

MEMORANDUM

To: OARDEC, Administrative Review Boards  
U.S. Naval Base Guantanamo Bay, Cuba

From: Stephen Oleskey, Esq.  
Robert Kirsch, Esq.  
Doug Curtis, Esq.  
Melissa Hoffer, Esq.

Date: March 30, 2005

Re: Belkacem Bensayah ISN# 10001  
Saber Lahmar ISN# 10002  
Mohamed Nechla ISN# 10003  
Mustafa Ait Idir ISN# 10004  
Lakhdar Boumediene ISN# 10005  
Hadj Boudella ISN# 10006

Memorandum In Support of the Release and the Return to Bosnia of Detainees Bensayah,  
Lahmar, Nechla, Ait Idir, Boumediene and Boudella (u)

(u) Introduction

- (u) We have attached to this memorandum six submissions dated March 31, 2005, explaining why the Administrative Review Board (Board or ARB) should recommend that the Department of Defense (DOD) release each of the detainees identified above. We submit these materials pursuant to the May 11, 2004 Order by the Deputy Secretary of Defense (OSD 06942-04) (ARB Order) and the September 14, 2004 Memorandum from Navy Secretary Gordon England (England Memorandum), the civilian officer designated to operate and oversee the Board proceedings under the ARB Order. This Memorandum briefly summarizes facts, issues and Combatant Status Review Tribunal (CSRT) decisions of significance to all six of our clients. All of these matters address factors important to the deliberations of each Board reviewing our clients' status for release under the ARB Order and the England Memorandum.
- (u) We submit this Memorandum, and all of the materials and submissions attached to it, without waiving any claims made, or which could be made, in the habeas corpus action captioned *Lakhdar Boumediene et al. V. George W. Bush et al.*, 04-CV-1155 (USDC DC), now pending before the United States Court of Appeals for the District of Columbia Circuit (No. 05-5062). We also specifically request, for the reasons summarized below, that all six of our clients be reviewed for release by a single Board. We hereby withdraw our separate unclassified filings of February 1, 2005 and replace them with the submission being made at this time for all six clients.

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(u) The United States has treated the cases of these six men as closely related since even before they were taken into custody. All six were arrested and later transported to detention facilities at the U.S. Naval Base at Guantanamo Bay based on a concern (never substantiated) that, in the fall of 2001, they were involved in a plot or conspiracy to bomb the U.S. and British Embassies in Sarajevo. From their October 2001 arrests in Bosnia through their CSRT proceedings in the fall of 2004, DOD has treated the six as if they were close associates (though in fact only four were good friends) involved in a terrorist conspiracy in Bosnia and their dispositions therefore as closely related. PowerPoint presentations and other summaries in their CSRT files often refer to our clients as "The Algerian Six." A significant portion of the documents and allegations that make up the CSRT records of all six are common ones, and many of the bases evaluated by CSRT panels addressing whether to classify the men as enemy combatants also are the same. Therefore, in our submissions for each, we identify, discuss and deconstruct the common themes and claims previously relied upon to justify our clients' extraordinary rendition from Bosnia to Guantanamo (in the face of an order for their immediate release issued January 17, 2002 by the Bosnian Supreme Court) and their continued detention in Guantanamo.

(u) All six were born in Algeria, were schooled there and lived there through their teenage years. Each left Algeria during the late 1980s or early 1990s, and by 1997, all six had established their homes in Bosnia. All were married, four to Bosnian women, and all had children born in Bosnia who are Bosnian citizens (there are twenty children in all). Five of the six men worked in mid-level administrative or technical positions for Muslim charitable organizations involved in the U.S. led reconstruction of Bosnia. They were not politically active. These men do not fit the mold or profile of many of those individuals that DOD claims to have apprehended in or near battlefields who can be said by their actions or words to have shown themselves to be anti-Western terrorists or religious extremists. And unlike virtually anyone else known to be detained at Guantanamo, all available evidence of the alleged act for which they first were detained in Bosnia - a bombing plot against the U.S. and British Embassies- was extensively reviewed for three months by Bosnian investigators and courts in the Fall of 2001 which then ordered their release for lack of evidence to support this claim.<sup>1</sup>

(u) In contrast to many others confined at Guantanamo, none of the six has ever borne arms against the U.S. or its allies, none was captured on or near a battlefield, and none was found in possession of any weapons, bombs, bomb making equipment or other tangible evidence of intent to commit a violent or terrorist act that could endanger U.S. or allied interests. There is no credible evidence in their CSRT files that any of them expressed extreme anti-American or anti-Western views; none of them has ever trained in Afghanistan or at any other terrorist location. There is also no meaningful intelligence

(u) <sup>1</sup> As detailed in our six submissions, other Bosnian courts, its Parliament and its ruling Council of Ministers have all taken steps since January 2002 directed at securing the return of the six men as having been improperly and unlawfully rendered from Bosnia to Guantanamo under extreme U.S. pressure. Today, the Bosnian government stands ready to negotiate for the return of the six as soon as the ARB process is concluded.

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information ever obtained from questioning any of the six men for over three years in Guantanamo - not because they have concealed such information - but because, as a thorough review of their classified files, coupled with the information uncovered in our investigation and detailed in our submissions makes plain, they do not possess such information.<sup>2</sup> Recommending that they be held indefinitely in Guantanamo, instead of being returned to Bosnia whose government actively seeks their release, would accomplish no meaningful national security or intelligence goals, and would be unjust and punitive to men who have already suffered extensively because of erroneous intelligence provided to DOD in 2001.

(u) There Was No Embassy Plot  
The Six Are Not Enemy Combatants

(SBU) (b)(1)

[Redacted]

(u) (b)(1) [Redacted] by October 21, 2001, all six had been arrested and jailed by Bosnian authorities.<sup>3</sup> Press reports at the time were filled with

(u) <sup>2</sup> While previous DOD CITF "Detainee Guidance Assessments for Release or Detention" for some of the six men (b)(1) [Redacted] in other cases, as discussed in our submissions, these assessments do not withstand a careful scrutiny and analysis of the CSRT files upon which the assessments are based. These Assessments plainly rely on the same flawed and now discredited and unreliable information (b)(1) [Redacted]

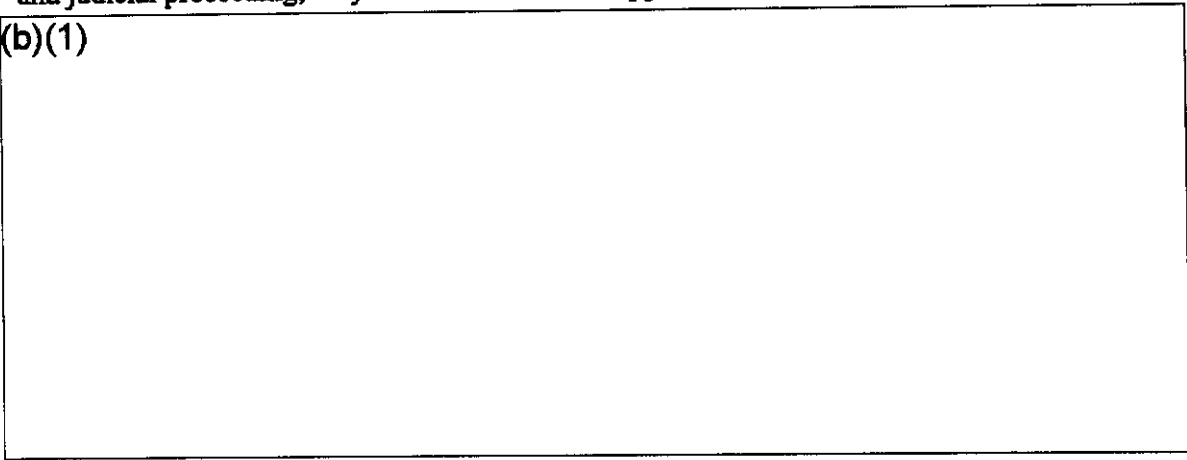
(b)(1) [Redacted] These Assessments assume that this original information (much of which is original raw field data from unidentified "sources") is credible and reliable and that since our clients have never admitted to facts supporting this information or to any other significant fact of intelligence value, they must necessarily still be withholding important intelligence information. As we demonstrate in our submissions (the first opportunity we have had to comment on the considerable body of file information concerning our clients), the principal information relied upon for previous assessments (as well as by most of the CSRT panels) is neither credible nor reliable. The previous CITF Assessments of both Threat Level and Intelligence Value are therefore not reliable indicators of whether our clients now pose a danger to the U.S. or other allied interests or should be held indefinitely at Guantanamo for further interrogation.

(u) <sup>3</sup> Mr. Bensayah was the first to be arrested, on October 8, 2001. The initial charge against him was not terrorism-related, but that he had made false statements in connection with seeking citizenship in Bosnia - an immigration violation. He had originally entered Bosnia using a passport bearing an alias. However, as explained in the submission made on his behalf, in the late 1990s, after marrying a Bosnia woman, he had

leaked stories of the claimed plot. The United States closed the Embassy for a day or two, and then reopened it without incident.

- (u) The six men ultimately were held in Bosnian jails for approximately 90 days. During that period Bosnian investigators, working under an investigative judge of the Bosnian Supreme Court, reviewed telephone records, computer files, documents, so-called pocket litter and a variety of other materials collected from the six in connection with their arrests. The Bosnians also interviewed witnesses, requested the information supporting the U.S. arrest request and otherwise investigated in an effort to substantiate the charges being considered as a result of the U.S. allegations. Despite this extensive investigation and judicial proceeding, they found no evidence supporting the alleged bombing plot.

(SBU) (b)(1)



- (u) Certain aspects of that January 17-18, 2002 night are significant to the considerations of this Board. First, while Messrs. Nechla, Boumediene, Ait Idir and Boudella were good friends and socialized frequently, of those four, only Mr. Boumediene knew Mr. Bensayah, because Mr. Boumediene (head of the Red Crescent Society of the United Arab Emirates orphans department in Sarajevo) on rare occasions had given food and clothing to Mr. Bensayah for Mr. Bensayah's young children. And, of those five, only Mr. Bensayah knew Mr. Lahmar. The two had been casual acquaintances since the two Algerians met, by chance, in 2000, in a marketplace in Zenica, Bosnia where Mr. Bensayah lived and Mr. Lahmar regularly visited his young son by his former wife.

- (FOUO//LES) The fact that (b)(7)(A) [redacted] (b)(7)(A) [redacted] has been a consistent (though often disregarded) theme in the information collected from all six, beginning during their detention in Bosnia and continuing throughout every episode of interrogation during which the question was raised at Guantanamo. Generally, the classified file reflects that the U.S. intelligence evaluations of the six men have ignored these facts and instead treated the six as close associates by relying on a "six degrees of separation" analysis.

voluntarily reported the use of the former alias to Bosnian authorities, and obtained corrected documents in his own name.

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(u) While those facts clearly were not persuasive either for interrogators or for the majority of the CSRT panels, in light of the conclusions reached by two of the CSRTs and the obligations imposed by the ARB Order, this Board must assess anew the claims that there was a close tie or connection among the six which would support the bombing plot claim.

(~~SECRET~~) The question of whether any plot against the U.S. Embassy ever existed was considered squarely by one CSRT, which found the claim unsubstantiated. (b)(1)

(b)(1)

(u) The absence of substantial, credible or corroborated evidence of a threat against the U.S. Embassy is important for another critical reason. Among other things, this Board should consider whether the six men have properly been classified as enemy combatants. According to the England Memorandum "[a]n enemy combatant is defined as an individual who was part of or supporting Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces." ( See England Memorandum, footnote 1.) Without specific, credible, corroborated evidence of a threat to bomb the Embassy – indeed, in the face of a conclusion that no such threat existed – there is no suggestion that any of the six ever was engaged in any activities covered by this definition of an enemy combatant. Consequently, this Board should evaluate the extent to which any of the six properly was classified as an enemy combatant – a question which can now be considered, for the first time, with the benefit of the two CSRT analyses provided above, as well as other detailed analysis in our six submissions.

(~~SECRET~~) (b)(1)

(u) None of the Six is Linked to the GIA  
None Has Any Intelligence Value for the U.S.

(S) All six CSRT panels found that the men were all members of or linked to the Armed Algerian Group (GIA), a Tier 2 terrorist organization. (b)(1)  
(b)(1) This finding is the principal basis for assessing enemy combatant status for all six men, based not on any action that they took or planned against the U.S., but, rather, based on their alleged membership in an organization that had the potential to take such action.

(u) The facts about the inception and status of the GIA are not in dispute. State Department documents report that the GIA "began its violent activities in 1992 after Algiers voided the victory of Islamic Salvation Front (FIS) - the largest Islamic opposition party - in the first round of legislative elections in December 1991." *Patterns of Global Terrorism, 2003* (U.S. Department of State, June 2004). Similar information is contained in the *Terrorist Organization Reference Guide* (U.S. Dept. of Homeland Security January 2004), See Encl. (2) to Lahmar CSRT Decision Report at Exhibit R-3, attached to Joint App. at Ex. E(e). That guide states that the GIA "aims to overthrow the secular Algerian regime and replace it with an Islamic state." The guide characterizes the GIA's area of operation as "Algeria."

(S) As it reviews the specific submissions included on behalf of each of these men, the Board will see that the repeated GIA assertions constitute errors not addressed by the CSRT proceedings. None of the six men remained long in Algeria during the period while the GIA was active there, and some were gone even before the December 1991 election that precipitated the GIA's terrorist agenda. The foreign ministry of Algeria, through its Rome Embassy, provided us with certifications that each of the men was born in Algeria. We would not have received such cooperation if the Algerian government believed any of the six was a member of the GIA. Similarly, Mr. Ait Idir took the time to register his children with the Algerian embassy after each was born, and Mr. Nechla placed a call to the Algerian Embassy in Rome upon learning he was to be arrested in October 2001.<sup>5</sup> None of those actions are those of a man who is a member of or associated with an organization that violently opposes the Algerian government.

(S) Also pertinent to the Board's evaluation of this common allegation is the conclusion reached by the CSRT Tribunal that closely reviewed the GIA issue. (b)(1)

(b)(1)

(u) <sup>5</sup> See Encl. (2) to Nechla CSRT Decision Report at Ex. R-22 (phone records), attached to Joint App. at Ex. H(x).

*Decision* at para. 1(e), attached to Joint App. at Ex. D(b). This Board also should look closely at the basis for the conclusory language about the GIA that litters the files of all six men.

~~(S//NF)~~ Even where alleged GIA links extend beyond the list, which was analyzed and discredited by the Boudella Tribunal, the files provided to us by the Justice Department show the alleged GIA links are suspect, at best. (b)(1)

(b)(1)

~~(S//NF)~~ (b)(1)

(b)(1)

~~(S//NF)~~ Perhaps most important for the deliberations of this Board is information not available to the CSRT Tribunals. Near the end of the (almost simultaneous -- not surprisingly) CSRT process for the six men, newly available exculpatory evidence bearing on the GIA claim was made available, but only to two members of the CSRT panel evaluating Saber Lahmar. (b)(1)

(b)(1)

~~(S//NF)~~ (b)(1)

(b)(1)

(u) Our analysis of Mr. Lahmar's CSRT classified file and our investigations in Bosnia over the last six months strongly suggest that the source of the Lahmar "smear campaign," of the purported list of Algerians living in Bosnia with GIA connections (see footnote 6 below), and of the claim that Muslim charitable entities operating in Bosnia and, in particular, the Saudi High Commission were fronts for terrorist groups, was Ali El Hamad, Mr. Lahmar's ex brother-in-law. Hamad is serving a lengthy jail term in Bosnia for various crimes. He has been plying U.S. intelligence for years with claimed facts about Muslim extremists and groups he says are operating in Bosnia, in an effort to barter his way out of jail. A recently obtained July 2004 letter from Hamad to then SFOR Commander U.S. Major General (b)(6) in Bosnia shows that General (b)(6) and SFOR (the NATO sponsored, U.S. commanded Stabilization Force responsible for keeping the peace in Bosnia) did not believe Hamad's stories.<sup>7</sup>

(S) This new development is significant for this Board. (b)(1)  
(b)(1)  
(b)(1) The less obvious but equally important revelation, for intelligence evaluation purposes, is that Hamad has shown himself in his letter to General (b)(6) to be a principal source of the claim that al Qaeda was connected with many Islamic humanitarian organizations engaged in relief work in Bosnia during and after the 1992-1995 war and allegedly lead by the Saudi High Commission for Relief. Hamad's letter to General (b)(6) reveals that information from Hamad is no longer accepted either by U.S. intelligence or on the ground in Bosnia. The fact that Hamad is at the heart of many of the key suspicions leveled at each of our clients explains why none have anything of utility to disclose to interrogators about Muslim charities operating in Bosnia. (b)(1)  
(b)(1) The fact that Hamad's duplicity has not been well publicized may explain why information he supplied is still relied on and the principal reason some of six (b)(1) in previous CITF Assessments.

(u) As the Board will see in conducting its review of the relevant files, while none of the six men has been interrogated at Guantanamo about the debunked Embassy plot, and although there is little in their interrogation summaries about the GIA, all have been questioned about Muslim charity organizations operating in Bosnia. Not surprisingly, the files of each man include many common evaluations assessing the terrorist links of such charitable organization, including some for which the six have worked or with which they have been associated at some point, sometimes before moving to Bosnia. For at least three significant reasons, however, this Board should look critically at whether those

(u) <sup>7</sup> Hamad's July 26, 2004 letter to General Packett is attached to the Joint Appendix at Exhibit M.

(u) <sup>8</sup> According to a Bosnian new service, a NATO Sarajevo HQ spokesman recently reported that "the possibility of terrorist threat in BiH is very low" and that "NATO does not have a single piece of information indicating the possibility of a terrorist attack in BiH." Joint Appendix at Exhibit P.



charitable links truly provide a basis for attributing intelligence value to any of these men. We respectfully submit they do not.

(u) First, consider the positions each man held with respect to the organization that employed him. All were, at most, in middle management or technical positions. None were in a position to control fund-raising or the distribution of significant amounts of money.<sup>9</sup> The limited influence of those positions, combined with the fact that none of the organizations was ranked as a high tier target organization, suggests that none would have had access to the type of information likely to be of intelligence value in 2005.

(~~SECRET~~) Second, it is improbable that these men have information of any current intelligence value about organizations which they may have worked for many years ago (in some cases over a decade ago). (b)(1)

(b)(1)

(b)(1) The Board should inquire into the chronology of the relevant determinations and whether each man's involvement - whether due to timing or degree of association - truly supports a conclusion about intelligence value.

(u) Finally, because other bases for arresting and continuing to detain the men appear to be invalid, the Board must consider the ruling of the United States Supreme Court in *Hamdi v. Rumsfeld* \_\_\_ U.S. \_\_\_, 124 S. Ct. 2633 (2004). The Court ruled that it was illegal to detain solely for purposes of collecting intelligence. While the *Hamdi* opinion was in the context of a citizen, that factor likely makes no difference in the context of a detention without charges and where there is no urgent security threat. See footnote 8, *supra*.

(u) Bosnia Has Written to The U.S. Seeking the Return of the Six

(u) The final common factor the Board should consider as it evaluates these six cases is that the government of Bosnia has written to the United States seeking the return of the six.<sup>10</sup> We are aware of a recent written response to this request from Secretary Condoleezza Rice, copies of which likely will be available to this Board through the Department of State.

(u) <sup>9</sup> For example, Mr. Ait Idir was the computer manager for one charity; Messrs. Boumediene and Nechla managed a local aid distribution programs for orphans for branches of the Red Crescent Society, and Mr. Boudella also managed orphan assistance programs. Each had a substantial hierarchy superior to him; none controlled these organizations or their finances.

(u) <sup>10</sup> The Board also should take note of the fact that at least as early as December 2004 the Department of State opened communications with the Algerian government, inquiring into whether Algeria would accept the six. That inquiry alone suggests that the DOD and State have considered these men appropriate for release.

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(u) All of the men wish to return to their wives and children in Bosnia, and to resume their normal lives to the extent they are able. The willingness of the Bosnian government to accommodate those requests, combined with the support of family, business associates and others - all as evidenced by the materials attached to the submissions which follow - show that the necessary prerequisite for recommendations of repatriation exist.

(u) Conclusion

(u) The ARB Order and England Memorandum require this Board to carefully examine evidence and to rely only on that derived from credible sources. We have had access only to limited information - most, but not all - of what was relied upon by the six Tribunals at Guantanamo last Fall. What we have seen, as outlined above, raises serious questions about the integrity of the DOD process, due to the quality of the intelligence information provided to and relied on by DOD in that process. And none of the CSRT panels had the opportunity to consider all of the factors highlighted here, and in the attached submissions.<sup>11</sup> We respectfully submit that the review required of this Board will show the errors unwittingly provided to and relied on in earlier proceedings and assessments.

(u) Each of these six men is suffering physically, emotionally and psychologically. Some have described symptoms that might benefit from prompt medical attention; all have indicated that their requests for such attention now are not heeded. And as set out in the attached submissions, these detainees exhibit symptoms of those suffering extreme psychological injuries. The continued confinement of these men by the DOD will only exacerbate those conditions.

(u) For all of the foregoing reasons, and as set out in more detail in the attached submissions, all of which are hereby incorporated by reference into the materials submitted on behalf of each of them, this Board should recommend that the Department of Defense, through the Department of State, return Belkacem Bensayah, Saber Lamar, Mohamed Nechla, Mustafa Ait Idir, Lakhdar Boumediene and Hadj Boudella to their families in Bosnia.

(u) We are prepared to answer the Board's questions or to provide additional information.

Respectfully Submitted,

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(u) <sup>11</sup> It is not our goal to criticize DOD with respect to these intelligence failures. Indeed, each day press reports include even more indications that many inside the government are coming to recognize that some of the information relied on in the war on terror was not well-founded. See *New York Times*, March 29, 2005, page 1.

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**Exhibit A.**  
Photographs of Messrs.  
Boumediene, Nechla,  
Lahmar, Boudella, Ait Idir,  
and Bensayah

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MUSTAFA AIT IDIR



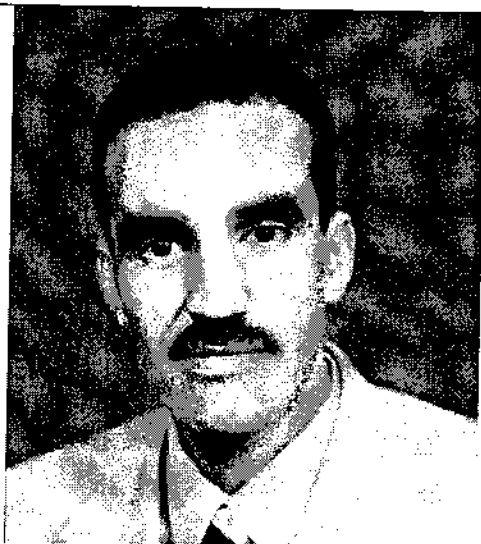
MOHAMED NECHLA



BELKACEM BENSAYAH



HADJ BOURELLA



LAKHDAR BOUMEDIENE



SABER LAHMAR

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**Exhibit B.**

Summary of Action of the  
Government of Bosnia and  
Herzegovina Concerning the  
Return of the Six Detainees  
Taken from Bosnia and  
Herzegovina to the U.S.  
Prison at Guantanamo Bay,  
Cuba (prepared by counsel),  
with attachments

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## Summary of Actions of the Government of Bosnia and Herzegovina Concerning the Return of the Six Detainees Taken From Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba

Submitted to the Administrative Review Board in the Matters of Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudella, Lakhdar Boumediene, Saber Lahmar, and Mohamed Nechle

1. One of the factors that this Administrative Review Board (the "Board") is directed to consider in evaluating the continued detention of persons detained at Guantanamo Bay is whether the person's home State "will or will not accept return" of the person and "the circumstances of, or any conditions related to, such return."<sup>1</sup>
2. This document is submitted to advise the Board of the specific actions taken by the Government of Bosnia and Herzegovina ("Bosnia") that demonstrate its willingness to accept return of the six Guantanamo detainees taken from the territory of Bosnia by U.S. forces on or about January 19, 2002. Those detainees are Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudella, Lakhdar Boumediene, Saber Lahmar, and Mohamed Nechle (together, the "Detainees").
3. The six Detainees are of Algerian descent but lived and resided in Bosnia with their families at the time of their forced removal to Guantanamo Bay. Four Detainees are Bosnian citizens and two are long-term residents. Five Detainees (Ait Idir, Boudella, Boumediene, Lahmar, and Nechle) were arrested between October 18 and 21, 2001 at the express request of the United States and placed in investigative detention in Sarajevo, the Bosnian capital. The sixth (Bensayah) had already been arrested by order of the Municipal Court in another locality, Zenica, on October 8, 2001 and was transferred to Sarajevo when his detention in Zenica ended on January 16, 2002.
4. The six men were suspected by the United States of planning to bomb the embassies of the United States and the United Kingdom, but they have never been charged with such a crime. On the contrary, the three-month investigation by Bosnian authorities while the six were detained in the fall of 2001 did not turn up any evidence linking them to any terrorist plot. For example, although it was publicly reported that Mr. Bensayah had a number of phone conversations after September 11, 2001 with a senior Al Qaeda member in Pakistan, expert analysis of Mr. Bensayah's telephone records—conducted by order of the Supreme Court of the Federation of Bosnia and Herzegovina—failed to find any support for this allegation.
5. On January 17, 2002, the office of the prosecutor of the Federation of Bosnia and Herzegovina informed the investigative judge of the Supreme Court that there was no reason to detain the six men any further. That day, the investigative judge ordered the six men immediately released from detention.
6. On the same day, the Human Rights Chamber for Bosnia and Herzegovina issued an order on provisional measures in a case brought by four of the Detainees (Boudella, Boumediene, Nechle,

<sup>1</sup> Department of Defense Designated Civilian Official, Memorandum Dated September 14, 2004, Regarding Implementation of Administrative Review Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba, Encl. (3) ("Administrative Review Board Process"), para. 3.f.(1)(d)(6).

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and Lahmar). The Chamber's order directed the Government of Bosnia to "take all necessary steps to prevent that the applicants are taken out of Bosnia and Herzegovina by the use of force."<sup>2</sup> Under the Dayton Peace Agreement, the Chamber's order has the force of domestic law in Bosnia.<sup>3</sup>

7. Notwithstanding the rulings of the Supreme Court and the Human Rights Chamber, the six men were forcibly removed from Bosnia by U.S. forces on January 19, 2002, and flown to the U.S. Naval Prison at Guantanamo Bay, Cuba.

8. On October 11, 2002, the Human Rights Chamber held that the removal of Detainees Boudella, Boumediene, Nechle, and Lahmar occurred in violation of the law of Bosnia.<sup>4</sup> The Chamber also found that the expulsion violated the provisions of the European Convention on Human Rights. On April 4, 2003, the Human Rights Chamber issued similar decisions regarding Detainees Bensayah and Ait Idir.<sup>5</sup>

9. In all three of its decisions, the Human Rights Chamber required the Government of Bosnia to take various specific actions to assist the Detainees, including "to use diplomatic channels in order to protect the basic rights" of the Detainees, to provide them with "consular support," and to "retain lawyers ... in order to take all necessary action to protect the applicants' rights while in U.S. custody and in case of possible military, criminal or other proceedings."<sup>6</sup> In the Human Rights Chamber's decision of April 4, 2003, regarding Detainee Ait Idir, the Chamber specifically ordered the Government of Bosnia "to take all possible steps to obtain the release of the applicant and his return to Bosnia and Herzegovina."<sup>7</sup>

10. The Government of Bosnia has recognized its obligations under the Human Rights Chamber's decisions and has taken several actions demonstrating its willingness to accept the Detainees' return, as detailed here.

11. Although the six detainees were deprived of their Bosnian citizenship and permanent resident status during the investigation period, the Bosnian citizenship of Detainees Ait Idir, Boumediene,

<sup>2</sup> *Boudella, Boumediene, Nechle and Lahmar v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Human Rights Chamber for Bosnia and Herzegovina, Cases Nos. CH/02/8679, CH/02/8689, CH/02/8690, CH02/8691, Order for Provisional Measures and on the Organization of the Proceedings (Jan. 17, 2001) (attached hereto).

<sup>3</sup> See General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 6, Article XI, para. 6 (attached hereto and available at [http://www.ohr.int/dpa/default.asp?content\\_id=374](http://www.ohr.int/dpa/default.asp?content_id=374)).

