Appeal No: SC/125/2015
Hearing Dates: 8 & 9 November 2016
Date of Judgment: 1 December 2016

SPECIAL IMMIGRATION APPEALS COMMISSION

Before:

THE HONOURABLE MR JUSTICE FLAUX
UPPER TRIBUNAL JUDGE OCKELTON, VICE PRESIDENT OF THE UPPER TRIBUNAL
MS JILL BATTLEY

N2

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

For the Appellant:	Mr Danny Friedman QC and Mr Edward Grieves
Instructed by:	Birnberg Peirce & Partners
For the Respondent:	Mr Robin Tam QC and Ms Melanie Cumberland
Instructed by:	Government Legal Department

JUDGMENT

The Honourable Mr Justice Flaux:

Introduction and background

1. The appellant, (to whom we will refer as "N2" or "the appellant"), is a Jordanian national. He claims to have entered the United Kingdom on 5 September 2002 on a false passport. On 6 September 2002 he claimed asylum. On 16 October 2002, his asylum claim was refused and certified as manifestly fraudulent. On 17 September 2003, his appeal was dismissed.

2. On 4 and 5 July 2007 at the Crown Court at Manchester following a trial before His Honour Judge Maddison, the Honorary Recorder of Manchester (as he then was) and a jury, the appellant was convicted on six counts of possession of a record of information for a purpose connected with the commission or preparation of an act of terrorism contrary to section 57 of the Terrorism Act 2000. The record in question consisted of terrorist material downloaded onto two of the appellant's computers. He was also convicted on two counts of acquiring criminal property, which it is accepted by the Secretary of State had no connection with the Terrorism Act offences and which are therefore irrelevant for present purposes.

3. On 6 July 2007, he was sentenced by His Honour Judge Maddison to nine years' imprisonment concurrent on each of the section 57 counts and 12 months imprisonment concurrent on the counts of acquiring stolen property, a total sentence of nine years imprisonment. The basis upon which he was sentenced in relation to the Terrorism Act offences was, as the judge held, that he was a sleeper for a terrorist organisation. On 6 November 2008, the Court of Appeal Criminal Division dismissed N2's application for permission to appeal against conviction and sentence.

4. Various notices of liability to deportation were served on the appellant and, after a complex history which it is not necessary to recite in this judgment, on 10 July 2015 the Secretary of State served the appellant with a letter of refusal of asylum and exclusion from refugee status under Article 1F(c) of the Refugee Convention and a Deportation Order. The appellant appealed against that refusal and Deportation Order to the Commission.

5. On 15 July 2016, the Secretary of State wrote to the appellant's solicitors to inform them that she had formed the view that it was no longer appropriate to pursue the appellant's deportation to Jordan at present and the Deportation Order was withdrawn. However, the letter maintained the appellant's exclusion from refugee status and granted him six months restricted leave to remain.

6. Notwithstanding that grant of leave to remain, the appellant gave notice that he wished to pursue his appeal on asylum and humanitarian protection grounds. The single issue for determination by the Commission at this stage is whether the appellant is excluded from the protection of the Refugee Convention, pursuant to Article 1(F)(c). A finding of exclusion from the protection of the Refugee Convention pursuant to Article 1F(c) would have

the necessary consequence that he would be likewise excluded from a grant of humanitarian protection pursuant to paragraph 339D(ii) of the Immigration Rules, so there is no need for us to consider the humanitarian protection ground separately.

The legal framework

Article 1F and its application in domestic law

7. Article 1(F) of the Refugee Convention excludes three types of person from the definition of refugee:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

8. This Article is mirrored in Article 12(2) of EU Council Directive 2004/83/EC ("the Qualification Directive") which also expands slightly on Article 1(F) (the changes and additions are italicised):

> "2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
>
> (a) he *or she* has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he *or she* has committed a serious non-political crime outside the country of refuge prior to his *or her* admission [to that country] as a refugee; *which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;*
>
> (c) he *or she* has been guilty of acts contrary to the purposes and principles of the United Nations *as set out in the Preamble and articles 1 and 2 of the Charter of the United Nations*.

> 3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein."

9. The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 transpose the Qualification Directive into domestic law. Regulation 7 of the Regulations provides that: "A person is not a refugee, if he falls within the scope of article 1D, 1E or 1F of the Geneva Convention". This has been incorporated into Rule 339D of the Immigration Rules.

10. Section 54 of the Immigration, Asylum and Nationality Act 2006 provides:

> "(1) In the construction and application of article 1F(c) of the Refugee Convention the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular -
>
> (a) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and
>
> (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).
>
> (2) In this section –
>
> 'the Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, and 'terrorism' has the meaning given by section 1 of the Terrorism Act 2000."

The correct approach to Article 1F

11. Mr Danny Friedman QC for the appellant devoted a significant part of his oral submissions to a series of high level submissions about principles of international law, but we consider that the applicable legal principles are not really controversial, save possibly in one respect to which we will turn later in this judgment. The general approach to be adopted to Article 1(F)(c) was established by the Supreme Court in *Al-Sirri v SSHD* [2012] UKSC 54; [2013] 1 AC 745 in the judgment of Baroness Hale and Lord Dyson MR at [12]-[16]:

> "12 The appellants, with the support of the UNHCR, argue that article 1F must be "interpreted narrowly and applied restrictively" because of the serious consequences of excluding a person who has a well-founded fear of persecution from the protection of the Refugee Convention. This was common ground in *R (JS (Sri Lanka)) v Secretary of State for the Home Department* [2010] UKSC 15, [2011] 1 AC 184, in the context of article 1F(a), and must apply a fortiori in the context of

article 1F(c). Concern was expressed during the drafting of the Convention that the wording was so vague as to be open to misconstruction or abuse. Professor Grahl-Madsen comments that "It seems that agreement was reached on the understanding that the phrase should be interpreted very restrictively": *The Status of Refugees in International Law*, 1966, p 283.

13 Secondly, article 1F(c) is applicable to acts which, even if they are not covered by the definitions of crimes against peace, war crimes or crimes against humanity as defined in international instruments within the meaning of article 1F(a), are nevertheless of a comparable egregiousness and character, such as sustained human rights violations and acts which have been clearly identified and accepted by the international community as being contrary to the purposes and principles of the United Nations. The appellants rely on *Pushpanathan v Canada, Minister of Citizenship and Immigration (Canadian Council for Refugees intervening)* [1998] 1 SCR 982 ("*Pushpanathan*") per Bastarache J at para 65:

> "….In my view, attempting to enumerate a precise or exhaustive list [of acts contrary to the purposes and principles of the United Nations] stands in opposition to the purpose of the section and the intentions of the parties to the Convention. There are, however, several types of acts which clearly fall within the section. The guiding principle is that where there is consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights as to amount to persecution, or are explicitly recognised as contrary to the purposes and principles of the United Nations, then article 1F(c) will be applicable."

14 On the other hand, not every act which is condemned by the United Nations is for that reason alone to be deemed contrary to its purposes and principles. In *Pushpanathan* itself, the majority held that international drug trafficking did not fall within article 1F(c), despite the co-ordinated efforts of the international community to suppress it, through United Nations treaties, declarations and institutions. As the UNHCR explains, in its "Background Note on the Application of the Exclusion Clauses: Article 1F…" (September 2003), at para 47:

> "The principles and purposes of the United Nations are reflected in myriad ways, for example by multilateral conventions adopted under the aegis of the UN General Assembly and in Security Council resolutions. Equating any action contrary to such instruments as falling within article 1F(c) would, however, be inconsistent with the object and purpose of this provision. Rather, it appears that article 1F(c) only applies to acts that offend the

> principles and purposes of the United Nations in a fundamental manner. Article 1F(c) is thus triggered only in extreme circumstances by activity which attacks the very basis of the international community's co-existence under the auspices of the United Nations. The key words in article 1F(c) 'acts contrary to the purposes and principles of the United Nations' should therefore be construed restrictively and its application reserved for situations where an act and the consequences thereof meet a high threshold. This threshold should be defined in terms of the gravity of the act in question, the manner in which the act is organised, its international impact and long-term objectives, and the implications for international peace and security. Thus, crimes capable of affecting international peace, security and peaceful relations between states would fall within this clause, as would serious and sustained violations of human rights."

15 Thirdly, for exclusion from international refugee protection to be justified, it must be established that there are serious reasons for considering that the person concerned had individual responsibility for acts within the scope of article 1F(c): see the detailed discussion at paras 50 to 75 of the UNHCR "Background Note". This requires an individualised consideration of the facts of the case, which will include an assessment of the person's involvement in the act concerned, his mental state and possible grounds for rejecting individual responsibility. As a general proposition, individual responsibility arises where the individual committed an act within the scope of article 1F(c), or participated in its commission in a manner that gives rise to individual responsibility, for example through planning, instigating or ordering the act in question, or by making a significant contribution to the commission of the relevant act, in the knowledge that his act or omission would facilitate the act. In *Bundesrepublik Deutschland v B and D* (Joined Cases C-57/09 and C-101/09) [2011] Imm AR 190 ("*B and D"*) the Grand Chamber of the Court of Justice of the European Union confirmed the requirement of an individualised assessment and held that it was not justifiable to base a decision to exclude solely on a person's membership of a group included in a list of "terrorist organisations". This too is consistent with the approach adopted by this Court in *R (JS (Sri Lanka)) v Secretary of State for the Home Department* [2011] 1 AC 184.

16 In our view, this is the correct approach. The article should be interpreted restrictively and applied with caution. There should be a high threshold ‘defined in terms of the gravity of the act in question, the manner in which the act is organised, its international impact and long-term objectives, and the

> implications for international peace and security'. And there should be serious reasons for considering that the person concerned bore individual responsibility for acts of that character…"

12. The Supreme Court went on to conclude at [36] that the phrase: *"acts contrary to the purposes and principles of the United Nations"* must have an autonomous meaning and individual member states were not free to adopt their own definitions. They approved the conclusion reached by Sedley LJ in the Court of Appeal in *Al-Sirri* [2009] EWCA Civ 222; [2009] INLR 586 at [28]-[29]:

> "28 Ours being a dualist system of law, the Refugee Convention has no domestic force save to the extent that it is adopted by national legislation. Formerly the route lay through the Immigration Rules, with their origin in the Immigration Act 1971. Since 2006 it has been through the Qualification Directive, which is given domestic force by the European Communities Act 1972. This is not merely a technical fact: by common consent it conditions and qualifies the application of s.1 of the Terrorism Act to art. 1F proceedings.
>
> 29 The reason is this. As has been seen, art 12 of the Directive, which sets minimum standards for the protection that member states are committed to give asylum-seekers, by paragraph (2)(c) reproduces the class of acts stigmatised by art. 1F(c) – acts contrary to the purposes and principles of the United Nations – and defines these by reference to paragraphs 1 and 2 of the Preamble to the Charter. Mr Eicke, on behalf of the Home Secretary, has not disputed that, even taken at its most generous, this formula does not go as wide as s.1 of the Terrorism Act 2000. It follows that the adoption by s.54(2) of the 2006 Act of the meaning of terrorism contained in the 2000 Act has where necessary to be read down in an art. 1F case so as to keep its meaning within the scope of art 12(2)(c) of the Directive."

13. The Supreme Court held at [38] of the judgment that, given the absence of any internationally agreed definition of terrorism, the appropriately cautious and restrictive approach would be to adopt para 17 of the UNCHR Guidelines, which provides:

> "Article 1F(c) is only triggered in extreme circumstances by activity which attacks the very basis of the international community's coexistence. Such activity must have an international dimension. Crimes capable of affecting international peace, security and peaceful relations between states, as well as serious and sustained violations of human rights would fall under this category."

14. At [39] and [40] the Supreme Court discussed the essence of terrorism:

> "39 The essence of terrorism is the commission, organisation, incitement or threat of serious acts of violence against persons or property for the purpose of intimidating a population or compelling a government or international organisation to act or not to act in a particular way (see, for example, the definition in article 2 of the draft comprehensive Convention), as Sedley LJ put it in the Court of Appeal, "the use for political ends of fear induced by violence" (para 31). It is, it seems to us, very likely that inducing terror in the civilian population or putting such extreme pressures upon a government will also have the international repercussions referred to by the UNHCR. In this particular case, the AIT did not consider that any such repercussions were required, but commented that "if we are wrong about that we consider the killing itself to be an act of terrorism likely to have significant international repercussions, as indeed it appears to have done" (para 47). When the case returns to the Tribunal, the Tribunal will have to consider the totality of the evidence and apply the test set out above.
>
> 40 Finally, is it enough to meet that test that a person plots in one country to destabilise conditions in another? This must depend upon the circumstances of the particular case. It clearly would be enough if the government (or those in control) of one state offered a safe haven to terrorists to plot and carry out their terrorist operations against another state. That is what the Taliban were doing by offering Osama bin Laden and Al-Qaeda a safe haven in Afghanistan at the time. As the UNHCR says, this would have clear implications for inter-state relations. The same may not be true of simply being in one place and doing things which have a result in another. The test is whether the resulting acts have the requisite serious effect upon international peace, security and peaceful relations between states."

