592 at paragraph 61 (C.A.), Mr. Mahjoub’s activities “directly implicate the integrity of Canada’s international obligations”. Further, they argue that “the fact that there is no direct evidence that Mr. Mahjoub sought to or attempted to commit an act of terrorism on Canadian soil is immaterial to whether he is a danger,” citing the Supreme Court decision in *Suresh* (paragraphs 82, 83, 85). The Ministers submit that the acts and attempted acts of subversion and terrorism attributed to the AJ and the VOC pose a threat to Canada’s national security as “a member of the international community.”

[662] Mr. Mahjoub submits that the Ministers must adduce evidence to prove danger to the security of Canada, and they have not done so.

[663] The Ministers’ allegation of danger to the security of Canada hinges again on membership. The Ministers have little to say about Mr. Mahjoub’s threat to the security of Canada apart from his membership in the AJ and/or the VOC, the purpose of which was to instigate the subversion by force of the government of Egypt. The Ministers have adduced no evidence to support their allegation that the subversion of the government of Egypt presents a





remained in Canada until May 1998 when he made his way to Baku to join other terrorists, likely to conduct terrorist attacks on American interests in Baku. While in Canada, Mr. Marzouk received visits from confessed American terrorist Mr. Mohammed (Yasmin Elmaleh's statements in *The Province*, 21 December 2001, Exhibit A9, Tab 8). As I found above, Mr. Marzouk was a terrorist operative who may have been planning an attack on the United States and was associated with the AJ and Al Qaeda.

- b. Mr. Al Duri, who had first arrived in Canada in November 1989, obtained Canadian citizenship in 1995 [REDACTED]

( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). As I found above,

Mr. Al Duri was a member of Al Qaeda.

- c. [REDACTED] ( [REDACTED]

[REDACTED] SIR Reference Indices Tab [REDACTED]). [REDACTED]

[REDACTED]

- d. Mr. Khadr, who had first arrived in Canada in 1977, returned to Canada in March 1996 after his arrest and release from Pakistan (D. Byman testimony, 28 October 2010, pp.94, 104). Shortly after, Mr. Khadr left again for Pakistan and Afghanistan. As I found above, Mr. Khadr was a member of Al Qaeda, and according to an Al Qaeda source in Afghanistan was the head of the Bin Laden network in Canada.

- e. Mr. Jaballah entered Canada in May 1996. As I found above, Mr. Jaballah was a contact of Mr. Mahjoub and is suspected of involvement in terrorism.

Professor Gerges warns that one must not conflate the “local Islamist or jihadist groups (al-Gama’ and al-Jihad) with transnational and global ones, such as al-Qaeda” (F. Gerges Expert Report, Exhibit R57, paragraph 17). The local groups targeted their home states, namely governments of their Islamic home countries that they considered “apostate,” while global groups targeted the United States and their allies. On this point, it is noteworthy that with the exception of [REDACTED] and Mr. Jaballah, I have determined that these contacts are all tied with global jihad, Mr. Marzouk through active terrorist plotting against an American embassy, and Messrs Al Duri and Khadr through their association with Al Qaeda.

[666] [REDACTED]

[REDACTED] ( [REDACTED] SIR Reference Indices Tab [REDACTED] ). [REDACTED]

[REDACTED]

[REDACTED]

( [REDACTED] SIR Reference Indices Tab [REDACTED] )

I accept the Service’s belief that during the 1996-1998 period, [REDACTED]

[REDACTED] **[there was a perceived]** trend of Egyptian terrorists moving into Canada. Professor Byman also observed that an “impressive list” of individuals with terrorist ties had come to Canada

during the period in which Mr. Mahjoub came to Canada (D. Byman testimony, 1 November 2010, p.218). He also stated at that time that the AJ was looking for a new base outside of Sudan, and that in general Canada would be useful to terrorist groups as a base for terrorist activities (*ibid.*, 28 October 2010, pp.30, 136) and as “a potential logistics and fundraising hub” due to Canada’s high wages, access to the United States as the Millennium Bomber incident proved, open immigration policies, modern communications, and respect for civil rights (D. Byman Expert Report, Exhibit A19, pp.56, 58). I find Professor Byman persuasive on this point.