<sup>4</sup> *Boudella, Boumediene, Nechle and Lahmar v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Human Rights Chamber for Bosnia and Herzegovina, Cases Nos. CH/02/8679, CH/02/8689, CH/02/8690, CH02/8691, Decision on Admissibility and Merits (Oct. 11, 2002) (available at <http://www.hrc.ba/database/decisions/CH02-8679%20BOUDELAA%20et%20al.%20Admissibility%20and%20Merits%20E.pdf>) ("*Boudella et al. Human Rights Chamber Decision*").

<sup>5</sup> *Bensayah v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/02/9499, Decision on Admissibility and Merits (April 4, 2003) (available at <http://www.hrc.ba/database/decisions/CH02-9499%20Bensayah%20Admissibility%20and%20Merits%20E.pdf>) ("*Bensayah Human Rights Chamber Decision*"); *Ait Idir v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/02/8961, Decision on Admissibility and Merits (April 4, 2003) (available at <http://www.hrc.ba/database/decisions/CH02-8961%20Ait%20Idir%20Admissibility%20and%20Merits%20E.pdf>) ("*Ait Idir Human Rights Chamber Decision*").

<sup>6</sup> *Boudella et al. Human Rights Chamber Decision*, paras. 330-331; *Bensayah Human Rights Chamber Decision*, paras. 217-218; *Ait Idir Human Rights Chamber Decision*, paras. 167, 170.

<sup>7</sup> *Ait Idir Human Rights Chamber Decision*, para. 168.

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Boudella, and Nechle has been restored following orders of the Supreme Court of the Federation of Bosnia and Herzegovina. On January 31, 2005, the Bosnian Minister of Justice, Slobodan Kovac, confirmed in a statement that these four individuals are citizens of Bosnia.<sup>8</sup> Senior representatives of the Ministry of Justice similarly assured counsel for the Detainees in a meeting on January 17, 2005, that all six Detainees are entitled to repatriation to Bosnia.

12. On November 18, 2003, the Bosnian Council of Ministers—the executive body with primary responsibility for carrying out policies and decisions in the fields of defense, intelligence, and foreign policy—determined that the Ministry of Justice should assign, as soon as possible, a person who would visit Bosnian citizens detained at Guantanamo Bay.

13. On April 21, 2004, the Commission for Human Rights, Immigration, Refugees and Asylum of the Parliament of Bosnia and Herzegovina formally accepted the conclusions and measures ordered by the Human Rights Chamber. The Commission requested all relevant institutions of Bosnia urgently to implement the Chamber's decision and to initiate a procedure with the United States authorities for the return of Guantanamo detainees to their homes in Bosnia and Herzegovina. The Commission's report was adopted by the full House of Representatives of the Parliament on May 11, 2004.

14. On June 24, 2004 the Bosnian prosecution authorities formally ended all investigations regarding the six detainees with regard to any suspicion of terrorism. Mr. Zdravko Knežević, Chief Prosecutor of the Federation of Bosnia and Herzegovina, confirmed in an interview on January 18, 2005 with Attorney Stephen Oleskey, counsel for the Detainees, that the investigations regarding suspicion of terrorist acts had been completed and closed. To our knowledge, the six Detainees are no longer the subject of any terrorism-related investigation.

15. Between July 27 and 29, 2004, Mr. Amir Pilav of the Bosnian Ministry of Justice visited Guantanamo Bay and met with four of the Detainees. Mr. Pilav later wrote a report to the Ministry of Justice dated August 10, 2004 and, at the request of the Council of Ministers, an annex dated October 18, 2004, that contained detailed recommendations for actions to be taken with regard to the detainees. The annex was forwarded to the Council of Ministers on October 21, 2004. The cover letter to the annex, signed by Bosnian Minister of Justice Slobodan Kovac, recommended that the Ministry of Justice be tasked with fulfillment of the proposed recommendations and appoint an official to lead implementation.

16. At its session on November 16, 2004, the Bosnian Council of Ministers adopted the recommendations of the Ministry of Justice as the official policy of the Government of Bosnia and Herzegovina. Recommendation 9 of the recommendations adopted by the Council of Ministers stated that it was necessary to start negotiations with the United States Government for the repatriation of the Detainees to Bosnia.

17. On January 31, 2005, the Bosnian Minister of Justice, Slobodan Kovac, issued a statement declaring that he would give full assistance within his authority for the resolution of this issue. The Minister of Justice indicated that the return of two Detainees, Saber Lahmar and Belkacem Bensayah, might be accomplished through extradition procedures, and that the Ministry of Security of Bosnia should take a lead role in securing the return of the remaining four Detainees.

<sup>8</sup> Statement of Minister of Justice Slobodan Kovac (Jan. 31, 2005), attached hereto with unofficial translation.

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The Minister of Justice stated that he would recommend this course of action to the Council of Ministers of the Government of Bosnia.<sup>9</sup>

18. On February 1, 2005, the Council of Ministers unanimously approved the initiative of Prime Minister Adnan Terzić to send a formal letter to the United States Government requesting the return of the Bosnian Detainees. On March 11, 2005, the Minister of Justice confirmed that the Bosnian Government had sent such a letter to the United States Government and that it was awaiting a response. To our knowledge, the Bosnian Government's letter has not been publicly released.

19. These developments demonstrate beyond doubt that the Government of Bosnia is committed to the return of the six Detainees from Guantanamo to Bosnia and is eager to discuss the matter with the United States.

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<sup>9</sup> Statement of Minister of Justice Slobodan Kovac (Jan. 31, 2005), attached hereto with unofficial translation.

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**Exhibit B(a).**  
Human Rights Chamber  
Order for Provisional  
Measures (January 17, 2002)

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**UNCLASSIFIED**HUMAN RIGHTS CHAMBER  
FOR BOSNIA AND HERZEGOVINADOM ZA LJUDSKA PRAVA  
ZA BOSNU I HERCEGOVINU

**ORDER FOR PROVISIONAL MEASURES  
AND THE ORGANISATION OF THE PROCEEDINGS**

(Article X paragraph 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina; Rule 33 paragraph 3, Rule 36 paragraph 2, Rule 49 paragraph 3 and Rule 50 of the Rules of Procedure)

Case no. CH/02/8679, CH/02/8689, CH/02/8690, CH/02/8691

Hadž BOUDELLAA, Boumedlene LAKHDAR, Mohamed NECHLE, Saber LAHMAR

v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina,

Considering that the above-mentioned case is now pending before the Chamber,

Considering that at this stage of the proceedings it does not appear that the Chamber lacks jurisdiction to decide the merits of the case;

Considering that it appears likely that if provisional measures are not ordered, the applicant will suffer harm which cannot subsequently be remedied;

**ORDER** the respondent Parties, Bosnia and Herzegovina, and the Federation of Bosnia and Herzegovina, to take all necessary steps to prevent that the applicants are taken out of Bosnia and Herzegovina by the use of force;

**DETERMINE** that this order shall remain in force until 11 February 2002;

**DIRECT** the Registrar to transmit copies of the present Order to the Office of the High Representative, the OSCE, UNMIBH and IPTF;

**DELEGATE** to the Registrar the authority required to ensure that this Order is carried out.

Issued in Paris/Sarajevo, on 17 January 2001.

(signed) Ulrich GARMES  
Registrar of the Chamber



(signed) Michèle PICARD  
President of the Chamber

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**Exhibit B(b).**  
Supreme Court of the  
Federation of Bosnia and  
Herzegovina Decision  
(January 17, 2002)

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The Supreme court of Federation Bosnia and Herzegovina, namely investigative judge Zdenko Eterovic in investigation case against accused **Belkacem Bensayah and others**, for criminal act from article 168, para 1 of the Criminal Code of Federation Bosnia and Herzegovina, with regards to article 20, para 1 of the Criminal Code of Federation Bosnia and Herzegovina, on grounds of article 189 of the Law on Criminal Procedure, on 17 January 2002 brought:

DECISION

*Against accused:*

1. **Belkacem Bensayah**, son of Ahmed, mother Alija, maiden name Esabahi, borne on 10 September 1960 in Miswar, Sana, Yemen, residing in Zenica, Lukovo Polje, Gorazdsanska 184, citizen of Yemen and BiH, agricultural worker, married, father of two minors, at the moment in detention.
2. **Saber Lahmar**, son of Mahvud and mother Akila, maiden name Sejh, borne on 22 May 1969 in Constantine, R Algeria, permanently residing in Sarajevo, Mahmutovac 24, professor of Arab language in Islamic center of High Saudi Committee in Sarajevo, married, father of minor, Moslem, citizen of R Algeria, identity established based on travel document No. 0705315 issued by Embassy of R. Algeria in Rome.
3. **Ait Idir Mustafa**, son of Hasemi and mother Sadija or Tasadi, maiden name Sachrat, borne on 9 July 1970 in Sidi Mhmad, R Algeria, permanently residing in Sarajevo, Tomc Mendosa 26/1, Vogosca municipality, information technician, married, father of two minors, employed in humanitarian organization "Taibah", Moslem, citizen of BiH and R Algeria, in possession of BiH travel document No. 9699980, Algerian passport No. 0189352, based on which identity of mentioned above has been established.
4. **Boudella Hadz**, son of Omar and mother Ajisa, maiden name Boudella, borne on 18 April 1965 in Laghouat, R Algeria, residing in Sarajevo, Dobojska 1/IV, religious servant, employed in humanitarian organization "Human Appeal", married, father of five minors, Arab, Moslem, citizen of R Algeria and BiH.
5. **Boumedicne Lahdar**, son of Kad and mother Dzabli Rahma, borne on 27 April 1966 in Aynnsultan, R Algeria, residing in Sarajevo, Semira Fraste 16, mechanic and administrator, employed in humanitarian organization "Crveni Polunjsccc" from United Arab Emirates, married, father of two minors, Moslem, citizen of R Algeria and BiH.
6. **Nechle Mohamed**, called "Sharfuldi", son of Abel Kader and mother Keljtum, maiden name Keljtum, borne on 2 April 1968 in Laghvat, R Algeria, residing in Bihac, ZAVNOBiH-a 16/IV,

administrator, employed in humanitarian organization "Crveni Polumjesec" office in Biljac, married, father of two minors, Moslem, citizen of R. Algeria and BiH.


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### AVOCATION OF DETENTION

With date 17 January 2002


To accused:

1. *Belkacem Bensayah, from decision of investigative judge of the Supreme court of Federation BiH, no.: Ki - 1010/01 from 25 October 2001,*
2. *Saber Lahmar,*
3. *Ait Idir Mustafa*
4. *Boudella Hadz*
5. *Boumediene Lahdar, and*
6. *Nechle Mohamed*

 *Extended by extrajudicial decision of the Supreme court of Federation of BiH, no.: Kv - 84/01 from 16 November 2001,*

*Therefore persons mentioned above are to be IMMEDIATELY released from detention.*

### EXPLANATION

 Office of Federal prosecutor has submitted request no.: KT - 115/01 on 19 October 2001 for conducting investigation against accused Belkacem Bensayah and others, for criminal act from article 168, para 1 of the Criminal Code of Federation Bosnia and Herzegovina, with regards to article 20, para 1 of the Criminal Code of Federation Bosnia and Herzegovina and article 353, para 1 of the Criminal Code of Federation Bosnia and Herzegovina, with suggestion to determine detention against accused.

Upon decision of the investigative judge of the Supreme Court of the Federation BiH, no. Ki. 101/01 from 25 October 2001, on the grounds of article 183, para 2, 3 and 4 of the Law on Criminal Procedure, measure of one-month detention has been determined against accused Belkacem Bensayah, starting from avocation of detention determined upon decision of Municipal court in Zenica, no. Kri - 659/01, according to which detention will last from 8 October 2001 at 17:30 hrs, and in accordance with this person mentioned above *is in detention from 16 January 2002 from 20:30 hrs\**, and upon decision of the Council of the Supreme Court of Federation BiH, no. Kv. - 84/01 from 16 November 2001 detention has been extended for two more months to accused Saber Lahmar, Ait Idir Mustafa, Boudella Hadz, Boumediene Lahdar and Nechle Mohamed, therefore to Saber Lahmar and Ait Idir Mustafa until 18 January 2002, Nechle Mohamed until 19 January 2002, Boumediene Lahdar until 20 January 2002, and to Boudella Hadz until 21 January 2002.

Office of Federal prosecutor has with document no. KT - 115/01 from 17 January 2002, informed investigative judge that opinion is that there are no further reasons or circumstances based upon which this measure for ensuring presence of accused in criminal procedure was ordered. Therefore the measure of the detention can be terminated to all accused persons and they can be released from detention.

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Reviewing suggestion of Deputy Federal prosecutor and status of investigation case, investigative judge agreed with this suggestion and since the reasons based upon which detention was ordered and extended, article 189, para 1 and 2 of the Law on Criminal Procedure, do not exist any more, it has been decided as in declaration of this decision.

Investigative judge

*Zdenko Eteravic*

Remedy: Appeal on this decision is allowed within three days from reception of the decision, and same should be submitted to the Criminal Council of the Supreme Court of the Federation BiH.

*\* Translator's note: There is a typing mistake in court papers, as this sounds illogical in English and in Bosnian. This possibly refers to the date and time of transfer from Zenica to Sarajevo prison, however it is unclear..*

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**Exhibit B(c).**  
Human Rights Chamber  
Decision (October 11, 2002)

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DECISION  
MERITS

ON ADMISSIBILITY AND

(delivered on 11 October 2002)

Cases nos. CH/02/8679, CH/02/8689, CH/02/8690 and  
CH/02/8691

Hadz BOUDELLAA, Boumediene LAKHDAR, Mohamed NECHLE and  
Saber LAHMAR

against

BOSNIA AND HERZEGOVINA  
and  
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in  
plenary session on  
3 September 2002 with the following members present:

- Ms. Michèle PICARD, President
- Mr. Giovanni GRASSO, Vice-President
- Mr. Dietrich RAUSCHNING
- Mr. Hasan BALIC
- Mr. Rona AYBAY
- Mr. Selimir JUKA
- Mr. Jakob MÖLLER
- Mr. Mehmed DEKOVIC
- Mr. Manfred NOWAK
- Mr. Miodrag PAJIC
- Mr. Vitomir POPOVIC
- Mr. Viktor MASENKO-MAVI
- Mr. Andrew GROTRIAN
- Mr. Mato TADIC

- Mr. Ulrich GARMS, Registrar
- Ms. Olga KAPIC, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

## TABLE OF CONTENTS

<u>Heading</u>	<u>Paragraph</u>
<u>NO.</u>	
I. INTRODUCTION .....	1
II. PROCEEDINGS BEFORE THE CHAMBER .....	4
III. ESTABLISHMENT OF THE FACTS .....	32
A. Applicants' personal lives in Bosnia and Herzegovina prior to October 2001      32	32
B. Initiation of criminal proceedings against the applicants .....	40
C. Revocation of citizenship, termination of permit for permanent residence and refusal of entry to the applicants .....	43
D. Diplomatic contacts concerning the applicants .....	50
E. Events of 17 and 18 January 2002 .....	53
IV. RELEVANT LEGISLATION, LAWS AND REGULATIONS .....	56
A. Criminal proceedings against the applicants .....	56
1. Criminal Code of the Federation of Bosnia and Herzegovina	56
B. Issue of citizenship .....	59
1. Law on Citizenship of Bosnia and Herzegovina .....	59
2. Law on Citizenship of the Federation of Bosnia and Herzegovina	66
3. Law on Administrative Disputes of the Federation of Bosnia and Herzegovina .....	71
C. Refusal of entry and expulsion .....	72
1. Law on Immigration and Asylum of Bosnia and Herzegovina ..	72
2. Law on Administrative Procedures of the Federation of Bosnia and Herzegovina .....	81
3. Law on the Council of Ministers and Ministries of Bosnia and Herzegovina      84	84
4. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina      86	86
D. International law regarding the fight against terrorism .....	93
1. United Nations Security Council Resolution 1373 (2001) ...	93

UNCLASSIFIED

2.	Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism .....	94
E.	Legislation of the United States of America .....	95
1.	US President's Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism .....	95
2.	US Department of Defense Military Commission Order No. 1 ..	96
3.	Laws of War .....	97
4.	United States Code .....	98
V.	COMPLAINTS .....	99
VI.	SUBMISSIONS OF THE PARTIES .....	102
A.	Bosnia and Herzegovina .....	102
1.	As to the facts and domestic law .....	102
2.	As to the admissibility .....	105
3.	As to the merits .....	106
4.	As to the order for a provisional measure .....	107
B.	The Federation of Bosnia and Herzegovina .....	110
1.	As to the facts .....	110
2.	As to the admissibility .....	113
3.	As to the merits .....	114
4.	As to the order for a provisional measure .....	118
C.	The applicants .....	119
D.	UN ORCHR as <i>amicus curiae</i> .....	124
VII.	OPINION OF THE CHAMBER .....	142
A.	Admissibility .....	142
1.	Admissibility against Bosnia and Herzegovina .....	142
a.	As to Bosnia and Herzegovina as a respondent Party ..	143
b.	Exhaustion of domestic remedies .....	148

UNCLASSIFIED

Nechle 149

- i. In regard to the applicants Boudellaa, Lakhdar and  
149
- ii. In regard to the applicant Lahmar ..... 152
- iii. Conclusion in regard to the exhaustion of domestic  
remedies ..... 153
- c. Six-months rule..... 154
- 2. Admissibility against the Federation of Bosnia and Herzegovina  
156
- 3. Admissibility of the alleged violation of "reasonableness of  
time" 157
- 4. Conclusion as to admissibility ..... 163
- B. Merits ..... 164
- 1. Expulsion proceedings ..... 165
- a. In regard to the applicants Boudellaa, Lakhdar and  
Nechle 169
- i. Whether the applicants Boudellaa, Lakhdar and  
Nechle  
were citizens of Bosnia and Herzegovina at the time  
of their expulsion ..... 171
- ii. Examination of the expulsion of the applicants  
Boudellaa,  
Lakhdar and Nechle under Article 1 of Protocol No.  
7  
to the Convention ..... 177
- iii. Examination of the expulsion of the applicants  
Boudellaa,  
Lakhdar and Nechle under Article 3 of Protocol No.  
4  
to the Convention ..... 190
- iv. Conclusion as to the expulsion of the applicants  
Boudellaa,  
Lakhdar and Nechle ..... 199
- b. In regard to the applicant Lahmar..... 200
- 2. Article 5 of the Convention - detention of the applicants in  
Bosnia and  
Herzegovina ..... 206
- a. As to the applicants' detention until the entry into  
force of the  
Supreme Court decision to release them on 17 January  
2002 207

- b. As to the applicants' detention after the entry into force of the Supreme Court decision to release them on 17 January 2002 and until the hand-over to US forces..... 215
- i. Possible justification under Article 5 paragraph 1(c) 218
  - ii. Possible justification under Article 5 paragraph 1(f) for the period after 11:45 p.m. on 17 January 2002 ... 221
  - iii. Conclusion ..... 230
- c. As to the hand-over of the applicants to US forces and their detention thereafter until their forced removal from Bosnia and Herzegovina..... 231
- 3. Article 6 paragraph 2 of the Convention - presumption of innocence 238
- 4. Article 8 of the Convention -- right to family life ..... 251
- 5. The hand-over of the applicants to US forces ..... 253
  - a. Application of the Human Rights Agreement in expulsion cases 253

b. Whether the obligation to co-operate in the international fight against terrorism prevails over obligations under the Human Rights Agreement..... 263

c. Whether the respondent Parties were obliged to consider the possibility of imposition of the death penalty or inhuman or degrading treatment only if raised by the applicants 268

d. Article 1 of Protocol No. 6 to the Convention -- the death penalty 270

    i. Failure to follow extradition proceedings .... 275

    ii. Substantive criminal law applicable to possible charges against the applicants ..... 278

    iii. Relationship between fair trial guarantees and the imposition of the death penalty ..... 284

    iv. Defendants' rights in a trial before a military commission 286

    v. Conclusion as to imposition of the death penalty 300

e. Article 3 of the Convention -- prohibition of torture or inhuman or degrading treatment..... 301

    i. Conditions of detention as a violation of the right not to be subjected to torture or inhuman or degrading treatment or punishment ..... 306

    ii. Application of Article 3 in extradition and expulsion cases 308

    iii. Respondent Parties' responsibility in the present cases 311

    iv. Conclusion as to Article 3 of the Convention . 320

f. Article 6 of the Convention -- fair trial..... 321

6. Conclusion as to merits ..... 323

VIII. REMEDIES ..... 324.

IX. CONCLUSIONS ..... 333

UNCLASSIFIED

Annexes

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- Annex I                   Partly dissenting opinion of Ms. Michèle Picard
- Annex II                   Partly dissenting opinion of Mr. Dietrich Rauschnig
- Annex III   Partly dissenting opinion of Mr. Viktor Masenko-Mavi and Mr. Giovanni Grasso
- Annex IV   Dissenting opinion of Mr. Mato Tadic, joined by Mr. Miodrag Pajic

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## I. INTRODUCTION

1. The applicants Boudellaa, Lakhdar and Nechle obtained citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina on 2 January 1995, 20 December 1997 and 25 August 1995, respectively. The applicant Lahmar was granted a permit for permanent residence in Bosnia and Herzegovina on 4 April 1997. In October 2001 the applicants were arrested and taken into custody on the suspicion of having planned a terrorist attack on the Embassies of the United States and the United Kingdom in Sarajevo. In November 2001 the Federal Ministry of Interior issued decisions revoking the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina of the applicants Boudellaa, Lakhdar and Nechle. Also in November 2001 the Ministry of Human Rights and Refugees issued a decision terminating the permit for permanent residence of the applicant Lahmar in Bosnia and Herzegovina and banishing him from the country for a period of ten years. On 17 January 2002 the applicants were ordered to be released from pre-trial detention. However, instead of being released, they were immediately taken into the custody of the Federation Police, and then the following day they were handed over to the military forces of the United States of America ("US forces"<sup>1</sup>) based in Bosnia and Herzegovina as part of the NATO led Stabilisation Force ("SFOR"). Subsequently, they were transferred to the military detention facility at Guantanamo Bay, Cuba.

2. The applicants claim that there were no grounds for the revocation of their citizenship and permit for permanent residency, nor for their expulsion from Bosnia and Herzegovina.

3. The cases raise issues under Article 3 (prohibition of torture or inhuman or degrading treatment), Article 5 (right to liberty and security of person), Article 6 (right to a fair trial) and Article 8 (right to respect for family life) of the European Convention on Human Rights ("the Convention"), Article 3 of Protocol No. 4 to the Convention (prohibition of expulsion of nationals), Article 1 of Protocol No. 6 to the Convention (abolition of the death penalty) and Article 1 of Protocol No. 7 to the Convention (procedural safeguards in relation to expulsion of aliens).

---

<sup>1</sup> Terminology: The Chamber notes that the Stabilisation Force ("SFOR") are composed of forces from 35 States, including the United States of America. The Agent for Bosnia and Herzegovina stated at the public hearing, on 10 April 2002, that the applicants were handed over to US forces and that there was in fact no distinction between US forces and SFOR. The Chamber, while not agreeing with this analysis, will follow this terminology and refer to "US forces", except where reference is made to the fact that the delivery slips of the refusal of entry decisions were signed "SFOR" (see paragraph 55 below).

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## II. PROCEEDINGS BEFORE THE CHAMBER

4. The applicant Boudellaa lodged his application on 14 January 2002. The applicants Lakhdar, Nechle and Lahmar filed their applications with the Chamber on 16 January 2002. In their applications the applicants also requested the Chamber to issue orders for provisional measures to prevent their deportation or any other expulsion or extradition from Bosnia and Herzegovina. The applications were directed only against the Federation of Bosnia and Herzegovina.

5. On 17 January 2002 the Chamber issued orders for provisional measures, ordering the respondent Parties to take all necessary steps to prevent the applicants from being taken out of the territory of Bosnia and Herzegovina by the use of force. These orders were directed against both the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, as the respondent Parties.

6. On 18 January 2002 the cases were transmitted to the respondent Parties under Articles 3, 5 and 8 of the Convention and Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7 to the Convention.

7. Bosnia and Herzegovina submitted its observations on the cases on 28 January 2002. The Federation of Bosnia and Herzegovina did so on 31 January 2002. These observations were communicated to the applicants' lawyers on 14 February 2002 for their observations in reply.

8. On 14 February 2002 the cases were re-transmitted to the respondent Parties under Article 3, Article 5 (in particular paragraphs (1)(c) and (1)(f), as well as the right to security of person), Article 6 (in particular paragraphs (1) and (2)), and Article 8 of the Convention, Article 3 of Protocol No. 4, Article 1 of Protocol No. 6 and Article 1 of Protocol No. 7 to the Convention. The Chamber further pointed out that the cases may raise issues under Article 3, Article 5 and Article 6 paragraph 1 of the Convention and Article 1 of Protocol No. 6 to the Convention, in particular with regard to the decision of the respondent Parties to extradite or to allow the expulsion of the applicants to a legal system that could expose the applicants to the possible risk of a violation of the rights protected by the mentioned provisions.

9. On 14 February 2002 the Chamber invited the Office of the High Representative ("OHR") and the United Nations Office of the High Commissioner for Human Rights ("UN OHCHR") to participate in the proceedings as *amici curiae*.

10. On 15 February 2002 the UN OHCHR accepted the Chamber's invitation to participate in the proceedings as *amicus curiae*.

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11. On 25 February 2002 the OHR declined the invitation of the Chamber to take part in the proceedings as *amicus curiae*.
12. On 25 February 2002 the Chamber received additional observations from Bosnia and Herzegovina. On 25 and 26 February 2002 additional observations were received from the Federation of Bosnia and Herzegovina.
13. On 26 February 2002 the Chamber invited the Organisation for Security and Co-operation in Europe ("OSCE") to participate in the proceedings as *amicus curiae*.
14. On 6 March 2002 the Chamber decided to hold a public hearing in the cases on 10 April 2002.
15. On 6 March 2002 the Chamber received the observations of the applicants Boudellaa, Lakhdar and Nechle. On 7 March 2002 additional observations were received from the applicant Boudellaa.
16. On 6 March 2002 the applicants Boudellaa, Lakhdar and Nechle, through their lawyers Mr. Mustafa Brackovic, Mr. Fahrija Karkin and Mr. Rusmir Karkin, submitted to the Chamber their claims for compensation.
17. On 11 March 2002 the relevant documents were communicated to the *amici curiae*, i.e. the UN OHCHR and the OSCE.
18. On 13 March 2002 the Chamber communicated the additional observations of the respondent Parties to the applicants for their observations and *vice versa*.
19. At the beginning of March 2002, SFOR expressed its interest to participate in the proceedings as *amicus curiae*, subject to the possibility to previously examine the case-files.
20. On 21 March 2002 the Chamber requested the respondent Parties and the applicants to inform it if they had any objections to communicating the relevant documents to SFOR in order for them to assess whether they wanted to take part in the proceedings as *amicus curiae*.
21. On 22 March 2002 the Federation of Bosnia and Herzegovina submitted additional information to the Chamber.
22. As both respondent Parties explicitly informed the Chamber that they did not have any objections and the applicants did not make any objections, the Chamber submitted the relevant documents to SFOR and invited them to take part in the proceedings as *amicus curiae* on 26 March 2002. On 29 March 2002 SFOR orally

## UNCLASSIFIED

communicated to the Chamber that they would not act as *amicus curiae*.

23. On 27 March 2002 the OSCE informed the Chamber that it should address its *amicus curiae*-invitation to the Office for Democratic Institutions and Human Rights ("ODIHR"). The Chamber did so on 28 March 2002. On 3 April 2002 the ODIHR communicated to the Chamber that it would not act as *amicus curiae*.

24. On 27 March 2002 both respondent Parties replied to the applicants' compensation claims. No further observations from the respondent Parties were received.

25. On 5 April 2002 the UN OHCHR submitted its *amicus curiae* brief. The brief was hand delivered to all the parties on the same day.