15. Mr Friedman QC on behalf of the appellant also relied upon the judgments of Lord Brown and Lord Hope in *R (JS (Sri Lanka)) v SSHD* [2010] UKSC 15; [2011] AC 184 and of the CJEU in *Germany v B & D* [2012] 1 WLR 1076, in support of the propositions that for Article 1F(c) to be engaged the person in question must have sufficient individual responsibility and must have contributed significantly to the relevant acts. Those propositions are not in doubt in an appropriate case, but we agree with Mr Robin Tam QC on behalf of the Secretary of State that they are of no relevance in the present case. Those cases were ones where the basis for exclusion was membership of a terrorist organisation. The issue was whether it was sufficient to be a member, to which the courts answered no, there had to be some element of individual responsibility for the activities of the organisation or a significant contribution to the organisation's ability to pursue its activities. However, as Mr Tam QC correctly submitted, that is not the case here. This case concerns someone who downloaded terrorist material onto his computer: it concerns his own acts, so he has individual responsibility.

16. We also agree with Mr Tam QC that the argument about significant contribution is a red herring in the present case. It derives from those cases where there had been a concluded act or series of acts by a terrorist organisation, for example the assassination of General Masoud in *Al-Sirri* or war crimes in Sri Lanka in *JS* and the issue was whether the person in question made a significant contribution to the act or series of acts. The present case is not such a case. If the appellant is excluded under Article 1F(c), it is because of his own act. There is no doubt that he made a significant contribution, only he committed the relevant act.

The principles and purposes of the United Nations

17. There is no definitive statement by the United Nations of what its "principles and purposes" are, which are being referred to in Article 1F(c). However, as Sedley LJ held at [30] of his judgment in *Al-Sirri*, a legitimate indicator may be relevant Security Council Resolutions. Our attention was drawn by Mr Tam QC to a number of these and to a General Assembly Resolution which must also be a legitimate indicator.

18. The General Assembly Resolution 51/210 of 16 January 1997 is headed: "Measures to eliminate international terrorism". Declarations 1 and 2 provided:

> "The General Assembly
>
> 1. Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;
>
> 2. Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them;"

19. This is at a high level of generality. Of more specific significance in the present context is Security Council Resolution 1373 of 28 September 2001, adopted in the immediate aftermath of the 9/11 terrorist attacks. Paragraph 2 provided, inter alia:

> "The Security Council
>
> *Decides also* that all States shall:
>
> (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
>
> (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

> (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;"

20. Paragraph 3(f) provided:

> "The Security Council
>
> *Calls* upon all States to
>
> (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;"

21. Paragraph 5 is of particular significance in the context of the present case since it makes express reference to the matters identified, including planning terrorist acts being contrary to the purposes and principles of the United Nations:

> "5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;"

22. That Resolution 1373 is referred to in Resolution 1455 of 17 January 2003, the preamble to which provides:

> "The Security Council
>
> Underlining the obligation placed upon all Member States to implement, in full, resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts, as well as to facilitate the implementation of counter terrorism obligations in accordance with relevant Security Council resolutions,"

23. Finally, Resolution 1624 of 14 September 2005, provides in the preamble or recitals (with our numbering for ease of reference):

"The Security Council

[2] Reaffirming also the imperative to combat terrorism in all its forms and manifestations by all means, in accordance with the Charter of the United Nations, and also stressing that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law,

[3] Condemning in the strongest terms all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security, and reaffirming the primary responsibility of the Security Council for the maintenance of international peace and security under the Charter of the United Nations,

[4] Condemning also in the strongest terms the incitement of terrorist acts and repudiating attempts at the justification or glorification (apologie) of terrorist acts that may incite further terrorist acts,"

…

[8] Reaffirming that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations,

…

[15] Recalling that all States must cooperate fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens,"

24. Paragraph 1 of the Resolution itself provides:

"[The Security Council]

Calls upon all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to: (a) Prohibit by law incitement to commit a terrorist act or acts; (b) Prevent such conduct; (c) Deny safe haven to any persons with respect to

whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct;"

25. We will consider the particular impact of these Resolutions in the present case when we have set out the detail of the evidence against the appellant and the offences which he committed. We simply note for the present that the submission advanced by Mr Friedman QC to the effect that if the conduct of the appellant was a threat to world security, as was contended on behalf of the Secretary of State, then this did not say much for world security, seriously underestimated the seriousness of the appellant's conduct, for reasons elaborated later in the judgment. Mr Tam QC submitted that the terms of the Resolutions which we have set out are amply wide enough to include the offences under section 57 of the Terrorism Act 2000 of which the appellant was convicted. For reasons we also elaborate later in the judgment, we agree with that submission.

Section 57 of the Terrorism Act 2000

26. Section 57 of the Terrorism Act 2000 created the offence of possessing articles for terrorist purposes. It provides:

> "57 Possession for terrorist purposes.
>
> (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (3) In proceedings for an offence under this section, if it is proved that an article—
>
> (a) was on any premises at the same time as the accused, or
>
> (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,
>
> the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it."

27. The purpose and operation of section 57 were considered by a five judge Court of Appeal Criminal Division (Lord Phillips CJ, Latham LJ, Cresswell, Holland and Burton JJ) in *R v Rowe* [2007] EWCA Crim 635; [2007] QB 975. In that case, the appellant was convicted of two counts under section 57 of

possession of a notebook containing his manuscript notes of instructions on how to assemble and operate a mortar and of a video case containing a substitution code listing components of explosives and places of a type susceptible to terrorist bombing. He had been arrested at Coquelles as he tried to enter the United Kingdom on a coach bound for Victoria Coach Station and the prosecution case was that he had been shortly to embark on a terrorist venture and that the notebook and the substitution code were held for terrorist purposes. The trial judge passed consecutive sentences of 7½ years' imprisonment on each count, a total of 15 years' imprisonment.

28. At [53] of the judgment, the Court dealt with the appropriate approach to this type of offence:

> "53. The point that has caused us more concern has been Mr Mansfield's submission that the judge erred in principle in awarding consecutive sentences and that the total sentence of 15 years was greater than was justified by the overall seriousness of the appellant's conduct. This raises the question of the appropriate approach to this type of offence. Section 57 makes provision for a special type of inchoate offence in relation to terrorism. Under the Criminal Attempts Act 1981, which replaced the common law, attempting to commit an offence carries criminal liability where a person, with intent to commit an offence, does an act that is more than merely preparatory to the commission of the offence. Section 57, for good and obvious reason, makes criminal conduct that is merely preparatory to the commission of terrorist acts. While such conduct is highly culpable, it is not as culpable as attempting to commit, or actually committing, the terrorist acts in question. But the seriousness of the offence consists not merely in the culpability of the offender but the potential of his conduct to cause harm…"

29. The Court of Appeal recognised at [54] that the seriousness of an offence under section 57 may justify a very long sentence indeed, providing both punishment and protection for the public. The Court noted at [55] that the trial judge had had these considerations in mind when he commented that "there will be cases where possession of objects for a terrorist purpose will have occurred in a context which makes the offence one of a high order of gravity…" He had concluded that the maximum sentence for an offence under section 57 of 10 years was inadequate, hence the consecutive sentences he passed and the Court of Appeal noted that Parliament had no doubt been of the same view when it increased the maximum sentence to 15 years in the Terrorism Act 2006. However, in the particular circumstances of that case, the Court of Appeal reduced the overall sentence to one of 10 years' imprisonment.

30. In the circumstances, Mr Tam QC submitted that the contention which seemed to be being advanced on the appellant's behalf that this was some form of relatively minor "prophylactic" offence was wrong: the section was intended to cover offences of a high order of gravity as the trial judge had noted in

Rowe. Of course how grave a particular offence is under section 57 will depend upon the circumstances of the particular case. We will examine the particular circumstances of this case in detail below, but we note that the trial judge here also considered this offending to be of a high order of gravity, saying in his sentencing remarks that the Terrorism Act offences were: *"amongst the most serious of their kind likely to come before the courts."* The seriousness of the offending was reflected by the overall sentence of 9 years imprisonment (on the basis that the downloading had occurred in 2003 and 2004, at a time when the maximum sentence for one offence under section 57 was 10 years imprisonment).

31. Of course, we accept that the length of the sentence of imprisonment cannot be determinative of the issue whether the appellant should be excluded under the Refugee Convention, although it must be a material factor. As Rix LJ said at [54] of his judgment in *AH (Algeria) v SSHD* [2012] EWCA Civ 395; [2012] 1 WLR 3469:

> "I certainly do not find it helpful to determine the level of seriousness by the precise sentence of imprisonment that may have been imposed upon the accused. Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed."

32. In fairness to Mr Friedman QC, his point about these being prophylactic or preparatory offences was not so much to suggest that they were minor, (although, whilst accepting their seriousness, he submitted that they were insufficiently grave to be contrary to the purposes and principles of the United Nations within Article 1F(c)), as to reinforce a submission he made that counter-terrorism measures such as under section 57 went beyond the requirements of the United Nations and other international law initiatives against terrorism. They were measures designed to nip terrorism in the bud, but went beyond the international law obligations of the United Kingdom, like the offences under section 2 of the Terrorism Act 2006 considered by the Supreme Court in *R v Gul* [2013] UKSC 64; [2014] AC 1260, where in the judgment of Lord Neuberger and Lord Judge at [53] the principle was stated: *"there is no rule that the UK government cannot go further than is required by an international treaty when it comes to legislating – the exercise is often known as 'gold-plating.'"* Mr Friedman QC submitted that the inchoate offences created by section 57 were far broader than and went beyond any international treaty obligations of the UK. We will return to this point when we consider the application of the Security Council Resolutions by reference to the detailed circumstances of the appellant's offending.

Must an act of terrorism have taken place?

33. Mr Friedman QC made a related point that, in order for someone to be guilty of acts contrary to the purposes and principles of the United Nations within

Article 1F(c) of the Refugee Convention, acts of international terrorism must in fact have taken place and it was not sufficient that the appellant might have planned or encouraged or facilitated such acts if, as in the present case, they had never taken place. Mr Friedman QC recognised that this argument had been recently rejected by the Upper Tribunal in *Youssef v SSHD* [2016] UKUT 137 (IAC) but submitted that that case was wrongly decided.

34. In that case, reliance was placed by the appellant on the fact that, under the jurisdiction of the International Criminal Court, ordering, soliciting or inducing the commission of a crime only gives rise to individual criminal responsibility if a crime in fact occurs or is attempted. This contrasted with the position in domestic criminal law, under which soliciting, inducing or inciting an offence would each constitute an "auxiliary" or "inchoate" offence, regardless of whether any primary offence was committed or attempted. In *R (JS (Sri Lanka)) v SSHD*, a case concerned with Article 1F(a) of the Refugee Convention, the Supreme Court had upheld the view of Toulson LJ in the Court of Appeal that international criminal law should be the starting point for considering whether an applicant is disqualified from asylum by virtue of Article 1F(a). In *Youssef* the appellant contended that the same reasoning should apply to Article 1F(c).

35. The Upper Tribunal rejected that contention. At [23] and [24] of the judgment they said:

> "23 The point of distinction as it seems to us, is the distinction between crimes and other acts. Article 1F(a) and (b) are both concerned with crimes and it is not surprising therefore that rules emanating for example from the ICC Statute should be regarded as applicable to both of those limbs, though applicability to 1F(b) must be a matter in our view for future litigation since *JS* was concerned with 1F(a) only. But the fact that there may be an overlap does not in our view justify the conclusion that there is anything surprising or curious about the fact that different elements of secondary liability may apply to the different heads under Article 1F bearing in mind the different types of matter with which they are concerned. The fact that a particular act may fall within 1F(c) and at the same time fall under (a) or (b) does not in our view invest it with the necessarily criminal character of a kind which would require incorporating the ICC Statute provisions into our assessment of the Rules pertaining to 1F(c).
>
> 24 … [Article 1F(c)] is not a provision concerned with the commission of a crime, and we do not accept Mr Mackenzie's argument that whether on the basis of what was said in *JS* or on any other basis can it properly be said to be a requirement of Article 1F(c)'s applicability that it is necessary to show anything beyond incitement and/or encouragement of acts of international terrorism without such acts having to be shown to have taken place."

