

**SUBMISSION TO THE PRIME MINISTER AND MINISTER IN CHARGE OF
SECURITY AND INTELLIGENCE SERVICE AND THE MINISTER OF
IMMIGRATION**

**AHMED ZAOUI
EXECUTIVE REVIEW OF NATIONAL SECURITY RISK CERTIFICATE**

**IN LIGHT OF “SUMMARY OF ALLEGATIONS AND REASONING” PROVIDED BY THE
DIRECTOR OF SECURITY ON 27 January 2004**

16 FEBRUARY 2004

EXECUTIVE SUMMARY

The Director of Security has now provided Ahmed Zaoui with a summary of allegations and reasoning (“the Summary”).

That the Director has for the first time in the Summary stated his actual reasons for the security risk assessment reached is a development of significance. The reasons advanced by the Director for his security risk assessment are so defective and inadequate that it is considered reasoned critique of the Summary and in particular the “reasoning” should be brought immediately to your joint attention, and acted upon.

Given the terms of the Summary and the weakness of the case which it attempts to make out, especially by contrast with the far most robust and comprehensive conclusions of the RSAA, we consider it an opportune time for all parties to reconsider the matter and we request an immediate reconsideration, leading to the withdrawal of the security risk certificate and / or the Minister’s decision to rely on it, and the consequent release and recognition of Ahmed Zaoui as a recognised refugee.

SECTION A: BACKGROUND

Introduction

This submission is made to you jointly as Minister in charge of the NZSIS and as Minister of Immigration, because aspects of the case fall within your respective portfolios.

The ruling of the High Court in December 2003 has resulted in a development which is the catalyst for our writing to you on behalf of Mr Zaoui, with the request for full reconsideration at Ministerial level and remedial action which concludes this submission.

The Director of Security on 27 January 2004 signed a document headed “Summary of Allegations and Reasoning of the Director of Security in Making a Security Risk Certificate About Mr Ahmed Zaoui” (“the Summary”). A copy of the Summary and the covering Crown Law Office letter is attached as **Appendix A**. We will turn to address that Summary shortly.

We have written at some length because Dr Harrison QC, Mr McLeod and Ms Manning each believe that there is now an opportunity, in the light of the Director's Summary, for the Prime Minister and Minister of Immigration, as Ministers with responsibility in the area to engage in an objective review of the claimed (but wholly inadequate) reasons for the security risk certificate, and thus for Mr Zaoui's continuing detention and threatened deportation. The mechanism for doing so lies with the Minister of Immigration pursuant to s114N of the Immigration Act.

Procedure and delays to date

You will be aware of the overall sequence of events which has kept Ahmed Zaoui in custody for some fourteen months. In particular, we refer to:

- the Refugee Status Appeals Authority (RSAA) decision granting Mr Zaoui refugee status and refuting the claims that he is a terrorist or has terrorist associations;
- the subsequent adverse interim rulings by the present Inspector-General of Intelligence and Security;
- the Inspector-General's "Listener" interview and his other media statements which are the subject of the current High Court proceedings seeking his removal;
- the successful judicial review of the Inspector-General's interim rulings and the judgment of Justice Williams;
- the recent application by Mr Zaoui to remove the present Inspector-General from the conduct of the review on the grounds of apparent bias;
- further developments in the original judicial review, being the Crown appeal against aspects of the judgment of Williams J;
- the Inspector-General's recent application, opposed by Mr Zaoui, to remove the apparent bias judicial review proceedings into the Court of Appeal for determination;
- an earlier additional delay in dealing with the security risk certificate review, when that process was (entirely appropriately) put on hold to await the RSAA decision on refugee status.

All of the foregoing steps have significantly contributed and will continue to contribute to the excessive length of his detention, and to the likelihood of still further substantial delays, likely to stretch into months if not years, before the security risk certificate review itself will be finally resolved.

Even assuming an unfavourable review outcome and a Ministerial decision to place final reliance on the security risk certificate, the matter would undoubtedly not end there. There are processes both under New Zealand law and at international law which would then be followed. Under both the ICCPR and the Torture Convention, complaints may be made to a judicial body which has the power to order, by way of interim relief, that an individual claiming breach of the Convention not be deported from the host country.

Deteriorating psychological condition of Ahmed Zaoui

The medical experts who have examined Mr Zaoui are unanimous in expressing their grave concerns for his mental and physical health consequent upon his conditions of detention and associated concerns arising out of the security risk certificate review process and its potential outcome, and the ongoing litigation. Copies of the latest expert reports have been furnished to the Minister of Immigration.

Mr Zaoui, whilst desperate in his incarceration knows that he cannot leave New Zealand, voluntarily or involuntarily, without facing the very real risk of refoulement to Algeria. There, as the Refugee Status Appeals Authority has concluded, he undoubtedly faces torture and probable death at the hands of the Algerian Security Services:¹

Should the appellant return to Algeria, he will almost certainly be imprisoned on arrival and tortured. ...

Furthermore, we consider there must be a real chance that the appellant will be the victim of an extrajudicial killing at the hands of, or at the direction of, the Algerian security services of which there are numerous cases every year in Algeria. ...

We are in no doubt that the appellant will be persecuted if returned to Algeria. On arrival, he will be detained and almost certainly tortured. While we can only speculate on whether the appellant will even survive the torture, Mohamed-Larbi Zitout (the former Algerian Deputy Ambassador to Libya), has no doubts:

“In my view, should Mr Zaoui be returned to Algeria, the Generals would definitely have him tortured savagely to extract every scrap of information possible from him. They would then have him executed.”

Mr Zaoui is also aware of the Algerian Government’s media announcements in August last year that it would launch, in collaboration with the Government of Tunisia, a campaign to “pressure” the New Zealand Government into “stripping” Mr Zaoui of his refugee status and deporting him.² While there is no evidence that this has in fact occurred, he did recently view with great concern the now-cancelled visit to New Zealand by the Algerian Ambassador to Indonesia for reasons still unknown. Were Mr Zaoui ultimately to be deported from New Zealand, there can be no doubt that the threatened Algerian Government campaign would re-emerge, wherever he was sent.

Media and Public interest

The Zaoui case has attracted enormous media and public scrutiny, with several government departments and (more recently) the Government’s (supposedly) independent security watchdog coming under heavy criticism for their handling of the Zaoui case. Media interest, and particularly public criticism has continued to

¹ See paras [416], [419], [421], [449] and [450] RSAA decision

² See enclosed media articles and translations

grow since the Refugee Status Appeals Authority granted him refugee status. There has also been growing international attention focusing on the treatment in New Zealand of Mr Zaoui, with the case being reported in the Guardian, Agence France Press, the New York Times, and in Australian, South African, European, and United States media.

There is no reason to doubt that this interest and criticism will continue to grow, particularly given the prospect of Mr Zaoui remaining in prison for another entire year as the security risk process continues to break down and be dragged out in court, and also as Mr Zaoui's challenge to the Security Risk Certificate grows in both intensity and strength. Delays aside, the Security Risk Certificate review will eventually commence, and Mr Zaoui's challenge to it will then commence quite comprehensively and publicly.

The Case for Mr Zaoui – a campaign of disinformation

The case for Ahmed Zaoui is that he is an innocent man who has been unjustly accused and treated in European countries, and (consequently) is now being unjustly accused and treated in New Zealand. We are not alone in concluding that he is the victim of a massive propaganda campaign of disinformation and lies, originating from the Algerian military regime and circulating through western intelligence agencies and media.