26. On 10 April 2002 the Chamber held a public hearing on the admissibility and merits of the applications in the Cantonal Court building in Sarajevo. The applicants were represented by their lawyers: the applicant Boudellaa by Mr. Mustafa Brackovic, the applicant Lakhdar by Mr. Fahrija Karkin, the applicant Nechle by Mr. Rusmir Karkin, and the applicant Lahmar by Mr. Mithat Koco. Bosnia and Herzegovina was represented by one of its Agents, Mr. Jusuf Halilagic, who was assisted by Mr. Vesko Drljaca from the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina, Ms. Ljiljana Lalovic from the Ministry of Human Rights and Refugees in Bosnia and Herzegovina and Ms. Mirsada @utic-Beganovic from the Federal Ministry of Interior. The Federation of Bosnia and Herzegovina was represented by Ms. Emina Hasanovic, its Agent, assisted by Ms. Safija Kulovac and Mr. Mirsad Gacanin. The UN OHCHR, appearing as *amicus curiae*, was represented by Ms. Madeleine Rees, Head of Office, and Ms. Jasminka Dzumhur.

27. At the public hearing, the applicant Lahmar, through his lawyer Mr. Mithat Koco, submitted to the Chamber his claim for compensation.

28. At the public hearing, the parties and the *amicus curiae* addressed the Chamber, after which they answered questions addressed to them.

29. On 23 April 2002 the Chamber received written information and a document from the Federation of Bosnia and Herzegovina with regard to issues raised at the public hearing.

30. On 18 June 2002 the Chamber received further written information from the Federation of Bosnia and Herzegovina and copies of the decision of the Supreme Court relating to the suspension of the criminal proceedings against the applicants.

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31. The Chamber deliberated on the admissibility and merits of the cases on 5 February, 6 March, 11 April, 8 and 9 May, 5 and 6 June, 2 and 4 July, and 3 September 2002. The Chamber decided to join the applications on 3 September 2002, and on the same date it adopted the present decision on admissibility and merits.

### III. ESTABLISHMENT OF THE FACTS

#### A. Applicants' personal lives in Bosnia and Herzegovina prior to October 2001

32. All four applicants are of Algerian origin and lived with their wives and children in Bosnia and Herzegovina until their arrests on 18 October 2001 (Lahmar), 19 October 2001 (Nechle), 20 October 2001 (Lakhdar) and 21 October 2001 (Boudellaa).

33. The applicant Hadz Boudellaa is an imam (a religious official) by profession, and he was employed by the humanitarian organisation "Human Appeal" in its Sarajevo office. He is married to a woman who is by birth a citizen of Bosnia and Herzegovina. He has three children with this wife. He has three more children with another woman whom he refers to as his spouse as well and who is also a native of Bosnia and Herzegovina. Since the application was submitted, a seventh child was born. According to the respondent Parties, the applicant came to Bosnia and Herzegovina in 1992.

34. The applicant Boumediene Lakhdar is a mechanic by profession, and he was employed by the humanitarian organisation "Red Crescent" in its office in Sarajevo. He is married to a wife who is not a native of Bosnia and Herzegovina. They have two small children. According to the respondent Parties, the applicant came to Bosnia and Herzegovina in 1997.

35. The applicant Mohamed Nechle is an administrator by profession, and he was employed by the humanitarian organisation "Red Crescent" in its office in Bihac. He is married to a wife who is not a native of Bosnia and Herzegovina. They have two small children. According to the respondent Parties, the applicant came to Bosnia and Herzegovina in 1995.

36. The applicant Saber Lahmar is a professor of Arabic language by profession, and he was employed at the Islamic Centre of the High Saudi-Arabian Committee in Sarajevo. He is married to a wife whose origin is not known to the Chamber. At the time the application was submitted in January 2002, he and his wife had one minor child, and his wife was six months pregnant. According to the respondent Parties, the applicant came to Bosnia and Herzegovina in 1996.

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37. None of the applicants have submitted to the Chamber any documentation on their naturalisation nor any documentation explaining their exact dates of entrance into Bosnia and Herzegovina and whether they have renounced their Algerian citizenship.

38. On 2 January 1995 the applicant Boudellaa was granted citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. The applicants Lakhdar and Nechle were granted their citizenship on 20 December 1997 and 25 August 1995, respectively.

39. On 4 April 1997 the applicant Lahmar was granted a permit for permanent residence in Bosnia and Herzegovina.

**B. Initiation of criminal proceedings against the applicants**

40. In October 2001 the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court") issued decisions ordering that the applicants be taken into custody on suspicion of having attempted to commit the criminal act of international terrorism, punishable under Article 168 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina. The applicant Lahmar was arrested on 18 October 2001; the applicant Nechle was arrested on 19 October 2001; the applicant Lakhdar was arrested on 20 October 2001; and the applicant Boudellaa was arrested on 21 October 2001. The criminal proceedings against the applicants by the Federation authorities were initiated on the grounds of the suspicion that they were planning a bomb attack on the Embassies of the United States and the United Kingdom in Sarajevo. During these proceedings, one of the co-suspects of the applicants, B.B., was interrogated by agents of the US Federal Bureau of Investigations ("FBI") and confronted with the allegation that during a search of his home, the telephone number of a liaison officer of the al Qaida leader Osama Bin Laden had been found.

41. On 16 November 2001 the Supreme Court issued decisions extending the applicants' detention for a period of two months. The applicants appealed against these decisions. However, their appeals were rejected by the Supreme Court on 22 November 2001.

42. On 9 April 2002 the Supreme Court issued a decision to suspend the criminal proceedings against the applicants. The applicants appealed against this decision, asking for termination rather than suspension of the proceedings. On 8 May 2002 the Supreme Court refused the appeal of the applicants.

**C. Revocation of citizenship, termination of permit for permanent residence and refusal of entry to the applicants**

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43. On 16 November 2001 the Federal Ministry of Interior issued decisions revoking the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina of the applicants Boudellaa and Nechle. On 20 November 2001 the Federal Ministry of Interior issued a decision revoking the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina of the applicant Lakhdar. The Federal Ministry of Interior based these revocations on Article 30 paragraph 2, in conjunction with Article 23 paragraph 1 of the Law on Citizenship of Bosnia and Herzegovina and Article 28 paragraph 3, in conjunction with Article 24 paragraph 1 of the Law on Citizenship of the Federation of Bosnia and Herzegovina. It reasoned that the fact that criminal charges had been brought against the applicants leads to the conclusion that, when they applied for citizenship, they had had hidden intentions to violate the Constitution and the laws of the Federation. These decisions were delivered to the applicants on 4 December 2001. On 28 December 2001 the Ministry of Civil Affairs and Communications approved the procedural decision on revocation of the citizenship of the applicants Boudellaa, Lakhdar and Nechle.

44. Also on 16 November 2001 the Commission for Consideration of the Status of Persons Naturalised after 6 April 1992 and before the Entry into Force of the Constitution of Bosnia and Herzegovina ("the Commission") replied to a request of the Supreme Court that it was not competent to consider the cases of the applicants Boudellaa, Nechle and Lakhdar..

45. On 23 November 2001 the Ministry of Human Rights and Refugees of Bosnia and Herzegovina issued a decision terminating the permit for permanent residence of the applicant Lahmar in Bosnia and Herzegovina and banishing him from the country for a period of ten years. The applicant was ordered to leave the country within three days from the date of issuance of the "valid" decision<sup>2</sup>. The decision stated that the initiative for the applicant's banishment was submitted by the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina through the Federal Ministry of Interior for the reason that the applicant was sentenced to 5 years imprisonment by the Supreme Court in its decision of 9 July 1998. The Ministry of Human Rights and

<sup>2</sup> For the purposes of the present cases it is important to recall that the administrative laws in Bosnia and Herzegovina draw a distinction between "final" decisions (*kona-no rje(enje)*) and "valid" decisions (*pravosna`no rje(enje)*). A "final" *kona-no* decision is final within the administrative proceedings, there is no appeal within the administration against it, but the initiation of an administrative dispute before a competent court is possible. Once this judicial remedy has been exhausted, or the deadline to initiate the administrative dispute has expired, then the decision is "valid" (*pravosna`no*). However, a "final" decision is immediately enforceable upon delivery to the person concerned, unless the law provides otherwise (see Article 19 of the Federation Law on Administrative Disputes (paragraph 71 below), Article 26 of the Federation Law on Citizenship (paragraph 68 below) and Article 38 of the Bosnia and Herzegovina Law on Immigration and Asylum (paragraph 79 below)).

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Refugees established that the applicant served part of his sentence and that on 6 January 2000 the competent organ replaced the remaining part of the original sentence with a conditional sentence that would not be executed unless he committed a new criminal offence within the next 3 years. Since he was sentenced to a term of imprisonment longer than 4 years, the Ministry of Human Rights and Refugees found that the conditions were met for expelling the applicant under Article 29 paragraph 1(b) of the Law on Immigration and Asylum.

46. On 11 January 2002 the applicant appealed against the decision of the Ministry of Human Rights and Refugees of 23 November 2001 to the Appeals Panel of the Council of Ministers of Bosnia and Herzegovina. To the Chamber's knowledge, no decision has been taken on this appeal.

47. On 20 December 2001 the applicants Boudellaa, Lakhdar and Nechle initiated an administrative dispute before the Supreme Court against the decisions revoking their citizenship of the Federal Ministry of Interior of 16 and 20 November 2001. These proceedings are still pending.

48. On 28 December 2001 the Federal Ministry of Interior submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina an initiative for the expulsion of the applicants Boudellaa, Lakhdar and Nechle from the territory of Bosnia and Herzegovina. The Ministry of Civil Affairs and Communications took no action upon this initiative.

49. On 10 January 2002 the Federal Ministry of Interior issued three decisions on refusal of entry onto the territory of Bosnia and Herzegovina to the applicants Boudellaa, Lakhdar and Nechle on the basis of Article 200 paragraph 1 of the Law on Administrative Procedure, Article 24 of the Law on Internal Affairs of the Federation of Bosnia and Herzegovina and Article 35 paragraph 2 and Article 27 paragraph 1(b) of the Law on Immigration and Asylum. Although these decisions are decisions on refusal of entry and not decisions of expulsion, they order the applicants to leave the territory of Bosnia and Herzegovina immediately. On 10 January 2002 the Federal Ministry of Interior also issued a procedural decision on refusal of entry into the territory of Bosnia and Herzegovina to the applicant Lahmar. This decision is based on Article 200 paragraph 1 of the Law on Administrative Procedure, Article 24 of the Law on Internal Affairs of the Federation of Bosnia and Herzegovina and Article 35 paragraph 2 of the Law on Immigration and Asylum of Bosnia and Herzegovina.

#### D. Diplomatic contacts concerning the applicants

50. According to a memorandum by the Council of Ministers of Bosnia and Herzegovina on the conduct of the officials of

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institutions of Bosnia and Herzegovina and its Entities regarding the so-called "Algerian group", prepared on 4 February 2002, which was submitted to the Chamber by the Federation of Bosnia and Herzegovina during the public hearing on 10 April 2002, on 11 October 2001, during an official visit to Sarajevo, a high-ranking official of the Algerian Secret Service was informed about the applicants and the suspicion that they were involved in terrorist activities. He promised full co-operation without specifying this any further. The high-ranking official exchanged information with members of the Federal Ministry of Interior and the Agencija za Istrazivanje Dokumentaciju ("AID"), one of Bosnia and Herzegovina's secret services.

51. According to the document of 4 February 2002 referred to in the previous paragraph, on 11 January 2002 the Ministry of Foreign Affairs of Bosnia and Herzegovina contacted the Democratic National Republic of Algeria to inquire about the possibility to deport the applicants to their native country of Algeria. The representatives of Algeria refused the request to accept the applicants on 12 January 2002. On 14 January 2002 the Ministry of Foreign Affairs of Bosnia and Herzegovina once again unsuccessfully contacted the representatives of Algeria with the same request.

52. On 17 January 2002, in a diplomatic note, the US Embassy in Sarajevo informed Bosnia and Herzegovina that it was willing to take custody of the applicants and two more persons, who were all believed to have been involved in international terrorism.

#### E. Events of 17 and 18 January 2002

53. On 17 January 2002 the investigative judge of the Supreme Court issued a decision terminating the applicants' pre-trial detention on the ground that there were no further reasons or circumstances upon which pre-trial detention could be ordered. This decision refers to the applicants Boudellaa, Lakhdar and Nechle as citizens of Bosnia and Herzegovina and to the applicant Lahmar as a permanent resident of Bosnia and Herzegovina. According to the undisputed statement of Mr. Fahrija Karkin, lawyer of the applicant Lakhdar, the decision was brought to the prison of the Cantonal Court in Sarajevo, where the applicants were being held, at approximately 5 p.m. on 17 January 2002. It remains unclear whether the applicants ever personally received the decision ordering their release. The Chamber invited the Federation to submit the slips proving delivery of the decision, but no such evidence has been produced.

54. During the night of 17 to 18 January 2002, an unauthorised demonstration of approximately 500 persons took place outside the Sarajevo prison where the applicants were held, during which eight police officers were injured, one of them badly.

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55. On 17 January 2002 at 11:45 p.m. the applicants were ordered to be released from pre-trial detention and were immediately taken into the custody of the Federation Police under the authority of the Federal Ministry of Interior. According to the document of the Council of Ministers of 4 February 2002 (see paragraphs 50-51 above), these forces and forces of the Ministry of Interior of Sarajevo Canton handed the applicants over to US forces at 6 a.m. on 18 January 2002<sup>3</sup>. On the same date those US forces delivered the decision on refusal of entry of 10 January 2002 to the applicants. The delivery slips submitted to the Chamber purport to be signed by each of the applicants and by "SFOR", as the delivering authority. The applicants' lawyers and the *amicus curiae* challenge the authenticity of the applicants' signatures. This occurred at the Sarajevo airport before the applicants boarded the aeroplane that transported them out of Bosnia and Herzegovina. The applicants are now believed to be at Camp X-Ray in Guantanamo Bay, Cuba, where they are held in detention by authorities of the United States.

#### IV. RELEVANT LEGISLATION, LAWS AND REGULATIONS

##### A. Criminal proceedings against the applicants

##### 1. Criminal Code of the Federation of Bosnia and Herzegovina

56. The Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina--hereinafter "OG FBiH"--no. 43/98, 29/00 of 20 November 1998) ("the Criminal Code") came into force on 28 November 1998.

57. Article 20 reads as follows:

"(1) Whoever intentionally commences execution of a criminal offence, but does not complete his/her action, shall be punished for the attempted crime only when the criminal offences in question is punished by imprisonment of five years or more, and for other criminal offences only where the law expressly prescribes punishment of the attempt alone.

(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence committed, but may be punished less severely."

<sup>3</sup> Terminology: Whilst the action of delivering the applicants to US forces to be transported to Guantanamo Bay, Cuba, may be considered an extradition or expulsion in nature, it has never been classified as such by the authorities, and no formal extradition procedures were followed. Therefore, for the purposes of this decision it has been classified as a "hand-over".

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58. Article 168, which is titled "International Terrorism", reads as follows:

"(1) Whoever, with the intention of causing damage to a foreign country, liberation movement or international organisation, kidnaps a person or commits some other violence, causes an explosion or fire, or by some generally dangerous activity or generally dangerous means causes danger to human lives and property of a large value, shall be punished with a sentence of imprisonment of not less than one year.

(2) If the death of one or more persons occurred as a consequence of an act referred to in paragraph 1 of this Article, then the perpetrator shall be punished with a sentence of imprisonment of not less than five years.

(3) If, in the course of the commission of an act referred to in paragraph 1 of this Article, the perpetrator has deliberately deprived another person of his/her life, then he/she shall be punished with a sentence of imprisonment of not less than ten years or a longer term of imprisonment."

**B. Issue of citizenship**

**1. Law on Citizenship of Bosnia and Herzegovina**

59. Article 1 of the Law on Citizenship of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina—hereinafter "OG BiH"—no. 13/99) provides as follows:

"(1) This Law determines the conditions for the acquisition and loss of citizenship of Bosnia and Herzegovina (hereinafter: the citizenship of BiH), in accordance with the Constitution of Bosnia and Herzegovina.

(2) The citizenship laws of the Entities must be compatible with the Constitution of Bosnia and Herzegovina and with this Law."

60. Article 23 provides, insofar as is relevant, as follows:

"Citizenship of Bosnia and Herzegovina may be withdrawn in the following cases:

(1) when the citizenship of Bosnia and Herzegovina was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant, (...)"

61. Article 24 provides, insofar as is relevant, as follows:

"(1) Citizenship of Bosnia and Herzegovina is lost by release, renunciation or withdrawal on the day of notification to the person concerned of the legal decision. (...)"

62. Article 30 provides, insofar as is relevant, as follows:

" (...)

(2) Decisions under Articles 6, 7, 8, 9, 10, 11, 12, 21, 22 and 23 are taken by the competent authority of the Entity. (...)"

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63. Article 31 provides, insofar as is relevant, as follows:

"(1) The decisions referred to in Article 30 paragraph 2, with the exception of decisions taken under Article 6, 7 and 8, must be submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina within three weeks of the date of the decision.

(2) The decision of the competent authority of the Entity becomes effective two months following its submission to the Ministry of Civil Affairs of Bosnia and Herzegovina, unless this Ministry concludes that the conditions of Articles 9, 10, 11, 12, 21, 22 and 23 have not been fulfilled. (...)"

64. Article 40 provides, insofar as is relevant, as follows:

"(1) A Commission shall be established within two months after the date that this Law enters into force to review the status of persons naturalised after 6 April 1992 and before the entry into force of the Constitution of Bosnia and Herzegovina, as referred to in Article 1(7)(c) of the Constitution. ..."

65. Article 41 provides, insofar as is relevant, as follows:

"(1) The Commission reviews individual applications for citizenship by naturalisation granted in the period mentioned in Article 40 paragraph 1. To this end, it considers the information provided by the persons concerned, as well as the procedural regularities.

(2) Upon a request by the Commission, the persons concerned and the competent authorities of Bosnia and Herzegovina and the Entities must submit all relevant information within a period determined by the Commission.

(3) If the person concerned does not comply with the request for information referred to in paragraph 2, then the Commission may withdraw the citizenship.

(4) If the Commission finds that the regulations in effect in the territory of Bosnia and Herzegovina at the time of naturalisation were not applied, and it is clear that the applicant was aware that he or she did not fulfil the conditions for naturalisation, then the citizen shall lose his or her citizenship of Bosnia and Herzegovina, unless he or she will thereby become stateless. If this person, by the time the decision of the Commission is taken, fulfils the conditions for naturalisation or facilitated naturalisation provided for in this Law, then he or she shall be considered a citizen of Bosnia and Herzegovina in accordance with this Law. ..."

## 2. Law on Citizenship of the Federation of Bosnia and Herzegovina

66. Article 1 of the Law on Citizenship of the Federation of Bosnia and Herzegovina (OG FBiH no. 43/01) provides as follows:

"This Law shall regulate the conditions for the acquisition and loss of citizenship of the Federation of Bosnia and Herzegovina

UNCLASSIFIED

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(hereinafter: the Federation), in accordance with the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina and the Law on Citizenship of Bosnia and Herzegovina (hereinafter: the Law on BH Citizenship) (Official Gazette of Bosnia and Herzegovina no. 4/97,13/99)."

67. Article 24 provides, insofar as is relevant, as follows:

"One may be deprived of the citizenship of the Federation in the following cases:

(1) if the citizenship of the Federation was obtained on the basis of fraud, false information or by hiding any relevant fact that may refer to the claimant; (...)"

68. Article 26 provides as follows:

"Citizenship of the Federation shall cease by renunciation, withdrawal or deprivation from the date of delivery of a valid decision to a person to whom the administrative decision refers. If the permanent residence of such person is not known or cannot be determined, then the citizenship of the Federation shall cease on the date of publishing the valid decision in the Official Gazette of the Federation of Bosnia and Herzegovina.

Citizenship of the Federation shall cease under force of law pursuant to Articles 16, 17 and 18 of this Law on the date when the person in question acquires the citizenship of some other state."

69. Article 28 paragraph 3 provides as follows:

"A decision granting citizenship of the Federation under paragraph 2 of this Article, as well as a decision revoking citizenship of the Federation on the basis of Article 14 of this Law is issued by the competent Ministry of the Federation, except for a decision renouncing citizenship, for which the Ministry of Civil Affairs and Communications is competent, as provided in Article 30 paragraph 1 of the Law on Citizenship of Bosnia and Herzegovina."

70. Article 33 provides, insofar as is relevant, as follows:

"The (...) procedural decision on cessation of citizenship of the Federation under Articles 21, 22 and 24 of this Law, (...) must be submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina within three weeks of the date of issuance of the procedural decision. The procedural decision shall enter into force two months after being submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina if this Ministry does not determine that conditions for (...) withdrawal or deprivation of citizenship (...) under the Law on Citizenship of Bosnia and Herzegovina have not been fulfilled. (...)"

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3. Law on Administrative Disputes of the Federation of Bosnia and Herzegovina

71. Article 19 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides, insofar as is relevant, as follows:

"As a rule, an action shall not prevent the enforcement of the administrative act that the action is filed against, unless otherwise established by law.

On the plaintiff's request, the body competent for enforcement of a contested administrative act shall postpone the enforcement until the issuance of a valid court decision if the enforcement would inflict damage to the plaintiff that would be irreparable, and if the postponement is neither contrary to the public interest nor would inflict major irreparable harm to the opposite party. The evidence on the filed action shall be enclosed with the request for postponement. The competent body must issue a procedural decision on any request at the latest three days after receipt of the request to postpone enforcement.

The competent body under paragraph 2 of this Article may, for other reasons, postpone enforcement of a contested administrative act until the issuance of a valid court decision, provided this complies with the public interest.

The competent court to which the lawsuit has been filed may decide on the postponement of the enforcement of the administrative act against which the lawsuit has been filed on the conditions of paragraphs 2 and 3 of this Article, if requested so in writing by the plaintiff. The plaintiff may only file this request, provided that he has not previously requested the postponement of the enforcement of the procedural decision from the body specified in paragraph 2 of this Article."

C. Refusal of entry and expulsion

1. Law on Immigration and Asylum of Bosnia and Herzegovina

72. Article 27 of the Law on Immigration and Asylum (OG BiH no. 23/99) provides, insofar as is relevant, as follows:

"An alien may be refused entry

(...)

(b) if he/she lacks a visa, residence permit or other permit required for entry, residence and work in Bosnia and Herzegovina; (...)"

73. Article 29 provides as follows:

"An alien may be expelled from Bosnia and Herzegovina

(a) if he/she remains on the territory of Bosnia and Herzegovina after his/her residence permit has expired or has been revoked according to Articles 30 to 32.

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(b) if he/she is convicted by a court in Bosnia and Herzegovina of a criminal offence and sentenced to more than four years imprisonment."

74. Article 30 provides, insofar as is relevant, as follows:

"Visas and residence permits may be revoked

(...)

(c) if his/her presence constitutes a threat to public order and security. (...)"

75. Articles 33 to 45 regulate the conditions and procedures for decisions on refusal of entry and for decisions on expulsion of aliens. Article 34 provides as follows:

"Aliens shall not be returned or expelled in any manner whatsoever to the frontier of territories, where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, whether or not they have formally been granted asylum. The prohibition of return or expulsion also applies to persons in respect of whom there are grounds for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Nor may aliens be sent to a country where they are not protected from being sent to such a territory."

76. Article 35 and Article 36 regulate the competencies to take decisions on refusal of entry and on expulsion. Article 35 provides, insofar as is relevant, as follows:

"(...) Decisions on the refusal of entry on the territory of Bosnia and Herzegovina are taken by the competent authority of the Entity. (...)"

and Article 36 provides as follows:

"Decisions on expulsion are taken by the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina."

77. As to decisions on refusal of entry, the Law distinguishes between persons who are refused entry at the border (Article 35 paragraph 1 and Article 37) and persons who, at the time of issuance of the decision on refusal of entry, are within the territory of Bosnia and Herzegovina (Article 35 paragraph 2 and Article 38).

78. As to the remedy against a decision on refusal of entry issued at the border, an alien may submit an appeal to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina, but this appeal has no suspensive effect.

79. As to the remedy against a decision on refusal of entry issued to an alien within the territory of Bosnia and

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Herzegovina, Article 38 provides, insofar as is relevant, as follows:

"An alien may appeal to the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina against a refusal of entry order taken on the territory of Bosnia and Herzegovina by the competent authority of the Entity.

An alien may appeal to the appeals panel as defined in Article 53 against an expulsion order by the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina.

The execution is stayed pending an appeal according to this Article."

80. Article 53 provides, insofar as is relevant, as follows:

"For the purposes of this Law, the Council of Ministers shall establish an appeals panel. (...)"

2. Law on Administrative Procedures of the Federation of Bosnia and Herzegovina

81. Article 139 of the Law on Administrative Procedures (OG FBiH no. 2/98, 48/99) provides, insofar as is relevant, as follows:

"(1) A body may directly solve the issue in an expedite procedure:

(...)

4) when the issue concerns urgent measures in the public interest which cannot be delayed and when the facts upon which the decision is based are established or at least shown to be probable."

82. Article 227 provides as follows:

"(1) An appeal against a decision shall be submitted within 15 days if the Law does not envisage it in a different way.

(2) The deadline for an appeal for each person and each body to which the decision was sent shall be calculated from the day of delivery of the decision."

83. Article 228 provides, insofar as is relevant, as follows:

"(1) A decision cannot be implemented during the period in which it is possible to file an appeal. After a properly stated appeal, a decision cannot be implemented until the decision on appeal is sent to the party.

(2) Exceptionally, a decision may be implemented during the appeal period, as well as after filing an appeal, if it was foreseen by the Law or if it is a matter of urgency (Article 139 item 1 line 4) or if the delay of implementation would cause irreparable damage to any of the parties. In the latter instance, it is

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possible to seek adequate insurance from the party in whose interest it is to carry out implementation and to condition the implementation on this insurance."

**3. Law on the Council of Ministers and Ministries of Bosnia and Herzegovina**

84. Article 39 of the Law on the Council of Ministers and Ministries of Bosnia and Herzegovina (OG BiH no. 11/00) provides as follows:

"The Ministry of Human Rights and Refugees shall undertake actions for the protection of human rights and rights of refugees, immigration, emigration and asylum in accordance with the Constitution of Bosnia and Herzegovina and the General Framework Agreement for Peace in Bosnia and Herzegovina, international conventions and laws and other acts of authorised institutions of Bosnia and Herzegovina, and co-ordinate tasks on rights of refugees and, in that respect, achieve co-operation with the Entities."

85. Article 43 provides as follows:

"The Ministry of Civil Affairs and Communications shall be competent for the areas of citizenship, politics and regulations on the application of international and inter-Entity criminal law, including relations with Interpol; establishment and functioning of mutual and international communication means; organisation of inter-Entity transport."

**4. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina**

86. The Code of Criminal Procedure (OG FBiH no. 43/98, 23/99) (the "Code of Criminal Procedure") came into force on 28 November 1998, replacing the former Code of Criminal Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia--hereinafter "OG SFRY"--nos. 26/86, 74/87, 57/89, 3/90 and Official Gazette of the Republic of Bosnia and Herzegovina--hereinafter "OG RbIH"--nos. 2/92, 9/92).

87. Chapter XXXI of the Code of Criminal Procedure regulates the procedure for "extradition of persons who have been charged or convicted".

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88. Article 506 provides, insofar as is relevant, as follows:

"1. The extradition of persons from the territory of the Federation who have been charged or convicted shall be performed in accordance with the provisions of this Law unless the law of Bosnia and Herzegovina or an international treaty specifies otherwise. ..."

89. Article 507 provides, insofar as is relevant, as follows:

"The prerequisites for extradition are as follows:

1. that the person whose extradition is sought is not a citizen of Bosnia and Herzegovina or the Federation;
2. --;
3. that the crime for which extradition is requested has not been committed in the Federation, against it or against its citizen;
4. that the crime for which extradition is sought constitutes a crime under both domestic law and the law of the State in which it was committed;
5. that the crime for which extradition is sought does not constitute a political or a military crime;
6. --;
7. --;
8. --;
9. that there is sufficient evidence to support a reasonable suspicion that the alien whose extradition is sought committed the particular crime or that a final verdict already exists;
10. ... and that the extradition is not sought for a crime for which capital punishment is prescribed by the law of the country seeking the extradition, unless the country seeking the extradition provides guarantees that capital punishment shall not be pronounced or exercised. ..."