36. Mr Friedman QC submitted that this reasoning was flawed, arguing that, in all cases under Article 1F the court or tribunal was concerned with examining criminal conduct and it would be surprising if a different standard applied to (c) than applied to the other sub-paragraphs. He relied upon [47] to [49] of the UNHCR Background Note on the Application of the Exclusion Clauses (2003), [48] and [49] of which at least suggest that only global acts of terrorism would be excluded by Article 1F(c). However, whilst of course the Commission will accord *"considerable weight"* to the *"valuable guidance"* of the UNHCR (see Recital (15) of the Qualification Directive and [36] of the Supreme Court judgment in *Al Sirri*), we note that in *Al Sirri* at [14] the Supreme Court only endorsed [47] of the Background Note and the suggestion made in [48] which underpins the reasoning in the Background Note in [49], that Article 1F(c) should be limited to "state actors", was expressly rejected by the Court of Appeal in *Al Sirri* (see per Sedley LJ at [36]-[39] and before the Supreme Court, the UNHCR itself accepted that the Article was not so limited (see [25(1)] of the judgment). In the circumstances, we do not consider much reliance can be placed on [48]-[49] of the Background Note.

37. Mr Friedman QC also relied upon a passage in *Hathaway and Foster: The Law of Refugee Status* 2nd edition at pp 586-589 which suggests that the circumstances in which Article 1F(c) should apply to non-state actors should be strictly limited, but we agree with Mr Tam QC that the editors are expressing views as to what Article 1F(c) should or should not cover which go beyond the law as set out in *Al Sirri*. We were equally unimpressed by Mr Friedman QC's arguments that *Youssef* was wrongly decided on its facts or, if not, should be distinguished on its facts from the present case (a point to which we return towards the end of this judgment). At this stage, we are simply concerned with whether the statement of the law in *Youssef* is correct.

38. Although we note that the decision of the Upper Tribunal in *Youssef* is to be appealed to the Court of Appeal, that is no reason not to follow its reasoning if we find it compelling, which we do. We consider that the Upper Tribunal was correct to conclude that Article 1F(c) is not simply concerned with completed terrorist acts. Nothing in the wording of the provision itself compels the contrary conclusion. Furthermore, we agree with Mr Tam QC that nothing in the various Security Council Resolutions to which we were referred, justifies the conclusion that, when they condemn matters such as planning or financing acts of terrorism, that condemnation is limited to cases where an act of terrorism has subsequently taken place. Mr Tam QC gave a hypothetical example of the FBI uncovering the 9/11 plot and thwarting the terrorists in acts of preparation on 10 September 2001. He submitted that it would be absurd to suggest that what the terrorists had done before they were thwarted was not contrary to the purposes and principles of the United Nations. We agree with that submission. It seems to us that, if the Resolutions were intended to be limited to completed acts of terrorism, they would say so in terms. They do not and there is nothing in them to justify such a gloss. In the circumstances, we are quite satisfied that the "acts" referred to in Article 1F(c) are not limited to situations where acts of terrorism have actually taken place.

The correct approach to the evidence

39. Before considering the evidence in this case and whether it justifies the exclusion of the appellant under Article 1F(c) we should set out what we consider to be the correct approach to the evidence and the question whether "there are serious grounds for considering" that the appellant was "guilty of acts contrary to the purposes and principles of the United Nations".

40. So far as the conviction of the appellant is concerned, that is governed by section 11 of the Civil Evidence Act 1968 which provides:

> Convictions as evidence in civil proceedings.
>
> (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom…shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

41. The effect of admitting the conviction in evidence is that the burden shifts to the appellant to prove that he was innocent of the offences of which he was convicted. Although there is what appears to be an attempt by the appellant, in his witness statement in September 2012 before the Commission on this appeal, to suggest that he was not guilty of the offences and downloaded the offending material out of idle curiosity, Mr Friedman QC eschewed any such attempt on the part of the appellant. In any event, in the present case, the appellant was not only convicted by the jury at trial, but the Court of Appeal Criminal Division refused his application for permission to appeal against that conviction. Furthermore, he has not asked the Criminal Cases Review Commission to review his case. It should also be borne in mind that he chose not to give evidence at trial, so that his witness statements served in September 2012 and May 2016 must be viewed with considerable caution and scepticism. As we will come on to consider in the specific context of some of the evidence against him at trial, the statements are remarkable for the fact that they fail to deal with a number of critical matters, quite apart from the fact that the appellant did not attend to be cross-examined.

42. However, it is only in relation to the fact of conviction that section 11 of the Civil Evidence Act 1968 applies. So far as all the other evidence in the case is concerned, the Supreme Court gave authoritative guidance as to the correct approach at [75] of the judgment in *Al Sirri*:

> "We are, it is clear, attempting to discern the autonomous meaning of the words "serious reasons for considering". We do so in the light of the UNHCR view, with which we agree, that the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied. This leads us to draw the following conclusions:

> (1) "Serious reasons" is stronger than "reasonable grounds".
>
> (2) The evidence from which those reasons are derived must be "clear and credible" or "strong".
>
> (3) "Considering" is stronger than "suspecting". In our view it is also stronger than "believing". It requires the considered judgment of the decision-maker.
>
> (4) The decision-maker need not be satisfied beyond reasonable doubt or to the standard required in criminal law.
>
> (5) It is unnecessary to import our domestic standards of proof into the question. The circumstances of refugee claims, and the nature of the evidence available, are so variable. However, if the decision-maker is satisfied that it is more likely than not that the applicant has *not* committed the crimes in question or has *not* been guilty of acts contrary to the purposes and principles of the United Nations, it is difficult to see how there could be serious reasons for considering that he had done so. The reality is that there are unlikely to be sufficiently serious reasons for considering the applicant to be guilty unless the decision-maker can be satisfied on the balance of probabilities that he is. But the task of the decision-maker is to apply the words of the Convention (and the Directive) in the particular case."

43. How those principles are applied in any given case will depend upon the circumstances of the particular case. In the present case, there is an important point of distinction from the case of *Al Sirri.* In that case, in relation to what the Supreme Court recognised at [22] was the most important matter relied upon, whether the appellant had conspired in the murder of General Masoud, he had been indicted at the Old Bailey, but the Common Sergeant had dismissed the charge of conspiracy to murder on the ground that the evidence would not be sufficient for a jury properly to convict. Inevitably, in those circumstances, the question whether there were: *"serious reasons for considering that…[the appellant] has been guilty of acts contrary to the purposes and principles of the United Nations"* required a particularly searching and critical consideration of what evidence there was against the appellant.

44. In the present case, where the appellant has been convicted of terrorism offences, the exercise of determining whether there are: *"serious reasons for considering that… [the appellant] has been guilty of acts contrary to the purposes and principles of the United Nations"*, involves consideration of the seriousness of the acts which he did commit, rather than considering whether he committed the acts at all. In considering the seriousness of his acts, we are entitled to look beyond the evidence which technically constituted the six counts, to ascertain his reasons and motivation for acting as he did and what his plans might have been and we are entitled to draw appropriate inferences for ourselves in relation to those matters from the totality of the evidence. The

totality of the evidence includes the evidence in the jury bundle and as summed up by the trial judge, the prosecution Opening Note, the sentencing remarks and the judgment of the Court of Appeal as well as additional material which has emerged subsequently such as the appellant's own witness statements (always subject to the caveat noted at [41] above).

The evidence

Association with terrorists before coming to the UK

45. The prosecution put before the jury evidence showing links between the appellant and terrorists abroad. The trial judge summed up to the jury on the basis that, if they were sure that the appellant was knowingly associating in Rotterdam with people he knew to be terrorists, then they could use that evidence to help them decide the issue between the prosecution and the defence whether the appellant knew of the existence of the material on his computers. We do not know what conclusion the jury reached about the so-called Dutch evidence since they do not give reasons for their decision, so that we need to consider for ourselves what the evidence was and what inferences can be drawn from it.

46. As was admitted at trial, from February 2000, the appellant was the tenant of a flat at 64A, Vletstraat, Rotterdam. In 2001 the Dutch police started an investigation into a number of suspected terrorists. These included Jerome Courtailler and Abdelghani Rabia both subsequently convicted of participating in international and Dutch criminal organisations. The judge summed up the findings of the Court of Appeal in The Hague about those and other men, (including Tobichi and Idowi) and the evidence of Dutch police officers at the appellant's trial.

47. The initial focus of the Dutch enquiry was not on those men but on another man, Nizar Trabelsi, who had once played football for Frankfurt, but who had become radicalised and gone to Afghanistan to receive paramilitary training with a view to committing acts of terrorism. Whilst there he was chosen to participate in a suicide attack in Europe led by a man called Jamel Beghal. Trabelsi returned to Europe in June 2001 and started planning an attack on either the U.S. Embassy in Paris or a U.S. Airforce base in Belgium. Others involved in that proposed attack were Courtailler and Rabia. Raw materials purchased to make explosives were discovered in a restaurant in Belgium where Trabelsi, Courtailler and Rabia had met. As a consequence, as the trial judge explained to the jury, Courtailler and Rabia were convicted by the Court of Appeal in The Hague of participation in an international criminal enterprise, not just a Dutch criminal enterprise. Courtailler and Rabia had also promised to find Trabelsi accommodation in Rotterdam and a forged diplomatic passport. Courtailler and Rabia, together with Tobichi and Idowi, were also convicted of producing and dealing in forged passports, identity papers and travel documents for persons to travel to Afghanistan. Trabelsi was subsequently convicted in Belgium of planning a terrorist attack.

48. The significance of all this, so far as the appellant is concerned, is that the Court of Appeal in The Hague found that, for some months leading up to

August 2001, those four men, Courtailler, Rabia, Tobichi and Idowi had been living at the flat in Rotterdam of which the appellant was the tenant. Courtailler had been there since at least April 2001 and Rabia since at least May 2001. They had with them jihad videos and a substantial collection of forged documents. Courtailler and Rabia moved to another address in Rotterdam in August 2001. When they were arrested by the Dutch police in September 2001, Courtailler claimed that he had only met the "landlord" of the flat, presumably the appellant, once, when they returned the keys as they left the flat.

49. The appellant was arrested and cautioned before being interviewed by the Dutch police on 24 September 2001. At that time he was using the alias Omar Altimimi, born in Kuwait on 6 August 1969 (of which more below). He confirmed that he lived at the flat and that he had a friend called Abu Zaid (in fact Gehad Abozayd, who was one of the suspected terrorists, but never charged by Dutch police) who stayed there for a while, having been in prison and having nowhere else to stay. Two other Muslims he had met at the mosque, Adel and Abdelkader, had also stayed. He was shown a photograph of Courtailler whom he said he had only met once, when he got the keys back from Abdelkader and Courtailler had been standing on the landing. He told the police that Courtailler had never slept at the flat and that, if he said he had, he must be lying. In a further interview the following day, he said he did not know Beghal or Trabelsi.

50. There was evidence of a number of money transfers to or from people living at the flat. The judge referred to a transfer of 1,000 guilders apparently by the appellant to an Osman Mohamedi in Egypt in January 2001 in which the appellant's identity card was produced. There was then a subsequent larger transfer of 15,350 guilders in May 2001 apparently by the appellant using his identity card to a man in Thailand called Rashid Messukat, who was a terrorist belonging to an Al Qaeda-related group, convicted in his absence in Paris in 2004. In the police interviews, the appellant was asked about the money transfers. He claimed to know nothing of them, but said that at the time of the first transfer, Abozayd had been staying at the flat so perhaps he had used the appellant's identity card. In relation to the second transfer, he said that when Abozayd left the flat in March 2001, he took the appellant's identity card with him and did not return it until November 2001, so that the identity card was not in the appellant's possession at the time of the transfer to Messukat. As the judge told the jury in summing up, it appeared from one of his police interviews that the appellant had reported his identification card stolen on 5 February 2001.

51. In his submissions to us, Mr Friedman QC submitted that we should not conclude that the appellant had knowingly associated in Holland with people who were terrorists. He relied upon two matters in particular. First, he relied upon the fact that, whilst the appellant had been arrested and interviewed by the Dutch police, criminal proceedings were never pursued against him in Holland. Second he relied upon the fact that, in his sentencing remarks the trial judge had said that he declined to make any findings of fact in relation to Holland, suggesting that he was not convinced that there was anything in the

prosecution case. Mr Friedman QC submitted that, even if we were against him on this point, the only finding we could make was that he had associated with extremists in Holland, not that he had any terrorist related relationship with them.