The decision of the Refugee Status Appeals Authority confirms that although western intelligence agencies linked to Algeria have sought to link him to the GIA and other armed groups, the truth is that Ahmed Zaoui has always been, and remains, a prominent member of the FIS, an Algerian political party that is, in all conceivable ways, diametrically opposed to the GIA and armed Algerian groups (indeed, Mr Zaoui has been sentenced to death by the GIA). His convictions in Belgium and France are both unsafe (by all observations) and are tainted by vested political, diplomatic and economic interests. His treatment by the Swiss Government has been no different.

Preliminary comments on summary of allegations

It is not accepted that the Summary is by any means an adequate compliance with the High Court ruling or with the principles of natural justice. We have outlined the reasons why that is so in our letter to Ms Karen Clark of Crown Counsel dated 11 February 2004 (Appendix B). Our expectation had been that we would be provided a summary of the "classified security information" provided by overseas liaison partners, as is consistent with overseas practice.³

While the Summary does contain a "summary of allegations", the allegations summarised are without exception already in the public domain and do not

³ See High Court decision – *Zaoui v Attorney General & Ors* – CIV-2003-404-5872; para [172].

summarise the actual classified security information, at all. This is remarkable given that Belgium and Switzerland have already agreed to a summary of their “classified security information” being provided to Mr Zaoui.

The “Summary of Allegations” is the Director of Security’s fifth attempt (at least) in succession at providing what he has claimed on each occasion to be the fullest particulars he can muster without jeopardising the national security. However, as separately outlined, it still falls far short of even the basic requirements of our client’s natural justice entitlement, as upheld by the High Court. The issue of his apparent bias aside, the fact is that at almost every step of the way, the present Inspector-General has acquiesced in the Director’s assessment of what (little) information should be provided to our client.

General comment on Director’s reasoning

It is considered that the fact that the Director has for the first time in the Summary stated his actual reasons for the security risk assessment reached is a development of significance. This is because the reasons advanced by the Director for his security risk assessment are so defective and baseless that it is considered a reasoned critique of the Summary and in particular the “reasoning” should be immediately acted upon, through available legal processes, at the highest levels of Government.

To place the criticism of the Director’s “reasoning” which follows in a proper context, it is necessary to comment in some detail on the “summary of allegations” contained in paras 1 – 6 of the Summary, notwithstanding its shortcomings in natural justice terms. Comments on and criticisms of the Summary and the Director’s reasoning as a whole therefore follow in Section B, under the following headings:

1. Arrival after attempted destruction of false passport
2. The joint Police/SIS Interview and Mr Zaoui’s videotape of his travels, dealing with the Director’s assertions that:
 - 2.1 the content of the videotape made by Mr Zaoui “during his journey overland from Malaysia via Thailand and last to Vietnam” is of itself something which when viewed gives rise to “security concerns”, in that it looks “suspiciously like a ‘casing’ video”.
 - 2.2 Mr Zaoui’s answers during the joint Police/SIS interview did not satisfy his interrogators, and “did not dispel [unidentified] security concerns” regarding visiting a mosque in Hanoi.
3. The further interview with the “Arabic-speaking SIS officer”.
4. Non-Classified information about Mr Zaoui’s treatment at the hands of French, Belgian and Swiss authorities between 1995 and 2001.

SECTION B

SUMMARY OF ALLEGATIONS

What follows is a detailed critical analysis of the purported "Summary of Allegations" provided by the Director of Security.

1. **Para 1 of the Summary: Arrival after Attempted Destruction of false passport**

1.1 Para 1 refers to Mr Zaoui's arrival in New Zealand on 4 December 2002, "having attempted to destroy a false South African passport en route". The Minister of Immigration will be aware that the destruction and attempted destruction of travel documents is commonplace among asylum seekers, as the Court of Appeal recognised in **Attorney-General v E** [2000] 3 NZLR 257, [3]. This is not something which should of itself be held against a refugee status claimant, let alone a recognised refugee.

2. **Para 2 of the Summary: Mr Zaoui's Videotape of his Travels and the Joint Police / SIS Interview**

2.1 There are in effect two allegations in para 2 of the Summary. The first is that the content of the videotape made by Mr Zaoui "during his journey overland from Malaysia via Thailand and last to Vietnam looks "suspiciously like a 'casing' video" which gives rise to "security concerns".

2.2 The second claim is that Mr Zaoui's answers during the joint Police/SIS interview did not satisfy his interrogators, and "did not dispel [unidentified] security concerns". This involves the bald contention that Mr Zaoui's responses to questions about the travel videotape "did not dispel security concerns", and in particular allegedly failed satisfactorily to explain why he should twice visit a Mosque in Hanoi, claimed to be "likely to be frequented by Algerian diplomats". (The obvious response is and was, to pray.)

2.3 **Joint Police/SIS Interview**

2.3.1 This is not the appropriate place to restate Mr Zaoui's complaints about the joint Police/SIS interview on which the Director relies. We wrote to the Prime Minister on 9 December 2003 enclosing copies of the correspondence and setting out Mr Zaoui's complaints and our concerns.

2.3.2 The short point for present purposes, is that the Director's reliance on the joint Police/SIS interview when issuing the certificate was, as we understand it, based not on his viewing of any videotape or audiotape (complete or incomplete) of the interview, but on an SIS officer's handwritten notes. These notes were later destroyed after being typed up by way of a report on the interview.

2.3.3 Disclosure of this report has been refused to Mr Zaoui and his advisers, despite the fact that it allegedly deals with Mr Zaoui's "answers" and not

any “classified security intelligence” obtained by the SIS as a result either of its own surveillance operations, or any supply by an “overseas liaison partner”. Access to all tapes of the interview has also been denied to us, other than on wholly unacceptable conditions which effectively prevent Mr Zaoui and his legal advisers making any subsequent use at all of the information contained on the tapes.

2.4 Videotape of travel to New Zealand

2.4.1 First and foremost, the SIS assessment that the content of the video is “suspiciously like a ‘casing’ video” is, quite simply, a fanciful assertion, as a viewing of the videotape (of which we hold a copy) will clearly demonstrate. The imagined purpose of the suspected “casing” is not revealed by the Director.

2.4.2 The purpose of Mr Zaoui’s journey from Malaysia to Vietnam was to enable him to then fly from Vietnam to New Zealand in order to claim refugee status on arrival. In those circumstances, it would be utterly absurd for him to be involved in “casing” locations – one can only assume, for terrorist purposes. In any event, that is not what the videotape, on any unbiased viewing, shows. It is manifestly an amateur video taken by a first-time tourist passing through the localities in question. The Director of Security may believe that only “westerners” can be regarded as bona fide tourists in South East Asia, but that is, unsurprisingly, not the case.

2.4.3 A number of other comments ought to be made about the video tape:

- Mr Zaoui was given the video camera by his eldest son before he left Malaysia to travel to New Zealand.
- While Mr Zaoui was recording his travels, he was well aware that the videotape could be checked at Customs in Vietnam or South Korea on his way to New Zealand. He was therefore aware that his video recording could be viewed by officials at any time. That he made no attempt to conceal the video tape throughout his journey and upon arrival in New Zealand can only indicate his state of mind as to its entirely benign contents.
- On its face, the Director’s reasoning in para 2 of the Summary is nonsensical. How can “tourist buses and an internet cafe” possibly qualify as “not obvious tourist sites”, and yet be places “frequented by westerners”?
- The summary attempts to draw an adverse inference from the fact that the videotape includes an image of an oil company building. Yet when the tape is viewed in context, it is obvious that Mr Zaoui is filming a variety of objects, buildings, landmarks and people, almost at random and as clumsily as any amateur. At one point in the video, being the amateur he was, it is

apparent that the video camera has even inadvertently been left recording inside Mr Zaoui's camera bag.