90. Article 508 provides, insofar as is relevant, as follows:

1. A proceeding for extradition of an accused or convicted alien shall be instituted on the petition of the foreign state.
2. A petition for extradition shall be submitted through diplomatic channels.
3. The following must accompany a petition for extradition:
  1. the means of establishing the identity of the accused or convicted person (precise description, photographs, fingerprints, and the like);
  2. a certificate or other data concerning the alien's citizenship;
  3. the indicting proposal or verdict or decision of custody or some other equivalent document, in an original or certified copy, containing the first and last name of the person whose extradition is sought, and other data necessary to establish his identity, a description of the crime, the legal name of the crime and evidence to support a reasonable suspicion of his commission of the crime;

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4. an extract from the text of the criminal law of the foreign State which is to be applied or which has been applied against the accused for the crime for which extradition is sought; and if the crime was committed on the territory of a third state, then an extract from the text of the criminal law of that State as well.
4. If these appendices are written in a foreign language, a certified interpretation in one of the official languages of the Federation should also be appended."

91. Article 509 provides, insofar as is relevant, as follows:

- \*1. The Ministry of Foreign Affairs of Bosnia and Herzegovina shall deliver the petition for extradition of an alien through the Ministry of Civil Affairs and Communications to the Federal Ministry of Justice, which has a duty to immediately forward this petition to the investigative judge of the court in whose jurisdiction the alien is living or in whose jurisdiction he happens to be present.
2. If the permanent or temporary residence of an alien whose extradition is sought is not known, then the Federal Ministry of Justice shall first establish these facts through the Federal Ministry of Interior. ..."

92. Article 510 provides, insofar as is relevant, as follows:

- \*1. In urgent cases, when there is a danger that the alien will flee or conceal himself and when the foreign State has sought temporary custody of the alien, the competent law enforcement agency may arrest the alien in order to take him before the investigative judge of the competent court on the basis of the petition of the competent foreign authority, regardless of how it was sent. The petition must contain data to establish the alien's identity, the nature and name of the crime, the number of the warrant, the date, place and name of the foreign authority ordering the custody, and a statement to the effect that extradition shall be sought through regular channels.
2. When custody is ordered in conformity with paragraph 1 of this Article and the alien is brought before the investigative judge, after his examination, the investigative judge shall report the arrest to the Ministry of Foreign Affairs of Bosnia and Herzegovina through the Ministry of Civil Affairs and Communications and through the Federal Ministry of Justice.
3. The investigative judge shall release the alien when the grounds for custody cease to exist or if the petition for extradition is not submitted by the date which he specifies in view of the remoteness of the State seeking extradition, such period not to exceed 3 months from the date when the alien was taken into custody. ..."

D. International law regarding the fight against terrorism

1. United Nations Security Council Resolution 1373 (2001)

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93. United Nations Security Council Resolution 1373 (2001) was adopted by the Security Council at its 4385<sup>th</sup> meeting on 28 September 2001. It provides, insofar as is relevant, as follows:

• "The Security Council,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C., and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

"Acting under Chapter VII of the Charter of the United Nations,

"1 ...;

"2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

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(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;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) --;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) --;

(e) --;

(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;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists; ..."

2. Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism

94. On 15 July 2002, at its 804<sup>th</sup> meeting, the Committee of Ministers of the Council of Europe adopted a document entitled "Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism". These Guidelines provide, insofar as is relevant:

*Preamble*

"The Committee of Ministers,

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- (a.) Considering that terrorism seriously jeopardises human rights, threatens democracy, and aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society;
- (b.) Unequivocally condemning all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed;
- 
- (d.) Recalling that it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights, the rule of law and, where applicable, international humanitarian law;
- (e.) Recalling the need for States to do everything possible, and notably to co-operate, so that the suspected perpetrators, organisers and sponsors of terrorist acts are brought to justice to answer for all the consequences, in particular criminal and civil, of their acts;
- (f.) Reaffirming the imperative duty of States to protect their populations against possible terrorist acts;
- 
- (i.) Reaffirming states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights and, for the member states in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights;

adopts the following guidelines and invites member states to ensure that they are widely disseminated among all authorities responsible for the fight against terrorism.

## I

*States' obligation to protect everyone against terrorism*

\*States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies states' fight against terrorism in accordance with the present guidelines.

## II

*Prohibition of arbitrariness*

\*All measures taken by states to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision.

## III

*Lawfulness of anti-terrorist measures*

- \*1. All measures taken by states to combat terrorism must be lawful.
- 2. When a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

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## XII

## Asylum, return ("refoulement") and expulsion

1. --
2. It is the duty of a State that has received a request for asylum to ensure that the possible return ("refoulement") of the applicant to his/her country of origin or to another country will not expose him/her to the death penalty, to torture or to inhuman or degrading treatment or punishment. The same applies to expulsion.
3. --
4. In all cases, the enforcement of the expulsion or return ("refoulement") order must be carried out with respect for the physical integrity and for the dignity of the person concerned, avoiding any inhuman or degrading treatment.

## XIII

## Extradition

1. Extradition is an essential procedure for effective international co-operation in the fight against terrorism.
2. The extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted. A requested State may however grant an extradition if it has obtained adequate guarantees that:
  - (i) the person whose extradition has been requested will not be sentenced to death; or
  - (ii) in the event of such a sentence being imposed, it will not be carried out.
3. Extradition may not be granted when there is serious reason to believe that:
  - (i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment;
  - (ii) the extradition request has been made for the purpose of prosecuting or punishing a person on account of his/her race, religion, nationality or political opinions, or that that person's position risks being prejudiced for any of these reasons.
4. When the person whose extradition has been requested makes out an arguable case that he/she has suffered or risks suffering a flagrant denial of justice in the requesting State, the requested State must consider the well-foundedness of that argument before deciding whether to grant extradition.

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## XV

## Possible derogations

1. When the fight against terrorism takes place in a situation of war or public emergency which threatens the life of the nation, a State may adopt measures temporarily derogating from certain obligations ensuing from the international instruments of protection of human rights, to the extent strictly required by the exigencies of the situation, as well as within the limits and under the conditions fixed by international law. The State must notify the competent authorities of the adoption of such measures in accordance with the relevant international instruments.
2. States may never, however, and whatever the acts of the person suspected of terrorist activities, or convicted of such

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activities, derogate from the right to life as guaranteed by these international instruments, from the prohibition against torture or inhuman or degrading treatment or punishment, from the principle of legality of sentences and of measures, nor from the ban on the retrospective effect of criminal law. ..."

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## E. Legislation of the United States of America

## 1. President's Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism

95. On 13 November 2001 the President of the United States signed a military order on the "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (66 Federal Register 57833 of 16 November 2001) (the "US President's Military Order"). It provides, insofar as is relevant, as follows:

"By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, 115 Stat. 224) and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

## \*Section 1. Findings.

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

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(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

"Section 2. Definition and Policy.

(a) The term "individual subject to this order" shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

- (1) there is reason to believe that such individual, at the relevant times,
  - (i) is or was a member of the organization known as al Qaida;
  - (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
  - (iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and
- (2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4. ...

"Section 3. Detention Authority of the Secretary of Defense.

Any individual subject to this order shall be --

- (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;
- (b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;
- (c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;
- (d) allowed the free exercise of religion consistent with the requirements of such detention; and

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(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

"Section 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

(a) Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.

(b) As a military function and in light of the findings in section 1, including subsection (f) thereof, the Secretary of Defense shall issue such orders and regulations, including orders for the appointment of one or more military commissions, as may be necessary to carry out subsection (a) of this section.

(c) Orders and regulations issued under subsection (b) of this section shall include, but not be limited to, rules for the conduct of the proceedings of military commissions, including pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys, which shall at a minimum provide for --

(1) military commissions to sit at any time and any place, consistent with such guidance regarding time and place as the Secretary of Defense may provide;

(2) a full and fair trial, with the military commission sitting as the triers of both fact and law;

(3) admission of such evidence as would, in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person;

(4) --;

(5) conduct of the prosecution by one or more attorneys designated by the Secretary of Defense and conduct of the defense by attorneys for the individual subject to this order;

(6) conviction only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present;

(7) sentencing only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present; and

(8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.

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"Section 7. Relationship to Other Law and Forums.

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(b) With respect to any individual subject to this order --

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal. ..."

2. US Department of Defense Military Commission Order No.

1

96. On 21 March 2002, the Secretary of Defense of the United States, issued the US Department of Defense Military Commission Order No. 1, which sets forth the Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism established under the US President's Military Order of 13 November 2001 (see paragraph 95 above). This Military Commission Order provides, insofar as is relevant, as follows:

"1. PURPOSE

This Order implements policy, assigns responsibilities, and prescribes procedures ... for trials before military commissions of individuals subject to the President's Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President's Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President's Military Order or this Order, the procedures prescribed herein and no others shall govern such trials.

"2. ESTABLISHMENT OF MILITARY COMMISSIONS

In accordance with the President's Military Order, the Secretary of Defense or a designee ("Appointing Authority") may issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order and appointing any other personnel necessary to facilitate such trials.

...

"4. COMMISSION PERSONNEL

A. Members

(1) Appointment

The Appointing Authority shall appoint the members and the alternate member or members of each Commission. ...

(3) Qualifications

Each member and alternate member shall be a commissioned officer of the United States armed forces ("Military Officer"), ... The Appointing Authority shall appoint members and alternative members determined to be competent to perform the duties

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involved. The Appointing Authority may remove members and alternate members for good cause. ...

C. Defense

(1) Office of the Chief Defense Counsel

The Chief Defense Counsel shall be a judge advocate of any United States armed force, shall supervise the overall defense efforts under the President's Military Order, shall ensure proper management of personnel and resources, shall preclude conflicts of interest, and shall facilitate proper representation of all Accused.

(2) Detailed Defense Counsel.

Consistent with any supplementary regulations or instructions issued under Section 7(A), the Chief Defense Counsel shall detail one or more Military Officers who are judge advocates of any United States armed force to conduct the defense for each case before a Commission ("Detailed Defense Counsel"). The duties of the Detailed Defense Counsel are:

(a) To defend the Accused zealously within the bounds of the law without regard to personal opinion as to the guilt of the Accused; and

(b) To represent the interests of the Accused in any review process as provided by this Order.

(3) Choice of Counsel

(a) The Accused may select a Military Officer who is a judge advocate of any United States armed force to replace the Accused's Detailed Defense Counsel, ... If requested by the Accused, however, the Appointing Authority may allow the original Detailed Defense Counsel to continue to assist in representation of the Accused as another Detailed Defense Counsel.

(b) The Accused may also retain the services of a civilian attorney of the Accused's own choosing and at no expense to the United States Government ("Civilian Defense Counsel"), provided that attorney: (i) is a United States citizen; (ii) is admitted to the practice of law in a State, district, territory, or possession of the United States, or before a Federal court; (iii) has not been the subject of any sanction or disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct; (iv) has been determined to be eligible for access to information classified at the level SECRET or higher under the authority of and in accordance with the procedures prescribed in reference (c); and (v) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the course of proceedings. Civilian attorneys may be pre-

UNCLASSIFIED

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qualified as members of the pool of available attorneys, if, at the time of application, they meet the relevant criteria, or they may be qualified on an ad hoc basis after being requested by the Accused. Representation by Civilian Defense Counsel will not relieve Detailed Defense Counsel of the duties specified in Section 4(C)(2). The qualification of a Civilian Defense Counsel does not guarantee that person's presence at closed Commission proceedings or that person's access to any information protected under Section 6(D)(5).

(4) Continuity of Representation

The Accused must be represented at all relevant times by Detailed Defense Counsel. --

\*5. PROCEDURES ACCORDED THE ACCUSED

The following procedures shall apply with respect to the Accused:

- A. The Prosecution shall furnish to the Accused, sufficiently in advance of trial to prepare a defense, a copy of the charges in English and, if appropriate, in another language that the Accused understands.
- B. The Accused shall be presumed innocent until proven guilty.
- C. A Commission member shall vote for a finding of Guilty as to an offense if and only if that member is convinced beyond a reasonable doubt, based on the evidence admitted at trial, that the Accused is guilty of the offense.
- D. At least one Detailed Defense Counsel shall be made available to the Accused sufficiently in advance of trial to prepare a defense and until any findings and sentence become final in accordance with Section 6(H)(2).
- E. The Prosecution shall provide the Defense with access to evidence the Prosecution intends to introduce at trial and with access to evidence known to the Prosecution that tends to exculpate the Accused. Such access shall be consistent with Section 6(D)(5) and subject to Section 9.
- F. The Accused shall not be required to testify during trial. A Commission shall draw no adverse inference from an Accused's decision not to testify. This subsection shall not preclude the admission of evidence of prior statements or conduct of the Accused.
- G. If the Accused so elects, the Accused may testify at trial on the Accused's own behalf and shall then be subject to cross-examination.
- H. The Accused may obtain witnesses and documents for the Accused's defense, to the extent necessary and reasonably available as determined by the Presiding Officer. Such access shall be consistent with the requirements of Section 6(D)(5) and subject to Section 9. The Appointing Authority shall order that such investigative or other resources be made available to the Defense as the Appointing Authority deems necessary for a full and fair trial.

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I. The Accused may have Defense Counsel present evidence at trial in the Accused's defense and cross-examine each witness presented by the Prosecution who appears before the Commission.

J. The Prosecution shall ensure that the substance of the charges, the proceedings, and any documentary evidence are provided in English and, if appropriate, in another language that the Accused understands. The Appointing Authority may appoint one or more interpreters to assist the Defense, as necessary.

K. The Accused may be present at every stage of the trial before the Commission, consistent with Section 6(B)(3), unless the Accused engages in disruptive conduct that justifies exclusion by the Presiding Officer. Detailed Defense Counsel may not be excluded from any trial proceeding or portion thereof.

L. Except by order of the Commission for good cause shown, the Prosecution shall provide the Defense with access before sentencing proceedings to evidence the Prosecution intends to present in such proceedings. Such access shall be consistent with Section 6(D)(5) and subject to Section 9.

M. --

N. --

O. The Accused shall be afforded a trial open to the public (except proceedings closed by the Presiding Officer), consistent with Section 6(B).

P. The Accused shall not again be tried by any Commission for a charge once a Commission's finding on that charge becomes final in accordance with Section 6(H)2).

#### \*6. CONDUCT OF THE TRIAL

##### A. Pretrial Procedures

---

##### (3) Notification of the Accused

The Prosecution shall provide copies of the charges approved by the Appointing Authority to the Accused and Defense Counsel. ...

##### B. Duties of the Commission During Trial

The Commission shall:

(1) Provide a full and fair trial.

(2) Proceed impartially and expeditiously, strictly confining the proceedings to a full and fair trial of the charges, excluding irrelevant evidence, and preventing any unnecessary interference or delay.

(3) Hold open proceedings except where otherwise decided by the Appointing Authority or the Presiding Officer in accordance with the President's Military Order and this Order. ... A decision to close a proceeding or portion thereof may include a decision to exclude the Accused, Civilian Defense Counsel, or any other person, but Detailed Defense Counsel may not be excluded from any trial proceeding or portion thereof.

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##### F. Voting

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"...An affirmative vote of two-thirds of the members is required to determine a sentence, except that a sentence of death requires a unanimous, affirmative vote of all of the members. Votes on findings and sentences shall be taken by secret, written ballot."

#### G. Sentence

Upon conviction of an Accused, the Commission shall impose a sentence that is appropriate to the offense or offenses for which there was a finding of Guilty, which sentence may include death, imprisonment for life or for any lesser term, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the Commission shall determine to be proper. Only a Commission of seven members may sentence an Accused to death. ...

#### H. Post-Trial Procedures

##### (2) Finality of Findings and Sentence

A Commission finding as to a charge and any sentence of a Commission becomes final when the President or, if designated by the President, the Secretary of Defense makes a final decision thereon pursuant to Section 4(c)(8) of the President's Military Order and in accordance with Section 6(H)(6) of this Order. An authenticated finding of Not Guilty as to a charge shall not be changed to a finding of Guilty. ...

##### (4) Review Panel

The Secretary of Defense shall designate a Review Panel consisting of three Military Officers, which may include civilians commissioned pursuant to reference (e). At least one member of each Review Panel shall have experience as a judge. ...

##### (5) Review by the Secretary of Defense

The Secretary of Defense shall review the record of trial and the recommendation of the Review Panel and either return the case for further proceedings or, unless making the final decision pursuant to a Presidential designation under Section 4(c)(8) of the President's Military Order, forward it to the President with a recommendation as to disposition.

##### (6) Final Decision

After review by the Secretary of Defense, the record of trial and all recommendations will be forwarded to the President for review and final decision (unless the President has designated the Secretary of Defense to perform this function). If the President has so designated the Secretary of Defense, the Secretary may approve or disapprove findings or change a finding of Guilty to a finding of Guilty to a lesser-included offense, or mitigate, commute, defer, or suspend the sentence imposed or any portion thereof. ..."

### 3. Laws of War

97. The US President's Military Order of 13 November 2001 provides, at Section 1(e), that "it is necessary for individuals subject to this order ..., when tried, to be tried for violations of the laws of war and other applicable law by military tribunals". Sources of the "laws of war" include customary principles and rules of international law, international agreements, judicial decisions of national and international

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tribunals, national manuals of military law, scholarly treatises, and resolutions of various international bodies. The understanding of the "laws of war" of the United States Department of Defense is set forth in the *Field-Manual 27-10: The Law of Land Warfare*, promulgated by the Department of the Army. Relevant parts of *The Law of Land Warfare*, Chapter 8, Section II, dealing with crimes under international law, read:

\*498. Crimes Under International Law

Any person, whether a member of the armed forces or a civilian, who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment. Such offenses in connection with war comprise:

- a. Crimes against peace.
- b. Crimes against humanity.
- c. War crimes.

Although this manual recognizes the criminal responsibility of individuals for those offenses which may comprise any of the foregoing types of crimes, members of the armed forces will normally be concerned, only with those offenses constituting "war crimes."

\*499. War Crimes

The term "war crime" is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.

\*500. Conspiracy, Incitement, Attempts, and Complicity

Conspiracy, direct incitement, and attempts to commit, as well as complicity in the commission of, crimes against peace, crimes against humanity, and war crimes are punishable.

\*502. Grave Breaches of the Geneva Conventions of 1949 as War Crimes

The Geneva Conventions of 1949 define the following acts as "grave breaches," if committed against persons or property protected by the Conventions:

c. GC [Geneva Convention relative to the Protection of Civilian Persons in Time of War].

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. (GC, art. 147.)

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## "504. Other Types of War Crimes

In addition to the "grave breaches" of the Geneva Conventions of 1949, the following acts are representative of violations of the law of war ("war crimes"):

a. Making use of poisoned or otherwise forbidden arms or ammunition.

d. Firing on localities which are undefended and without military significance.

j. Pillage or purposeless destruction.

Section III, dealing with the punishment of war crimes, reads *inter alia*:

## "505. Trials

a. *Nature of Proceeding.* Any person charged with a war crime has the right to a fair trial on the facts and law.

b. *Rights of Accused.* Persons accused of "grave breaches" of the Geneva Conventions of 1949 are to be tried under conditions no less favorable than those provided by Article 105 and those following [of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War - hereinafter "the Third Geneva Convention of 1949"].

c. *Rights of Prisoners of War.* Pursuant to Article 85 [of the Third Geneva Convention of 1949], prisoners of war accused of war crimes benefit from the provisions of [the Third Geneva Convention of 1949], especially Articles 82-108 (-).

d. *How Jurisdiction Exercised.* War crimes are within the jurisdiction of general courts-martial (-), military commissions, provost courts, military government courts, and other military tribunals (-) of the United States, as well as of international tribunals.

e. *Law Applied.* As the international law of war is part of the law of the land in the United States, enemy personnel charged with war crimes are tried directly under international law without recourse to the statutes of the United States. However, directives declaratory of international law may be promulgated to assist such tribunals in the performance of their function.

## "508. Penal Sanctions

The punishment imposed for a violation of the law of war must be proportionate to the gravity of the offense. The death penalty may be imposed for grave breaches of the law. Corporal punishment is excluded. Punishments should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not of itself limit the imprisonment to be imposed."

## 4. United States Code

98. The US Code, Title 18, provides, insofar as is relevant, as follows:

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Section 1114 - Protection of officers and employees of the United States

"Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished -

(1) in the case of murder, as provided under section 1111; -"

Section 1117 - Conspiracy to murder

"If two or more persons conspire to violate section 1114 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life."

Section. 2332a (18 U.S.C. 2332a) - Use of certain weapons of mass destruction

"(a) Offense Against a National of the United States or Within the United States. -

A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction (other than a chemical weapon as that term is defined in section 229F), including any biological agent, toxin, or vector (as those terms are defined in section 178) -

(1) against a national of the United States while such national is outside of the United States;

(2) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce; or

(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life."

Section 2332b (18 U.S.C. 2332b) - Acts of terrorism transcending national boundaries

"(a) Prohibited Acts. -

(1) Offenses. -

Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b) -

(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or

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(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States;

in violation of the laws of any State, or the United States, shall be punished as prescribed in subsection (c).

(2) Treatment of threats, attempts and conspiracies. -  
Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished under subsection (c).

"

"(c) Penalties. -

(1) Penalties. -

Whoever violates this section shall be punished -

(A) for a killing, or if death results to any person from any other conduct prohibited by this section, by death, or by imprisonment for any term of years or for life;

(F) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

"(d) Proof Requirements. -

The following shall apply to prosecutions under this section:

(1) Knowledge. -

The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

(2) State law. -

In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

"(e) Extraterritorial Jurisdiction. -

There is extraterritorial Federal jurisdiction -

(1) over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and

(2) over conduct which, under section 3, renders any person an accessory after the fact to an offense under subsection (a).

Sec. 3591. - Sentence of death

"(a) A defendant who has been found guilty of -

(1) an offense described in section 794 or section 2381;  
or

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(2) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593 -

- (A) intentionally killed the victim;
- (B) intentionally inflicted serious bodily injury that resulted in the death of the victim;
- (C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or
- (D) intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act.

“(b) ...

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.”

V. COMPLAINTS

99. In their applications, which were submitted in the four days preceding their hand-over by the Federation Police to US forces, the applicants complain about a violation of Article 3 of the Convention, as by their expulsion to Algeria they would be subjected to torture, inhuman and degrading treatment and punishment. They also complain of a violation of the right to have a trial within a reasonable time in respect to their appeal for annulment of the decisions on revocation of citizenship (they bring this complaint under Article 5 paragraph 3 of the Convention). Further, they complain of a violation of Article 8 of the Convention, the right to respect for private and family life, which would be affected by their removal from Bosnia and Herzegovina.

100. In their written submission of 6 March 2002, the applicants add to their original complaints allegations of violations of several provisions which had been referred to by the Chamber in communicating the applications to the respondent Parties: Article 5 paragraph 1 of the Convention in regard to the detention of the applicants, Article 6 of the Convention and in particular the presumption of innocence, and Article 3 of Protocol No. 4 to the Convention or respectively Article 1 of Protocol No. 7 to the Convention in regard to the expulsion of the applicants, Article 1 of Protocol No. 6 to the Convention in light of the fact that

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the applicants were expelled to a legal system in which they are under the possible risk of imposition of the death penalty.

101. In the submission of 6 March 2002, the applicants further add the allegation that their right under Article 13 of the Convention was violated due to a lack of effective remedies against the possible violations of Articles 3, 5 and 8 of the Convention. Further, they add the claim that they were discriminated against in their rights as protected by Articles 3, 5, 6 and 8 of the Convention because they are aliens.

## VI. SUBMISSIONS OF THE PARTIES

### A. Bosnia and Herzegovina

#### 1. As to the facts and domestic law

102. In its written submissions of 28 January 2002, concerning the procedure of the revocation of citizenship, Bosnia and Herzegovina states that the applicants had hidden intentions not to respect the Constitution and laws of Bosnia and Herzegovina and that therefore the revocation of citizenship was in accordance with the law. In addition to the criminal proceedings initiated against the applicants, Bosnia and Herzegovina claims that the applicants made false statements and submitted false documents in order to acquire citizenship. Bosnia and Herzegovina further argues that the applicants' citizenship was removed at the time of the delivery of the decisions on revocation to the applicants on 4 December 2001, in accordance with Article 24 of the Law on Citizenship of Bosnia and Herzegovina.

103. In respect to possible extradition<sup>4</sup> of the applicants, Bosnia and Herzegovina submits that on 12 January 2002, in reply to a request made by INTERPOL in Sarajevo, the National Democratic Republic of Algeria, represented by its Embassy in Rome, refused to accept the applicants in the event they were deported from Bosnia and Herzegovina.<sup>5</sup> On 17 January 2002 in a diplomatic note the US Embassy in Sarajevo informed Bosnia and Herzegovina that it was willing to take custody of the applicants and two more persons who were all believed to be involved in international terrorism. Bosnia and Herzegovina concludes that as Algeria, the applicants' country of origin, did not want the

<sup>4</sup> The use of the word "extradition" contains no formal assessment other than conveying the submissions of Bosnia and Herzegovina. This word is repeated in the submissions of the Federation of Bosnia and Herzegovina and of the applicants.

<sup>5</sup> It is unknown whether the applicants were still citizens of Algeria at this time. At the public hearing on 10 April 2002, the Agents of the respondent Parties and the lawyers for the applicants were unable to clarify this fact.

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applicants back, it was Bosnia and Herzegovina's right under international law to extradite the applicants to the authorities of the United States of America, who had asked for their extradition on the suspicion that the applicants were involved in terrorist activities. At the public hearing, however, the Agent of Bosnia and Herzegovina stated that, neither at the time of the hand-over nor at the time of the public hearing, Bosnia and Herzegovina was aware of any intention of the United States to initiate criminal proceedings against the applicants. Bosnia and Herzegovina placed the applicants "under the supervision" of the US forces, which did not involve "detention" of the applicants. Facilitating such "supervision" was a necessary form of co-operation by Bosnia and Herzegovina in the international fight against terrorism. The Agent lamented that in the translation of the Note Verbale of the US Embassy the word "custody" had been translated as "supervision".

104. At the public hearing the Agent of Bosnia and Herzegovina stated that he did not have any official information as to when the applicants were taken out of Bosnia and Herzegovina.

2. As to the admissibility

105. Bosnia and Herzegovina claims that the cases are inadmissible. Firstly, Bosnia and Herzegovina is of the opinion that the Chamber exceeded its jurisdiction by extending the cases to it as a respondent Party, because the applicants did not direct their applications against Bosnia and Herzegovina. Secondly, Bosnia and Herzegovina argues that it is not responsible for any of the acts giving rise to the alleged violations of the applicants' rights as protected by the Convention. Thirdly, it claims that the applicants have not exhausted the available domestic remedies. Finally, it claims that the applicants did not wait six months before submitting their applications, the applicants thereby being in breach of the six-months rule under Article VIII(2)(a) of the Agreement.

3. As to the merits

106. In regard to the merits, Bosnia and Herzegovina did not submit any written observations. At the public hearing, Bosnia and Herzegovina argued that it was obliged under the UN Security Council Resolution 1373 of 28 September 2001 (see paragraph 93 above), to accede to the US request and that the applicants were not citizens at the time of their hand-over. Furthermore, Bosnia and Herzegovina maintains that it has not taken any of the decisions or conducted any of the operations complained of by the applicants.

4. As to the order of a provisional measure

107. Bosnia and Herzegovina alleges that it was never delivered

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the order for a provisional measure in a proper way. It argues that even if the order was transmitted to the facsimile of the legal service of the Council of Ministers on 17 January 2002, at 6:26 p.m., it could not have complied with the order, because the Council of Ministers, where the Agents are situated, stops working at 5:00 p.m. However, on 18 January 2002, at 9:00 a.m., when the Agents started working the next day, the applicants were already outside of the territory of Bosnia and Herzegovina. Moreover, the regular practice is that the Agents of Bosnia and Herzegovina receive cases and decisions of the Chamber and other materials directly by courier.

108. Bosnia and Herzegovina opines that the English version and the Bosnian version of the order for a provisional measure are different in a number of decisive details. Bosnia and Herzegovina assumes from these mistakes that both the President and the Vice President were outside of Sarajevo at the relevant time. Bosnia and Herzegovina considers that in particular cases of such importance, the order should have been issued only after the President or any other judge issuing the order had personal insight into the files, even if that means that the judge must travel to Sarajevo immediately.