52. We were unconvinced by these submissions. We agree with Mr Tam QC that in the police interviews, the appellant sought to downplay his involvement with people who were subsequently convicted of terrorism. Given that he lived in the flat and Courtailler lived there as well for some four months, we consider it implausible in the extreme that the appellant only met him once. Taking all the available evidence about Holland and the money transfers together, it seems to us equally implausible that all this association was innocent coincidence. Whilst he may well have reported his identity card as stolen at one stage, we consider that it is more likely than not that it was he who responsible for the money transfers, including the one to Messukat.

53. In this context, it is striking that, in his witness statements put before the Commission for this hearing, he has not sought to deal with these activities and associations in Holland at all, nor has he come to be cross-examined about them. In the first statement in September 2012, he refers to the fact that in the aftermath of the 9/11 attacks he was arrested by the Dutch police as part of a general investigation into Islamic extremism in Holland, that he was questioned and no charges were brought against him, but this is no explanation at all for his activities and associations in Holland.

54. Whilst we bear in mind that he was not prosecuted by the Dutch authorities, there may have been any number of reasons for that decision and it certainly does not follow that he was not knowingly associating with people he knew to be terrorists. Nor, with respect to Mr Friedman QC, do we consider that the judge's reason for not making any findings of fact about Holland was that he did not think there was anything in the prosecution case. Rather, it is clear from what he said that he was being careful not to tread on the toes of the Dutch authorities as regards any possible further prosecution. He said:

> "I decline to make findings of fact in relation to Holland. It seems to me that the authorities in Holland are much better able on the material available to them to decide about your activities in that country…"

55. It is not necessary to make a finding that, whilst in Holland, he was actively engaged in terrorist activity, but we do consider that looking at the evidence as a whole, it is appropriate to conclude that he was associating and living with people he knew to be terrorists and that, in all probability, he was responsible for making a money transfer to one such terrorist in Thailand. It is not just a question of associating with extremists, as Mr Friedman QC sought to suggest. As Mr Tam QC put it, these were not just any old extremists or terrorists with whom he was associating, but members of international Al Qaeda or Al Qaeda-related terrorist groups. We regarded Mr Friedman QC's contrary submissions as unrealistic.

56. Of course none of the evidence can be viewed in isolation; it has to be viewed as a whole. This evidence about his associations and activities in Holland casts important light on other aspects of the evidence, such as his use of multiple identities, to which we turn next and the question of his mindset and motivation in committing the offences of which he was convicted, matters to which we turn later in the judgment.

Use of multiple identities when the appellant came to the UK

57. As noted above, in Holland the appellant had been investigated under the name Omar Altimimi, born in Kuwait on 6 August 1969. When he arrived in the UK in September 2002 and claimed asylum, he did so as Mahr Abdullah Abu Hawas, born on 6 August 1965, claiming he was an Iraqi national, but in fact using a false Iraqi nationality certificate. His second wife claimed asylum in her own name. In claiming asylum, he made no mention about having been in Holland. He claimed to have come from Kuwait. He claimed to fear the Iraqi security forces and the Kuwaiti authorities on the grounds that he was spying on them. He spun a story about persecution in Iraq. His asylum claim was subsequently refused by the Home Office as manifestly fraudulent.

58. Notwithstanding the refusal of asylum, he was allowed to remain in the UK and did so as Abu Hawas, although on 17 October 2002, a Dutch passport was issued to him in the name Altimimi. As the trial judge summed up the case, he maintained connections in Holland, including with the flat in Vletstraat. He travelled to Holland on a number of occasions including when his divorced first wife Mariam Saleh died in 2005 and he kept in touch with her brother, Musah Saleh.

59. The evidence at trial was that, after initially being accommodated at a hotel in Margate, in October 2002 whilst his asylum application was still pending, the appellant and his family were moved to an address in Bolton, 76 Yates Street. The tenancy agreement between Clearsprings, the management company which provided the accommodation to the National Asylum Seekers Service, and the appellant was signed by him in the name Abu Hawas. One of the witnesses from Clearsprings who visited Yates Street said that, in the front room, there four computer towers linked to one another with cables and two screens.

60. Throughout 2003, the appellant continued to live at the Yates Street address. During that year, he opened bank accounts in different names: one with Halifax in the name Abu Abdullah and one with the Cooperative Bank in the name Abu Hawas. By May 2004 he was applying to Bolton Borough Council for accommodation as a homeless person in the name Altimimi, informing them that he had come from Holland and had left there to find employment in England. Also as Omar Altimimi who had come from another EU country and had a Dutch passport to prove it, he was applying for Jobseekers Allowance. That application was successful and he received the Allowance from October 2004 until June 2006 when he was arrested.

61. On 5 September 2004, also in the name of Omar Altimimi, he entered into a private tenancy agreement for another property in Bolton, 10 East Bank Street,

whilst still living at 76 Yates Street in the name of Abu Hawas. At some stage in 2005 the appellant prepared a CV on his computer in the name of Omar Altimimi, giving the East Bank Street address and stating that he had come to the UK in June 2004, all consistent with his Altimimi identity, but not his Abu Hawas identity. In October 2005 as Omar Altimimi, he applied for a job as a teaching assistant with Bolton Community College. In November 2005, as Abu Hawas, he and his family moved from the Yates Street address to another Clearsprings property in Bolton, 13 Lansdowne Road. It was at the two addresses in East Bank Street and Lansdowne Road that the two computers containing the material the subject of the Terrorism Act counts were found by the police. We return to those addresses and computers later in the judgment.

62. When the appellant was arrested in 2006 by the police in respect of the offences of which he was subsequently convicted, he maintained the identity of Altimimi and gave his address as 10 East Bank Street. He told them lies in interview about the circumstances in which and the reason why he had entered the UK and about his identity. When first interviewed on 25 March 2006 in relation to the offences of acquiring stolen property (which it is accepted were not terrorist related) he confirmed that he did have bank accounts at Nationwide, Yorkshire Bank and Islamic Bank, which were held in the name of Altimimi. Consistently with seeking to maintain that identity, he did not mention the accounts he held at Halifax in the name of Abu Abdullah and at the Cooperative Bank in the name Abu Hawas. Shown the identification card in the name of Abu Hawas, he said this was a friend who had given it to him, Altimimi, to photocopy for him. He declined to say where Abu Hawas lived, saying it was a private matter. When asked in interview about the Halifax and Cooperative Bank debit cards found hidden in the sole of his right shoe which were in the name of Abu Abdullah and Abu Hawas respectively, he lied to the police, saying: *"Frankly, I don't like to talk about things that belong to others and if something doesn't belong to me I don't like it and when the police came I had to hide things that didn't belong to me."* That was an absurd but utterly mendacious explanation.

63. At the second interview on 12 June 2006, he told the police he had come by train to Waterloo Station at the end of 2003 and had used his Dutch identity card. He said he had held Dutch citizenship since 1998 and had held a Dutch identity card which had expired. He was shown a copy of his Dutch passport (in the name of Altimimi) and accepted it was his. Asked why he had come to England, he said there was no reason, but that the Dutch language was difficult. He was asked whether he was Abu Hawas or had ever used that name and he said; "No". He denied having lived at the house 76 Yates Street, Bolton where he had lived as Abu Hawas or at 13 Lansdowne Road where he was arrested and where one of the computers on which he had downloaded the incriminating material was found by the police in execution of a search warrant.

64. At a subsequent interview on 28 June 2006, he said he was an Iraqi national and that he had been born and lived in Kuwait all his life until 1992 or 1993 and that he had a Kuwaiti accent. He had been detained there without trial for two years because he was an Iraqi national and, on his release had used a

friend's passport to travel to Holland, where he successfully applied for asylum and was later granted Dutch citizenship. Asked why he had come to England, he now said he had problems with his first wife Mariam and could not divorce her. This was the third different reason he had given for coming to the UK.

65. In his first witness statement in relation to his bail application in September 2012, made in the name Abu Hawas, he says he was born with that name in Kuwait on 6 August 1969 and that his parents were both born in Palestine but had fled to Jordan and been given Jordanian citizenship, which he had inherited by birth. He then describes being detained in Kuwait and going to Holland in 1993 where he gave the name Omar Abdullah Altimimi and said he was Iraqi through his father Abdullah Altimimi. That was the name of an Iraqi soldier his mother had introduced him to when she came to visit him in prison and later confessed to him was his biological father. He describes how he married Mariam Saleh, who was Jordanian, in 1995 and their son was born in 1996.

66. He describes how, although she was dying, he divorced Mariam in 2002 and married his second wife, also Jordanian, in Amman. He says that she could not enter Holland as his wife as his marriage documents were in the name Abu Hawas and the Dutch authorities did not know who that was. He claims that after his return to Holland, he remained under pressure from the Jordanian authorities by whom he had been tortured when there in early 2002, so he decided he had to leave Holland. He left for the UK at the end of 2002, with his second wife. He says that they claimed asylum under false names because, although he knew that he would be entitled to live and work in the UK as a Dutch national, he wanted to create a new identity for himself to make it more difficult for the Jordanians to find him. He used the false name of Abu Hawas with a false date of birth of 6 August 1965. He admits that in making his asylum claim, most of what he told the Home Office was not true.

67. Given the extent to which the appellant has changed his account of his life and his identity, we find it impossible to accept any of this account (which involves what is, in effect, a fourth reason for coming to the UK, that he was seeking to avoid persecution by the Jordanian authorities) at face value. If this version of events were true, it is difficult to see why he did not give it to the Home Office when he first claimed asylum in 2002. We have little doubt that, if the appellant had come to give evidence and been cross-examined, the inconsistencies and fabrications in his various accounts would have been exposed.

68. Mr Friedman QC accepted that there could be two reasons for having multiple identities and lying to the police in the way in which he did. One was that he was, as the trial judge found in his sentencing remarks, a sleeper for a terrorist organisation and the other was the reason which Mr Friedman QC advocated, what he described as an immigration reason: that the appellant did in fact have two families, one in Holland and one in the UK, that his first wife was terminally ill in Holland and he came over here to start a new life with his second wife.

69. However, whilst that might, on the face of it, explain the decision to leave Holland and come to the UK, it cannot begin to explain, let alone excuse, lying about his true identity, his country of origin or his past history. In our judgment, the so-called immigration reason is no reason at all. The conclusion which the trial judge drew in his sentencing remarks, that the appellant was a sleeper for a terrorist organisation (a conclusion endorsed by the Court of Appeal), remains valid, if not more so than at time of the trial, given that the appellant's story has continued constantly changing:

> "Doubts remain as to who you really are and where you really come from. In my view, the only reasonable conclusion to be drawn from these features of the case [which included: "your multiple identities, your different addresses, your coming into this country from Holland late in 2002 under an assumed name and on any fair view the…lies you told before and during the police inquiry into this case"] is that you were indeed a sleeper for some sort of terrorist organisation."

The link with Feroze

70. On 24 March 2006, the day the appellant was first arrested, the police found a number of items linking this appellant to Junade Feroze, who subsequently pleaded guilty at Woolwich Crown Court in April 2007 to conspiracy with a convicted Al Qaeda terrorist, Dhiren Barot, to cause explosions pursuant to a terrorist bomb plot. In the kitchen unit at the 10 East Bank Street address used by the appellant as Altimimi, a piece of paper was found by the police with the mobile telephone number of Feroze. They also found (i) a Barclaycard Application in the name of Feroze with an address in Malham Gardens, Blackburn and the same mobile phone number; and (ii) a Nationwide Flexaccount Application Form also in the name of Feroze with the same address and mobile phone number. The prosecution at the trial of this appellant did not suggest that the appellant was involved in the conspiracy with Feroze but relied on the contact between him and a man who subsequently pleaded guilty to being a terrorist, as part of their overall case that the appellant had knowingly downloaded the incriminating material found on his computer. Mr Tam QC also relied on this material as part of his overall case that the appellant was more involved with terrorists than Mr Friedman QC suggested.