- The Summary does not clarify whether Mr Zaoui's visit to the mosque in Hanoi raises security concerns, and we fail to see how it could do so. Put simply, Mr Zaoui videotaped the Mosque in Hanoi because that is where he went to pray. A viewing of the videotape will show that Mr Zaoui videotaped hundreds of scenes; buildings; forms of transportation; people; and indeed animals (including a close-up of a hen on a river bank).

2.4.4 For the Director of Security to select out of all these images, "tourist buses" (when as the videotape shows, Mr Zaoui travelled by tourist bus – and also by ferry boat, rowboat and canoe for that matter); an internet café (when these are simply commonplace in all areas of tourist resort); and a Mosque (given that Mr Zaoui is a Muslim) - among all the other numerous subjects he photographed - without great skill, it must be said, is not only absurd, but bordering on malicious.

2.5 *Visits to mosque*

2.5.1 The second contention raised by para 2 of the Summary is in effect that Mr Zaoui's answers during the joint Police/SIS interview did not satisfy his interrogators, and "did not dispel [unidentified] security concerns". A number of points can be made about this contention:

- The joint Police/SIS interview was conducted in (attempts at) French, not Arabic; and was impeded by problems with interpretation. Mr Zaoui picked up his conversational French only after he left Algeria and lived in France, Belgium and Switzerland; but even so, we are instructed that the first interpreter spoke worse French than he did. Aside from the interpretation difficulties, there was obviously considerable potential for misunderstanding in relation to the claimed content of the travel videotape, given the implausible interpretations of it which the interviewers appear to have adopted and put to Mr Zaoui. In those circumstances, an assessment by the interviewers that certain answers of Mr Zaoui's at interview regarding his visits to the mosque "did not dispel security concerns", passed on secondhand to the Director, involves a highly subjective and question-begging conclusion. It is obviously not possible for an interviewee to dispel security concerns which he is either unaware of at the time, or simply does not share.
- Mr Zaoui instructs that the questions put to him regarding the videotape were of an entirely superficial and non-probing nature, and so he therefore could not / did not appreciate their significance.

- The fact that the Mosque which Mr Zaoui visited may or may not have been frequented by Algerian diplomats is also a matter that could hardly factor into a security risk assessment. The significance of this point (if any) is not, in any event, stated in the Summary.

3 Para 3 of the Summary: The Further Interview with the “Arabic-speaking SIS officer”

3.1 At the outset, there appear to have been significant communication / interpreting problems during this interview in addition to the first SIS interview. We are instructed that the SIS interviewing officer was an Arabic-speaking New Zealander who had studied his Arabic in Egypt. Consequently, there were communication difficulties and a number of instances during the interview when either the interviewer or Mr Zaoui could not understand the other’s question or answer. The most troubling aspect of interviewer’s technique, though, is that he attempted to simultaneously record Mr Zaoui’s Arabic responses **in written English**, a feat which our most experienced interpreters advise is almost impossible.

3.2 The Summary asserts that this interview “produced one point of security concern, relating to the veracity of an answer Mr Zaoui gave, which cannot be disclosed without compromising classified security information which cannot be divulged”.

3.3 Franz Kafka would surely be proud to claim ownership of this reasoning. It is claimed that Mr Zaoui gave an answer (which cannot be divulged) to a question (which cannot be divulged). It is not asserted that Mr Zaoui’s answer was untrue; but instead that (apparently) an unidentified doubt as to its correctness somehow gives rise to an unidentified “point of security concern”. Even if all that were accepted as adequate – and it is not – the alleged “point of security concern” is presumably one of those later identified by the Director in para 8 of the Summary. This, then, takes us no further than the weight of the Director’s alleged “reasoning”, analyzed below.

4. Paras 4, 5 and 6 of the Summary: Non-Classified Information About Mr Zaoui’s Treatment at the Hands of French, Belgian and Swiss Authorities Between 1995 and 2001

4.1 Para 4 of the Summary sets out the results of NZSIS enquiries with overseas liaison partners about Mr Zaoui’s alleged “activities since he left Algeria”. Para 5 goes on to state that these enquiries “in each of the three countries” – plainly, France, Belgium and Switzerland, being the countries referred to in para 4 – “also produced classified information **which provided background to the above public facts**” (our emphasis). As to the classified information thus provided, para 6 goes on to state that the Belgian and Swiss authorities have agreed to Mr Zaoui being provided

with an unclassified summary or version of the classified information. By a process of elimination, therefore, it is France that has declined to do so.

- 4.2 Contrary to what is asserted in para 6 of the Summary, the “version of the classified information” referred to was not given to Mr Zaoui’s lawyers in May 2003, or at any time. Nor do the two bullet points of para 6 summarize any classified information. Rather, on analysis, they go no further than to merely summarize or repeat some of the “public facts” earlier referred to in para 4 of the Summary. For a more detailed analysis of and comment on this aspect, please refer to paras 11.4 – 11.7 of the accompanying letter to Crown Law of 11 February 2004.
- 4.3 Para 4 of the Summary goes no further than to briefly identify particular judicial and administrative steps taken against Mr Zaoui by the Belgian, Swiss and French authorities. Each of these in turn was meticulously researched in detail, analyzed and dismissed by the RSAA as flawed, and as requiring to be rejected as against the weight of evidence supporting Mr Zaoui’s version of events. In particular, the convictions entered against Mr Zaoui in Belgium and France came under careful scrutiny and criticism, and it is important we believe to briefly explain at this point why those convictions cannot possibly sustain Mr Zaoui’s security risk certificate.
- 4.4 *Belgian Convictions: Failure to take into account final legal decision in Belgium***
- 4.4.1 For Belgium, the RSAA noted (assisted by expert legal analyses) that while the lower court there in fact **acquitted** Mr Zaoui of the charge of being the “head of a criminal association”, a disturbing number of “procedural flaws significantly tainted the evidence before the Court of Appeal to the point where, at best, **it would be unsafe** to rely on” the convictions entered against Mr Zaoui in that court.⁴
- 4.4.2 In para 6 it is said that the Belgian unclassified information confirmed that Mr Zaoui had been found to be a leader and instigator of a criminal association with the intention of attacking persons and property. However, if the Belgian “public facts” are to be relied on, the criminal conviction (at appellate level after being acquitted before the trial court) needs to be balanced against the differing conclusions reached by the Belgian “Foreigners’ Consultative Committee”. This body and its decision favourable to Mr Zaoui are discussed in paras [211] – [213] and [754] – [756] of the RSAA decision. In particular, the Committee found that -
- From an examination of all the documents before it, there was **no decisive evidence** to counter Mr Zaoui’s denial of having any part in the GIA – on the contrary, the BSR in its report of 6 April 1995, recorded specifically that it had “no conclusive evidence” regarding Mr Zaoui’s membership of that group;

⁴ Para [584]

- That there was a glaring inconsistency between the lenient sentence imposed by the Belgian Court of Appeal (only nine months imprisonment) and that Court's comments that the sentence "must take into account the importance of the role he played as head of the criminal association".

4.4.3 Ultimately, the Belgian Foreigners Consultative Committee as an independent judicial body found that Mr Zaoui should not be deported from Belgium as he was not considered a threat to national security.

4.4.4 This outcome is therefore directly relevant, if "public facts" are to be relied on, to the Director's security risk assessment. However, although known to the Director – it is referred to, inaccurately, in the material supplied by the Director to the RSAA (which was the subject of criticism by that body) – it was not taken into account by the Director in relation to the making of the security risk certificate. This was presumably because it was favourable to Mr Zaoui.