109. In addition, the Agent of Bosnia and Herzegovina stated in its written observations of 25 February 2002, and repeated at the public hearing on 10 April 2002, that the Chamber is fully aware that Bosnia and Herzegovina has no authority to give effect to orders by the Chamber. The Agent of Bosnia and Herzegovina stated in paragraph 2 of the written observations:

"We would like to point out the following preliminary legal issues that are now under the Chamber's competence, and to which the Chamber, up to now, paid no attention to in its consideration and/or statements on the above-mentioned cases:

"(10) In its provisional measure the Chamber requested the state of Bosnia and Herzegovina to prevent the applicants to be taken out of Bosnia and Herzegovina by the use of force. The esteemed Chamber, most certainly, should know by now that the state of Bosnia and Herzegovina, in its distinction from its Entities, does not institutionally possess any instrument of force ... and such wording of the order for provisional measures is not enforceable by the state of Bosnia and Herzegovina..."

**B. The Federation of Bosnia and Herzegovina**

**1. As to the facts**

110. The Federation submitted a written account of the facts pertaining to the criminal proceedings against the applicants,

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the revocation of citizenship and the hand-over of the applicants to US forces which coincides in substance with the facts as established by the Chamber in paragraphs 40 to 55 above.

111. At the public hearing the Federation stated that the organs of the Federation only acted as agents executing the orders of Bosnia and Herzegovina. Therefore, the Federation is not responsible for any acts concerning the applicants and in particular not for handing-over the applicants to US forces. The Federation also claims that the applicants lost their citizenship at the time the decisions on revocation were delivered to the applicants on 4 December 2001.

112. In reply to a question by the Chamber, the Agent of the Federation stated that she did not have any explanation as to why the decision on refusal of entry of 10 January 2002 was not delivered to the applicants before 18 January 2002.

### 2. As to the admissibility

113. In the written submissions the Federation did not submit any arguments with regard to the admissibility of the cases. At the public hearing, the Federation joined the argument of Bosnia and Herzegovina that the cases are inadmissible because, in the legal system of the Federation, effective remedies exist both in relation to theory and practise, which have not been exhausted by the applicants.

### 3. As to the merits

114. With regard to the presumption of innocence as protected by Article 6 paragraph 2 of the Convention, the Federation claims that the decisions of the Supreme Court in the investigative proceedings against the applicants were only based on doubt and suspicion and not on the presumption of guilt.

115. In respect to the detention of the applicants, the respondent Party claims that until their release from pre-trial detention, the detention was justified under Article 5 paragraph 1(c) of the Convention. The detention subsequent to their release from pre-trial detention until the hand-over to US forces was justified under Article 5 paragraph 1(f) in order to ensure their expulsion.

116. In respect to the merits, the Federation points out that there can only be a violation of either Article 3 of Protocol No. 4 to the Convention or of Article 1 of Protocol No. 7 of the Convention. In the additional written submissions of 25 February 2002, the Federation submits in regard to the alleged violation of Article 6 that there is no violation with regard to the reasonableness of the duration of any proceedings initiated until that day.

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117. The Federation further argues that under Article 1 paragraph 2 of Protocol No. 7 to the Convention, it was justified for reasons of national security to expel the applicants before they could avail themselves of the procedural safeguards provided for in Article 1 paragraph 1 of Protocol No. 7 to the Convention.

4. As to the order for a provisional measure

118. The Federation stated that it received the order for a provisional measure at 6:26 p.m. on 17 January 2002, and it transmitted it to the Federal Ministry of Interior, which confirmed receipt.

C. The applicants

119. In regard to the admissibility the applicants point out that there is also responsibility of Bosnia and Herzegovina, as their expulsion also involved acts that fall within the responsibility of Bosnia and Herzegovina. In addition, the Chamber ordered the provisional measure against both the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, and both parties did not comply with the order.

120. They further claim that they have exhausted all available remedies. In particular, they have initiated an administrative dispute against the revocation of citizenship before the Supreme Court, which is still pending. However, nothing has proven effective against the forceful expulsion of the applicants. The applicants also submit that they did not request the Supreme Court to suspend the revocation of citizenship because, under Article 26 of the Law on Citizenship of the Federation of Bosnia and Herzegovina, the revocation of citizenship only enters into force upon the decision of the Supreme Court in the administrative dispute. Therefore, they submit, a request for provisional suspension would have been redundant.

121. In regard to the merits the applicants submit that there was a violation in regard to the reasonableness of time as the administrative dispute before the Supreme Court regarding the revocation of citizenship was not decided before the applicants were expelled.

122. In their original applications the applicants were under the impression that they would be extradited<sup>6</sup> to Algeria. They alleged that a possible extradition to Algeria might result in a violation of their rights as protected by Article 3 of the Convention as they would probably be subject to arbitrary detention, torture, and degrading treatment including sexual maltreatment, and the applicants could even "disappear" and be

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<sup>6</sup> See footnote 5 above.

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murdered. The applicants having been taken to the United States of America, the applicants' representatives now claim a violation of Article 3 in regard to the applicants' treatment at Camp X-Ray, Guantanamo Bay, Cuba. According to the submissions of their lawyers, they are held in cages under inhuman conditions, as publicly known from coverage by the international media.

123. Moreover, the lawyer of the applicant Lakhdar claimed at the public hearing that the signature of his client on the delivery slip, which should prove that on 18 January 2002 the applicant was delivered the decision on refusal of entry, was forged. He pointed out that a comparison of the applicant's signature on other documents with the signature on the delivery note would prove that the signature on the delivery slip was not made by the same person; therefore, it could not be his client's signature on the delivery slip.

D. UN OHCHR as *amicus curiae*

124. On 5 April 2002, the UN OHCHR, as *amicus curiae*, submitted its written observations on the admissibility and merits of the applications. The UN OHCHR offered further arguments in its oral presentation at the public hearing on 10 April 2002. At the public hearing the UN OHCHR clarified that it has appeared as *amicus curiae* not on behalf of the applicants but "to contribute to the understanding of the application of human rights to all parties in the proceedings". It has sought to explain that the "two absolutes" --- "the absolute necessity of ensuring the effective prosecution of terrorism and the absolute necessity of upholding the rule of law and human rights" --- "are not incompatible", as follows:

"While we recognise that the threat of terrorism may require specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. Such steps might particularly affect the presumption of innocence, the right to a fair trial, freedom from torture and privacy rights, freedom of expression and assembly, and the right to seek asylum. The purpose of anti-terrorism measures is to protect human rights and democracy, not to undermine these fundamental values of our societies. The nature and manner of implementation of such measures must be fully consistent with this. We believe that in this case those vital concerns are being raised."

125. In summary, the UN OHCHR submits that all four applications are admissible. It further submits that "the respondent Parties have singularly failed in their obligations under Article 1 of the Convention, and that there are violations of Articles 3, 5, 6" of the Convention. In addition, there are either violations of Article 3 of Protocol No. 4 or Article 1 of Protocol No. 7

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(depending on the citizenship status of applicants Boudellaa, Nechle, and Lakhdar). Lastly, there may be violations due to the lack of guarantees in relation to obligations under Article 1 of Protocol No. 6 to the Convention.

126. With respect to admissibility, the UN OHCHR first argues that the applicants had no effective domestic remedies to challenge the withdrawal of their citizenship (applicants Boudellaa, Nechle, and Lakhdar) or permanent residence (applicant Lahmar). The applicants' citizenship has not been effectively withdrawn until the Supreme Court of the Federation has decided their cases, as domestic legislation provides that a procedural decision to withdraw citizenship becomes valid only when the administrative dispute has been concluded. The applicants had duly initiated administrative disputes at the Supreme Court of the Federation and these disputes were still pending at the time of their removal. Mr. Lahmar, the applicant with the permanent residence status, also submitted an appeal to the appropriate body, the Appeal Panel of the Council of Ministers, in accordance with the Law on Immigration and Asylum of Bosnia and Herzegovina. However, since this body was not officially functioning at that moment, there was no effective remedy Mr. Lahmar could pursue.

127. The UN OHCHR further argues that there was no effective and accessible domestic remedy for the applicants to challenge the decisions on refusal of entry into the territory. The Law on Immigration and Asylum of Bosnia and Herzegovina provides a right to appeal a decision on refusal of entry. However, the decisions on refusal of entry were issued and served on the applicants on 18 January 2002; therefore, it was nearly impossible for them to exercise their right of appeal, since most likely they were removed from the territory before the deadline for their appeal.

128. Moving on to the merits, the UN OHCHR divides the entire process leading to the removal of the applicants from the jurisdiction into four areas of concern: removal of citizenship rights and refusal of entry; first period of detention from the date of arrest until the decision of the Supreme Court of the Federation to release the applicants on 17 January 2002; second period of detention from the Supreme Court's decision of 17 January 2002 until the hand-over of the applicants to US forces on 18 January 2002; and third period of detention from the hand-over of the applicants to their subsequent removal from the jurisdiction of Bosnia and Herzegovina by US forces.

129. The UN OHCHR argues that the applicants had no effective remedy, within the meaning of Article 13 of the Convention, to challenge their removal of citizenship rights and refusal of entry. This Article has been interpreted to impose on states a duty to provide a national authority that can deal with the substance of a complaint under the Convention and grant effective relief (see, e.g., Eur. Court HR, *Murray v. United Kingdom*,

**UNCLASSIFIED**

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judgment of 28 October 1994, Series A no. 300-A, pages 37-38, paragraph 100; Eur. Court HR, *Aydin v. Turkey*, judgment of 25 September 1997, Reports of Judgments and Decisions 1997-VI, paragraph 103). Since the applicants were removed from the jurisdiction before their appeals against the removal of citizenship rights and refusal of entry could be heard by the competent domestic authorities, the institutional mechanisms available to them were ineffective. In addition, the applicants had no opportunity to raise the substance of the rights they were claiming. The UN OHCHR submits that "as there was no possibility in fact, if not in law, of accessing the requisite bodies to assert those rights, then the respondents denied the applicants the possibility of an effective remedy and are in violation of Article 13". The UN OHCHR also notes that if they had been provided with an effective remedy, the applicants would have had the right to argue that any expulsion from the jurisdiction could have violated their rights protected by Article 8 of the Convention. According to the UN OHCHR, "the Article 8 rights of the applicants have clearly been interfered with and there has been no opportunity to argue the lawfulness", which in turn violates Article 13.

130. The first period of detention (from arrest to the Federation Supreme Court's decision to release them on 17 January 2002) could be in violation of Article 5(1)(c) of the Convention, according to the UN OHCHR. Unless the respondent Parties demonstrated that there was reasonable suspicion that each of the applicants committed a criminal offence and that the detention and arrest were truly aimed at bringing them before a judicial authority, the detention was in violation of the Convention. Although the European Court of Human Rights (the "European Court") has recognised a wider margin of appreciation in terrorism cases, it has emphasised that the essence of Article 5(1)(c) safeguards cannot be impaired.

131. The UN OHCHR considers three possible scenarios for the second period of detention (after the Federation Supreme Court ordered the applicants' release on 17 January 2002): that the detention was covered by Article 5(1)(c); that the detention was to enable extradition from Bosnia and Herzegovina; and that the detention was to enable their deportation. Since the Federation Supreme Court had ordered the applicants' release from detention, further detention would necessitate another judicial decision based on new information. As no such new decision was issued, the UN OHCHR argues that the further detention "had become arbitrary and hence unlawful" under Article 5(1)(c). On the other hand, Article 5(1)(f) allows detention for the purposes of extradition and deportation, provided such detention is "lawful". However, no valid proceedings for either extradition or deportation were carried out; rather, the applicants were subjected to illegal transfers to a third party. Consequently, the UN OHCHR submits that Article 5(1)(f) is also inapplicable as

UNCLASSIFIED

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a justification for the continued detention of the applicants after the decision on release of 17 January 2002.

132. For the third period of detention (from the hand-over of the applicants to US forces to their removal from the jurisdiction by US forces), the UN OHCHR relies on the case law of the European Court to argue that the respondent Parties had a responsibility to protect the applicants' rights even after their transfer. The UN OHCHR submits that this positive obligation extended, in particular, to protecting the applicants' rights under Article 3, Article 5, Article 6, and Article 1 of Protocol No. 6 to the Convention.

133. The UN OHCHR notes that Article 3 of Protocol No. 4 prohibits the expulsion of nationals, while Article 1 of Protocol No. 7 requires certain procedural safeguards in connection with the expulsion of aliens. The UN OHCHR argues that applicants Boudellaa, Lakhdar and Nechle still retained their citizenship at the moment of their illegal transfer; therefore, Article 3 of Protocol No. 4 protected them, as nationals of Bosnia and Herzegovina, from expulsion. In the alternative, if the applicants had lost their citizenship, then they were still protected as aliens by Article 1 of Protocol No. 7. In particular, Article 1 of Protocol No. 7 requires an opportunity to submit reasons against the expulsion, to have these reasons reviewed, and to be represented for these purposes before the competent authority. While these rights may be limited in the interests of public order or national security, the respondent Parties have not relied on national security or public order to justify the expulsions. In fact, no procedural guarantees were followed. Since these requirements were not met, the UN OHCHR concludes that the applicants' rights guaranteed by Article 1 of Protocol No. 7 have been violated.

134. With respect to the removal of the applicants' citizenship, the UN OHCHR further points out that there exists a "necessity of not making people stateless". None the less, although the respondent Parties did not know whether or not the applicants had Algerian citizenship or any other available citizenship, they were still prepared to remove the applicants' citizenship of Bosnia and Herzegovina. The UN OHCHR admits that the Law on Citizenship of the State of Bosnia and Herzegovina contains no time limit for challenging the validity of naturalised citizenship. However, it submits that the Law on Citizenship must be read in connection with the criminal offence at issue, from which it follows that the time limit "has to be related to the statute of limitation for initiating criminal proceedings for those crimes". Lastly, on the issue of how to reconcile the Federation Law on Citizenship with the State Law on Citizenship, the UN OHCHR argues as follows:

UNCLASSIFIED

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"As a matter of construction, it is only possible for the State to ensure the highest level of internationally recognised human rights by stating that the final decision on loss of citizenship at the State level can only be final (i.e., valid and enforceable) after the procedure in Federation Law on Citizenship and Article 26 has been completed, as it is only through the Federation Law on Citizenship that the individual has the possibility of challenging the decision. So, therefore, we would say that in order for ... the State to cancel citizenship, the procedures at the Federation level must be exhausted".

135. As explained with respect to the ineffectiveness of domestic remedies, the UN OHCHR contends that there has been a violation of Article 5 of the Convention because proper procedures prescribed by law were not followed in connection with the applicants' detention.

136. With respect to Article 6, the UN OHCHR suggests that the respondent Parties may have failed to guarantee the applicants' rights, particularly with respect to the presumption of innocence and a fair hearing. The UN OHCHR makes no submission as to whether the military tribunals under the US President's Military Order comply with the requirements of Article 6.

137. According to the UN OHCHR, the "crucial" or "core" issues with respect to the merits of the applications are "the obligations of Bosnia and Herzegovina towards the applicants to protect their rights under Article 3 of the Convention". The UN OHCHR argues that, in the absence of guarantees from the United States as to the treatment of the applicants, the transfer of the applicants to US authorities has violated Article 3 of the Convention because it is possible that they could face the death penalty if convicted on charges of terrorism. Noting that "it is known as a matter of public record that the death penalty does apply in relation to alleged terrorists held at Guantanamo Bay", the UN OHCHR opines "that there was a positive obligation on Bosnia and Herzegovina at that time to ensure, to absolutely ensure, that there was no transfer without guarantees that the death penalty would not be imposed".

138. For its argument in relation to Article 3, the UN OHCHR relies upon the European Court's decision in *Soering v. United Kingdom*, in which it explained that the extradition of an applicant to the United States to stand trial on capital murder charges and face the possibility of the death penalty would "plainly be contrary to the spirit and intendment of the Article" (Eur. Court HR, judgment of 7 July 1989, Series A no. 161, page 35, paragraph 88). In later cases, the European Court applied the same considerations to expulsion cases (see, e.g., Eur. Court HR; *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, page 28, paragraph 70). As the European Court

UNCLASSIFIED

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stated in *Chahal v. United Kingdom*, even a threat to national security could not justify taking such a risk, because "the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct" (Eur. Court HR, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, paragraph 79). The UN OHCHR notes that in *Soering* the European Court further provided that Article 3 covered not just the violations that had already taken place, but also the "foreseeable consequences in the requesting country" (*Soering* at page 35, paragraph 90). Imposition of the death penalty need not be certain or even probable (*id.* at page 37, paragraph 94). The UN OHCHR submits that Bosnia and Herzegovina must conduct a material examination of whether an expulsion would be compatible with Article 3 prior to ordering such expulsion. No such examination occurred in the present cases.

139. With respect to Article 1 of Protocol No. 6, the UN OHCHR observes that the military tribunals were empowered to seek the death penalty. Therefore, the UN OHCHR concludes, "it is incumbent upon the State of Bosnia and Herzegovina to ensure that guarantees are given in relation to its non-application to the applicants". As no evidence has been produced of such guarantees from the United States, the UN OHCHR submits that the respondent Parties "are liable for any violations that occurred or occur from the moment the applicants were illegally transferred to the custody of the United States".

140. The UN OHCHR also argues that the respondent Parties have no defence to their failure to comply with the Chamber's order for provisional measures. In accordance with Annex 6 to the General Framework Agreement, the Chamber's decisions are final and binding on all parties. The UN OHCHR notes that superseding the authority of the Chamber, an independent judicial body, with that of the Executive undermines the rule of law.

141. In the event the Chamber finds a violation of the Convention, the UN OHCHR suggests that compensation for pecuniary damages could be an available remedy. In addition, the Chamber could order Bosnia and Herzegovina "to take all necessary measures and steps to have the applicants returned to the jurisdiction so that they can then have their procedures followed, their citizenship determined, and/or if the extradition is requested, for a formal legal request to be made and for the procedures to be gone through in accordance with the law and in accordance with the demands of the Convention".

## VII. OPINION OF THE CHAMBER

### A. Admissibility

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## 1. Admissibility against Bosnia and Herzegovina

142. Bosnia and Herzegovina has challenged the admissibility of the applications on three grounds:

a. As to Bosnia and Herzegovina as a respondent Party

143. Bosnia and Herzegovina emphasises that the application forms and documents appended thereto did not name Bosnia and Herzegovina as a respondent Party; therefore, it claims that the Chamber exceeded its jurisdiction by naming Bosnia and Herzegovina as a respondent Party.

144. Bosnia and Herzegovina further argues that it cannot be held responsible for possible violations in the present cases. In addition, it claims that the matters relevant to the present applications do not fall within the responsibility of Bosnia and Herzegovina, because it has neither been given the relevant competence by the Constitution of Bosnia and Herzegovina and other legislation, nor has it *de facto* taken action from which a possible violation of the applicants' rights might arise.

145. The Chamber recalls that it has on previous occasions considered applications against respondent Parties not specifically named by the applicant. In *Zahirovic* (case no. CH/97/67, *Sakib Zahirovic v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, decision of 9 July 1999, paragraphs 93-94, Decisions July-December 1999), the Chamber stated:

"93. Bosnia and Herzegovina has argued that it cannot be considered a respondent Party in this case. It is true that the applicant submitted his application against the Federation as the only respondent Party. In its observations of 18 May 1998 the Federation, however, argued that Bosnia and Herzegovina was solely responsible for the actions of the Livno-Bus Company as it had been a state-owned company. As recalled above (see paragraph 91), the Chamber's jurisdiction extends to alleged or apparent violations of the rights and freedoms provided for in the relevant international agreements appended to the Agreement, *inter alia*, where such a violation is alleged or appears to have been committed by one or several of the Parties to the Agreement. The Chamber notes the complexity of the legal and constitutional arrangements of Bosnia and Herzegovina because of which it would be unreasonable to expect applicants to be able in all circumstances to address the correct respondent Party. This approach is in line with the object and purpose of the right of individual petition provided by the Agreement.

UNCLASSIFIED

## UNCLASSIFIED

"94. It is on the above basis that the Chamber has consistently considered that it is not restricted by the applicant's choice of respondent Party. In its case law the Chamber has repeatedly found violations of the Agreement to have been committed by a respondent Party designated by the Chamber itself (see, e.g., *Turcinovic v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, case no. CH/96/31, decision of 9 May 1997, Decisions 1996-97, paragraph 11). On the basis of its competence under the Agreement the Chamber has further provided, in Rule 33(1) of its Rules of Procedure, that it may, *proprio motu*, take any action which it considers expedient or necessary for the proper performance of its duties under the Agreement. In the present case the Chamber eventually decided to transmit the application not only to the Federation but also to the State of Bosnia and Herzegovina for observations, thereby affording it an opportunity to take part in adversarial proceedings."

146. The Chamber therefore, in accordance with its previous jurisprudence, rejects the argument by Bosnia and Herzegovina that it is precluded from examining, for the purposes of the Agreement, the potential responsibility of Bosnia and Herzegovina for the events complained of.

147. In regard to the second argument that Bosnia and Herzegovina is not and cannot be responsible for the alleged violations of the applicants' rights, the Chamber observes - without prejudging the merits of the cases - that the organs of the Government of Bosnia and Herzegovina have been factually involved in the proceedings concerning the applicants. Bosnia and Herzegovina has, for example, established diplomatic contacts with the governments of Algeria and the United States of America<sup>7</sup> with regard to the applicants. It has also, in accordance with the domestic law, played a role in the process of the revocation of citizenship of the applicants Boudellaa, Lakhdar and Nechle. The decision on termination of the permit for permanent residence, which included an expulsion order in the case of the applicant Lahmar, was issued by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina. The responsibilities of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina in the cases before the Chamber are closely intertwined. The Chamber therefore finds that it is not appropriate to declare the cases inadmissible against Bosnia and Herzegovina at this stage, but it will examine the responsibility of Bosnia and Herzegovina with regard to each alleged violation on the merits.

<sup>7</sup> The Diplomatic note of 17 January 2002 from the US Embassy is specifically addressed to the Government of Bosnia and Herzegovina and the Ministry of Foreign Affairs (there is no Ministry of Foreign Affairs at the Entity level).

UNCLASSIFIED

## b. Exhaustion of domestic remedies

148. Bosnia and Herzegovina argues that the applicants did not exhaust domestic remedies. In this respect the respondent Party refers to the procedure before the Supreme Court regarding the applicants' complaint against the administrative act on revocation of citizenship. The respondent Party further claims that in filing a lawsuit against the revocation of citizenship, the applicants have failed to request the Supreme Court to postpone the execution of the administrative act of revocation of citizenship. In accordance with Article 19 of the Law of Administrative Disputes (see paragraph 71 above), this claim would have been examined within three days. The respondent Party further points out that, due to the large case-load of the Supreme Court, the cases of the applicants have not been resolved yet, as the applicants failed to file a written request for urgency.

## i. In regard to the applicants Boudellaa, Lakhdar and Nechle

149. The Chamber considers that the alleged violation of the rights of the applicants Boudellaa, Lakhdar and Nechle is not directly the revocation of their citizenship, which merely represents one element in the overall proceedings. On this point the Chamber notes that the Convention does not protect the right to citizenship as such, nor is a violation of that right the subject matter of the cases before the Chamber. The impugned acts in the cases of the applicants Boudellaa, Lakhdar and Nechle are the applicants' detention, the order of refusal of entry and the hand-over of the applicants into the custody of US forces.

150. Neither respondent Party has substantiated how the remedies which they claimed were not exhausted, *i.e.* the request for suspension of execution and a request for urgency to the Supreme Court, would have proven effective remedies against the impugned acts, namely, the detention of the applicants until their hand-over to US forces.

151. The Chamber is well aware that revocation of the applicants' citizenship raises questions of importance when assessing whether the applicants' cases fall under Article 3 of Protocol No. 4 to the Convention, which forbids the expulsion of nationals, or under Article 1 of Protocol No. 7 to the Convention, which provides for procedural safeguards in respect to the expulsion of aliens. However, the Chamber finds that these questions do not raise issues of admissibility. These issues will therefore be discussed on the merits.

## ii. In regard to the applicant Lahmar

UNCLASSIFIED

UNCLASSIFIED

152. The applicant Lahmar was not a citizen of Bosnia and Herzegovina, but only a permanent resident. His permanent residence status was terminated as he was convicted of a criminal offence and sentenced to more than four years imprisonment. The applicant appealed against the decision of the Ministry of Human Rights and Refugees on 11 January 2002 to the Appeals Panel of the Council of Ministers of Bosnia and Herzegovina; the appeal is still pending. Therefore, in accordance with Article 38 of the Law on Immigration and Asylum, the execution of the decision to expel the applicant should have been stayed. The argument made by Bosnia and Herzegovina hence appears not to apply to him as the applicant has exhausted all possible remedies.

iii. Conclusion in regard to the exhaustion of domestic remedies

153. Accordingly, the Chamber finds that the applicants have complied with the requirement set out in Article VIII(2)(a) of the Agreement. The Chamber therefore decides not to declare the applications inadmissible on the ground that the applicants have not exhausted the effective domestic remedies.

c. Six-months rule

154. Bosnia and Herzegovina objects to the admissibility of the applications in that the applicants failed to wait six months after the final decision in their cases, as required by Article VIII(2)(a) of the Agreement, before filing their applications with the Chamber. This provision reads:

"The Chamber shall decide which applications to accept... In so doing, the Chamber shall take into account the following criteria: (a) ... that the application has been filed with the Commission within six months from such date on which the final decision was taken."

155. In its long-standing case law, the Chamber has always interpreted the six-months rule in accordance with the clear wording of the rule and its *ratio legis* to mean that an applicant is obliged to submit his application to the Chamber within six months after a final decision has been taken. The Chamber recalls that the six-months rule is designed to mark out the temporal limits of supervision carried out by the Chamber in order to ensure a certain degree of legal certainty. The applicants were not obliged to wait for six months before submitting an application; on the contrary, they were obliged to file applications within six months. The applicants hence complied with Article VIII(2)(a) of the Agreement.

2. Admissibility against the Federation of Bosnia and Herzegovina

UNCLASSIFIED

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156. In its written submissions the Federation of Bosnia and Herzegovina has not objected to the admissibility of the applications. However, during the public hearing the Federation of Bosnia and Herzegovina joined the argument of the other respondent Party, Bosnia and Herzegovina, that the cases should be declared inadmissible due to non-exhaustion of domestic remedies. The Chamber finds the same reasoning applies to reject this argument as set out above in paragraphs 148 to 153 with regard to the admissibility against Bosnia and Herzegovina.

**UNCLASSIFIED**

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3. Admissibility of the alleged violation of "reasonableness of time"

157. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept... In so doing, the Chamber shall take into account the following criteria: ...

(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

158. The applicants allege in their applications that there was a violation of their right to a trial within a reasonable time as protected by Article 5 paragraph 3 of the Convention. The applicants substantiate their claim by stating that this violation arises from the fact that the Supreme Court did not decide in the administrative dispute regarding the revocation of citizenship before the applicants were physically removed from the territory of Bosnia and Herzegovina.

159. Article 5 paragraph 3 of the European Convention reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

160. The Chamber notes that Article 5 paragraph 3 of the Convention provides for safeguards in respect to persons detained pending criminal proceedings. As to the applicants' detention, its lawfulness was examined several times by the Supreme Court of the Federation. On the basis of the Supreme Court's decisions and considering the nature of the charges against the applicants, the Chamber does not consider that their detention from 19 to 21 October 2001 until 17 January 2002, when their release from pre-trial detention was ordered by the Supreme Court, was unreasonably long.

161. Furthermore, even if the applicants' claim to have their administrative dispute before the Supreme Court decided within a reasonable time could be interpreted as a claim of a violation of the right protected by Article 6 paragraph 1 of the Convention "to a fair and public hearing within reasonable time", the Chamber notes that the European Commission of Human Rights (the "European Commission") has consistently held that the determination of "civil rights and obligations" within the meaning of Article 6 paragraph 1 of the Convention does not encompass proceedings concerning a person's citizenship (Eur. Commission HR, *S v. Switzerland*, no. 13325/87, decision of 15

UNCLASSIFIED

**UNCLASSIFIED**

December 1988, Decisions and Reports 59, page 256, at page 257). This remains the case even where the decision will have repercussions on the exercise of civil rights and obligations.

162. Therefore, the Chamber finds that the right to have one's status as a citizen determined within a reasonable time is not a right which is included among the rights and freedoms guaranteed under the Agreement. It follows that these parts of the applications are incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the applications inadmissible in this respect.

#### 4. Conclusion as to admissibility

163. The Chamber decides to declare inadmissible the claim of a violation of the "reasonable time requirement" in regard to the proceedings before the Supreme Court in the administrative dispute against the revocation of citizenship. The remainder of the applications is declared admissible against both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, in their entirety, as no other grounds for declaring the cases inadmissible have been established.