71. It was in the context of this contact with Feroze that Mr Tam QC submitted that there was a pattern which came up time and again, and he described the appellant as *"in many ways, the very model of a modern Al Qaeda terrorist"*, echoing the Major-General's song in Gilbert & Sullivan's *The Pirates of Penzance*. This rhetorical point caused Mr Friedman QC to become very exercised in his written reply submissions put in after the conclusion of the hearing, making the point more than once that any case that the appellant was a *"commissioned member of Al Qaeda"* was not supported by the evidence. In our judgment, Mr Friedman QC has misinterpreted the point which we understood Mr Tam QC to be making, rhetorically, which was not that the appellant was a member of Al Qaeda, but that his pattern of conduct was similar to that of Al Qaeda terrorists: multiple identities, different immigration

histories, associations with other terrorists and extremists, but all elusive and difficult to pin down. That seems to us to be a valid point, and is not changing the Secretary of State's case which was and is that the appellant was a sleeper for a terrorist organisation and whilst it is not possible to identify the precise organisation, if it was not Al Qaeda, it was related to or associated with or inspired by Al Qaeda.

72. In his written reply submissions, Mr Friedman QC also complained that the Secretary of State had not relied upon association with Feroze in the deportation decision or the letter on 15 July 2016. In our judgment that misses the point. This is evidence which was before the jury which we are entitled to take into account in assessing whether this appellant's acts were sufficiently serious to be contrary to the purposes and principles of the United Nations. It is also notable that although this material connecting the appellant to Feroze and the prosecution case about it were before the jury, the appellant has not sought to put forward any explanation for his having Feroze's telephone number and Feroze's documents, let alone one which would suggest that any connection between them was wholly innocent.

The Terrorism Act offences

Counts 2, 3, 4 and 6

73. These counts related to material downloaded onto a computer found by police at the Lansdowne Road address and seized by them on 12 June 2006. There was overwhelming evidence that it could only have been downloaded by the appellant and he now admits as much in his September 2012 witness statement, although he seeks to mitigate his conduct. Confirmation that he had downloaded the terrorist and other extremist material and was well aware of how incriminating the contents were is provided by the fact that, two days after it was seized, on 14 June 2006, the appellant attended Ashley Bridge Police Station and requested the return of the computer, which he said, untruthfully, was *"his friend's computer"*.

74. Although all the material to which these counts relate (to the detail of which we will come below) was downloaded in a short time frame on 4 November 2003, this was not casual internet browsing. There was clearly an element of planning in that, the previous day, 3 November 2003, the appellant had downloaded Netant, a computer programme which he then used to download the various files the following day.

75. The material to which these counts relate was contained in three zip files on the C Drive of the Lansdowne Road computer, 11 zip (counts 2 and 3), 2 zip (count 4) and 9 zip (count 6). The common features of these zip files were that they were all downloaded by Netant and they all came from the Angelfire website, which is a legitimate website which rents storage space to people who want to place materials on the internet. However, the files could not simply be downloaded from the Angelfire website, on the homepage of which there was no link to those zip files. To access them, the appellant would have had to type in a code D20/SWRMM, which was not publicly available and of which the appellant would have had to have special knowledge.

76. Mr Friedman QC stressed in his submissions that the zip files were not on a secret website or "the Dark Web", but we were unimpressed by that point. The files could only be accessed with a special code which was not publicly available. In fact, on one view, the appellant appears to have admitted this to the psychologist Dr Zainab Al-Attar, who interviewed and examined him in prison. In her report dated 15 November 2012 she records him telling her that he had learnt how to access Al Qaeda terrorist websites from Jordanian intelligence services in 2012. Mr Friedman QC submitted that the appellant was not saying that the Jordanian intelligence services had given him the secret code to the web page from which these zip files were downloaded, he was simply making a general statement. Whether this is right or not, we consider that this explanation for learning how to access Al Qaeda websites from Jordanian intelligence services is implausible, not least because the appellant's whole account of his experiences in Jordan is unreliable. We consider that it is much more likely that he was given the secret code by someone else within the terrorist organisation for which he was a sleeper.

77. Mr Friedman QC sought to rely, albeit somewhat faintly, on the suggestion put by defence counsel to the police computer expert, D.C. Appleton at trial that the zip files could be accessed by means of a hyperlink from some other site. In our judgment this point is hopeless. To begin with, there was and is no evidence on behalf of the appellant that the files could be accessed from any other source, let alone one which was publicly available. Furthermore, in any event, on a fair reading of D.C. Appleton's evidence as set out in the summing up, he was not accepting that the files could be accessed with a hyperlink. His evidence was clear that they could only be accessed with the secret code D20/SWRMM.

78. On the evening of 4 November 2003, in a period of minutes between 22.51 and 22.55, the appellant used that secret code to access and download these zip files. Before turning to the specific content of the files, Mr Friedman QC stressed that there was no evidence that the appellant had ever opened these files again after 4 November 2003 and submitted that it would not have been possible physically to read them all at the time. However, that submission that he had not read them at the time is not supported by any evidence. Although the appellant admits accessing the websites in his September 2012 statement, he simply does not deal at all with how long he had the relevant files open and whether he did or did not read all of the files. In our judgment, there is no basis for supposing that he did not read the files at the time (other than, it would appear, the material covered by count 3 to which we refer in [84] below).

79. In any event, whatever he did or did not read at the time, as Mr Tam QC correctly submitted, given the forward planning in downloading Netant the previous day and using the secret code, it is astonishingly unlikely that these files came onto his computer without his having any forewarning as to what they were about. His suggestion in his witness statement that he accessed the files out of "curiosity, naivety and ignorance" simply does not bear scrutiny.

80. D.C. Appleton found that the material in 11 zip covered by count 2 was damaged during the downloading process so that, to gain access to the file,

any user of the computer would have to first repair the file using an archive repair programme. Two such programmes were installed on the computer, and his evidence was that the material could have been retrieved without difficulty, as he put it: *"It would take a few clicks of the mouse to repair the zip file and then access the material in the zip file"*. However, there was no evidence which could be obtained from the computer itself that 11 zip had ever been repaired, which was why the prosecution accepted that they could not prove that the appellant had viewed the material (or indeed any of the material on the other zip files) at any other time after 4 November 2003.

81. The evidence of D.C. Appleton was that once the appellant had entered the secret code, what would have appeared on the screen, before the appellant entered the specific zip files was a page in Arabic which was in effect an introduction and list of contents, which, in translation, read:

> "AL Qaeda Organisation
>
> Al-Haramain Liberation Group
>
> In the current bloodshed that Muslims are exposed to on the hands of the crusaders. In preparation to face the crusades which will extend to reach all the Islamic world. In the new crusade on Islam we aim, using this website to increase the number of Islamic organisations and parties, to fight the crusaders and establish Calipha state (Islamic state) on the ruins of the betrayal state. This website contains information on making explosives, organising cells, establishing parties, and gangs warfare. It also benefit in individual operations.
>
> Introduction to explosives
>
> Sensitive explosives
>
> Semi-sensitive explosives
>
> Stun grenades.
>
> Splitting explosives
>
> Detonators
>
> Making explosives
>
> Grenades types
>
> How do firearms work
>
> Silencer
>
> Military Topography
>
> Electronic workshop

> Group of lessons
>
> Join one of Mujahideen cells.
>
> The prophet said, what means if two Muslims faced each other holding their swords, the killed and the killer are in hell. They asked, that is the killer why the killed? He said, he tried to kill."

82. The evidence at the trial from Professor Michael Clarke, Professor of Defence Studies at King's College, London and an expert on terrorism and jihadists, was that the Al-Haramain Liberation Group was a group which channels humanitarian aid to Muslim people but which since 2002 had been labelled a terrorist group by the United States. It was thought to funnel funds for terrorist purposes.

83. The material in the 11 zip file covered by count 2 was all about how to make explosives. There was evidence at the trial from Sharon Broom, a senior forensic case officer at the Forensic Explosive Laboratory, that this method of creating an explosive device was a real and fairly commonly encountered method of creating a home-made explosive. The raw materials referred to were all viable explosive substances.

84. The material in the 11 zip file covered by count 3 differed from that covered by count 2 in that it had been corrupted during downloading and so specialist software was required to recover it. That software was not installed on the computer, so that the prosecution could not say he had viewed the material at any particular time. The material was more material relating to making explosives. In relation to the material covered by counts 2 and 3 Mr Friedman QC accepted that these were dangerous documents but submitted that they were relatively unsophisticated.

85. In his written reply submissions after the hearing, Mr Friedman QC submitted that, merely because the zip file contained material which the appellant would have known was associated with Al Qaeda and Al-Haramain Liberation Group, it did not follow that the webpages were from an Al Qaeda website as Mr Tam QC contended. Mr Friedman QC submitted that this was not how the prosecution had presented the case. We were unimpressed by that submission. The issue for the Commission is whether, on the totality of the evidence available to us: *"there are serious reasons for considering that [the appellant] has been guilty of acts contrary to the purposes and principles of the United Nations".* In considering that issue, the Commission cannot be hidebound by how the prosecution put their case at the criminal trial. In our judgment, the point made by Mr Tam QC was entirely justified: the appellant's offending took place at a time when Islamist terrorism was predominantly channelled through Al Qaeda and terrorist networks, activities and attacks were organised, sponsored or inspired by Al Qaeda. Further, by his own admission to the psychologist in interview, the appellant was accessing Al Qaeda associated websites.

86. Count 4 was in the 2 zip file, which was also damaged during the downloading process and so would have required repair with one of the archive repair

programmes installed on the computer. The material covered by count 4 included a list of the dangers of dealing with certain chemicals, a description of ways of doubling the force of urea explosive and how to make explosive with ammonium nitrate which has three quarters of the strength of TNT. Mr Friedman QC submitted, on the basis of the evidence of Ms Broom, that most of this material on how to make explosives was freely available on the internet. That may be so in one sense, but it is clearly not freely available in this particular format.

87. The material covered by this count included instructions on how to make other types of explosives. It also included material which is clearly not material publicly available on the internet, but in effect a terrorist manual consisting of (i) a section on how to hide explosives in markets, cars, buses and bus stations, public places and government institutions; and (ii) a section headed: "Instructions for destroying building[s] and bombing Embassies", which contains a quotation from Sheikh Al-Zawahiri in incendiary terms about escalating conflict, including targeting civilians. Al-Zawahiri also appears on an Al Qaeda propaganda video which was found on the appellant's computer.

88. The material covered by count 6 was in the 9 zip file and was not damaged in the downloading process and so could be read without the need to use repair software, although there was no evidence that it had been opened or read since 4 November 2003. It contained notes on preparing explosive substances and on the chemical properties of sulphuric acid and nitric acid. In general terms in relation to both counts 4 and 6, Ms Broom's evidence was that: *"Looking at the material as a whole, these methods are amongst the most credible I have seen. These recipes could be of use to someone interested in the criminal use of explosives."*

89. Mr Friedman QC submitted in his written reply submissions after the hearing that the general availability on the internet of material downloaded onto the Lansdowne Road computer about how to make explosives, whilst it was irrelevant to whether the appellant had committed offences under section 57 of the Terrorism Act 2000, was relevant to any impact assessment of the appellant's conduct in relation to whether exclusion was justified under Article 1F(c). If the material in respect of which the appellant was convicted had been limited to instructions on how to make explosives which, by one means or another, were publicly available on the internet, we can see the force of the submission. However, the problem for the appellant in advancing this argument is that the totality of the material he downloaded was not limited to such publicly available material, but included the "terrorist manual" material to which we referred in [87] above, together with the organisational chart for the setting up of terrorist cells, including in the UK and elsewhere in western society, covered by count 1, dealt with below. Given the seriousness and significance of that material, we consider that the "public availability" argument is misconceived.