4.5 French conviction

4.5.1 The RSAA and other expert advisors are unanimous in their far-reaching and resounding criticisms of Mr Zaoui's French trial. You will probably be aware that Mr Zaoui was tried by the French *in absentia* and that curiously, whilst the charges related to events alleged to have occurred in 1993, he was convicted two days after the 11 September 2001 attacks in the US. Numerous procedural and substantive flaws led the RSAA and experts to conclude that the French conviction is entirely unsafe and cannot be relied upon.

4.5.2 In short, para 4 of the Director's Summary represents nothing more than the Director of Security's uncritical acceptance of the "public facts" listed in that paragraph, without his hearing Mr Zaoui's side of the story. It cannot stand against the compelling weight of evidence to the contrary, detailed in the RSAA decision and supported by a number of experts. We are in no doubt that any reasoned analysis of the French and Belgian convictions will arrive at the same conclusion as the RSAA has reached, that they "are unsafe and are not probative or reliable evidence of [Mr Zaoui's] involvement in acts of terrorism or any other non-political crimes" (paras [752], [867]).

4.5.3 Furthermore, paras 5 and 6 of the Director's Summary show that the "classified security information" which the SIS claims to have, concerning Mr Zaoui's "activities since he left Algeria" and before coming to New Zealand is no more than information which "provided background to" the "public facts" known to and uncritically relied on by the Director of Security. If all the "classified security information" in relation to Mr Zaoui prior to his arrival in New Zealand does is "provide background" to the "public facts" stated in para 4, then it simply cannot be said to introduce

any additional ground of concern or even give added weight to the known “public facts” relied on.

- 4.5.4 Furthermore, the Director’s reliance on the so-called “public facts” in paras 5 and 6 of the Summary is both selective and superficial.

4.6 Switzerland

- 4.6.1 The Swiss Federal Council conclusion which is also referred to in para 6 of the Summary appears to have weighed heavily with the Director, but once again, the reliance on it is superficial and selective. The document quoted from in translation in para 6 is in fact merely a **press release** apparently issued by the Swiss Federal Council – a copy of it was among the material supplied by the Director to the RSAA.

- 4.6.2 In any event, it is clear from the RSAA decision, paras [758] – [781], that the Swiss Federal Council’s administrative order banning the appellant from specified activities, ordering the seizure of his fax machine and blocking his email and internet connections, was made entirely without hearing from Mr Zaoui and was essentially a political response to communiqués issued by Mr Zaoui on behalf of an FIS organisation. These were examined in detail by the RSAA and found to be quite innocuous.

[796] The above matters, and our finding as to the appellant’s overall credibility, satisfy us that the appellant’s statements concerning his personal rejection of violence should be accepted. His written and oral statements are entirely consistent with this. We accept that the appellant is who he claimed to be when he wrote to the Executive Council of the Swiss Federal Government in a letter dated 4 May 1998:

“I have never been a supporter of violence and have never used it as a means or an end. I am a politician. I seek freedom for my people, and security. I seek freedom from unreasonable controls and freedom in the choice of social vision in its leaders. I seek and support any honourable political solution that would fully respect the dignity and complete freedom of choice of the people.”

[796] Similarly, we find that far from being a “terrorist”, the appellant’s statements and his extensive testimony before us, reveal, as so many witnesses have testified, a person of genuine religious and moral sensibilities. This response to his Swiss immigration officer captures him well:

“I come from a very religious family; my grandfather was a sheik, learned in religion, my father was senior mufti, my uncles are imams and my brother sis a communist; he is married to a French woman and has never had any problems at home. ...In the koranic tradition, tradition, human rights means to honour any human being. He who kills human kills humanity, he who nurtures a human nurtures humanity.”

[797] We conclude that the evidence concerning the appellant’s CCFIS and other activities in Switzerland do not provide “serious reasons for considering” that he was engaged in or encouraged extremist or terrorist

activities so as to bring him within the exclusion provisions of Article 1F of the Refugee Convention.

DIRECTOR’S REASONING CONCLUDING THAT AHMED ZAOUI IS A THREAT TO NATIONAL SECURITY

5. Introduction

5.1 In para 8 of the Summary, the Director of Security sets out a series of comments, said to constitute his “reasoning” leading to the making of the security risk certificate in reliance on sub-para (c) of the definition of “security” in the NZSIS Act 1969 (set out in para 7 of the Summary). The definition of “security” in the NZSIS Act 1969 is as follows:

<p>Security means –</p> <p>(a) The protection of NZ from acts of espionage, sabotage, terrorism and subversion, whether or not they are directed from or intended to be committed within New Zealand:</p> <p>(b) The identification of foreign capabilities, intentions, or activities within or relating to NZ that impact on New Zealand’s international well-being or economic well-being.</p> <p>(c)The protection of New Zealand from activities within or relating to New Zealand that-</p> <p style="padding-left: 40px;">(i) Are influenced by any foreign organisation or any foreign person; and</p> <p style="padding-left: 40px;">(ii) Are clandestine or deceptive, or threaten the safety of any person; and</p> <p style="padding-left: 40px;">(iii) Impact adversely on New Zealand’s international well-being or economic well-being (emphasis added)</p>
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5.2 It is noteworthy that the Director places no reliance on sub-paras (a) and (b) of the definition of “security”. In particular, he impliedly accepts that there is no question here of protecting New Zealand “from acts of espionage, sabotage, terrorism, and subversion either directed from or within New Zealand”.

5.3 In essence, the “reasoning” adopted by the Director appears to be as follows:

- If permitted to remain in New Zealand Mr Zaoui would proceed in the future to act in one or more of the ways which the judicial and administrative authorities in Belgium, Switzerland and France found him culpable of.

- Mr Zaoui's presence would lead "people with his sort of record", to be attracted to New Zealand as a "safe haven" and, once arrived, "to engage in activities of security concern".
- Activities engaged in by Mr Zaoui or such people "could threaten the safety of New Zealanders".
- If Mr Zaoui with his public record were allowed to remain, that would send a message to other governments "that New Zealand has a lower level of concern about security than other like-minded countries", which would "impact adversely on New Zealand's reputation with such countries and thus on New Zealand's international wellbeing".

5.4 We now turn to the four stated grounds in the Directors Reasoning: (refer to page 3 of the Summary):

6. The protection of New Zealand from activities within or relating to New Zealand and attracting others to New Zealand

6.1 *Alleged Activities of Mr Zaoui*

- 6.1.2 As above, the alleged past activities on Mr Zaoui's part leading to these conclusions are denied by him and were resoundingly rejected by the RSAA in its decision, after a very full and thorough inquiry which heard from numerous overseas and local experts and rejected the convictions comprising his "record" (in the case of France, heard and entered in absentia) as unwarranted and unsafe.
- 6.1.3 Mr Zaoui denies membership of or any association with the GIA. To the contrary, he is a leading member of the FIS and is therefore supportive of its peaceful (and legitimate) political objectives. The RSAA, in strongly worded conclusions, accepted that this was the case.
- 6.1.4 It necessarily follows that there is no risk or likelihood whatsoever of Mr Zaoui supporting or associating himself with the GIA – or indeed any other terrorist organisation. If he were (inconceivably) to do so, he would commit serious offences under New Zealand law and seriously jeopardise his right to remain. Equally, his continued support of the FIS or its aims (whatever if any form that might take) would not involve criminal activity. Nor would it even potentially "threaten the safety of New Zealanders" or indeed anyone else.
- 6.1.5 Furthermore, any activities engaged in by Mr Zaoui in relation to the FIS would not only be lawful under New Zealand law, but also an exercise of his rights under the Bill of Rights to engage in freedom of association and freedom of expression in relation to his political beliefs. Any security risk assessment which fails (as this one clearly does) to take into account the legality of predicted conduct and its status as an exercise of basic human rights is necessarily seriously flawed.