**UNCLASSIFIED**

## UNCLASSIFIED

## B. Merits

164. Under Article XI of the Agreement the Chamber must address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement.

## 1. Expulsion proceedings

165. Article 3 of Protocol No. 4 regarding the prohibition of expulsion of nationals reads:

"1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

"2. No one shall be deprived of the right to enter the territory of the State of which he is a national."

166. Article 1 of Protocol No. 7 regarding procedural safeguards relating to expulsion of aliens reads:

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- a. to submit reasons against his expulsion,
- b. to have his case reviewed, and
- c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

"2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

167. With regard to the rights protected by Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7, the Chamber notes preliminarily that, while the Convention uses the terms "expelled" and "expulsion", the application of these provisions is not limited to cases in which the applicant is the subject of an "expulsion" in accordance with domestic legal terminology. The protection afforded by the two provisions applies also in cases in which a person is deported, removed from the territory in pursuance of a refusal of entry order or handed over to officials of a foreign power.

168. The Chamber further notes that Article 3 of Protocol No. 4 prohibits any expulsion of nationals, while Article 1 of Protocol

UNCLASSIFIED



**UNCLASSIFIED**

No. 7 provides certain procedural safeguards for the expulsion of aliens.

a. In regard to the applicants Boudellaa, Lakhdar and Nechle

169. The applicants Boudellaa, Lakhdar and Nechle obtained both the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina, as it is not possible to be a citizen of the State without having citizenship of one of the Entities and vice versa.

170. On 16 and 20 November 2001 the Federal Ministry of Interior issued decisions against each of the three applicants revoking their citizenship on the grounds that the applicants "had hidden intention not to respect the Constitution, laws and other provisions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina" and that they "shall harm international and other interests of Bosnia and Herzegovina".

**UNCLASSIFIED**

## UNCLASSIFIED

- i. Whether the applicants Boudellaa, Lakhdar and Nechle were citizens of Bosnia and Herzegovina at the time of their expulsion

171. The last paragraph of the decisions of 16 and 20 November 2001 states that the decisions are "final"<sup>8</sup> and cannot be appealed against, but an administrative dispute may be initiated before the Supreme Court. On 20 December 2001 all three applicants initiated an administrative dispute before the Supreme Court to invalidate the revocation decisions. The Chamber notes that in accordance with Article 19 of the Law on Administrative Disputes, the initiation of an administrative dispute does not have suspensive effect. However, the applicants could have asked the Supreme Court to suspend the revocation of their citizenship under the Law on Administrative Disputes. They failed to do so.

172. Both respondent Parties argue that the applicants lost their citizenship at the time of the delivery of the decisions on revocation to them on 4 December 2001. This opinion is in accordance with Article 24 of the State law, which provides that citizenship is lost on the day of notification of the decision to the person concerned. Article 26 of the Federation law, however, states that the citizenship of the Federation ceases to exist when the valid decision is delivered to the person. The Chamber notes that the decision of the Federal Ministry of Interior is not valid, but merely final. It does not become valid until the Supreme Court issues a decision in the administrative dispute.

173. Therefore, according to the State law, the citizenship was revoked at the time of delivery of the decision to the applicants, i.e. on 4 December 2001. According to the Federation law however, the citizenship is not revoked until the valid decision, i.e. the decision of the Supreme Court in the administrative dispute, is delivered to the person concerned. As the Supreme Court has not yet issued a decision, according to the Federation law, the applicants would still appear to be citizens of the Federation of Bosnia and Herzegovina.

174. Furthermore, both laws require that the decision revoking the applicants' citizenship be submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina (Article 31 of the State law and Article 33 of the Federation law). According to a literal reading of the law, the decision does not become effective until two months after this submission and under the condition that this Ministry concludes that the conditions of, in this case, Article 23 of the State law and Article 24 of the Federation law, have been fulfilled. Apparently the decisions of the Federal Ministry of Interior of 16 and 20 November 2001 were submitted to the Ministry on the dates of their respective issuance. Still, according to a literal reading

<sup>8</sup> See footnote 3 above.

UNCLASSIFIED

## UNCLASSIFIED

of both the State law and the Federation law, the decisions, which were delivered to the applicants on 4 December 2001, did not become effective until two months later, that is until 16 and 20 January 2002, respectively. However, at the public hearing, the Agent for Bosnia and Herzegovina argued that the provision had to be interpreted as providing that the revocation of citizenship becomes effective on the date that the Ministry of Civil Affairs and Communication explicitly expressed its consent, i.e., on 28 December 2001. Only when that consent is expressed by silence does the decision become effective two months after submission to the Ministry of Civil Affairs and Communication.

175. The Chamber finds that the legal situation regarding the question of whether the citizenship of the applicants Boudellaa, Lakhdar and Nechle was revoked remains unclear as the law of the Federation and the law of Bosnia and Herzegovina are not harmonised. As explained in paragraph 172 above, Article 24 of the State law and Article 26 of the Federation law provide for different requirements. The Chamber finds further that there are valid arguments on both sides for giving priority to either law. On one hand, there is the argument of Bosnia and Herzegovina made at the public hearing that the State law always takes priority over the law of an Entity. On the other hand, the Chamber notes that the Federation law is the later law. In addition, one could argue that as the legal situation is unclear, such uncertainty should not be resolved at the expense of the applicants, and accordingly, the laws should be interpreted in their favour. Other elements, as discussed in paragraphs 171 to 174 above, contribute to the extreme legal uncertainty as to whether the applicants were citizens of Bosnia and Herzegovina on 10 January 2002, the date of the decision on refusal of entry and on 18 January 2002, the date of their hand-over to US forces.

176. The Chamber will not decide whether the applicants had lost their citizenship on the date they were handed over to US forces, i.e. on 18 January 2002. It will give the respondent Parties the benefit of the uncertainty in this respect -- even though this uncertainty results from a lack of clarity in the legislation of the respondent Parties and in the actions of their organs -- and it will proceed to consider the applications under Article 1 of Protocol No. 7 to the Convention, which provides aliens with procedural safeguards in case of expulsion.

ii. Examination of the expulsion of the applicants Boudellaa, Lakhdar and Nechle under Article 1 of Protocol No. 7 to the Convention

177. Assuming that the applicants Boudellaa, Lakhdar and Nechle had lost their citizenship at the time of expulsion and therefore were to be considered as aliens, the Chamber will now examine whether the respondent Parties have acted in accordance with

UNCLASSIFIED

# UNCLASSIFIED

their obligations arising from the Convention and its Protocols, namely whether they have acted in accordance with Article 1 of Protocol No. 7 to the Convention.

178. Article 1 of Protocol No. 7 to the Convention on "procedural safeguards relating to the expulsion of aliens" was added to afford minimum guarantees to aliens in the event of expulsion from the territory of a Contracting Party (see Explanatory Report on Article 1 of Protocol No. 7 to the Convention). Article 1 paragraph 1 of Protocol No. 7 to the Convention provides that no lawful resident may be expelled from the territory of a Contracting State except in pursuance of a decision reached in accordance with the law.

179. The Chamber therefore must examine whether the expulsion of the applicants was in accordance with the domestic law. Article 36 of the Law on Immigration and Asylum provides for a decision on expulsion to be taken by the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina. It is undisputed that such a decision was never issued with respect to the applicants Boudellaa, Lakhdar and Nechle. The Federal Ministry of Interior submitted an initiative to the Ministry of Civil Affairs and Communications to issue such a decision, but the Ministry of Civil Affairs and Communications took no action.

180. Nonetheless, the Chamber notes that on 10 January 2002 the Federal Ministry of Interior issued three decisions on refusal of entry to the applicants Boudellaa, Lakhdar and Nechle into the territory of Bosnia and Herzegovina on the basis of Article 27 paragraph 1(b) of the Law on Immigration and Asylum. These are - technically speaking - decisions on "refusal of entry" and not "expulsion" orders. However, these decisions also order the applicants to leave the territory of Bosnia and Herzegovina immediately. The Chamber has examined whether these decisions could provide a legal basis for a lawful expulsion from the territory of Bosnia and Herzegovina for the purposes of Article 1 of Protocol No. 7. The Chamber notes in this respect that:

- (a) The Federation as respondent Party has not argued that a decision on refusal of entry provides a sufficient basis for an expulsion.
- (b) On the contrary, the Agent of the Federation has submitted that, in detaining the applicants in view of their hand-over to US forces, the organs of the Federation were acting on the assumption that decisions on expulsion had been issued by the Ministry of Civil Affairs and Communications.
- (c) The Federal Ministry of Interior asked the Ministry of Civil Affairs and Communications to issue decisions on expulsion against the applicants.
- (d) Article 34 of the Law on Immigration and Asylum prohibits the expulsion of aliens to countries in

# UNCLASSIFIED

## UNCLASSIFIED

which their life is threatened or they are in danger of being subjected to torture, inhuman or degrading treatment. No such limitations are provided for with respect to the issuance of decisions on refusal of entry. As a result, if a decision on refusal of entry could substitute for a decision on expulsion, these limitations could be easily circumvented.

181. The Chamber therefore finds that the decisions of 10 January 2002 on refusal of entry, which also order the applicants to leave the territory of Bosnia and Herzegovina immediately, do not provide a sufficient legal basis in accordance with the Law on Immigration and Asylum for the expulsion of the applicants.

182. Notwithstanding this conclusion, the Chamber will also examine whether, assuming the decisions on refusal of entry could be considered a sufficient basis for the expulsion of the applicants, this expulsion would have been in accordance with the law.

183. It is submitted by the respondent Parties that on 18 January 2002 all four applicants received, from US forces, the decisions of 10 January 2002 on refusal of entry. The Federation has been unable to explain why these decisions were delivered to the applicants by members of a foreign military force at the moment of their being taken out of the country, considering that the applicants had previously been detained by the Federation in the eight days between the issuance and delivery of the decisions. These decisions of 10 January 2002 state that an appeal does not have suspensive effect in light of Article 228 paragraph 2 of the Law on Administrative Procedures. However, Article 38 of the Law on Immigration and Asylum provides that an appeal against a decision on refusal of entry to a person within the borders of Bosnia and Herzegovina has suspensive effect. The Chamber is of the opinion that there is no doubt that Article 38, as the *lex specialis*, governs this issue; therefore, an appeal should have had suspensive effect. The Agent of the Federation has agreed with this conclusion.

184. In conclusion, the Chamber finds that the expulsion of the applicants was not in accordance with domestic law, because: (a) the applicants were practically deprived of their right to appeal against the decisions on refusal of entry; (b) the decisions themselves were misleading, in that they stated that an appeal would not halt the execution, while the relevant law clearly provided the contrary; and (c) the decisions had not been delivered to the applicants and therefore had not entered into force when the applicants were effectively removed from the territory of Bosnia and Herzegovina by handing them over to US forces. These violations of domestic law in themselves are sufficient to establish that the decisions to refuse entry to the applicants were not reached in accordance with the law.

UNCLASSIFIED

## UNCLASSIFIED

185. In addition, the Chamber finds that the expulsion was unlawful because it was carried out in violation of the Chamber's binding order for provisional measures of 17 January 2002, which ordered both respondent Parties to take all necessary steps to prevent the applicants from being taken out of the territory of Bosnia and Herzegovina. The Chamber recalls that in its previous case law, the Chamber has held that an order for provisional measures is binding and has the status of national law. The Chamber recalls that, for example, in the D.K. case, it held that the eviction of the applicant was not "in accordance with the law" for the purposes of Article 8(2) of the Convention, even though the competent authorities had established that the applicant was an illegal occupant, because there was an order for provisional measures of the Chamber prohibiting the eviction (case no. CH/98/710, D.K. v. Republika Srpska, decision on admissibility and merits of 2 November 1999, paragraphs 33-37, Decisions August--December 1999).

186. The Chamber notes that according to the submission of the Federation, the order for provisional measure was received on 17 January 2002 and transmitted to the Federal Ministry of Interior (see paragraph 118 above). However, the Federation failed to implement the order.

187. The Chamber also notes that Bosnia and Herzegovina alleges that the order for provisional measures was not delivered to it in a timely and proper manner. Bosnia and Herzegovina submitted in its written observations of 25 February 2002, and repeated at the public hearing on 10 April 2002, that the Chamber must be aware that Bosnia and Herzegovina has no authority to give effect to orders by the Chamber (see paragraph 109 above). It is not necessary for the Chamber to examine these submissions. It is undisputed that the applicants were held in detention by officials of the Federation when its order was issued, that they were handed over to US forces by officials of the Federal Ministry of Interior, and that the order for provisional measures had been brought to the attention of the Federal Ministry of Interior before the hand-over of the applicants. This is sufficient to establish the unlawfulness of the expulsion in this respect as well.

188. The Chamber finds that the respondent Parties have not followed the requirements of a legal expulsion procedure arising from the domestic law. They thereby violated the condition set out in Article 1 paragraph 1 of Protocol No. 7 to the Convention of "a decision reached in accordance with law". Therefore, there is no need to examine whether in the applicants' cases such circumstances prevailed as to allow the respondent Parties, under Article 1 paragraph 2, to rely on the permission to expel the applicants before they could exercise the procedural rights set

UNCLASSIFIED

UNCLASSIFIED

out in Article 1 paragraph 1(a), (b) and (c) of Protocol 7 to the Convention.

189. The Chamber also finds that these violations fall within the responsibility of both respondent Parties. The law and also the factual actions taken by both respondent Parties in regard to the revocation of citizenship, the decision on refusal of entry and also the hand-over of the applicants to US forces, after ensuring through diplomatic contacts that those forces would take them into custody and take them out of the country, involved actions by both respondent Parties which constitute a violation of the applicants' rights.

iii. Examination of the expulsion of the applicants Boudellaa, Lakhdar and Nechle under Article 3 of Protocol No. 4 to the Convention

190. As explained above (see paragraph 176), the Chamber has decided to give the respondent Parties the benefit of the doubt regarding the question of whether the applicants still were citizens of Bosnia and Herzegovina at the time of their expulsion. The Chamber has therefore proceeded to examine the expulsion under Article 1 of Protocol No. 7 to the Convention, which governs the expulsion of individual aliens. Nonetheless, the Chamber finds that, for the reasons explained below, the applications also raise serious issues under Article 3 of Protocol No. 4 to the Convention, concerning whether or not the applicants were citizens at the time of their expulsion.

191. The Chamber notes that a right to nationality as incorporated in Article 15 of the Universal Declaration of Human Rights does not form part of the rights and freedoms prescribed in the Convention. The Chamber is further aware that a provision according to which a "State would be forbidden to deprive a national of his nationality for the purpose of expelling him" was expressly excluded from Protocol No. 4 to the Convention. Although the Committee of Ministers of the Council of Europe stated that it approved the underlying principle, the majority thought that: "it was inadvisable in Article 3 to touch upon the delicate question of the legitimacy of measures depriving individuals of nationality" (Explanatory Report on the Second to Fifth Protocols, H (71) 11 (1971), pages 47-48).

192. However, the Chamber finds that, if States could simply withdraw the citizenship of one of their citizens in order to expel him without being in violation of Article 3 of Protocol No. 4 to the Convention, then the protection of the right enshrined in that provision would be rendered illusory and meaningless. A measure of the national authorities, which has as its sole object the evasion of an obligation, is equivalent to a violation of

UNCLASSIFIED

**UNCLASSIFIED**

that provision. This is also implicit from the rationale underlying Article 17 of the Convention, which reads:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

193. The Chamber is well aware that a violation of a Convention right can be found based on this line of reasoning only in very evident cases, in which the national authority exclusively intended to evade the operation of the Convention by their measure. The Chamber must therefore now examine whether the sole purpose of withdrawing the applicants' citizenship was to expel them.

194. The Chamber notes that the applicants Boudellaa and Nechle obtained their citizenship in 1995 before the entry into force of the Constitution of Bosnia and Herzegovina. In accordance with Articles 40 and 41 of the Law on Citizenship of Bosnia and Herzegovina, their applications for citizenship were therefore subject to review by the Commission for Consideration of the Status of Persons Naturalised after 6 April 1992 and before the entry into force of the Constitution of Bosnia and Herzegovina ("the Commission") set up under Article 40 of this Law. According to Article 41, a citizen loses his citizenship if the Commission finds that at the time of naturalisation the applicant did not fulfil the conditions for naturalisation and the applicant was aware of that fact. Upon the request of the Supreme Court of 14 November 2001, on 16 November 2001 the Commission stated that it was not considering the applicants' cases. The Chamber notes that without awaiting any formal decision of the Commission, the Federal Ministry of Interior on 16 and 20 November 2001 issued decisions revoking the citizenship of the applicants.

195. The Chamber also notes that, as it will find when examining the applications under Article 6 paragraph 2 of the Convention, the decisions revoking the applicants' citizenship are based on reasoning that is incompatible with respect for the presumption of innocence and with the rule of law (see paragraphs 238 to 249 below).

196. The Chamber notes further that according to information submitted by Bosnia and Herzegovina (see paragraphs 50 to 52 above) already on 11 October 2001, during an official visit to Sarajevo, a high-ranking official of the Algerian Secret Service was informed about the applicants and the suspicion that they were involved in terrorist activities. On 11 January 2002 the Ministry of Foreign Affairs of Bosnia and Herzegovina contacted

**UNCLASSIFIED**



UNCLASSIFIED

the Democratic National Republic of Algeria to inquire about the possibility to deport the applicants to their native country, Algeria, which representatives of Algeria refused on 12 January 2002. On 14 January 2002 the Ministry of Foreign Affairs of Bosnia and Herzegovina once again unsuccessfully contacted representatives of Algeria with the same request. There was also diplomatic contact with the US Embassy in Sarajevo. According to the diplomatic note of 17 January 2002, the US Embassy signalled its willingness to assume custody of the applicants. The proceedings of the applicants against the withdrawal of citizenship had been at the same time pending before the Supreme Court since 20 December 2001. All this shows that various efforts were undertaken to locate a country that would receive the applicants upon their removal from the territory of Bosnia and Herzegovina.

197. The Chamber also considers that the expulsion of the applicants was carried out in a hasty manner, before the validity of the revocation of citizenship was finally clarified by the Supreme Court.

198. The Chamber observes, taking into account all the circumstances, that in the present cases numerous factors point toward the conclusion that the respondent Parties revoked the applicants' citizenship for the sole purpose of expelling them. This would constitute a violation of Article 3 of Protocol No. 4 to the Convention, whether or not the decision on revocation of citizenship had entered into force at the time of the expulsion. However, having found a violation of Article 1 of Protocol No. 7, the Chamber refrains from making a definite finding on this issue.

**iv. Conclusion as to the expulsion of the applicants Boudellaa, Lakhdar and Nechle**

199. As noted above, the Chamber makes no finding as to whether the applicants were still citizens at the time of their expulsion. In light of the fact that the respondent Parties claim that their authorities acted lawfully in the hand-over of the applicants to US forces, as they assumed in good faith that the applicants were no longer citizens of Bosnia and Herzegovina, the Chamber has examined the cases under Article 1 of Protocol No. 7 to the Convention, which protects the right of aliens to be expelled only in a lawful manner. The Chamber finds that both respondent Parties acted in violation of Article 1 of Protocol No. 7 to the Convention.

**b. In regard to the applicant Lahmar**

200. The applicant Lahmar never acquired citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. On 4 April 1997 he was granted a permit for permanent residence.

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Article 3 of Protocol No. 4 to the Convention therefore cannot apply in his case, as he was not a national of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. The Chamber must therefore examine whether the expulsion of the applicant Lahmar constitutes a violation of Article 1 of Protocol No. 7 to the Convention, which applies to the expulsion of aliens.

201. On 23 November 2001 the Ministry of Human Rights and Refugees issued a procedural decision terminating the applicant's permit for permanent residence and banishing him from the country for ten years, as he had been convicted of a criminal offence and sentenced to more than four years imprisonment. In accordance with Article 30 paragraph c of the Law on Immigration and Asylum, he was therefore considered to constitute a threat to public order and security.

202. The Ministry of Human Rights and Refugees on 23 November 2001 also ordered the expulsion of the applicant Lahmar. This decision, in accordance with Article 29 paragraphs a and b of the Law on Immigration and Asylum of Bosnia and Herzegovina, was also based on the fact that the applicant had been convicted of a criminal offence and sentenced to more than four years imprisonment.

203. The applicant appealed against the decision of the Ministry of Human Rights and Refugees on 11 January 2002 to the Appeals Panel of the Council of Ministers of Bosnia and Herzegovina. This appeal is still pending and should have had suspensive effect. Therefore, in accordance with Article 38 of the Law on Immigration and Asylum, the execution of the decision to expel the applicant should have been stayed.

204. Moreover, as noted above, the Chamber had ordered both respondent Parties to take all necessary steps to prevent the applicant from being taken out of the territory of Bosnia and Herzegovina. The applicant was handed over to US forces in violation of this order, which enjoyed the force of law.

205. As stated above, Article 1 of Protocol No. 7 requires the respondent Parties not to expel an alien lawfully resident in the territory of a State, except in pursuance of a decision reached in accordance with the law. In light of the circumstances that, pursuant to Article 38 of the Law on Immigration and Asylum, the appeal against the decision on expulsion should have stayed its execution, and that the Chamber had issued an order barring the applicant's expulsion, this requirement is not fulfilled. The respondent Parties are thereby in breach of their obligations arising from Article 1 of Protocol No. 7 to the Convention.

2. Article 5 of the Convention - detention of the applicants in Bosnia and Herzegovina

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206. Article 5 paragraphs 1(c) and (f) reads:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

"c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

"f. the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition."

a. As to the applicants' detention until the entry into force of the Supreme Court decision to release them on 17 January 2002

207. The Chamber notes that the applicants were held in pre-trial detention until the entry into force of their release order on 17 January 2002. This pre-trial detention was based on procedural decisions by the investigative judge of the Supreme Court ordering the applicants' detention. The procedural decisions were based on the suspicion that the applicants had committed criminal acts of international terrorism, as prohibited by Article 168 paragraph 1 in conjunction with Article 20 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina. The decision regarding the applicant Boudellaa was issued on 22 October 2001; the decision regarding the applicant Lahmar was issued on 18 October 2001; the decision regarding the applicant Nechle was issued on 20 October 2001; and the decision regarding the applicant Lakhdar was issued on 21 October 2001. The Chamber notes that the reasons upon which the pre-trial detention is based are not set out in great detail in these procedural decisions.

208. On 30 October 2001 the Supreme Court issued a decision to open an investigation against all four applicants and four other persons based on reasonable suspicion that these eight persons had committed a punishable attempt of the criminal offence of international terrorism. This decision sets out the suspicion against each individual applicant in more detail than the procedural decisions which ordered their pre-trial detention. It explains to what extent the applicants knew each other and the other four persons accused of the same criminal offence, and it explains that the applicants, together with the other four accused persons, were under the suspicion of being involved in

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preliminary activities in order to carry out a terrorist attack on the US Embassy in Sarajevo.

209. On 17 January 2002 the Supreme Court ordered the release of the applicants, as the conditions for continued investigative custody were no longer satisfied. According to the submission of the Federation of Bosnia and Herzegovina, the applicants were released from pre-trial detention at 11:45 p.m. on the same day. They were taken into custody by forces of the Ministry of Interior.

210. The applicants do not appear to allege that their detention, as ordered by the Supreme Court, in connection with the investigation into their involvement in the alleged terrorist activities, was unlawful. However, they have challenged their detention before the domestic courts and the Supreme Court has upheld the orders for custody. Moreover, the *amicus curiae* has expressed doubts as to whether the applicants' detention was supported by sufficient evidence to justify a reasonable suspicion. Also, the Chamber notes the lack of detail and reasoning in the procedural decisions ordering the applicants' arrest.

211. For these reasons, the Chamber has examined whether the applicants' detention until the entry into force of the Supreme Court's decision of 17 January 2002 was lawful in accordance with Article 5 paragraph 1(c) of the Convention, and specifically whether the arrest and detention were based on a reasonable suspicion that each applicant had committed an offence.

212. The Chamber recalls that the case law of the European Court of Human Rights has allowed a wider margin of appreciation in the manner of the application of Article 5 where issues arise relating to terrorism, as long as the essence of the safeguard provided for by subparagraph (c) is left intact. In the case *Fox, Campbell and Hartley* (Eur. Court HR, judgment of 30 August 1990, Series A no. 182, pages 16-17, paragraph 32), the European Court stated:

"The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1(c). The Court agrees ... that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances.

In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including

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information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge.

... [T]he "reasonableness" of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of "reasonableness" to the point where the essence of the safeguard secured by Article 5 § 1(c) is impaired..."

213. The Chamber considers that the pre-trial detention and the decision of 30 October 2001 to open an investigation against the applicants must be considered in light of the special circumstances in regard to international terrorism following the attacks on the World Trade Center, the Pentagon and other targets in the United States of America on 11 September 2001. The Chamber takes account of the obligations of the respondent Parties arising from paragraph 2(e) of the UN Security Council Resolution 1373 (2001) to:

"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".

214. The Chamber does not find that in the present cases the Federation has stretched the notion of "reasonableness" to the point where the essence of the safeguard provided by Article 5 paragraph 1(c) of the Convention is impaired. Hence, the Chamber is satisfied that the Federation of Bosnia and Herzegovina has complied with the requirements of Article 5 paragraph 1(c) of the Convention, the suspicion upon which the pre-trial detention was based being "reasonable". Accordingly, the Chamber finds no violation of Article 5 of the Convention for the period from the time of the original arrest until the entry into force of the decision of the Supreme Court to release the applicants on 17 January 2002.

- b. As to the applicants' detention after the entry into force of the Supreme Court decision to release them on 17 January 2002 and until the hand-over to US forces

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215. The Chamber recalls that the Supreme Court of 17 January 2002 ordered that the applicants were "to be immediately released from detention". According to the submissions of the Federation at the public hearing, the Registry of the Supreme Court only works until 4 p.m. The Chamber concludes therefore that the decision ordering the release must have been issued before that time. It seems that after the decision of the Supreme Court was issued, it was sent by a messenger to the prison in which the applicants were held in detention. The lawyer of the applicant Lakhdar, Mr. Fahrija Karkin, who was standing outside the prison gates on 17 January 2002, stated at the public hearing that he saw the messenger of the Supreme Court enter the prison at around 5 p.m. He claims that from that time onward for the next few hours he unsuccessfully tried to contact his client. He further states that he was not informed about the Supreme Court order to release his client at that point in time. These statements remain undisputed.

216. The Chamber notes that according to the submissions of the Federation of Bosnia and Herzegovina, the applicants were only released from pre-trial detention at 11:45 p.m. on 17 January 2002 and not immediately after receipt of the order by prison authorities. Neither respondent Party submits any reasons for the delay of execution of the Supreme Court order.

217. The Chamber further notes that, despite the delivery of a legitimate order for the release of the applicants, and despite no issuance of further orders for detention, the applicants were immediately taken into custody by members of the Federation Police and remained in their custody until 6:30 a.m. the following day, when they were handed over to US forces. It remains unclear in this context whether the applicants were informed about their release from pre-trial detention, and hence, whether they learnt that their detention now had a different quality, as it was based on different grounds.

1. Possible justification under Article 5  
paragraph 1(c)

218. The Federation states that it complied with the Supreme Court order by releasing the applicants at 11:45 p.m. on 17 January 2002, the same day the Supreme Court issued the order.

219. The Chamber recalls the decision of the European Court in *Quinn v. France* (Eur. Court HR, judgment of 22 March 1995, Series A no. 311). In that case the Paris Court of Appeal directed the immediate release of the applicant Quinn. However, the applicant Quinn was not notified and no steps were taken to release him. Eleven hours after the decision of the Court of Appeal, whilst still held in detention, he was arrested again with a view to being extradited. The European Court in this case held that although some delay in executing an order for release was

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understandable, the eleven hours of detention until the arrest of the applicant Quinn for extradition were clearly not covered by Article 5 paragraph 1(c) of the Convention (*id.* at pages 17-18, paragraph 42).