Count 1

90. The material covered by count 1 was on the C Drive of the Lansdowne Road computer. It was not in a zip file. It was downloaded on 27 December 2004, so

over a year after the terrorist material covered by counts 2 to 4 and 6. It was an organisational chart for the setting up of terrorist cells by the Mujahideen (the holy fighters) which in the opinion of Professor Clarke had been derived from many years of experience, probably in Afghanistan, but which had been adapted to apply to the UK and elsewhere in the West. His five conclusions about this chart in his report merit quoting in full:

> *"Conclusion 1 – This chart seems to have derived from many years of experience of the Mujahideen, probably in Afghanistan. It certainly echoes the structure and operations of the Afghan Mujahideen during the era of Soviet occupation from 1978 – 1988 and then since 2001. It mixes the doctrines organisations and operations of guerrilla warfare and of terrorism which in Mujahideen thinking was always part of the same campaign. Nevertheless the chart has also been upgraded and is designed also to cover urban terrorist operations in capitals and suburbs – something the Mujahideen seldom did when fighting the Soviets.*
>
> *Conclusion 2 – It is a generic chart that is intended to be adapted to specific circumstances. In some ways the chart is very detailed. In others fairly general. It provides a viable organisational structure for a big operational area and makes clear that it is to cover whole countries, both large and small. It does not tell cells how to go about terrorist operations but it does provide an extensive check list of what is required to be a successful cell and encourages cells to be aware of the targets that are appropriate. It reminds cell leaders of the functions they have to ensure are performed of the skills they need to train and develop of their reporting lines to the central organisation and of their ultimate religious commitment to the Jihad.*
>
> *Conclusion 3 – "All of the functions described here despite being generic and derived apparently from a rural guerrilla campaign are intrinsic to successful, prolonged terrorist campaign. They are all important and though they will be interpreted differently in various countries and environments, no ongoing terrorist campaign would be successful unless it performed all the main functions described here. This chart represents a feasible terrorist structure and organisational design.*
>
> *Conclusion 4 – The chart bears many similarities to sections of the "encyclopaedia of Jihad" and many of the other "terrorist manuals and terrorist videos that circulate in Jihadi groups". It is more complete than many of them and covers all major aspects of guerrilla and terrorist structure and organisations.*
>
> *Conclusion 5 – The inclusion of so many key references to the Al Ghurabaa (and a brigade not just Al Ghurabaa as "the*

> *strangers") suggest that this chart has been adapted to apply (at least organisationally) to the United Kingdom. Unless there is another grouping that goes under this name in another country of which I am not aware, I cannot draw any other inference than that this generic chart has been adapted to represent how a terrorist cell structure should be applied through Al Ghurabaa to the UK or perhaps some other western country if the "brigade" operates clandestinely somewhere else."*

91. In his oral evidence, Professor Clarke said that he had only ever known the Al-Ghurabaa Brigade operating in a UK context. As the judge recorded in his summing-up, although defence counsel put to him that it could have been operating in the Afghan war against the Russians, Professor Clarke had never heard of this. He went on to say that both the Al-Ghurabaa Brigade and the Saved Sect which also featured in the chart had been banned in the United Kingdom in July 2006.

92. Another important part of Professor Clarke's evidence about the chart was summed up by the judge in this way:

> "As to the areas of the world to which it could apply, …I have already indicated I think that Professor Clarke accepted that some of these entries were more appropriate to for example, Afghanistan, but that some of the entries were entirely appropriate to western societies and I don't think that I need to remind you of his evidence in that regard. He also said that the whole document that had what he called a Tac Feri theme or motive to it and that, members of the jury, brought him to refer to an organisation called "Tac Feri"… He said its attitude is violent and bizarre even by the standards of terrorism experts. It will kill its own supporters if they slip from its core requirements. It will not compromise with [other] states or opponents of its view. They advocate placing sleepers in foreign countries. After 2001, this organisation was believed to have support in Britain, France, Germany and Spain. The organisation is believed still to be current and to offer inspiration to potential terrorists. And, members of the jury, Professor Clark detected in this chart an influence in relation to that organisation.
>
> In cross-examination he said the Tac Feri were a group of people can declare anyone who doesn't agree with them as infidels who can then be killed. That is completely alien to normal Muslim thinking [and] that Al Qaeda do hold with this ideology. The Tac Feri Group also allow suicide bombings.
>
> His conclusions from all of this chart, members of the jury, were this, "I have no doubt at all this is an earnest and genuine attempt to inform and educate potential terrorists in relation to the planning and execution of terrorist activity.""

93. In his oral submissions, Mr Friedman QC accepted that this chart was about how to organise a terrorist group, but submitted that it was a dated document and of an elementary nature. The Commission could not conclude that it was actually being used, because there was no evidence that it was ever opened, read or printed, as D.C. Appleton had accepted. Mr Friedman QC also submitted that this chart related to setting up a cell in a foreign country not the UK. In our judgment, that submission flies in the face of the clear evidence of Professor Clarke referred to above that, whilst the chart may have had its genesis in Afghanistan, the references to Al Ghurabaa meant that, in his opinion, it had been adapted to apply to the UK. We see no reason not to accept that evidence of Professor Clarke.

94. No doubt appreciating how damaging this document is to the appellant's case, in his written reply submissions to the Commission, Mr Friedman QC returned to the same theme, submitting that the organisation banned by the Terrorism Act (Proscribed Organisations) (Amendment) Order 2006 was Al-Ghurabaa (also known as the Saved Sect) not called a brigade. He submitted that the references in the text of the chart to the Al-Ghurabaa Brigade appeared not to be describing a UK based organisation. Again in our judgment those submissions fly in the face of the expert evidence of Professor Clarke which we see no reason not to accept.

95. We are quite satisfied that the chart which the appellant had downloaded about setting up a terrorist cell was referable to the United Kingdom and that it emanated from a terrorist organisation which, whether it was Al Qaeda or an Al Qaeda-related or associated organisation, was dedicated to violent terrorist activity against the West and, to that end, would place sleepers in Western countries, strong support for the prosecution case, which the jury must have accepted by its verdict (as the Court of Appeal said at [11] of its judgment to which we return below) that the appellant was a sleeper for a terrorist organisation.

Count 5

96. Count 5 related to material found on a computer which the police seized from the East Bank Street address on 12 June 2006. The material in question was found in the temporary internet cache of the computer (which was on the floor in a room off the kitchen). It was not possible to say exactly how the material had got there, but it had been placed on the computer on 21 November 2004. The material might have been downloaded from one of two websites, adat8k.com or mojahedun.com, both of which were mentioned in a diagram forming part of the material but it was not possible to say that the material had been downloaded from either website. The material provided instructions on how to make and detonate a nail bomb. It ended with the words: *"Peace and prayers upon the leaders of the majahedun."*

Other extremist material on the computers

97. The material which was the subject of the Terrorism Act counts was not the only inflammatory and extremist material found on the computers. On the East Bank Street computer were found a number of videos glorifying terrorism and

the killing of hostages. Amongst these was a video headed in Arabic; "The Wills of the Knights of the London Raid" in which Al-Zawahiri appears praising the 7/7 bombings. It is not necessary to set out the detail of this, but we agree with Mr Tam QC that this is clearly an Al Qaeda propaganda video.

98. Also included in the extremist items was a video clip about Hurricane Katrina and the havoc it had wreaked in New Orleans. The clip began with writing on the screen: "Al-Ghurabaa Media Corporation presents the Soldiers of God, Katrina Hurricane." It goes on to describe the hurricane as punishment to America as the conveyancer of infidelity and corruption.

99. Whilst it was not possible to say when this extremist material was put on the computer, these two particular clips must have been put on after the 7/7 bombings in July 2005 and the hurricane in August 2005. Given that this material was found on the computer, we agree with Mr Tam QC that someone was using the computer to view extremist material and given the control which the appellant had over the East Bank Street address and computer, it is highly likely that it was him who was viewing this material. Furthermore, this is borne out by the fact that those video clips were found on the C Drive in two user accounts which bore the names of two of his children who were infants at the time and so incapable of accessing this sort of material, a strong pointer to it being the appellant who had downloaded and watched the material.

100. Similar extremist articles and other materials were found on the Lansdowne Road computer which was clearly the appellant's computer. As Mr Tam QC pointed out, as recently as 10 June 2006, two days before his arrest, an attempt had been made by the appellant to access an extremist website on the Lansdowne Road computer.

101. It is striking that the appellant does not deal with this additional extremist material in either of his witness statements. It gives the lie to any suggestion that after December 2004 he had lost interest in extremist or terrorist activity, since what emerges is use of the computers to download and view extremist material through 2005 and right the way up to his arrest. This points strongly to the appellant having had an extremist mindset at all material times.

102. In his expert report, Professor Clarke considered the totality of the extremist and terrorist material on the two computers in these terms:

> *"Taking all this material together I have no doubt that it constitutes evidence of genuine terrorist planning and organisation. The fact that it is very disparate is typical of modern Jihadi cell organisation and the range of material may indicate more ambitious intentions than any cell is able to perform. What is not in doubt however is the intense Jihadism and hostility to those outside the framework of Jihad which is displayed consistently throughout these documents."*

103. Quite apart from the fact that the appellant admits accessing *"things like terrorist organisational charts and bomb-making recipes"* on his computer, there are a number of other matters linking the appellant to the Lansdowne

Road computer and demonstrating that he was using it on a regular basis. His email address was registered to that computer on 5 November 2003, the day after the downloading of the zip files. A number of the profiles on the C Drive are indicative of use by him: "Administrator Abou"; "Administrator Omar"; "Administrator OMR", "Alti". Furthermore, other documents found on the computer show very clearly that this was the appellant's computer. In any event, as the prosecution pointed out at his trial, at the time of his arrest, the only people living at the Lansdowne Road address apart from him were his second wife and his three young children, the eldest of whom (from his first marriage) was about ten at the time and the other two of whom were, as we have said, infants. The only realistic candidate for use of the computer to download and access terrorist and extremist material is the appellant.

Proficiency with computers

104. There was evidence before the jury that the appellant had some proficiency with computers. Quite apart from the fact that he had two archive repair programmes installed on the Lansdowne Road computer capable of repairing damaged files, there is the evidence of the witness from Clearsprings that in the front room at Lansdowne Road there were four computer towers linked to one another with cables and two screens. From the East Bank Street address documents were recovered relating to how to add to computer hardware by way of a memory RAM, a hard disk and a removable media drive. These documents included information about a number of technical computer related issues such as format tools, recovery settings and trouble-shooting for a floppy disk drive. In our judgment, the picture which emerges is that the appellant was someone with considerable computer skills.

The directions as to the law, the sentencing remarks and the decision of the Court of Appeal

105. As Mr Tam QC submitted, the prosecution case against the appellant was put high at the trial, on the basis that the evidence as a whole showed that he was a sleeper for a terrorist organisation and it was in that role that he had downloaded the material the subject of the Terrorism Act counts. The trial judge summed up the law in relation to those counts on that basis. In relation to the requirement under section 57 of the Terrorism Act 2000 that the prosecution prove that the appellant was *"in possession"* of the material he had downloaded *"for a purpose connected with the commission, preparation or instigation of an act of terrorism"*, the judge summed up to the jury in these terms:

> "Now members of the jury if you are sure and of this you would need to be sure that Mr. Altimimi did select the article in the count that you are considering, and have selected it put that article on his computer knowing what it was, then he would be in possession of it, whether or not he subsequently actually brought it up on any particular computer screen, to see it or listen to it. The Crown says it is up whether you accept this that it was there available to be listened to or looked as and when the need arose. In other words what the Crown's case against

> Mr. Altimimi is that he was effectively a "sleeper" and had the material available to him to bring up as and when the need arose. I hope I make it clear to you members of the jury exactly what it the prosecution must prove in relation to the allegation that Mr. Altimimi was in possession of this in Count 1 of the chart. Exactly the same considerations apply can I make it clear, to the allegations of possession in relation to Counts 2,3,4,5 and 6.

106. In sentencing the appellant the trial judge said this:

> "Having been convicted by the jury, on the basis of what I have to say seemed to me to be the clearest possible evidence, you now fall to be sentenced for 6 offences contrary to Section 57 of the Terrorism Act of 2000 and for two offences contrary to the Proceeds of Crime Act 2002. The offences contrary to the Terrorism Act are, in my view, amongst the most serious of their kind likely to come before the courts, although one can never discount the possibility that yet more serious cases might emerge. I say this, because taken together the material which you had in your possession on two different computers at two different addresses consisted of an organisational chart for the establishment of terrorist cells and detailed and genuine instructions in relation to the making of harmful chemicals, explosive substances, detonators, explosive devices and bombs and the placing of such devices and the targeting of particular premises, public places and public figures.
>
> Your possession of this material has to be seen in the context of other features of the case. One, is the additional material also found on your computer at Lansdowne Road, but part of the background is formed also by your multiple identities, your different addresses, your coming to this country from Holland, late in 2002 under an assumed name and, on any fair view, the end also lies which you then told before and during the police inquiry into this case.
>
> Doubts remain as to whom you really are and where you really come from. In my view the only reasonable conclusion to be drawn from these features of your case is that you were indeed as the prosecution contended, a sleeper for some sort of terrorist organisation."

107. Between the sentencing of the appellant on 6 July 2007 and the hearing before the Court of Appeal Criminal Division on 6 November 2008, the Court of Appeal Criminal Division decided *R v Zafar and others* [2008] EWCA Crim 184; [2008] QB 810. In that case, the appellants were convicted of offences of possessing articles for a purpose connected with the commission, preparation or instigation of an act of terrorism, contrary to section 57 of the Terrorism Act 2000. The articles in question were documents, compact discs or computer hard drives on which material had been electronically stored, which included

ideological propaganda as well as communications between the appellants and others which the prosecution alleged showed a settled plan under which the appellants would travel to Pakistan to receive training and thereafter commit a terrorist act or acts in Afghanistan.