6.1.6 Section s 2(2) of the NZSIS Act relevantly states:

Nothing in this Act limits the right of persons to engage in lawful advocacy, protest, or dissent in respect of any matter ...

6.1.7 In applying sub-para (c) of the definition of “security” to Mr Zaoui, the Director has entirely omitted to differentiate as required by s 2(2) between lawful and unlawful advocacy of a cause – and indeed even to identify the activity or the cause which he has in contemplation. In that sense, the Director has plainly misdirected himself in law.

6.2 Claim that Mr Zaoui would directly and indirectly attract others to New Zealand

6.2.1 The Director’s “reasoning” is that Mr Zaoui, by his mere presence here, “would attract, both directly (people who wish to work with him) and indirectly (people encouraged to believe that New Zealand is a safe haven with people of his sort of record), other people likely to engage in activities of security concern”. Just what these “activities of security concern” might be is not stated.

6.2.2 There is no factual basis for the Director’s contention that permitting Mr Zaoui to remain in New Zealand as a recognised refugee would attract here others – his wife and young children aside - “who wish to work with him”; let alone others “likely to engage in activities of security concern”. The reality is that most of the other FIS leaders abroad are already lawfully residing in other countries such as Switzerland, the United States and Australia. They have no need to travel to the other end of the earth to “work with” Mr Zaoui, in order to advance such political aims as they may currently have. All are living, working and promoting the FIS legally and openly in the western countries in which they live. In Australia, Mr Samir Bennegadi (a FIS executive advisor and close friend of Mr Zaoui) holds a top AISO security clearance; is employed as a supervisor at a Sydney nuclear power plant; is permitted to openly operate and promote Australia’s FIS branch; and regularly travels in and out of the country on FIS-related business.

6.2.3 Moreover, the Director’s claim that Mr Zaoui’s presence here would directly and indirectly encourage others to travel to New Zealand in order to engage in activities of security concern completely ignores New Zealand’s immigration laws and border controls. We submit that any security risk assessment which completely ignores such a practical dimension to its attempts at prediction is so fundamentally flawed as to be unworthy of any credence whatsoever.

6.3 *New Zealand laws adequate: Current Terrorism and Criminal laws sufficient*

6.3.1 The Director's unspoken premise is that, Mr Zaoui would act so as to breach the criminal law (in particular the provisions of the Terrorism Suppression Act 2001).

6.3.2 In that inconceivable scenario, the Terrorism Suppression Act exists to preclude membership of, association with or support for a designated terrorist entity or associated entity. These and various other acts under that legislation constitute serious criminal offences. The Groupe Islamique Armé (GIA), an organisation accused of terrorist activities in both Algeria and Europe, has already been designated a terrorist entity, as have a number of individuals said to be GIA members. The Front Islamique du Salut (FIS), an Algerian political party in exile to which Mr Zaoui belongs, is not a designated entity under the Terrorism Suppression Act. This is not surprising because, according to numerous international experts and as accepted by the RSAA, the FIS is not a terrorist organisation or associated in any way with terrorism, which it denounces.

7. Claim that Mr Zaoui's future activities may be influenced by any foreign organisation or foreign person

7.1 What is said here is simplistic and begs the question. If Mr Zaoui as a recognised refugee is permitted to stay, he will not qualify as a "foreign person" within the definition (whatever that expression may mean, it cannot possibly extend to non-citizens lawfully resident in New Zealand.) Of course, given that Mr Zaoui has until his arrival lived the whole of this life outside of New Zealand, no doubt he can be said to have "a long record of involvement with foreign persons and foreign organisations, including leadership". There are few adults entering New Zealand from overseas of which this assertion could not be made.

7.2 The Director then follows up his first two propositions with the complete non-sequitur that there is therefore "good reason to believe that any [unidentified] future activities [Mr Zaoui] may undertake will be influenced by other [unidentified] foreign persons and/or by [unidentified] foreign organisations". This is an inadequate and bizarre contention. It underlines the fact that nowhere in the Summary does the Director of Security actually come out and identify what organisation or organisations he claims Mr Zaoui belongs to or associates with. This vague innuendo is then followed by an unsubstantiated assertion, dressed up as fact by use of the "good reason to believe" formulation, that unidentified foreign persons and/or organisations will somehow determine Mr Zaoui's future conduct in New Zealand.

8. Claim that Mr Zaoui's future activities could be clandestine or deceptive or threaten the safety of any person

8.1 This part of the Director's reasoning stems from Mr Zaoui's treatment by the French, Belgian and Swiss authorities, in respect of which submissions have already been made above. In short -

- Mr Zaoui is not guilty of the activities for which he was convicted in Belgium and France;
- Mr Zaoui did not undertake any activities in Switzerland that could have led to acts of violence in that country;
- The FIS is does not operate clandestinely or deceptively, and nor does Mr Zaoui. To the contrary, the party has worked openly, intentionally and with known integrity in European political circles for many years.

9 Claim that allowing Mr Zaoui to remain will impact adversely on New Zealand's international well-being

9.1 The Director's final proposition involves the outrageous suggestion that New Zealand should reject Mr Zaoui simply on the basis of his pre-existing "public record", because to do otherwise would "indicate that New Zealand has a lower level of concern about security than other [unidentified] like-minded countries", with the consequence that the resultant perception of New Zealand as a "safe haven"/soft on terrorism "will impact adversely on New Zealand's reputation with such countries and thus on New Zealand's international well-being". The "public record" referred to would appear to be that asserted in para 4 of the Summary.

9.2 The Director of Security is effectively here saying that New Zealand should be prepared to breach its obligations under New Zealand law⁵ and also at international law, simply in order to avoid being labelled "a soft touch".

9.3 It does not follow that for New Zealand to permit a recognised refugee to remain here, in accordance with his entitlement under New Zealand law and the Refugee Convention, is in any way an indication "that New Zealand has a lower level of concern about security than other like-minded countries"; or that it would be taken that way by the (unidentified) countries concerned.

9.4 Furthermore, it could hardly be claimed that New Zealand has a lower level of concern about security than other like-minded countries given that Mr Zaoui has now been imprisoned without charge for fourteen months, ten of which were spent in solitary confinement in a maximum security facility.

⁵ In particular Section 129X(1) of the Immigration Act,

- 9.5 As the basis for issuing the security risk certificate, this unsubstantiated claim falls woefully short of a justification for deporting Mr Zaoui, especially given his now recognised refugee status and the demolition by the RSAA of both the “public record” relied on by the Director and the underlying allegations and concerns of terrorist involvement or activity.

SECTION C

CONCLUSIONS

The security risk certificate in respect of Ahmed Zaoui was issued without hearing from him, and with no reasons or details. Until now he has been unable effectively to take issue with it, either by way of the Inspector-General’s review or by addressing submissions to the Minister of Immigration, who has placed reliance on it (and has the power under the Immigration Act to decide, right now, to cease to do so). The Director’s provision to the Inspector-General of the Summary, although inadequate for the reasons indicated, is the first opportunity Mr Zaoui has had to address the making of the security risk certificate on its merits.

Despite its failure to provide as required a summary of the classified security information relied on, one must assume that the Summary is at least exhaustive in the sense that it lists all allegations and all reasons relied on by the Director of Security when making the security risk certificate. That is to say, the Summary can safely be relied on in order to demonstrate the many and manifest weaknesses of the decision to issue the security risk certificate.

The allegations of fact relied on by the Director can be seen to fall within three categories.