220. The Chamber notes that in the present cases, by 11:45 p.m. on 17 January 2002, the applicants had been held in detention for some six to eight hours after the Supreme Court had ordered their "immediate" release. The Chamber finds that the Supreme Court decision to order the applicants' release ought to have been complied with by the prison authorities when they received the order of the Supreme Court in the late afternoon or early evening of 17 January 2002. The continued detention on 17 January 2002 after the entry into force of the Supreme Court decision was clearly not covered by Article 5 paragraph 1(c) of the Convention, as their release after this much time had elapsed cannot be considered to be "immediate" and in compliance with the Supreme Court order.

ii. Possible justification under Article 5 paragraph 1(f) for the period after 11:45 p.m. on 17 January 2002

221. The Chamber must now examine whether the applicants' detention after 11:45 p.m. was justified under Article 5 paragraph 1(f) of the Convention, which allows the "lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition".

222. The Chamber notes that in order to rely on Article 5 paragraph 1(f) of the Convention as a justification for the detention of the applicants, the respondent Parties must fulfil two conditions: the arrest and detention must be "lawful" and, in addition, the action against the persons arrested and detained must be taken "with a view to deportation or extradition".

223. Firstly, therefore, the respondent Parties must demonstrate that the detention was "lawful". The detention of the applicants can only be considered as being "lawful" under the condition that it complies with the procedure prescribed by law. The Convention here essentially refers back to domestic law, but it also requires that any deprivation of liberty be in conformity with the purpose of Article 5, namely to protect individuals from arbitrariness. Hence, lawfulness would require the respondent Parties to follow a procedure in accordance with the procedural requirements of the domestic law. In addition, Article 5 paragraph 1(f) requires the respondent Parties to ensure that the aim and essence of Article 5 of the Convention are observed and that the detention was not arbitrary.

224. At least one of the respondent Parties must have shown that it issued a detention order grounded on a legal basis, that it

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informed the applicants about the reasons for their detention, and that there was a possibility for the applicants to challenge the decision. However, both respondent Parties have failed to demonstrate that there was an order for continued detention, or in the alternative, to demonstrate that domestic law in Bosnia and Herzegovina entitles them to detain the applicants in view of a possible expulsion upon which the detention of the applicants was based. The respondent Parties have further failed to substantiate that they followed proper legal procedures when keeping the applicants in detention subsequent to Supreme Court's procedural decision.

225. A minimum requirement of legal procedure for a legal detention is the requirement to inform the persons subject to the detention, here the applicants, about the reasons for the detention. In light of the fact that the decisions, in which the applicants were ordered to leave the country immediately, were delivered to them by US forces at the airport, when they were about to board the aeroplane that took them out of the country on 18 January 2002, it seems highly unlikely that they were duly informed that they were now held in detention in order to be expelled, and, certainly, they had no opportunity to challenge the decisions ordering their detention for expulsion purposes.

226. Secondly, Article 5 paragraph 1(f) of the Convention requires that at the end of the detention, the applicants should have either been deported or extradited. The respondent Parties admitted in the public hearing that the applicants were simply handed over to the custody of US forces.

227. There is no evidence to suggest that the hand-over of the applicants can be interpreted to be an extradition. In particular, the diplomatic note of 17 January 2002 from the US Embassy cannot be understood to be a valid extradition request of the United States of America. In this note the US Embassy in Sarajevo advised the Government of Bosnia and Herzegovina that it was "prepared to assume custody of the six specified Algerian citizens" and it offered to "arrange to take physical custody of the individuals at a time and location ... mutually convenient". This note, however, does not fulfil the requirements for a formal extradition of persons who have been charged or convicted as provided for in Chapter XXXI of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (see paragraphs 87 to 92 above). In particular, it includes neither the indicting proposal against the applicants nor an extract of the criminal law to be applied in the United States. The Chamber also notes that, in accordance with Article 507 of the Code of Criminal Procedure, the prerequisites for extradition include the fact that the person whose extradition is sought is not a national of Bosnia and Herzegovina and of the Federation and that the crime for which extradition is requested "has not been committed in the Federation".

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228. In assessing the conditions to be met under Article 5 paragraph 1(f), the Chamber recalls the jurisprudence of the European Court in the *Bozano* case (Eur. Court HR, *Bozano v. France*, judgment of 18 December 1986, Series A no. 111). In this case an Italian national convicted in absentia of murder was forcibly taken by French police officers to the Swiss border, where he was transferred to Swiss police custody without giving him a chance to contact his wife or lawyer or to nominate a country of expulsion. This occurred after a French court had refused to order extradition to Italy and the French government had ordered the applicant *Bozano's* expulsion. The European Court ruled that: "Depriving Mr. *Bozano* of his liberty in this way amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979 by the Indictment Division of the Limoges Court of Appeal, and not to 'detention' necessary in the ordinary course of 'action ... taken with a view to deportation'"; hence, there was no justification under Article 5 paragraph 1(f) of the Convention (*id.* at pages 26-27, paragraph 60). It concluded that the detention had been arbitrary and did not fulfil the requirements of a justification under Article 5 paragraph 1(f) (*id.*).

229. The Chamber notes that the jurisprudence of the European Court that an arbitrary detention does not meet the requirements of Article 5 paragraph 1(f) also applies here. The Chamber finds that in the present cases the detention of the applicants was not intended to carry out a legal expulsion in accordance with the rules and procedure as prescribed in the domestic law. The detention was intended to keep the applicants under control until their hand-over to US forces. The Chamber considers that in the present cases detention for an aim other than a legal expulsion renders the detention arbitrary and incompatible with Article 5 paragraph 1(f) of the Convention.

### iii. Conclusion

230. Hence, the Chamber finds that there was no justification under Article 5 paragraph 1 of the Convention for the respondent Parties to keep the applicants in detention after the order of the Supreme Court to release the applicants from pre-trial detention entered into force in the early evening of 17 January 2002. The detention from that period of time until the applicants were handed over to the custody of US forces constitutes a violation of the applicants' rights as protected by Article 5 paragraph 1 of the Convention.

- c. As to the hand-over of the applicants to US forces and their detention thereafter until their forced removal from Bosnia and Herzegovina

231. Article 1 of the Convention reads as follows:

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"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

232. A positive obligation arises from Article 1 of the Convention for the respondent Parties to secure the rights and freedoms set out in the Convention in regard to all persons within their jurisdiction, including the applicants. The Chamber notes that in this context the term "jurisdiction" is to be interpreted broadly (see, e.g., Eur. Court HR, *Loizidou v. Turkey*, judgment of 23 March 1995, Series A no. 310, pages 23-24, paragraph 62). In the present case, the obligation implies that before handing over the applicants to the custody of the authorities of another State, the respondent Parties were obliged to obtain and examine information as to the legal basis of that custody, as reflected in the quoted provisions relating to extradition proceedings.

233. The hand-over of the applicants to the custody of US forces without seeking and receiving any information as to the basis of the detention constitutes a breach of the respondent Parties' obligations to protect the applicants against arbitrary detention by foreign forces. Considering the broad interpretation of the term "jurisdiction", this obligation arises even if under the Dayton Peace Agreement the respondent Parties had no direct jurisdiction over US forces stationed in Bosnia and Herzegovina.

234. This obligation concerns both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

235. Bosnia and Herzegovina received the diplomatic note of 17 January 2002 from the US Embassy in Sarajevo in which the US advised the Government of Bosnia and Herzegovina that they were "prepared to assume custody of the six specified Algerian citizens" and offered to "arrange to take physical custody of the individuals at a time and location" "mutually convenient". Therefore, Bosnia and Herzegovina was well aware of the possible hand-over of the applicants to US forces and the intention of US forces to keep the applicants detained. Bosnia and Herzegovina facilitated the hand-over by informing the Federation of Bosnia and Herzegovina of the request of the United States of America. Bosnia and Herzegovina cannot therefore deny its knowledge that a possible violation of the applicants' rights in the form of an illegal detention by US forces on the territory of Bosnia and Herzegovina could occur, and it had the positive obligation to prevent such a possible violation.

236. In respect to the responsibility of the Federation of Bosnia and Herzegovina, the Chamber notes that it was police officers of the Federation of Bosnia and Herzegovina who actually handed over the applicants. At the public hearing the Federation

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of Bosnia and Herzegovina claimed that it only acted on behalf of Bosnia and Herzegovina. However, even if this were true, the Federation of Bosnia and Herzegovina still cannot be absolved from responsibility, its police forces being a mere instrument in the hands of Bosnia and Herzegovina. The Chamber finds that even in this case there was a positive obligation on the Federation of Bosnia and Herzegovina to refuse to perform any act that would result in a violation of the applicants' rights that are protected by the Convention.

237. The Chamber therefore finds that both respondent Parties have violated Article 5 paragraph 1 of the Convention by handing over the applicants into illegal detention by US forces.

3. Article 6 paragraph 2 of the Convention - presumption of innocence

238. Three of the applicants, Boudellaa, Lakdhar and Nechle, submit that the decisions revoking their citizenship involved a breach of the presumption of innocence provided for in Article 6 paragraph 2 of the Convention.

239. Article 6 paragraph 2 provides:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

240. The applicants in question obtained citizenship of Bosnia and Herzegovina in 1995 and 1997. On 16 and 20 November 2001 the Federal Ministry of Interior issued decisions revoking their citizenship. The Ministry based these decisions on Article 30 paragraph 2, in conjunction with Article 23 paragraph 1, of the Law on Citizenship of Bosnia and Herzegovina and Article 28 paragraph 3, in conjunction with Article 24 paragraph 1, of the Law on Citizenship of the Federation of Bosnia and Herzegovina (see paragraphs 43 and 59 to 70 above).

241. The reasons given by the Ministry of Interior were the same in all three cases. The Ministry of Interior reasoned in effect that criminal charges had been brought against the applicants and that accordingly it could be concluded that, at the time they obtained citizenship, they had harboured hidden intentions to violate the Constitution and laws of Bosnia and Herzegovina and of the Federation. The relevant parts of the decisions stated:

"[I]t has been established that, ... when the request for granting citizenship of the Republic of Bosnia and Herzegovina was filed, the named person stated that he shall respect the Constitution, laws and other provisions of the Republic of Bosnia and Herzegovina.

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"In the Act of Service of the Criminal Police within this Ministry ... of 13 November 2001, it was stated that criminal charges were brought to the Federal Prosecution against the named person due to grounds for suspicion that he had committed the attempted criminal offence under Article 168 paragraph 1 (international terrorism) of the Criminal Code of the Federation of Bosnia and Herzegovina. Accordingly, it can be concluded that the named person had hidden intentions not to respect the Constitution, laws and other provisions of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina and that he shall harm international and other interests of Bosnia and Herzegovina."

242. The relevant provisions of national law do not permit the withdrawal of citizenship on the basis of a mere suspicion that a person has committed an offence or on the basis merely that a criminal charge has been brought against the person concerned. Article 23 of the Law on Citizenship of Bosnia and Herzegovina, on which the decisions appear to be based, provides that citizenship may be withdrawn "when the citizenship ... was acquired by means of fraudulent conduct, false information or concealment of any relevant fact..." (see paragraph 60 above). This implies that it must be proven to the satisfaction of the authority in question that conduct of the relevant kind actually occurred. Article 24 of the Federation Law on Citizenship provides similar terms (see paragraph 67 above).

243. The reasoning in the relevant decisions indicates that the Federal Ministry of Interior concluded, solely on the basis of the fact that the applicants had been charged with the offences mentioned, that they had obtained their citizenship by fraud or other means mentioned in the relevant provisions. The only reasonable interpretation of the decisions is that the Ministry concluded that the applicants were guilty of the offences of attempted international terrorism with which they were charged, and that they had had the intention of engaging in such activities when their requests for citizenship were granted. The question before the Chamber is, therefore, whether the authorities breached the applicants' right to the presumption of innocence under Article 6 paragraph 2 of the Convention in drawing such conclusions from the charges pending against them.

244. The European Commission of Human Rights has held, in case law of long standing, that Article 6 of the Convention does not apply to proceedings concerning citizenship, since such proceedings do not involve either "the determination of his civil rights and obligations or of any criminal charge against him" within the meaning of Article 6 (see, e.g., Eur. Commission HR, *S v. Switzerland*, no. 13325/87, decision of 15 December 1988, Decisions and Reports 59, page 256, at page 257). It is also established in the case law of the European Court that decisions

UNCLASSIFIED

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regarding the entry, stay and deportation of aliens do not concern the determination of civil rights and obligations or criminal charges; therefore, Article 6 of the Convention is inapplicable to proceedings regarding such matters (Eur. Court HR, *Masouia v. France*, no. 39652/98, judgment of 5 October 2000, paragraphs 40-41). It follows that Article 6 of the Convention did not apply directly to the proceedings concerning the withdrawal of the applicants' citizenship and their subsequent removal from the country.

245. However, at all relevant times the three applicants were subject to criminal charges in the proceedings against them in the Supreme Court of the Federation. They were therefore entitled to the protection provided by Article 6 of the Convention, including in particular the presumption of innocence provided for in Article 6 paragraph 2, as they were persons "charged with a criminal offence" within the meaning of that provision. The question which arises is therefore whether the scope of the protection afforded by Article 6 paragraph 2 is wide enough to cover statements made and decisions taken in relation to the applicants' citizenship.

246. The presumption of innocence is one of the elements of a fair criminal trial required by Article 6. However both the European Commission and the European Court have held that it may be infringed upon not only by a judge or court hearing the case, but also by other public authorities. In particular, in the case of *Alenet de Ribemont v. France* (Eur. Court HR, judgment of 10 February 1995, Series A no. 308), the European Court held that there had been a violation of Article 6, paragraph 2 arising from statements, alleging the applicant's guilt of certain charges pending against him, made by a Minister and senior police officers at a press conference. The European Court pointed out that the two police officers were conducting the inquiries in the case and stated that "their remarks, made in parallel with the judicial investigation and supported by the Minister of Interior, were explained by the existence of that investigation and had a direct link with it. Article 6 § 2 therefore applies in this case" (*id.* at page 17, paragraph 37).

247. In several cases the European Court has held that Article 6 paragraph 2 of the Convention applies to proceedings concerning legal expenses and compensation for detention on remand after criminal proceedings have been terminated (see, e.g., Eur. Court HR, *Rushiti v. Austria*, no. 28389/95, judgment of 21 March 2000, paragraphs 31-32). In the *Rushiti* case, the European Court stated that the "general aim of the presumption of innocence ... is to protect the accused against any judicial decision or other statements by State officials amounting to an assessment of the applicant's guilt without him having previously been proved guilty according to law" (*id.* at paragraph 31).

UNCLASSIFIED

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248. In accordance with this case law, Article 6 paragraph 2 may thus apply to protect an accused person against statements made and decisions taken outside the scope of the criminal proceedings themselves, at least where there is a sufficient link to the criminal proceedings. The European Commission has held, however, that a distinction must be drawn between civil and criminal proceedings arising out of the same facts and that Article 6 paragraph 2 of the Convention does not necessarily preclude the accused person from being found liable in civil proceedings for acts which may constitute a criminal offence, even though he has not been convicted in criminal proceedings (Eur. Commission HR, *C. v. United Kingdom*, no. 11882/85, decision of 7 October 1987, Decisions & Reports 54, page 162, at pages 166-167).

249. In the present cases, as the Chamber has already pointed out, the Ministry of Interior reached conclusions of fact adverse to the applicants solely on the basis of the fact that they had been charged in the criminal proceedings. It treated the criminal charges as evidence of the applicants' guilt. It did not, as far as appears from its decisions, make its own examination of the evidence and reach its own conclusions of fact on the basis of the appropriate standard of proof. The circumstances were therefore not analogous to those in *C. v. United Kingdom*. In the Chamber's opinion, in so acting, the Ministry of Interior misused the criminal charges pending against the three applicants in question and violated their rights under Article 6 paragraph 2 of the Convention.

250. As to the applicant Lahmar, the reason given for the decision terminating his permit for permanent residence was that he had been sentenced to five years imprisonment by the Supreme Court on 9 July 1998 (see paragraph 45 above). His case does not therefore raise any issue under Article 6 paragraph 2 of the Convention.

#### 4. Article 8 of the Convention -- right to family life

251. In their applications to the Chamber, all four applicants claimed to be victims of a violation of Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

"2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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252. In view of its findings that there has been a violation of Article 5 of the Convention, and also in view of its findings in respect to the illegal expulsion of the applicants, the Chamber does not consider it necessary to examine the cases separately under Article 8 of the Convention.

5. The hand-over of the applicants to US forces

a. Application of the Human Rights Agreement in expulsion cases

253. The applicants have alleged that they are at risk of having their rights to life and to freedom from torture, inhuman and degrading treatment violated outside the territory of Bosnia and Herzegovina and that the respondent Parties are responsible for such alleged violations because they handed over the applicants to US forces. As these are the first cases before the Chamber in which a violation of the rights protected by the Agreement is alleged to have effects outside the territory of Bosnia and Herzegovina, the Chamber finds it useful to set forth, on the basis of the jurisprudence of the European Court, the principles that govern the application of the Agreement in expulsion cases where it is alleged that the Convention rights will not be respected in the country of destination.

254. Article I of the Agreement states:

"The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex. ..."

255. Article I of the Agreement thereby mirrors Article 1 of the Convention, which reads:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

256. In interpreting Article 1 of the Convention, the European Court has stated as follows in the *Soering* case:

"Article 1 ... sets a limit, notably territorial, on the reach of the Convention. In particular, the engagement undertaken by a Contracting State is confined to 'securing' ('reconnaître' in the French text) the listed rights and freedoms to persons within its own 'jurisdiction'. Further, the Convention does not govern the actions of States not

UNCLASSIFIED

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Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States. ..." (Eur. Court HR, *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161, page 33, paragraph 86).

257. "In keeping with the essentially territorial notion of jurisdiction, the [European] Court has accepted only in exceptional cases that acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction by them within the meaning of Article 1 of the Convention" (Eur. Court HR, *Bankovic et al. v. Belgium & 16 Other Contracting States*, no. 52207/99, decision on admissibility of 12 December 2001, paragraph 67).

258. In accordance with the statement of the European Court quoted above, the Chamber finds that the Agreement "does not govern the actions of States not Parties to it". Specifically, it does not govern the actions of the United States of America, nor does it require the Parties to impose observance of the rights protected in the Agreement on the United States of America. In this sense, the present cases do not call for "extra-territorial application" of the Agreement.

259. However, it is a well-established principle of the case law of the European Court that the extradition or expulsion of a person by a Contracting State may give rise to an issue under Articles 2 and/or 3 (or, exceptionally, under Articles 5 and/or 6) and hence engage the responsibility of that State under the Convention (*Bankovic* at paragraph 68; see also *Soering* at pages 35-36, paragraph 91; *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, page 28, paragraphs 69 and 70; *Vilvarajah and Others v. United Kingdom*, judgment of 30 October 1991, Series A no. 215, page 34, paragraph 103). In such cases, liability is incurred "by an action of the respondent State concerning a person while he or she is on its territory, clearly within its jurisdiction," and "such cases do not concern the actual exercise of a State's competence or jurisdiction abroad" (*Bankovic* at paragraph 68). Such liability for the respondent Parties arises from the positive obligation enshrined in Article I of the Agreement and Article 1 of the Convention to secure the rights and freedoms in regard to all persons within their jurisdiction. It would be against the general spirit of the Convention and of the Agreement for a Party to extradite an individual to another State where there was a substantial risk of a violation the Convention (see *Soering* at pages 34-35, paragraph 88).

260. The Chamber notes that Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina have recognised this principle and incorporated it into their legislation. Article 34

UNCLASSIFIED



UNCLASSIFIED

of the Law on Immigration and Asylum of Bosnia and Herzegovina prohibits expulsion, in any manner whatsoever, where there exists a risk that the expelled person may be subjected to torture or other inhuman or degrading treatment or punishment. It provides, insofar as is relevant:

"(34) Aliens shall not be expelled in any manner whatsoever to the frontier of territories, where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion... The prohibition of return or expulsion also applies to persons in respect of whom there are grounds for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Nor may aliens be sent to a country where they are not protected from being sent to another such territory."

261. Article 507 paragraph 1 of the Federation Code of Criminal Procedure prohibits extradition in cases in which the person to be extradited might be subject to death penalty:

"(1) The prerequisites for extradition are as follows:  
10. ...; and that the extradition is not sought for a crime for which capital punishment is prescribed by the law of the country seeking extradition, unless the country seeking extradition provides guarantees that the capital punishment shall not be pronounced or exercised".

262. In accordance with this principle established by the European Court, the Chamber will examine whether the respondent Parties, by handing over the applicants to US forces, have violated the applicants' rights not to be subject to the death penalty and not to be subject to torture, inhuman or degrading treatment. Before it examines the applications with specific regard to these two rights, the Chamber will address two arguments made by the respondent Parties, which purportedly exempt the respondent Parties from any responsibility under both Article 1 of Protocol No. 6 to the Convention and Article 3 of the Convention.

- b. Whether the obligation to co-operate in the international fight against terrorism prevails over obligations under the Human Rights Agreement

263. Bosnia and Herzegovina argues that it was obliged under the UN Security Council Resolution 1373 of 28 September 2001 to accede to the request by the United States to hand over individuals suspected of terrorist activities (see paragraphs 93 and 106 above). It argues that this obligation, flowing from a

UNCLASSIFIED

UNCLASSIFIED

Security Council Resolution adopted under Chapter VII of the UN Charter, has an overriding character.

264. The Chamber fully acknowledges the seriousness and utter importance of the respondent Parties' obligation, as set forth in paragraph 2 of the UN Security Council Resolution 1373 (see paragraph 93 above), to "(c) deny safe haven to those who finance, plan, support, or commit terrorist acts ...", to "(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 to "(f) afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing and support of terrorist acts ...".

265. Contrary to the argument made by Bosnia and Herzegovina, however, the Chamber finds that the obligation to co-operate in the international fight against terrorism does not relieve the respondent Parties from their obligation to ensure respect for the rights protected by the Agreement. In this regard, the Chamber recalls the "Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism" of 15 July 2002 (see paragraph 94 above). The Chamber understands these Guidelines to be an authoritative clarification of the principles deriving from the Convention for the respect for human rights in the fight against terrorism.

266. In the Preamble to the Guidelines, the Committee of Ministers, while "unequivocally condemning all acts, methods and practices of terrorism as criminal and unjustifiable", "recall[s] that it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights [and] the rule of law" and "reaffirm[s] states' obligation to respect, in their fight against terrorism, the international instruments for the protection of human rights". The Council of Ministers recognises that "[e]xtradition is an essential procedure for effective international co-operation in the fight against terrorism" (Guideline XIII, paragraph 1). Nonetheless, Guideline XIII restates the Convention principles:

"2. The extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted. A requested State may however grant an extradition if it has obtained adequate guarantees that:

- (i) the person whose extradition has been requested will not be sentenced to death; or
- (ii) in the event of such a sentence being imposed, it will not be carried out.

3. Extradition may not be granted when there is serious reason to believe that:

UNCLASSIFIED

UNCLASSIFIED

- (i) the person whose extradition has been requested will be subjected to torture or to inhuman or degrading treatment or punishment ...".

267. In summary, the Chamber finds that the international fight against terrorism cannot exempt the respondent Parties from responsibility under the Agreement, should the Chamber find that the hand-over of the applicants to US forces was in violation of Article 1 of Protocol No. 6 to the Convention or Article 3 of the Convention.

- c. Whether the respondent Parties were obliged to consider the possibility of imposition of the death penalty or inhuman or degrading treatment only if raised by the applicants

268. At the public hearing on 10 April 2002, the Agent of Bosnia and Herzegovina argued that it was up to the applicants to ensure that their rights were not infringed upon and to raise the issue that their delivery to US forces put them at risk of a violation of their rights protected by the Convention. The Chamber finds that the suggestion that this burden could fall upon the applicants represents an erroneous analysis of the Convention and the rule of law. The implication of this conclusion, if accepted, would be that any Contracting State to the Convention could expel, extradite, or hand over any individual to any state, irrespective of its implementation of human rights, with complete disregard for the individual's fate. This prospect is completely against the spirit and intention of the Convention and other international instruments, and as such, it cannot be accepted by the Chamber.

269. In addition, the Chamber must point out that the applicants have never been provided any decision concerning their extradition or delivery to US authorities, nor have the respondent Parties submitted evidence to the effect that the applicants were otherwise informed thereof. It is likely that the applicants only became *de facto* aware that they were to be transported to Guantanamo Bay, Cuba, to possibly face trial, during the night of 17 and 18 January 2002, or at the time they were handed over to US forces and forced to board the aeroplane that took them out of Bosnia and Herzegovina. The argument that it was up to the applicants to draw the attention of the authorities to the alleged risks involved in their delivery to US forces is more than a misunderstanding of the law; it shows, under the factual circumstances of these cases, bad faith and cynicism.

- d. Article 1 of Protocol No. 6 to the Convention -- the death penalty

UNCLASSIFIED

UNCLASSIFIED

270. The applicants complain that their delivery to US forces places their lives at substantial risk, as they will face capital punishment if convicted under certain US counter-terrorism statutes. They allege that this amounts to a violation of their right to life protected by Article 2 of the Convention. The Chamber notes that Article 2 of the Convention allows the imposition and execution of the death penalty under certain circumstances. The Chamber will therefore consider this complaint under Article 1 of Protocol No. 6 to the Convention, which prohibits the death penalty and thereby supersedes Article 2 of the Convention in this respect. For the reasons explained below, the Chamber will consider this complaint under Article 1 of Protocol No. 6. in conjunction with Article 6 of the Convention.

271. Article 2 paragraph 1 of the Convention provides:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

272. Article 1 of Protocol No. 6 to the Convention provides:

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

273. In accordance with Article 1 of Protocol No. 6 to the Convention, the imposition of the death penalty is prohibited and the death penalty is abolished. For the purposes of international co-operation in criminal matters, this means that:

"the extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted. A requested State may however grant an extradition if it has obtained adequate guarantees that:

- (i) the person whose extradition has been requested will not be sentenced to death; or
- (ii) in the event of such a sentence being imposed, it will not be carried out."

(Guideline XIII(2) (see paragraph 94 above); see also Eur. Commission HR, *Aylor-Davis v. France*, no. 22742/93; decision of 20 January 1994, Decisions and Reports 76-A, page 164 at pages 170-172; Eur. Commission HR, *Raidl v. Austria*, no. 25342/94, decision of 4 September 1995, Decisions and Reports 82-B, page 134).

274. It is undisputed that in the present cases the respondent Parties have not sought assurances from the United States that the death penalty would not be imposed and carried out against the applicants. It therefore remains for the Chamber to examine whether the applicants risk being sentenced to death. If so,

UNCLASSIFIED

## UNCLASSIFIED

since the respondent Parties have failed to seek such assurances, there will be a violation of Article 1 of Protocol No. 6.

1. Failure to follow extradition proceedings

275. The Chamber notes that, according to the submission of Bosnia and Herzegovina of 25 January 2002 and of the Federation of Bosnia and Herzegovina, the applicants, at the time of their hand-over to US forces, were under suspicion of participating in acts of international terrorism. At the public hearing on 10 April 2002, the Agent of Bosnia and Herzegovina explained, with respect to the obligations of Bosnia and Herzegovina arising from the UN Security Council Resolution 1373 (2001) to support the fight against terrorism: "The applicants had to be put under the supervision [of the United States] because the presumption existed that they have knowledge of terrorist activities."

276. The Chamber notes that the laws of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina do not provide for individuals suspected of criminal activities to be "put under the supervision" of a foreign State by any procedure other than the extradition procedure governed by the Federation Law on Criminal Procedure. The Chamber recalls that Article 508 of the Law of Criminal Procedure requires that a petition for extradition shall include the indictment or the decision ordering custody against the person to be extradited. In addition, an extract of the text of the criminal law to be applied by the foreign State seeking extradition must accompany a petition for extradition. Reading Article 508 in conjunction with Article 507(1)(10), the Chamber notes that in the applicants' cases, the petition for extradition would have had to include a statement as to whether the death penalty is applicable to the offences the applicants are suspected of and, if so, whether the death penalty will be sought.