[667] In 1998, the AJ became a member of the “International Islamic Front for Jihad on the Jews and Crusaders” along with Al Qaeda. On February 23, 1998, Dr. Ayman Al Zawahiri, leader of the AJ, signed the fatwa of that group authorizing the killing of Americans and their allies, which would include Canadians (*Al-Quds al-‘Arabi* 23 February 1998, Exhibit A3, Tab 20). Dr. Al Zawahiri expressed his views on Canadians specifically in 2006 when he warned of 9/11-style attacks against Canadians, whom he perceived as “second-rate Crusaders” (*National Post*, 28 October 2006, SIR Reference Indices Tab [REDACTED]). Further, the AJ had a close association with Al Qaeda as early as 1990, when Al Qaeda targeted the United States due to the Gulf War (J.Al Fadl transcript, Exhibit A12 pp.264-266, 321-322; Allocution proceeding of Ali Mohammed, Exhibit R46, pp.26-27). Professor Gerges agreed with the statement that the AJ was “one of the most aggressive and violent Jihadi organizations” and noted that the AJ “used violence on huge scales...” (F. Gerges testimony, 20 January 2011, p.184).

[668] During the 1996-1997 period, when terrorists associated with the groups at issue seemed to be accumulating in Canada, and during the 1998-2000 period after the AJ became a member

of the Islamic Front with Al Qaeda and the fatwa against Americans and their allies was issued, Mr. Mahjoub maintained contact from Canada with established or suspected terrorists either in Canada or abroad: Mr. Khadr, Mr. Al Duri, Mr. Jaballah, and in particular Mr. Marzouk [REDACTED]. Importantly, the contacts abroad, Mr. Khadr and Mr. Al Duri, were Canadian citizens. I have found that there are reasonable grounds to believe that all of these individuals with the exception of [REDACTED] and Mr. Jaballah, including Mr. Mahjoub himself, were present in Canada or had free access to Canada and were involved with terrorist groups committed to killing US allies including Canadians. These facts establish that AJ members in Canada were a threat to Canadians.

[669] I find that these facts establish reasonable grounds to believe that prior to his arrest, as a member of the AJ and its splinter or sub-group the VOC, Mr. Mahjoub was a danger to the security of Canada.

## VI. Conclusion

[670] Mr. Mahjoub is the “named person” subject to a security certificate certifying that he is inadmissible on the grounds that:

- a. he is a member of two organizations that engaged in terrorism and subversion pursuant to paragraph 34(1)(f) of the *IRPA*;
- b. he is engaged in subversion by force of the government of Egypt pursuant to paragraph 34(1)(b),
- c. he is engaged in terrorism pursuant to 34(1)(c); and

- d. he is a danger to the security of Canada pursuant to paragraph 34(1)(d).

[671] The Security Certificate is based on the SIR containing the Ministers' allegations against Mr. Mahjoub. These allegations are set out in paragraphs 68-70 earlier in these Reasons. In my above reasons, I have found that the following allegations by the Ministers have not been established:

- a. Mr. Mahjoub was a prominent member of the Al Jihad or a high-ranking member of the VOC and its ruling Shura Council;
- b. Mr. Mahjoub had contacts with extremists in Egypt and was trying to induce them to travel abroad;
- c. Mr. Mahjoub actively recruited new VOC members after the Afghan-Soviet War, recruiting both Afghan and Egyptian individuals to enter Egypt and to form cells to assassinate some Egyptian officials;
- d. Mr. Mahjoub was the head of the VOC's military wing in the early 1990s, during which he recruited a number of Egyptians to train in camps in southern Lebanon controlled by both Hezbollah and the Islamic Revolutionary Guards Corps;
- e. Mr. Mahjoub was responsible for the VOC's terrorist operations;
- f. Mr. Mahjoub was a high ranking member of the VOC;
- g. Mr. Mahjoub occupied a position of relative seniority with the Arab Mujahideen fighting against the Soviet forces in the 1980s and that during the Afghan-Soviet War and was responsible for arranging the travel of AJ Mujahideen to Pakistan via Saudi Arabia;

- h. Since the end of the Afghan-Soviet War, Mr. Mahjoub operated from Pakistan/Afghanistan for his recruitment operations;
- i. Mr. Mahjoub was [a VOC leader while in Canada] [REDACTED]  
[REDACTED]  
[REDACTED], and
- j. Mr. Mahjoub is also known as Mahmoud Shaker, and
- k. Mr. Mahjoub was in contact with Ahmed Agiza and Ahmed Badiya.