- **The first** is the content of a tourist videotape in Mr Zaoui’s possession on arrival at Auckland. This cannot credibly be described as a casing videotape as asserted by the Director. The tape is a wholly innocuous record that can be permitted to speak for itself. The Director’s unfounded “suspicions”, that the videotape may be a “casing” video, are quite simply ludicrous judged in terms of the content of the tape, and utterly implausible given that the footage was shot when Mr Zaoui was en route to New Zealand with a view to claiming refugee status. It does not therefore provide evidence of Mr Zaoui being a security threat.
- **Secondly**, it is contended by the Director that Mr Zaoui’s responses to questions at two successive interviews conducted here shortly after his arrival “did not dispel security concerns”, or were unsatisfactory. These contentions are unwarranted and inadequate to support a security risk assessment.
- **Thirdly**, the remaining allegations – those relating to Mr Zaoui’s alleged activities since leaving Algeria and before arriving in New

Zealand – all relate to matters that were very fully canvassed and disposed of in a manner favourable to Mr Zaoui by the RSAA in its hearing and decision. Given the comprehensiveness of the Refugee Status Appeals Authority decision we consider there is no need to relitigate these issues. However, in the event that the Director is not satisfied with the RSAA findings, we have further witnesses and evidence for the Inspector General to personally consider. Aspects of this defence, including a summary of witnesses has been provided in Appendix B.

The claimed “classified security information” in relation to these allegations is explicitly accepted by the Director as doing no more than “providing a background to the above public facts”. There is therefore nothing – in particular, nothing adverse or sinister – in any of the information relied on by the Director in relation to Mr Zaoui’s activities before his arrival in New Zealand, which has not already been far more comprehensively dealt with, and conclusively rebutted, by the RSAA.

Threshold of “threat to national security” not met

It is worth noting that the test for satisfaction of Article 33.2 of the Refugee Convention (and Section 129X(1) of the Immigration Act) is that a “very serious danger” to the security of the country concerned must be shown.⁶

When deportation directly or indirectly to face torture is at issue, as here, the national security interests identified must be still more compelling. It will be a very rare case indeed – no doubt one of actual involvement in terrorist activity or support for terrorist activity – which may qualify for deportation⁷.

Reduced to its bare essentials, the Director’s “reasoning” involves the contention that Mr Zaoui, if allowed to remain, will associate with or support people or organisations “of security concern”. Neither the people nor the organisations nor the “security concerns” are identified. We again point out that the only associations conceivably at issue here are the terrorist GIA and its members, and the non-terrorist FIS and its members.

Mr Zaoui has no association with the GIA and its members, and any such association on his part would involve a criminal breach of the Terrorism Suppression Act. There is quite simply no basis on which it could be suggested that such a thing would occur. Future association with the FIS and its members is not unlawful; falls outside the definition of “security” relied on; and if it occurred would in fact be an exercise by Mr Zaoui, as a recognised refugee and New

⁶ The leading Canadian case of **Suresh** uses a test of “serious danger”; but numerous authorities on the Refugee Convention suggest the higher standard which we rely on. In the present case, nothing turns on the difference because the claimed threat or danger to security identified by the Director could not remotely be described as “serious”, far less “very serious”.

⁷ Authority for this and the foregoing propositions will be found in Mr Zaoui’s written submissions to the High Court, and within the judgment of Justice Williams.

Zealand resident, of his basic human rights of association and freedom of expression.

The balance of the Director's "reasoning" involves variations on the "New Zealand a soft touch" theme. So far as other individuals outside New Zealand are concerned, the entire argument is based on unfounded supposition. It likewise ignores other parallel (and far more significant) developments such as New Zealand's humane treatment and acceptance of the "Tampa" refugees rejected by Australia - a course of action far more likely to raise expectations on the part of prospective refugees. As already noted, it also ignores the fact that New Zealand has strict immigration and entry laws which are rigorously patrolled at the border.

The only other plank to the Director's "New Zealand a soft touch" argument is an imagined fear of a perception by "other like-minded countries", which it is said will ensue in the event that New Zealand now fully accords Ahmed Zaoui the recognised refugee status that the RSAA, with full knowledge of all but the most minor of the matters put forward by the Director, found he was without doubt entitled to.

At the end of the day, so far as this claimed ground for deportation based solely on fear of what other (unnamed) countries might think of New Zealand is concerned, one has to ask: have we really sunk so low as a country, as to reject a recognised refugee who is faced with death or torture if returned to Algeria, simply because of a claim, in the absence of any supporting evidence or analysis, that some other country or countries might conceivably think we were "soft on terrorism" for doing so? That is certainly not the way New Zealand and in particular Labour Governments have conducted our foreign policy in the past.

The Zaoui case with its ongoing developments and disclosures, many of which have occurred quite independently of Mr Zaoui and (we add) his legal advisers, has become a matter of serious concern to the New Zealand public and has come to reflect very badly on New Zealand's human rights record, including internationally. Owing to factors largely beyond Mr Zaoui's control, as explained above, the Inspector-General's review process will not resolve the matter and define his position within the foreseeable future, and indeed possibly not this year.

SECTION D

BRIEFINGS GIVEN BY THE DIRECTOR OF SECURITY AND ONGOING COMMUNICATION

Briefing to Minister of Immigration

We note that the Minister of Immigration received an oral briefing from the Director of Security in relation to the “classified security information” which he held concerning Mr Zaoui. In an “open letter” which she wrote to all Members of Parliament on 27 August 2003, the Minister stated:

The information I have been given [by the Director of Security] was not referred to the RSAA, nor did the unclassified information referred to the RSAA by the Director of Security at the RSAA’s request form the basis for the decision to issue a Security Risk Certificate. That decision was based on classified security information.

While we do not doubt that that statement accurately reflects what the Minister was told, given what we now know to have been the actual extent of the Director of Security’s reliance on the “public facts” which were before the RSAA, (and indeed featured prominently among the material supplied by the Director to the RSAA) one would now have to wonder to what extent there exists any correspondence between what the Minister appears to have been told was the basis of the Director’s decision, and what he now asserts as being the basis of and reasons for his decision, in the Summary recently provided.

Further contact with the Director of Security

We take the liberty of raising one further matter. In the event that you see fit to provide a copy of these submissions to the Director of Security for his comments, we would ask that Mr Zaoui be given access to these when received, and an opportunity to respond.

While not wanting to raise any fresh controversy, we have reason to believe that there has been ongoing communication by or on behalf of the Director of Security with either Cabinet or individual Ministers, about the Zaoui case. It would in our view be quite wrong if such communications were to occur – or to have already occurred - and to involve the making of allegations about Mr Zaoui going beyond the matters summarised in the Summary and on which the security risk certificate was based.

Dr Rodney Harrison QC
Richard McLeod
Deborah Manning

APPENDIX A

Letter from Crown Law and Summary of Allegations and Reasoning of the
Director of Security

APPENDIX B

Letter to Crown Law Office

APPENDIX C

Foreigners Consultative Committee Report

APPENDIX D

MR ZAOUI'S DEFENCE OF THE SECURITY RISK CERTIFICATE'S ALLEGATIONS – EVIDENCE AND WITNESSES

Evidence

Although recent developments (further court hearings and the Crown's appeal to the Court of Appeal) will inevitably further prolong both the commencement of the security risk certificate review and Mr Zaoui's incarceration well into the second half of 2004, the delays will at least mean that the Zaoui legal team now has the benefit of more time to fully research, investigate and prepare our client's challenge to the Security Risk Certificate. Thus far, our efforts have secured at least fifteen expert and other witnesses, all of whom have indicated their preparedness to fly to New Zealand to defend Mr Zaoui in the review. As mentioned above (see "The Case for Ahmed Zaoui"), the witnesses are of the unanimous belief that Ahmed Zaoui is innocent of the allegations raised by the Director's Summary.