108. An issue arose as to the effect of the words *"connected with"* in section 57. In the judgment of the Court given by Lord Phillips CJ, the Court held as follows at [27]-[29]:

> "27. There was considerable debate at the hearing of the appeal as to the effect of the words "connected with" in section 57. Did those words give the section a wider ambit than if it had provided that 'a person commits an offence if he possesses an article…for the purpose of the commission, preparation or instigation of an act of terrorism'? Mr Edis submitted that in the present case the prosecution had proceeded on the basis that they had to prove that the possession of the articles was "for the purpose of the commission, preparation or instigation of acts of terrorism" and the jury had been directed on that basis. None the less, he submitted that the addition of the words "connected with" did enlarge the ambit of the section. This is a matter that we must address, for an issue has been raised as to whether the ambit of the section is too uncertain to satisfy the requirements of legality.
>
> 28. We can exemplify the problem in this way. It was the prosecution case that the appellants were party to a plan that involved the following three stages:
>
> i. travelling to Pakistan;
>
> ii. training in Pakistan;
>
> iii. fighting against the government in Afghanistan.
>
> Only the third stage would amount to 'acts of terrorism'. One could, however, say that travelling to Pakistan and training were "connected with the commission of acts of terrorism". We asked Mr Edis whether possession of an air ticket for travel to Pakistan would constitute "possession of an article for a purpose connected with the commission of acts of terrorism". He answered that it would. What then, we asked, of the cheque book that was to be used to pay for the air ticket? Mr Edis conceded that we were getting into difficult territory. The reality is that the phrase "for a purpose in connection with" is so imprecise as to give rise to uncertainty unless defined in a manner that constrains it.
>
> 29. We have concluded that, if section 57 is to have the certainty of meaning that the law requires, it must be interpreted in a way that requires a direct connection between

the object possessed and the act of terrorism. The section should be interpreted as if it reads:

> "A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that he intends it to be used for the purpose of the commission, preparation or instigation of an act of terrorism.""

109. In the present case, the appellant originally sought permission to appeal on the basis that the trial judge had failed to give the jury adequate directions as to the matters of which they would have to be sure in order to find that the appellant possessed the material. The single judge considering that application pursuant to section 31 of the Criminal Appeal Act 1968 refused permission on the basis that the directions were correct and the Court of Appeal Criminal Division dismissed the renewed application for permission summarily on the same basis. However, at the hearing of that renewed application, defence counsel sought permission to amend the grounds of appeal in the light of *Zafar* on the basis that that case established that for the purposes of an offence under section 57, the jury had to be satisfied that there was some direct connection between the material that was found in the possession of a defendant and a proposed act of terrorism.

110. The Court of Appeal rejected that application on the basis that, even if the trial judge had had the benefit of seeing the judgment in *Zafar*, it would have made no difference to the verdict of the jury. At [10]-[11] of the judgment (*R v Altimimi* [2008] EWCA Crim 2829) the Court held as follows:

> "10. We have considered that submission in the light of the material with which the court was concerned at this trial. The prosecution case, as expressed by the judge in the summing up, was that this material indicated that the applicant was what was described as a "sleeper"; in other words, he was a person who had the material on his computer ready to be used if and when either he or others considered it appropriate for that material to be used. That was implicit in the way the case was put to the jury and it was essentially the way that the prosecution sought to establish that the applicant possessed that material.
>
> 11. It seems to us, in those circumstances, that the inevitable consequence of the jury's verdicts in this case is that the only conclusion that could be reached from possession of the material was indeed that it would be used in the way that the prosecution were seeking to persuade the jury. It follows that although the judge did not direct the jury as he might have done had he had the advantage of seeing the judgment in *Zafar*, it can make no difference to the ultimate verdict in this case, bearing in mind that what the jury would have to be satisfied of was that the circumstances of possession gave rise to a reasonable suspicion that he intended to use it."

111. Before the Commission, Mr Friedman QC placed emphasis on the fact that a judgment of the Court of Appeal Criminal Division on a renewed application for permission to appeal is of no precedential value and should not be cited in other cases. With respect, that submission completely misses the point, which is that the judgment is the decision of the Court of Appeal Criminal Division in the appellant's own case, not some other case and, as such, it is of critical importance to the central issue in this case in relation to Article 1F(c) of the Refugee Convention. The Court of Appeal Criminal Division concluded, in the passage we have quoted above from its judgment, that the jury must have found the appellant guilty on the basis that they were satisfied, to the criminal standard of proof, that the appellant was indeed a sleeper for a terrorist organisation, who downloaded the terrorist material so that it would be ready to be used by him or others as and when it was considered appropriate for it to be so used. Clearly, that was the motive for downloading the material, not some idle curiosity.

Post-conviction evidence

112. In his submissions before us, Mr Friedman QC relied upon the evidence of the appellant in his witness statement served in September 2012. We have already rejected his submission, based upon that statement, that the reason for the appellant's constantly changing history and identity and his lies to the Home Office and the police was his so-called "immigration reason", as opposed to, as we have found, because the appellant was a sleeper for a terrorist organisation. More generally, in circumstances where the appellant chose not to give evidence at his criminal trial and has not condescended to be cross-examined on his evidence before the Commission, we agree with Mr Tam QC that the Commission should disregard and reject the appellant's attempt, in his September 2012 witness statement, to explain away his conduct (whether in relation to his original offending or his constantly changing history and identity).

113. In any event, the witness statement does not address the large number of questions which remain unanswered from the prosecution case and the appellant's conviction, such as his association with known terrorists in Holland, the circumstances in which he came to download all the incriminating material and his subsequent internet activity demonstrating a continuing and active interest in extremist material.

114. Mr Friedman QC also sought to place considerable reliance upon the appellant's interviews with Dr Al-Attar in 2011 and 2012, where he contended that he had become interested in Al Qaeda websites at the time of the invasion of Iraq in 2003 but thereafter had lost interest in researching their websites and even forgot he had downloaded the material. Mr Friedman QC submitted that the appellant, as the psychologist found (in relation to his insistence that he was a Kuwaiti even though he did not speak with a Kuwaiti accent) was unsophisticated and that the downloading had been carried out during a period of extremism and fixation at the time of the Iraq war, which had passed.

115. In our judgment, the untested assertions of the appellant to the psychologist are of even less evidential value than his witness statement. Dr Al-Attar was

clearly sceptical about a number of the things which the appellant was telling her. In her report, she records the limitations on much of what she records because it was dependent upon uncorroborated self-reporting by the appellant. Those limitations become even more stark when it is appreciated that the appellant's assertion to her that his offending was: *"a misguided lapse of judgment during which he allowed his curiosity to get the better of him"* and *"misguided, impulsive behaviour, committed alone or in the context of associations that he forged without any questioning or scrutiny"* is demonstrably untrue. This is another aspect of the appellant's case which will not bear scrutiny. It not only ignores the fact that the material covered by counts 1 and 5 was downloaded in November and December 2004, a year after the alleged misguided impulsive behaviour in the wake of the invasion of Iraq, but it also ignores the evidence of the other extremist material found on both computers post-dating December 2004, which shows a continuing extremist mindset on the part of this appellant right the way up to his arrest, all of which is consistent with his being a sleeper and not, as he now seeks to portray himself, some sort of misguided, naïve ingénue.

116. Despite the detailed submissions made by Mr Friedman QC in his written reply submissions about the assessments made by Dr Al-Attar, we remain of the very firm view that the assertions made by the appellant to the psychologist and her assessments of him by reference to those assertions are of no evidential value for the reasons we have given. Had the appellant come to be cross-examined about his assertions to her, so that the truth of what he asserted could be tested, the position might be different. However, he did not come to be cross-examined, which, given his history of not giving oral evidence, means that we should place no weight on his assertions.

117. We also consider that, although it is right that section 11 of the Civil Evidence Act 1968 only shifts the burden onto the appellant of disproving his guilt of the offences (which he has not sought to do) the fact that the appellant was convicted by the jury and that, as the Court of Appeal Criminal Division concluded, that must have been on the basis that the jury were satisfied he was a sleeper for a terrorist organisation and had downloaded the material for use as and when required by the organisation, does represent a critical difference between the present case and *Al Sirri*, where the criminal charges were dismissed by the Common Sergeant.

Analysis and conclusions on the evidence and whether Article 1F(c) is satisfied

118. In our judgment, the presence of the extremist and terrorist material on the computer is only consistent with a man who was not, as he seeks to portray himself, a casual and curious browser of Al Qaeda websites, who had once had an extremist mindset for a short period of time which had passed and who had accidentally left material on his computers which he had effectively forgotten about, only to be caught later in 2006. Rather what emerges clearly is a man who had a consistent extremist mindset and involvement with terrorists from 2001 onwards through to when he was arrested in 2006.

119. We reject entirely the suggestion that this appellant was unsophisticated and naïve and merely acting out of curiosity. The terrorist material which he

downloaded was downloaded for a terrorist purpose. As the Court of Appeal Criminal Division concluded, the jury must have convicted him on the basis that he was a sleeper for a terrorist organisation and that: *"he was a person who had the material on his computer ready to be used if and when either he or others considered it appropriate for that material to be used."* Having considered all the available evidence (including what has emerged since the trial) with care, we are quite satisfied that this assessment of the appellant's criminality and role is correct.

120. Despite all the submissions of Mr Friedman QC seeking to downplay the significance of the appellant's offending, we consider, as did the trial judge that these were extremely serious terrorist offences and the appellant was engaged in the planning and/or facilitation of acts of terrorism. Clearly if an act of terrorism had eventuated, in which it could be shown that the material downloaded by the appellant had been used, he would clearly have planned and facilitated a terrorist act and the contrary would be unarguable. Here, there was no act of terrorism as a consequence of the appellant's offending, but we have already held that it makes no difference, for the purpose of considering whether he was engaged in planning or facilitating such acts, that no actual act of terrorism eventuated.

121. It follows that, applying the guidance at [75] of the Supreme Court judgment in *Al Sirri*, we are quite satisfied that there are serious reasons for considering that the appellant was guilty of the acts of which he was convicted and that the evidence that he was a sleeper for a terrorist organisation is clear, credible and strong. Mr Friedman QC sought to make much, as we have said, of the fact that the Secretary of State could not establish that the appellant was a member of Al Qaeda. Mr Tam QC accepted this, but submitted that the totality of the evidence demonstrated that the appellant was a sleeper for a terrorist organisation which was related to or associated with or inspired by Al Qaeda.

122. We consider that the totality of the evidence does demonstrate that the appellant was a sleeper for a terrorist organisation which was related to or associated with or inspired by Al Qaeda. In particular, the following matters in relation to which we have made findings, demonstrate this:

(1) Before he came to the UK from Holland the appellant was associating and living with people he knew to be terrorists who were members of international Al Qaeda or Al Qaeda-related terrorist groups and, in all probability was responsible for a money transfer to one such terrorist in Thailand ([45]-[56] above).

(2) The appellant came to the UK in September 2002 and claimed asylum on a fraudulent basis using one of his identities and over the next four years he used multiple identities with a constantly changing story as to his nationality and history ([57]-[69] above).

(3) Whilst living at the East Bank Street address the appellant associated with Feroze, another terrorist involved in an Al Qaeda bomb plot ([70]-[72] above).

(4) In November 2003, little more than a year after arriving in the UK, the appellant downloaded terrorist material onto the Lansdowne Road computer using a secret code that in all probability he was given by someone else within the terrorist organisation ([74]-[78] above).

(5) That material went beyond instructions on how to make explosives which could have been obtained publicly on the internet but included instructions on how to hide explosives in public places and how to blow up buildings and bomb Embassies, in effect what we have described as a "terrorist manual" ([81]-[89] above).

(6) In December 2004, the appellant then downloaded the organisational chart for setting up terrorist cells which had been adapted for use in the UK and, whether it emanated from Al Qaeda or an Al Qaeda-related or associated organisation, clearly emanated from an organisation dedicated to violent terrorist activity against Western society ([90]-[95] above).

(7) In November 2004, the appellant downloaded material on how to make and detonate a nail bomb onto his other computer at the East Bank Street address ([96] above).

(8) The appellant continued to use the computers in 2005 (and in the case of the Lansdowne Road computer right the way until just prior to his arrest in June 2006) to access extremist material glorifying terrorism, including at least one Al Qaeda propaganda video ([97]-[101] above).

(9) The appellant lied persistently and repeatedly to the police in the interviews about his identity, his history and his conduct ([62]-[64] above).