[672] However, I have found that the Ministers have established reasonable grounds to believe the following allegations:

- a. Mr. Mahjoub was a member of the AJ and its splinter or sub-group the VOC; and
- b. Mr. Mahjoub was in contact with Mubarak Al Duri, Mahmoud Jaballah, Ahmed Said Khadr, and Essam Marzouk, and that these individuals with the exception of Mr. Jaballah are AJ, VOC or Al Qaeda members.

[673] As a result of my review of the reasonableness of the certificate pursuant to subsection 77(1) of the *IRPA*, I find the certificate to be reasonable. There is insufficient evidence to establish reasonable grounds to believe that Mr. Mahjoub was engaged in subversion or terrorism pursuant to paragraphs 34(1)(b) and (c). I find, however, that the evidence establishes reasonable grounds to believe that Mr. Mahjoub was a member of the the AJ and the VOC, two organizations that engaged in subversion by force and terrorism pursuant to paragraph 34(1)(f). I also find that as a member in Canada having continued contact with other terrorists, he was a danger to the security of Canada pursuant to paragraph 34(1)(d).

[674] The parties will have thirty (30) days from the issuance of the public summary of these reasons to propose a serious question(s) of general importance for certification pursuant to section 79 of the *IRPA*.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The security certificate signed pursuant to subsection 77(1) of the *IRPA*, dated February 22, 2008, naming Mr. Mohamed Zeki Mahjoub is reasonable.
2. The parties shall, jointly or severally, propose a schedule for submitting question(s) for certification pursuant to section 79 of the *IRPA*, no later than 15 days following the release of the public summary of the Reasons for Judgment.

Edmond P. Blanchard  
\_\_\_\_\_  
Judge



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[REDACTED]

Lexicon

[REDACTED]	[REDACTED]
AJ	Al Jihad
AGAI	Al Gam'aa Al Islamiya
BRS	Bibliographical Reference System
[REDACTED]	[REDACTED]
CBSA	Canada Border Services Agency
CEIC	Citizenship, Employment and Immigration Canada
CIC	Citizenship and Immigration Canada
[REDACTED]	[REDACTED]
CIDT	Cruel, inhuman or degrading treatment
CSIS	Canadian Security Intelligence Service
[REDACTED]	[REDACTED]
ESS	Egyptian Security Service
FBI	Federal Bureau of Investigation
FBIS	Federal Broadcast Information Service
IRB	Immigration and Refugee Board
IRGC	Iranian Revolutionary Guards Corps
[REDACTED]	[REDACTED]
KSS	Kuwait Security Service
NIF	Sudanese National Islamic Front
[REDACTED]	[REDACTED]
PIF	Personal Information Form
SIR	Security Intelligence Report
SIRC	Security Intelligence Review Committee
SLO	Service Liaison Officer
VOC	Vanguards of Conquest
WMD	Weapons of mass destruction
“To make bayat”	To swear allegiance to

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** DES-7-08

**STYLE OF CAUSE:**

**IN THE MATTER OF A CERTIFICATE SIGNED  
PURSUANT TO SUBSECTION 77(1) OF THE  
*IMMIGRATION AND REFUGEE PROTECTION ACT*  
(IRPA);**

**AND IN THE MATTER OF THE REFERRAL OF A  
CERTIFICATE TO THE FEDERAL COURT  
PURSUANT TO SUBSECTION 77(1) OF THE *IRPA*;**

**AND IN THE MATTER OF  
MOHAMED ZEKI MAHJOUB**

**PLACE OF PUBLIC HEARING:** TORONTO, ONTARIO / OTTAWA, ONTARIO

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**REASONS FOR JUDGMENT  
AND JUDGMENT:**

BLANCHARD J.

**DATED:**

OCTOBER 25, 2013

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