More and more potential witnesses are beginning to come forward, including witnesses who will tender what can only be regarded as "explosive" evidence about the conduct of Mr Zaoui's French and Belgian trials and his treatment by the French, Belgians and Swiss authorities. In his challenge to the Certificate, Mr Zaoui is also being assisted by an ever-growing number of supportive experts and strategically-placed individuals from a variety of backgrounds and positions in Europe, who are tirelessly investigating relevant issues and officials in those countries. Those assisting in the preparation of the case are all united in the firm belief that what is being built in support of Mr Zaoui is an expose of quite staggering proportions. All are emboldened by recent developments in Europe, including –

- The publications of various books on the true nature of the Algerian conflict, which expose the infiltration and manipulation of the GIA by Algerian / French intelligence services;
- Publications of books and other articles on French, Belgian and Swiss intelligence complicity in the Algerian military Government's campaign against the FIS;
- The revelations in and outcome of the recent Nezzar trial in France, in which General Nezzar (one of the heads of the Algerian military) unsuccessfully sued a publishing company for defamation;
- A recent Canal Plus TV documentary that aired across Europe ("The Attacks of Paris, we could have stopped them") which exposed the French intelligence service's complicity in what, ostensibly, were "GIA attacks" on France in the mid-nineties, but were in fact operations carried out by Algerian counter-intelligence.

Witnesses

Thus far, the following witnesses will be giving evidence in support of Ahmed Zaoui:

1. Professor Abdul Hamid Brahimi, former Algerian Prime Minister 1984-88
2. Mr Larbi Zitout, former Algerian Deputy-Ambassador to Libya
3. Colonel Samraoui, ex-officer of the Algerian Secret Services (DCE)
4. Captain Haroun, ex-officer of the Algerian Secret Services (DCSA)
5. Mr Ahmad Chouchane, ex-officer and instructor of the Algerian Army Special Forces
6. Dr Abbasi Madani, co-founder and leader of Front Islamique du Salut (FIS)
7. Dr Mourad Dhina, leader of the Executive Committee of the FIS abroad
8. Mr Samir Bennegadi, Senior FIS Advisor and Head of Australian FIS Bureau
9. Professor Emile George Joffe, pre-eminent academic expert on Algeria
10. Dr Abbas Aroua, academic expert on Algeria
11. Mr Francois Burgat, academic expert on Algeria
12. Mr Michael McColgan, European human rights and legal expert
13. Professor John Entelis, Fordham University expert on Algeria, North Africa and US-Algerian relations.

More detail about some of the witnesses and their proposed evidence follows:

Former Algerian leaders

Professor Abdul Hamid Brahimi (United Kingdom), former Algerian Prime Minister 1984-88 and currently Director General of the Maghreb Centre for Islamic Studies in London. Professor Brahimi fled Algeria in the mid-nineties after surviving an assassination attempt organised by the Algerian military secret services, and was granted political asylum in the United Kingdom. He has already submitted a preliminary report on Ahmed Zaoui in which he describes in detail the Algerian military regime and its disinformation campaign against the Islamists. In a recent report, he expresses his firm belief that Ahmed Zaoui, as one of the leaders of the FIS, is an innocent man wrongly defamed in the course of that disinformation campaign:

“Mr. Ahmed Zaoui is known as member of FIS, the most popular Islamist party in Algeria. His Islamic political and cultural activities in Algeria led him to leave his country due to the danger he incurred, especially after the cancellation of parliamentary elections in January 1992. All that the Algerian regime has said about Mr Ahmed Zaoui and other members of FIS has been suggested by the military secret services for disinformation and manipulation purposes.

My report ... shows that Mr Ahmed Zaoui cannot be a threat to New Zealand's (or to any other foreign country's) national security. The FIS is an Algerian political party, based on Islamic values, targeting internal objectives such as economic development, social justice, national solidarity, peace, freedom, democracy.”

Mr Mohamed Larbi Zitout (United Kingdom), former Algerian Deputy-Ambassador to Libya and defector. Mr Zitout has met Ahmed Zaoui on a number of occasions. He will provide evidence on how the Algerian regime seeks to discredit its opposition abroad through media and intelligence channels, and how they have succeeded in the case of Ahmed Zaoui, whom Mr Zitout believes is clearly innocent of any wrongdoing. In a report he provided to the RSAA, Mr Zitout remarked –

“The accusation made by the Algerian regime and backed by France, that Mr Zaoui is the "Head of the GIA in Europe", is also baseless. No proof has ever been offered of this, nor is there likely to be any since, to our knowledge, Mr. Zaoui has never been a member of the GIA, let alone in a leadership position in that group. Moreover, Mr. Zaoui is in fact one of those on the list of 8 leading FIS members convicted to death by the GIA. The first in the list, Sheikh Sahraoui, was killed in Paris in July 1995.”

Algerian Intelligence Officials

Colonel Mohammad Samraoui is an ex-officer of the Algerian Secret Services (DCE), and formerly involved in counter-espionage. He defected and was granted asylum in the United Kingdom. He is in a position to provide first-hand evidence on the campaign of the Algerian military regime to discredit the FIS and other Islamic opposition during the nineties, through the provision of media and intelligence disinformation, particularly to Europe. Colonel Samraoui will also testify how he was personally involved in that campaign and how the campaign successfully targeted an innocent Ahmed Zaoui in Belgium. He was the leading witness for the defence in the recent libel case in France involving the Algerian general Khaled Nezzar, and his compelling testimony ensured that Nezzar lost the case. In a recent interview with the Listener, Colonel Samraoui made the following comments about Mr Zaoui:

“Ahmed Zaoui has never been a member of the GIA, or any armed group whatsoever. Ahmed Zaoui is even innocent of the crimes of which he was accused in Belgium and France.... I am sure of this because I was personally involved in the campaign launched against the Islamist leaders in Europe, or which Zaoui was one, in order to discredit them, and to obtain their extradition to Algeria”.

Captain Haroun (aka Hocine Ouguenoune) is an ex-officer of the Algerian Secret Services (DCSA). He defected and was granted asylum in the United Kingdom. As with Colonel Samraoui, Captain Haroun will also provide evidence on the Algerian military regime’s campaign to discredit the FIS and other Islamic opposition through media and intelligence disinformation.

Front Islamique du Salut (FIS) Leaders

Dr Abbassi Madani (Qatar) is a co-founder and leader of the Front Islamique du Salut (FIS). He co-founded the FIS in 1989 and was its leader in 1991 when the FIS won the Algerian elections, only to be arrested and imprisoned by the military for 12 years. He was released from prison in July 2003 and has now left Algeria for medical reasons. To the New Zealand media (see eg NZ Herald “Freed

Algerian makes plea for Zaoui from Malaysia”, 26 August 2003), Dr Madani has already spoken out in support of Mr Zaoui and pledged his commitment “to work towards correcting the mistake New Zealand has made in putting an innocent man behind bars”.

Dr Mourad Dhina is the Head of the Executive Committee of the Front Islamique du Salut (FIS) abroad. Based in Switzerland, he was formerly a leading spokesman for Mr Zaoui’s CCFIS (“Consultative Committee of the FIS” (see RSAA decision para [224]ff). In recent years the Swiss Government has resisted Algerian pressure to extradite Mourad Dhina to Algeria. Dr Dhina has already provided the New Zealand Immigration Service and the RSAA with three affidavits regarding Mr Zaoui, reaffirming Mr Zaoui’s invaluable leadership of the FIS and his innocence of all charges or accusations against him. In one affidavit, he confirmed –

“Mr. Zaoui is a senior member of FIS and he is not and has never been a member of the GIA or any other armed group. We feel that this statement from the National Executive Bureau of the FIS in this respect is more than enough.