(10) The appellant did not give evidence at his criminal trial and in his witness evidence served since he fails to deal adequately or at all with any of the matters set out above and he did not attend the hearing before the Commission to be cross-examined ([112]-[116] above).

123. Turning to the issue whether the acts of which he is guilty are *"contrary to the purposes and principles of the United Nations"* within the meaning of Article 1F(c) of the Refugee Convention, in our judgment, consideration of the various Resolutions of the Security Council which we set out at [19] to [24] above demonstrates clearly that the acts of which the appellant is guilty were contrary to the purposes and principles of the United Nations. As we have held, the totality of the evidence does demonstrate that the appellant was a sleeper for a terrorist organisation which if not Al Qaeda itself, was related to or associated with or inspired by Al Qaeda and that the material downloaded onto his computer was ready to be used if and when either he or others considered it appropriate for that material to be used for terrorist purposes. Contrary to the submissions of Mr Friedman QC that this is all too remote from terrorist acts to be contrary to the purposes and principles of the United Nations, we consider that the appellant's conduct clearly amounted to the planning and/or facilitation of acts of terrorism. As we said at [120] above, the contrary would simply be unarguable, if a terrorist attack had eventuated as a consequence of the organisation using the material he had downloaded and, in

our judgment, it can make no difference to the quality of the appellant's acts as planning and/or facilitation of terrorist acts that no terrorist attack eventuated. Furthermore, as we also held at [34]-[38] above, Article 1F(c) does not require that an act of terrorism has in fact taken place and *Youssef* was correctly decided.

124. Turning to the specific Resolutions, paragraph 2 of Resolution 1373, passed in the wake of the 9/11 attacks, decides that all states should, inter alia, ensure that *"any person who participates in the …planning…of terrorist acts or in supporting terrorist acts… is brought to justice…"* Given that, for the reasons we have set out above, the appellant was guilty of acts which amounted to planning for terrorist acts and, in any event, was supporting terrorist acts, it seems to us clear that his acts were contrary to the purposes and principles of the United Nations. However, in our judgment, the matter is put beyond doubt by paragraph 5 of the Resolution which provides expressly that: *"the acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly…planning…terrorist acts are also contrary to the purposes and principles of the United Nations".* The appellant's conduct amounted to the planning of terrorist acts for the reasons we have given and so was contrary to the purposes and principles of the United Nations. Furthermore, given the basis upon which the appellant was convicted, his conduct was encompassed within *"the acts, methods and practices of terrorism",* which must include acting as a sleeper for a terrorist organisation whose downloaded material would be used by that organisation as and when they thought appropriate. For that reason as well, the appellant's conduct was contrary to the purposes and principles of the United Nations.

125. Given our clear conclusion as to the effect and meaning of resolution 1373, in one sense it is not necessary to consider the other Resolutions, but, in any event, they simply reinforce that conclusion. Resolution 1455 (set out at [22] above) simply reinforces the obligation placed upon member states to implement Resolution 1373 with regard to any *"individuals, groups, undertakings and entities…associated with the Al Qaeda organisation who have participated in the…planning, facilitation and preparation…of terrorist acts".* As we have held at [122] above, the totality of the evidence does demonstrate that the appellant was a sleeper for a terrorist organisation which if not Al Qaeda itself, was related to or associated with or inspired by Al Qaeda. To that extent we consider that it can legitimately be said that the terrorist organisation was *"associated"* with Al Qaeda.

126. Finally, Resolution 1624 (set out at [23] and [24] above) reaffirms in the eighth preambular paragraph precisely the same point as made in paragraph 5 of Resolution 1373 and, accordingly, pursuant to that Resolution as well as Resolution 1373, the appellant's conduct was contrary to the purposes and principles of the United Nations for the same reasons as set out at [124] above.

127. Preambular paragraph [15] emphasises the obligation on member states to bring to justice: *"any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts."* In his written reply submissions Mr Friedman QC focused on this recital and submitted that the words *"supports, facilitates, participates or*

attempts to participate" must be read as applying only to those who have actually engaged in the *"planning, preparation or commission of terrorist acts".* He relied upon the finding of the trial judge in his sentencing remarks that there was no evidence that the appellant had actually been involved in *"the commission, preparation or instigation of an act of terrorism".* This is all very well as far as it goes, but, as Mr Friedman QC seems to recognise, the trial judge did not say there was no evidence that the appellant was engaged in planning terrorist acts. Similarly, given that, as Mr Tam QC submitted, the line between planning and facilitation can become blurred, even if Mr Friedman QC is right that the words *"supports, facilitates, participates or attempts to participate"* must be read as applying only to those who have actually engaged in the *"planning, preparation or commission of terrorist acts",* we have no difficulty in concluding that the appellant's conduct was facilitating the planning of terrorist acts.

128. Furthermore, contrary to the submissions made by Mr Friedman QC referred to at [32] above to the effect that the prophylactic offences created by, inter alia, section 57 of the Terrorism Act went beyond the requirements of the United Nations, we consider that the offences created by section 57, particular as the section applied in the present case, fell clearly within the strictures contained in the Resolutions of the Security Council that member states should ensure that they bring to justice those who plan or facilitate terrorist acts.

129. In his submissions, Mr Friedman QC emphasised the commentary of the UNHCR in relation to preambular paragraph [8] in its "Note on the Impact of Security Council Resolution 1624 (2005) on the Application of Exclusion under Article 1F of the 1951 Convention relating to the Status of Refugees" quoted (with emphasis supplied) by the Supreme Court at [31] of the judgment in *Al Sirri*:

> "The focus should . . . continue to be on the nature and impact of the acts themselves. In many cases, the acts in question will meet the criteria for exclusion as 'serious non-political crimes' within the meaning of article 1F(b). In others, such acts may come within the scope of article 1F(a), for example as crimes against humanity, while *those crimes whose gravity and international impact is such that they are capable of affecting international peace, security and peaceful relations between states would be covered by article 1F(c)* of the 1951 Convention. Thus, *the kinds of conduct listed in [preambular paragraph] 8 of Resolution 1624* – i.e. 'acts, methods and practices of terrorism' and 'knowingly financing, planning and inciting terrorist acts' – *qualify for exclusion under article 1F(c), if distinguished by these larger characteristics*." (Emphasis supplied)"

130. As Mr Friedman QC correctly points out, the Supreme Court approved this analysis by the UNHCR in [40] of the judgment, which we cited at [14] above. It follows from that and the approval of the Supreme Court at [38] of the judgment of the *"appropriately cautious and restrictive approach"* of the UNHCR that, in order to lead to exclusion of the appellant under Article

1F(c), his acts must have an international dimension and be capable of affecting international peace, security and peaceful relations between states.

131. Mr Friedman QC submits that the conduct of the appellant here, however serious his criminality, lacks that international dimension or larger international characteristic, essentially because, whilst he may have been planning or facilitating terrorist acts, this was all at a preparatory stage and no terrorist attack ever eventuated. Leaving aside the point about whether Article 1F(c) applies only where a terrorist attack or act has eventuated and, as we have held, we consider that *Youssef* was correctly decided in relation to that issue, we also consider that Mr Tam QC is correct in his submission that Mr Friedman QC's submissions significantly understate the seriousness and significance of the appellant's criminal conduct.

132. The necessary international dimension and larger international characteristic is provided by a number of aspects of the appellant's conduct. First, those parts of the terrorist manual in the zip files, which give instructions on how to hide explosives in public places and how to blow up buildings and bomb embassies, are clearly concerned with planning and facilitating international terrorism. Second, the organisational chart for setting up a terrorist cell adapted for application in the UK or other western societies is also clearly concerned with planning and facilitating international terrorism. Third, it follows that the other material downloaded about making bombs and explosives has to be viewed in context, not as curiosity about matters that could have been found publicly on the internet, but as part of that overall planning and facilitation of international terrorism.

133. Fourth, more generally the very role which the appellant had, as a sleeper for a terrorist organisation, which if not Al Qaeda, was clearly Al Qaeda-related or associated or inspired, as even a cursory examination of the material downloaded demonstrates, itself provides the necessary international dimension and larger international characteristic. As the Court of Appeal said, this material was on the computer ready to be used if and when he or others considered it appropriate for it to be used. If the material had been used for the purposes of a completed terrorist act, that would indisputably have been international terrorism, even if the terrorist act or attack took place in the UK. As Mr Tam QC rightly said, the 7/7 bombings were international terrorism, notwithstanding that they came about from a home-grown plot. Were it otherwise the Security Council would not have got involved, as it did, in passing Resolution 1611 condemning the attacks on the very day they occurred and Resolution 1624 two months later.

134. In this context, in his submissions about *Youssef*, Mr Friedman QC submitted that, even if that case was rightly decided, there were important points of distinction between that case and the present, so that, just because the acts of the appellant in that case were sufficiently serious to justify exclusion under Article 1F(c), it did not follow that the same was true of the present appellant. The appellant there was assessed by the Security Service to be a senior figure in Egyptian Islamic Jihad. He had published sermons and other material on the internet praising Osama bin Laden, including what Mr Friedman QC described as a "glorification ode" on the day of his death. The Upper Tribunal

considered the language used by the appellant to be explicit direct encouragement or incitement to acts of terrorism and so within the exclusion in Article 1F(c). Mr Friedman QC submitted that a man with that status within an Islamist organisation who was inciting violence had a far more significant degree of proximity to acts of terrorism than the appellant in the present case. The appropriate analogy would be if Youssef had left his glorification ode at home and not published it.

135. We do not accept that the comparison with *Youssef* diminishes the seriousness of the present appellant's conduct or its international dimension and impact. The appellant was convicted of Terrorism Act offences on the basis of what we consider was compelling evidence that, in downloading this terrorist material, he was a sleeper for a terrorist organisation which if not Al Qaeda, was Al Qaeda-related or associated or inspired. Far from being more remote from acts of terrorism than Youssef, we consider that the appellant's conduct amounted to planning and/or facilitating acts of terrorism.

136. Mr Friedman QC also sought assistance from the case of *Al Sirri* when it was heard in the First Tier Tribunal, after it had been remitted by the Supreme Court. From the judgment of the First Tier Tribunal of 13 April 2015 at [25] and [26] it emerges that on Al Sirri's premises were found some 2,000 copies of a book (which he admitted publishing and writing the foreword) entitled: *"Bringing to Light some of the Judgments of the Peak of the Summit of Islam"* which espoused the killing of Jews, quoting from the Quran in justification, together with military manuals on making explosives. This material was relied upon by the Secretary of State in support of her case that Al Sirri was a conspirator and involved in the assassination plot. The First Tier Tribunal held at [108] that whilst this material was circumstantial evidence of his sympathy was extremist views and support for jihad, it did not advance the case that he was a conspirator and at [109] that, as the Secretary of State accepted, this material showing associations with terrorists was insufficient in itself to bring the appellant within Article 1F(c).

137. In our judgment, this does not assist the appellant in the present case. Obviously, if the only evidence against the appellant were his association with terrorists in Holland and with Feroze in the UK and the presence on his computers of the other extremist material (other than the material which was the subject of the six counts under the Terrorism Act), which would be the appropriate comparison, one could see that it would be difficult to sustain a case for exclusion under Article 1F(c). However, that would be to ignore the serious criminality of which he was convicted. His associations with terrorists did not lead to any criminal charges and however unpleasant and inflammatory the other extremist material found on his computer, he was never charged in relation to that, just as, once the Common Sergeant dismissed the criminal charges against Al Sirri, he was not subject to any criminal charges, however extremist and inflammatory his views.

138. The critical difference between this case and those of *Al Sirri* and *Youssef* is that the appellant in this case was tried and convicted of terrorist offences which the trial judge described as: *"amongst the most serious of their kind likely to come before the courts"*. It does seem to us that many of Mr

Friedman QC's submissions on this part of the case do involve downplaying how serious this offending was or, as Mr Tam QC put it, trivialising the offending. In our judgment, the trial judge's assessment of the seriousness of the criminality of the appellant (with which the Court of Appeal clearly agreed) was entirely correct. When it is put in the context of the totality of the evidence against the appellant, which we have sought to summarise in earlier sections of this judgment, the case under Article 1F(c) is amply made out. Even interpreting the Article narrowly and applying it restrictively as the Supreme Court held it should be, we consider that the case is clear that there are serious reasons for considering that the acts of which the appellant was guilty were contrary to the purposes and principles of the United Nations.

Conclusion

139. It follows that, for all the above reasons, the appellant's appeal against his exclusion from the protection of the Refugee Convention by reason of the application of Article 1F(c) and against his exclusion from humanitarian protection is dismissed.