All reports linking Mr Zaoui to the GIA or similar groups were mainly triggered by the French secret services. These services are far from being neutral in the Algerian crisis. Their methods of action are not always legal, and New Zealand knows something about such methods through the Rainbow Warrior affair. In addition I should ask why, if he was alleged to be so intimately linked to GIA (the group which has, according to France, committed crimes in French territory) would France not even care to bring Mr Zaoui to France to face trial?

Mr Zaoui has entered New Zealand seeking refuge, freedom and peace. There is no evidence whatsoever that hints to anything else. I remain confident that this will be the conclusion definitively reached by the honorable tribunal vested of the matter of adjudging Mr Zaoui a refugee in New Zealand.”

Mr Samir Bennegadi (Sydney). After fleeing Algeria in 1993, Mr Bennegadi was granted refugee status in Australia and is now a Senior FIS Advisor and the Head of the FIS Bureau in Australia. Based in Sydney, Mr Bennegadi is a supervisor at Sydney’s nuclear power facility and holds a top AISO security clearance. He has known Ahmed Zaoui for many years and is a close friend and colleague. He has already appeared before the RSAA as a witness.

Academic Experts on Algeria, North Africa & Europe

Professor Emile George Joffe (United Kingdom), former Director-of-Studies at the Royal Institute of International Affairs, held a Visiting Fellowship to the Centre for International Studies in the London School of Economics and Political Science. Currently he is the Director of the Centre for North African Studies at the Centre of International Studies, University of Cambridge. He holds a Research Fellowship at the Centre for International Studies at Cambridge University. He is also a Visiting Professor to King's College, London University, an Associate Fellow of the Royal United Services Institute of Strategic Studies

and a Visiting Scholar in the history department at the University of Melbourne in Victoria, Australia.

Professor Joffe has specialised in North African affairs for the past twenty years, taking a particular interest in Algeria since 1986. He has already provided a detailed report on the Algerian crisis and Ahmed Zaoui to the Refugee Status Appeals Authority, and has appeared before the RSAA in person, reaffirming the evidence of other witnesses about the reality of the situation in Algeria and the disinformation campaign the Algerian regime has waged against the FIS since the early nineties. In a detailed report prepared for the RSAA, Professor Joffe remarked –

“Ahmad Zaoui was a well-known and highly respected member inside the Islamic movement in Algeria and was also a member of the religious affairs faculty in Algiers university until 1992. His primary role within the FIS, which he joined in 1991, was in the *Ad-Daw'a* Committee which advised the party on issues of doctrine and religious practice....

In view of the account given above, it is difficult to avoid the conclusion that Mr Zaoui has been the victim of a series of gross injustices and misrepresentations. There is no evidence whatsoever that he has had contact with or been involved in the GIA in any way, shape or form. Indeed, given the intense antagonisms that have developed between the two organisations and Mr Zaoui's unflinching commitment to the FIS, it would have been very surprising if this were not the case. The simple fact is that there is not and has not been any connection between the two organisations since 1994 and, even then, the mainstream pro-FIS groups had had no contact with the GIA after March 1993 and the breakdown in the attempt to create a unified opposition....

The Algerian government, on the other hand, has been trying to convince European governments since 1992 that the FIS is a terrorist organisation. It has regularly protested, in company with the Libyan, Tunisian and Egyptian governments, over European asylum policy towards former FIS members, particularly elected members of the Algerian parliament....

Mr Zaoui seems to have been the victim of a major campaign of disinformation from Algeria, abetted by France. The suggestion that he is a man connected with or sympathising with violence has no grounding whatsoever in the facts as recounted here.”

Dr Abbas Aroua is the Director of the Hoggar Institute for Human Rights studies in Switzerland, focusing on North African countries. He is an expert on Algeria and has coordinated one of the most thorough and acclaimed investigations into the GIA, the terrorist group which Mr Zaoui was falsely accused of belonging to. He knows and has met Ahmed Zaoui on several occasions, and has already provided the RSAA with a detailed report on Mr Zaoui's victimisation by Algerian intelligence and media disinformation. Relevant conclusions from that report are:

“I believe that in the 1990s the Algerian regime viewed Mr. Zaoui as a significant political threat who had to be neutralized or eliminated ... because he is a popular and influential figure. This is the reason he was elected to his parliamentary seat. His family background (son of a charismatic Islamic scholar respected throughout the country and even by the highest authorities), his specialized knowledge of religion and track-record of honesty and service to citizens have all contributed to

making him a political figure people listened to and widely respected by a wide cross-section of the population. Moreover, there is the fact that President Bouteflika himself sought to consult Mr Zaoui which is further evidence of his political weight, his credibility and the public legitimacy which he holds.

I would also venture to suggest that if New Zealand national interests are a subject of debate in the Zaoui case, then in the medium and long-term the interests of New Zealand people ought to lie with the FIS and with its leaders such as Mr Zaoui, rather than with the Algerian military regime – a junta that in my view is bound to disappear eventually.... Mr Zaoui in my opinion would also have much to offer the New Zealand community in a positive, constructive manner.

Dr Francois Burgat is a French specialist on Algeria, formerly with the French National Centre for Scientific Research and currently Head of the French Cultural Centre in Sanaa (Yemen). He too has already provided the RSAA with a detailed report on Mr Zaoui and his victimisation by Algerian intelligence and media disinformation. In that report, he remarked –

“I am aware of accusations claiming that Mr Zaoui has been involved in the Armed Islamic Group (GIA), and even that he was the “Head of the GIA in Europe”. These are baseless statements.... The GIA is widely recognised as a creation of the Algerian secret service.

There is a campaign of repression in Algeria launched by the military regime against members of the FIS – a democratically-elected party which had dared to win two elections in a row. I should add that the biggest threat to the Algerian regime is its fear of the ballot box and of moderate legal political opponents such as the FIS and Ahmed Zaoui. The regime prefers political violence and attempts to criminalize its political opponents in order to then "justify" its own widespread state terror.

In my emphatic view, Ahmed Zaoui could not possibly represent any threat, either physically, economically, or politically to New Zealand interests.

In my opinion, if Mr Zaoui was granted political asylum in New Zealand, this would not only not represent a danger for New Zealand but it would on the contrary demonstrate the high level of understanding that the New Zealand authorities have of the complexity of the crisis in many countries of the Arab world. It would demonstrate an ability to deal with difficult issues in the Algerian context on a more sophisticated, more intelligent and more humane basis than the highly dangerous and repressive stance adopted by the Algerian military dictatorship.”

Legal Expert

Mr Michael McColgan (United Kingdom) is an expert on European Human Rights, who recently co-authored the Federation of International Human Rights article, “France – Paving the Way for Arbitrary Justice”. Mr McColgan provided the RSAA with a detailed report which studied and criticised Mr Zaoui’s Belgian and French convictions and concluded that they are unsafe.

“In general, I find the documents which I have read relating to Mr Zaoui’s trials in Brussels and Paris quite inadequate as evidence of due process. The laws under which he was prosecuted are vaguely worded, leaving too much room for speculative interpretation and application. The state’s case, compiled by the investigating magistrates and the prosecution, in both French and Belgian

jurisdictions, is long on innuendo and suggestion, but short on substantive proof. The trials themselves were clearly brief and perfunctory, largely if not exclusively paper exercises. His defence counsel could not possibly have taken instructions from him, and moreover should not have been representing both him and Mr Boudjaadar. And even if his defence counsel had not had a conflict of interest, the totally unacceptable passage of time together with the cost and time involved in gaining access to the dossier, would have made it impossible for him to mount a proper defence and hence have a fair trial.”