277. No extradition proceedings pursuant to the Federation Code of Criminal Procedure were initiated in the applicants' cases. The respondent Parties did not obtain any statement from the United States as to whether custody was sought for the purpose of bringing the applicants to trial, and if so, which law the applicants would be tried under and what penalties would be applied in the event of a conviction. Answers to these questions are crucial in order to assess whether the applicants face a real risk of being subjected to the death penalty. The facts that have emerged during the proceedings before the Chamber, the submissions of the Parties and the information obtained by the Chamber proprio motu have not been able to dispel the uncertainty clouding these matters. The Chamber finds that since this lack of information is a consequence of the respondent Parties' failure to follow extradition proceedings, the resulting uncertainty can only be weighed to the disadvantage of the

## UNCLASSIFIED

respondent Parties when assessing the risk of imposition and execution of the death penalty against the applicants. The Chamber will now proceed to assess the risk of imposition of the death penalty on the basis of the available elements, keeping this principle in mind.

ii. Substantive criminal law applicable to possible charges against the applicants

278. The criminal proceedings against the applicants by the Federation authorities were initiated on the grounds of the suspicion that they were planning a bomb attack on the Embassies of the United States and the United Kingdom in Sarajevo. During these proceedings, one of the co-suspects of the applicants, B.B., was interrogated by FBI agents and confronted with the allegation that during a search of his home, the telephone number of a liaison officer of the al Qaida leader Osama Bin Laden had been found. The Chamber therefore concludes that it is reasonable to assume that the applicants are at risk of being charged not only with planning an attack on the US Embassy in Sarajevo, but also with being part of the al Qaida conspiracy to wage a terrorist war against the United States.

279. The Chamber notes that in a possible trial of the applicants, the applicable law might be either the law applicable to violations of the laws of war or US federal law. The US President's Military Order of 13 November 2001 provides, at Section 1(e) that "it is necessary for individuals subject to this order ..., when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals" (see paragraph 95 above). Sources of the "laws of war" include customary principles and rules of international law, international agreements, judicial decisions of national and international tribunals, national manuals of military law, scholarly treatises, and resolutions of various international bodies. The understanding of the "laws of war" of the United States Department of Defense is set forth in the *Field-Manual 27-10: The Law of Land Warfare*, promulgated by the Department of the Army (see paragraph 97 above). "As the international law of war is part of the law of the land in the United States, enemy personnel charged with war crimes are tried directly under international law without recourse to the statutes of the United States" (Paragraph 505e of the *Law of Land Warfare*). If the defendants in a trial for violations of the "laws of war" are classified as illegal combatants, then they will be deprived of the safeguards provided by the Third Geneva Convention of 1949 for the trial of prisoners of war.

280. As to applicable penalties, Paragraph 508 of the *Law of Land Warfare* states that "[t]he punishment imposed for a violation of the law of war must be proportionate to the gravity of the

UNCLASSIFIED

UNCLASSIFIED

offense. The death penalty may be imposed for grave breaches of the law". No further indication is given as to when the death penalty can be imposed. Historically, the death penalty has been amply applied to violations of the laws of war. In 1862, during the so-called "Indian Wars" in the American West, a portion of the Sioux tribe in Minnesota declared war on white settlers. During a battle in which the Sioux forces were defeated, the US Army captured more than 400 Sioux fighters. The Army refused to grant them prisoner of war status and instead classified them as illegal combatants. Thus, they were eligible for trial before a military commission. After summary trials before this commission, 303 were sentenced to death (President Lincoln later commuted all but 38 of the death sentences) (Douglas Linder, *The Dakota Conflict Trials*, at <http://jurist.law.pitt.edu/trials23.htm>).

281. The US Supreme Court case of *Ex parte Quirin*, 317 U.S. 1 (1942), is a landmark Second World War case in which eight German saboteurs were captured after coming ashore in New York and Florida with plans and equipment to blow up rail centres, bridges, other public works, and industrial plants. President Franklin D. Roosevelt established a military commission to try them under the laws of war, and they were quickly found guilty. The US Supreme Court upheld the convictions, and six of the eight were executed a few days later. Footnotes 9 and 10 of this judgment list numerous other cases in which the death penalty was imposed for violations of the laws of war.

282. Under US federal law, the death penalty is available for conspiracies related to the events of 11 September 2001, as is apparent from the Indictment and Notice of Intent to Seek a Sentence of Death filed in *United States v. Moussaoui* in the Eastern District of Virginia. In that case, the US Attorney seeks the death penalty on four counts of the Indictment, including counts charging offences under 18 U.S.C. § 2332a and 2332b ("Use of certain weapons of mass destruction" and "Acts of terrorism transcending national boundaries"). Thus, if the applicants were charged and convicted on any similar count involving these offences, they could face capital punishment. In such a prosecution, it would not be necessary for the US authorities to show that the applicants personally committed any overt act; it would be sufficient for US authorities to show that they were members of the conspiracy and that one of the other conspirators acted to further its aims.

283. Finally, the Chamber notes that, whether the applicants are tried under US federal criminal law or under the "laws of war", Section 1(f) of the US President's Military Order provides "that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts". The US President's Military Order thereby, and in particular through the explicit reference to Section 1(f)

UNCLASSIFIED

UNCLASSIFIED

contained in Section 4(b), mandating the Secretary of Defense to issue further orders and regulations concerning the trials to be held before the military commissions, opens the door to elements of summary justice in both the substantive criminal law and the procedural rules to be applied by the military commissions (see paragraph 95 above).

iii. Relationship between fair trial guarantees and the imposition of the death penalty

284. The Chamber recalls that in international human rights law there is a well-established relationship between the fairness of the trial and the imposition of the death penalty. The United Nations Human Rights Committee has consistently noted that "in capital punishment cases, State Parties have an imperative duty to observe rigorously all the guarantees for a fair trial" (see, e.g., *Earl Pratt and Ivan Morgan v. Jamaica*, Communication No. 210/198, U.N. Doc. Supp. No. 40 (A/44/40) at 222 (1989), decision of 6 April 1989, paragraph 15). In cases in which it has found a violation of the guarantees of a fair trial, the UN Human Rights Committee has recommended the commutation of the death sentence. In this respect the Chamber recalls Resolution 1984/50 on "Safeguards guaranteeing protection of the rights of those facing the death penalty", adopted by the UN Economic and Social Council on 25 May 1984. In particular, safeguard No. 5 provides:

"Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

285. The Chamber is of the opinion that, as a matter of experience intimately related to this principle of human rights law, courts that are not fully independent from the executive power and that offer reduced procedural safeguards and limitations on the right to legal assistance, are more likely to impose the death sentence than courts that fully respect all the rights of defendants enshrined in international human rights instruments, e.g., in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the Convention. The Chamber will therefore examine the procedure before the military commissions that are likely to try the applicants, should they be brought to trial, in the light of Article 6 of the Convention.

iv. Defendants' rights in a trial before a military commission

UNCLASSIFIED



UNCLASSIFIED

286. Article 6 of the Convention provides:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

"3. Everyone charged with a criminal offence has the following minimum rights:

- a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b. to have adequate time and facilities for the preparation of his defence;
- c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

\* 287. The Chamber notes that the applicants were taken to the US detention centre known as "Camp X-Ray" in Guantanamo Bay, Cuba. There, pursuant to the US President's Military Order of 13 November 2001, it appears that the applicants will not stand trial before a regular US court, but may instead face prosecution before a military commission. (This US President's Military Order, which relates to "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism", applies to any non-US citizen who, at the US President's determination: "(i) is or was a member of the organization known as al Qaida"; and "(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor,

UNCLASSIFIED

UNCLASSIFIED

that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy..." (Section 2(a)(1) of the US President's Military Order, see paragraph 95 above.)

288. Section 4 of the US President's Military Order sets out the general parameters for the military commissions and for subsequent orders and regulations concerning proceedings before such military commissions. Section 4(a) provides:

- "Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death."

289. The Chamber notes that, pursuant to Section 4(b), the members of the military commissions are appointed by the US Secretary of Defense. Under Section 4(b) and (c), the Secretary of Defense shall issue "rules for the conduct of the proceedings of military commissions, including pre-trial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys". In issuing these procedural rules, the Secretary of Defense is mandated to take into account that "it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts" (Section 1(f) of the US President's Military Order). On 21 March 2002, the US Department of Defense issued Military Commission Order No. 1 (hereinafter "MC Order No. 1"), setting forth "Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism" and implementing the US President's Military Order.

290. The Appointing Authority, i.e. the Secretary of Defense or a person designated by him, may appoint the members of the military commission "from time to time" (MC Order No. 1, § 2), *ad hoc* for any specific trial. Moreover, the Appointing Authority may remove members for "good cause" (MC Order No. 1, § 4(A)(3)).

291. Each member of a military commission shall be a commissioned officer of the United States armed forces (MC Order No. 1, § 4(A)(3)), and therefore a subordinate of the Appointing Authority within a military command structure.

292. Moreover, the findings of a military commission and of a review panel and the sentence imposed become final only once they have been reviewed and approved by the President or the Secretary of Defense (MC Order No. 1, § 6(H)(2, 4, 5 and 6)). While he may

UNCLASSIFIED

UNCLASSIFIED

not change a not guilty finding into a guilty finding, the Secretary of Defense may "return the case for further proceedings" (MC Order No. 1, § 6(H)(2 and 5)).

293. The Chamber notes that the duration of the detention of the applicants awaiting trial or release without trial is potentially unlimited: the Executive Order and the Military Commission Order No. 1 contain no time limits until which the detainees must be charged or released if no charges are brought, and they set no time frame for possible trials of the applicants.

294. The hearings of the military commissions shall be open to the public, unless otherwise decided by the Appointing Authority or the Presiding Officer (MC Order No. 1, § 6(B)(3), which provides ample grounds for excluding the public).

295. The accused's presence at the proceedings, the prosecution's duty to forward to the defence exculpatory evidence, the defence's right to obtain a copy of documents introduced into evidence by the prosecution, and the defence's right to call witnesses are all subject to the requirement to safeguard "protected information" (MC Order No. 1, § 5). Such "protected information" is defined broadly (MC Order No. 1, § 6(D)(5)).

296. The MC Order No. 1 establishes the Office of the Chief Defense Counsel, who shall be a judge advocate of the US armed forces, shall "supervise the overall defense efforts" and "shall facilitate proper representation of all Accused" (MC Order No. 1, § 4(C)(1)). The Chief Defense Counsel "shall detail one or more Military Officers who are judge advocates of any United States armed forces to conduct the defense for each case before a Commission", called the Detailed Defense Counsel (MC Order No. 1, § 4(C)(2)). The defendant may also retain a military officer or a civilian attorney of his own choosing to represent him (MC Order No. 1, § 4(C)(3)). However, retaining civilian defence counsel has at least two serious drawbacks: he or she can be excluded from any part of the proceedings, when the Presiding Officer or the Appointing Authority decide to close the proceedings for reasons of confidentiality; and civilian attorneys must be "at no expense to the United States". Moreover, civilian attorneys must have been "determined to be eligible for access to information classified at the level secret or higher" (MC Order No. 1, § 4(C)(3)). None the less, the defendant "must be represented at all relevant times by Detailed Defense Counsel" (MC Order No. 1, § 4(C)(4)), and "Detailed Defense Counsel may not be excluded from any trial proceedings or portion thereof" (MC Order No. 1, § 5(K)).

297. In accordance with Section 7(b)(2) of the US President's Military Order, defendants shall not have any recourse to any remedy before any court in the United States, "any court of any

UNCLASSIFIED

UNCLASSIFIED

foreign nation" or "any international tribunal". The US District Court for the District of Columbia has recently confirmed that US federal courts have no jurisdiction to consider claims by aliens detained in Camp X-Ray for the protection of US Constitutional rights (*Rasul v. Bush* and *Odah v. United States*, Nos. 02-299 and 02-828 (D. D.C.), decision of 30 July 2002, at [www.dcd.uscourts.gov/02-299.pdf](http://www.dcd.uscourts.gov/02-299.pdf)).

298. The Chamber finally notes that only aliens can be tried under the US President's Military Order and the Military Commission Order No. 1 (Section 2(a) of the US President's Military Order; MC Order No. 1, § 1). US citizens suspected of being members of al Qaida or of having engaged in international terrorism cannot be excluded from the jurisdiction of regular courts in the United States and deprived of the constitutional guarantees protecting criminal defendants.

299. The Chamber finds that the US President's Military Order and the Military Commission Order No. 1 establish tribunals whose independence from the executive power is subject to deep-cutting limitations. The rights to trial within a reasonable time, to a public hearing, to equality of arms between prosecution and defence and to counsel of the accused's choosing are all severely curtailed. Moreover, the applicants are discriminatorily deprived of the guarantees enshrined in the Bill of Rights of the US Constitution. The Chamber finds that all these elements considerably increase the risk of the death penalty being imposed and executed on the applicants.

v. Conclusion as to imposition of the death penalty

300. In conclusion, the Chamber finds that considerable uncertainty exists as to whether the applicants will be charged with a criminal offense, what charges will be brought against them, which law will be deemed applicable, and what sentence will be sought. This uncertainty does not exclude the imposition of the death penalty against the applicants. On the contrary, the US criminal law most likely applicable to the applicants provides for the death penalty for the criminal offences with which the applicants could be charged. This risk is compounded by the fact that the applicants face a real risk of being tried by a military commission that is not independent from the executive power and that operates with significantly reduced procedural safeguards. Hence, the uncertainty as to whether, when and under what circumstances the applicants will be put on trial and what punishment they may face at the end of such a trial gave rise to an obligation on the respondent Parties to seek assurances from the United States, prior to the hand-over of the applicants, that the death penalty would not be imposed upon the applicants. The Chamber therefore finds that, in handing over the applicants to US forces, the respondent Parties have failed to take all

UNCLASSIFIED

UNCLASSIFIED

necessary steps to ensure that the applicants will not be subject to the death penalty. They have thereby violated Article 1 of Protocol No. 6 to the Convention.

- e. Article 3 of the Convention -- prohibition of torture or inhuman or degrading treatment

301. The Chamber will examine whether the respondent Parties violated Article 3 of the Convention by handing-over the applicants to US forces. The Chamber points out that, in examining this alleged violation of Article 3 of the Convention by the organs of both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, the Chamber is not making any assessment as to how detainees at Camp X-Ray, Guantanamo Bay, Cuba, are treated by US authorities. As explained above (see paragraphs 253 to 262), the Chamber is solely concerned with the question of whether the authorities of the respondent Parties failed to comply with their obligations under the Agreement when they handed over the applicants to US forces.

302. Article 3 of the Convention reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

303. The applicants complain of a violation of Article 3 of the Convention with regard to the treatment that they expect to receive at the detention facility at Guantanamo Bay, Cuba. More specifically, one of the lawyers of applicants elaborated that, "having in mind that the applicant has been transferred to the USA, i.e. to the Guantanamo Base on Cuba, and the circumstances prevailing there with regard to the treatment of prisoners, against which all international organisations dealing with the protection of human rights have protested, and where, according to the evidence in the Amnesty International Report and the world media, the applicant is put in a space that can freely be called a cage in which detainees are chained with masks on their faces in a kneeling position, a violation of Article 3 has occurred because, having in mind the above mentioned facts, the existence of ill-treatment of the applicant, i.e. torture, inhuman and degrading treatment and punishment, seems obvious."

304. At the public hearing on 10 April 2002, the respondent Parties stated that, at the time of handing-over the applicants to US forces, they did not consider the United States to be a country where the applicants would be placed at a high risk of being subjected to treatment prohibited by Article 3 of the Convention.

305. The law governing the complaint before the Chamber has been stated by the European Court in a number of judgments:

UNCLASSIFIED

## UNCLASSIFIED

"[T]he expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country" (Eur. Court HR, *Ahmed v. Austria*, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, paragraph 39; see also *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161, pages 35-36, paragraphs 90-91; *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, page 28, paragraphs 69-70; *Vilvarajah and Others v. United Kingdom*, judgment of 30 October 1991, Series A no. 215, page 34, paragraph 103; and *Chahal v. United Kingdom*, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, page 1853, paragraph 74).

1. Conditions of detention as a violation of the right not to be subjected to torture or inhuman or degrading treatment

306. The Chamber notes that it is well-established case law that conditions of detention *per se*, without any allegation of deliberate ill-treatment by the police, prison guards or other persons, can already amount to inhuman or degrading treatment. This can be due to prolonged isolation, deprivation of light or uninterrupted exposure to artificial light, overcrowding, absence of heating, poor sanitary conditions, lack of exercise or, more likely, an accumulation of such conditions (Eur. Court HR, *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, page 40, paragraph 107, finding no violation of Article 3 with regard to detention conditions; Eur. Commission HR, *Ensslin, Baader, Raspe v. Germany*, no. 7572/76 et al., decision of 8 July 1978, Decisions and Reports 14, page 64, at pages 109-111, finding no violation of Article 3 with regard to isolated detention of terrorists; *McFreely and Others v. United Kingdom*, no. 8317/78, decision of 15 May 1980, Decisions and Reports 20, page 44, at pages 81-89, finding no violation of Article 3 with regard to the conditions of detention of IRA terrorists); *Dougoz v. Greece*, no. 40907/98, judgment of 6 March 2001, paragraphs 45-49, finding a violation of Article 3 due to poor detention conditions while the applicant was awaiting extradition).

307. In *Kröcher and Möller v. Switzerland* (Eur. Commission HR, no: 8463/78, decision of 16 December 1982, Decisions and Reports 34, page 24, at pages 51-55), the detention conditions complained of, although less serious than those in Guantanamo Bay, can be usefully compared to those complained of by the applicants before

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the Chamber, in that they were dictated by extreme security requirements in a "climate of terrorism", rather than by abandonment and degradation. In the *Kröcher and Möller* case, the prison conditions included isolation, constant artificial lighting, permanent surveillance by closed-circuit television, denial of access to newspapers and radio and lack of physical exercise. The Commission expressed "serious concern with the need for such measures, their usefulness and their compatibility with Article 3 of the Convention" (*id.* at page 57). However, it concluded that the applicants were not subjected to inhuman or degrading treatment (*id.*). In reaching this conclusion the Commission accepted the State Party's submission that the applicants were dangerous, that they were alleged to be terrorists, and that there was a risk of escape and collusion. The Chamber notes that also in all other cases concerning high-level security measures in the detention of alleged or convicted terrorists quoted above, no violation was found.

ii. Application of Article 3 in extradition and expulsion cases

308. Turning to the cases in which Article 3 was applied in the context of extradition or expulsion, the Chamber notes that the cases it is aware of can be divided into three categories. In the first group of cases, applicants allege that their extradition would constitute inhuman or degrading treatment in that, in detention in the receiving country, they would not receive medical care they desperately need (see *Eur. Court HR, D. v. United Kingdom*, decision of 2 May 1997, Reports of Judgments and Decisions 1997-III, paragraphs 39-54, finding a violation of Article 3; *Eur. Commission HR, Raidl v. Austria*, no. 25342/94, decision of 4 September 1995, Decisions and Reports 82-B, page 134, finding no violation of Article 3). The Chamber finds that the situation complained of in these cases is so different from that of the applicants, that they cannot provide any guidance in the present cases.

309. The second group of cases, such as *Soering v. United Kingdom* (*Eur. Court HR*, judgment of 7 July 1989, Series A no. 161) and *E.M. Kirkwood v. United Kingdom* (*Eur. Commission HR*; no. 10479/83, decision of 12 March 1984, Decisions and Reports 37, page 158), concern complaints under Article 3 in the context of the death penalty. In the *Soering* case, the European Court found that the so-called "death row phenomenon", i.e. the psychological situation faced by a person awaiting for years the execution of a death sentence, amounted to treatment contrary to Article 3 of the Convention (*Soering* at pages 44-45, paragraph 111). The Chamber considers that it has already dealt with the risk of imposition of the death penalty under Article 1 of Protocol No. 6, which was not applicable in the *Soering* case, and that there is no separate complaint about the "death row phenomenon" before

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it. It shall therefore not consider the issue of the death penalty under Article 3 in the cases before it.

310. In the third and most substantial group of cases, the applicants complained that their expulsion would put them at risk of persecution based on their ethnic origin or political activity. In *Cruz Varas and Others v. Sweden*, the first applicant alleged that "his expulsion exposed him to the risk that he would be arrested and tortured once more on his return to Chile" (Eur. Court HR, judgment of 20 March 1991, Series A no. 201, page 28, paragraph 71). In the *Vilvarajah* case, the applicants claimed that upon their return to Sri Lanka, they had been arbitrarily detained by security forces, tortured and otherwise ill-treated, as part of a pattern of persecution against young Tamil men (Eur. Court HR, *Vilvarajah and Others v. United Kingdom*, judgment of 30 October 1991, Series A no. 215, pages 34-35, paragraph 104). In *Chahal v. United Kingdom*, one of the applicants, a supporter of the Sikh separatist movement, claimed that he would be subjected to torture and persecution if returned to India, in particular with regard to the situations of Sikhs in Punjab (Eur. Court HR, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, paragraph 26). In the *Ahmed* case, the applicant, a Somali national, complained that his expulsion to Somalia would expose him to a serious risk of being subjected to treatment contrary to Article 3 of the Convention (Eur. Court HR, *Ahmed v. Austria*, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, paragraph 35). In *Hilal v. United Kingdom*, the applicant, an active member of the Civic United Front, an opposition party in Zanzibar, claimed to have been ill-treated in detention in Tanzania before and to be placed at risk of torture or inhuman and degrading treatment contrary to Article 3 if he were expelled from the United Kingdom to Tanzania (Eur. Court HR, judgment of 6 March 2001, no. 45276/99, paragraphs 52-53). The Chamber will now examine to what extent this case law is applicable to the cases before the Chamber.

#### iii. Respondent Parties' responsibility in the present cases

311. Returning to the cases currently before it, the Chamber notes that the applicants' lawyers are claiming that the conditions of detention in Camp X-Ray are such as to violate the applicants' rights under Article 3. In their submissions the applicants' lawyers expressly rely on media reports and other publicly available information, which in fact was made available to the media by US authorities, who have allowed journalists to observe and to describe the conditions of detention at Camp X-Ray. The applicants' lawyers are not alleging that the applicants are victims of any hidden, secret ill-treatment or of any persecutory conduct by US authorities different from the publicly

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known measures, which are purportedly necessary for security reasons.

312. The Chamber is not aware of any case decided by an international human rights body in which it found a violation of the right not to be subject to torture or inhuman or degrading treatment by the expelling or extraditing State on the basis that the applicant was extradited to a State where high-security conditions of detention were so invasive as to amount to a violation of Article 3. The Chamber considers that this is so because, as the Kröcher and Möller case shows, the detention of highly dangerous individuals requires the authorities to strike a very delicate balance between the requirements of security and basic individual rights (see Eur. Commission HR, Kröcher and Möller v. Switzerland no. 8463/78, decision of 16 December 1982, Decisions and Reports 34, page 24). This determination will require a case-specific, ongoing assessment of the danger of flight, of collusion, of the detainees harming themselves, and of the security situation inside and outside the detention facility. Therefore, the Chamber finds that an extraditing State is not in a position and cannot be required to carry out this balancing exercise.

313. The Chamber also notes that the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of 1984 ("the Torture Convention") is the only human rights treaty containing a provision explicitly applying the principle of non refoulement, which has its origin in refugee and asylum law, to torture. The Chamber therefore considers the case law of the UN Committee against Torture, which is charged with examining individual complaints of violations of the Torture Convention, to be particularly relevant. Article 3 of the Torture Convention reads as follows:

"1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

314. In developing criteria to determine whether "substantial grounds" exist, the UN Committee against Torture has clarified that:

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"[T]he existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances" (*Mutombo v. Switzerland*, Communication No. 13/1993, U.N. Doc. A/49/44 at 45 (1994), paragraph 9.3; see also *Tahir Hussain Khan v. Canada*, Communication No. 15/1994, U.N. Doc. A/50/44 at 46 (1995), paragraph 12.2).

315. The Chamber notes that Article 3 of the Torture Convention applies only to torture, and not to other cruel or inhuman treatment or punishment falling short of torture. The Chamber is aware that the European Court has explicitly stated in the *Soering* case that the obligation not to extradite under Article 3 of the Convention also extends to cases in which the individual would face a real risk of exposure to inhuman or degrading treatment or punishment in the receiving State (Eur. Court HR, *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161, page 35, paragraph 88; see also *Vilvarajah and Others v. United Kingdom*, judgment of 30 October 1991, Series A no. 215, page 34, paragraph 103). Notwithstanding this difference in scope between the two provisions, the Chamber considers that the test developed by the UN Committee against Torture in application of paragraph 2 of Article 3 of the Torture Convention is relevant to complaints under Article 3 of the Convention as well.

316. Applying the test developed by the UN Committee against Torture to the applicants' case, the Chamber notes that there is no allegation or indication that in the United States there is a consistent pattern of gross, flagrant or mass violations of human rights. This consideration, while on its own insufficient to relieve the respondent Parties of all responsibility for handing over the applicants to US forces, weighs heavily against finding that the respondent Parties were under an obligation to consider that the applicants could be at a specific, substantial risk of being subjected to treatment contrary to Article 3 while in US custody.

317. The Chamber also notes that, as shown in the decisions of the European Commission and the European Court (see paragraph 310 above), the threshold for finding that conditions of detention dictated by justified security concerns are in violation of Article 3 of the Convention is indeed a very high one.

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318. Furthermore, the Chamber notes that Section 3(c) of the US President's Military Order provides:

"Any individual subject to this order shall be -

- (b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;
- (c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;
- (d) allowed the free exercise of religion consistent with the requirements of such detention".

319. Finally, the Chamber notes that the International Committee of the Red Cross visited and continues to maintain an active presence at the detention facilities at Guantanamo Bay. The Chamber will therefore give the respondent Parties the benefit of the assumption that they were relying also on this international control mechanism in entrusting the applicants to US custody, and that their treatment there would comply with the minimum standards expected of detention.

#### iv. Conclusion as to Article 3 of the Convention

320. To sum up, the Chamber finds that the respondent Parties were not under an obligation to evaluate whether the conditions of detention at Camp X-Ray strike the right balance between security requirements and the basic rights of the detainees before handing the applicants over to US forces. Moreover, the Chamber observes that it has not been alleged that there is a consistent pattern of gross human rights violations in the United States of America, and that the threshold for finding a violation of Article 3 due to conditions of detention dictated by security concerns is very high. Finally, the Chamber notes that the US President's Military Order provides that all prisoners shall be treated humanely and that US authorities have admitted the International Committee of the Red Cross to monitor the conditions of detention at Camp X-Ray. On the basis of all the above considerations, the Chamber concludes that the respondent Parties did not violate their duty to protect the applicants from torture or inhuman or degrading treatment or punishment by handing them over to the United States. Accordingly, the Chamber finds that there has been no violation of Article 3 of the Convention by the respondent Parties.

#### f. Article 6 of the Convention -- fair trial

321. All four applicants complain that any trial that they may face by US authorities will not be a fair trial. Therefore, they claim that the respondent Party, by handing them over to US

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authorities, contributed to a violation of Article 6 of the Convention.

322. In view of its finding of a violation of Article 1 of Protocol No. 6 to the Convention, the Chamber does not consider it necessary to examine the cases separately under Article 6 of the Convention.

#### 6. Conclusion as to the merits

323. In conclusion, in its discussion on the merits of the applications, the Chamber has found that with respect to the expulsion of all four applicants, both respondent Parties acted in violation of Article 1 of Protocol No. 7 to the Convention because they failed to act in accordance with the law. The Chamber has refrained, however, from deciding whether the respondent Parties also acted in violation of Article 3 of Protocol No. 4 to the Convention with respect to the expulsion of the applicants Boudellaa, Lakhdar and Nechle. As to the detention of the four applicants in Bosnia and Herzegovina, the Chamber has found that both respondent Parties violated the rights of the applicants protected by Article 5 paragraph 1 of the Convention for the time period of detention after the entry into force of the Supreme Court decision to release them on 17 January 2002 until and including their detention in Bosnia and Herzegovina after the hand-over to US forces. In light of this finding, the Chamber has not considered it necessary to examine the applications separately under Article 8 of the Convention. In response to the applicant's complaints under Article 6 paragraph 2 of the Convention, the Chamber has decided that the respondent Parties violated the presumption of innocence with respect to the applicants Boudellaa, Lakhdar and Nechle. Next the Chamber has examined the obligations of the respondent Parties in handing over the applicants to US forces, which lead to their present detention at Camp X-Ray in Guantanamo Bay, Cuba. Taking into consideration that it remains possible that US authorities may seek and potentially impose the death penalty against the applicants, the Chamber has found that the respondent Parties should have sought assurances from the United States prior to handing over the applicants to US forces that the death penalty would not be imposed upon them; failing to do so constitutes a violation of Article 1 of Protocol No. 6 to the Convention. On the other hand, the Chamber has concluded that the respondent Parties did not violate their obligation under Article 3 of the Convention to protect the applicants from torture or inhuman or degrading treatment or punishment by handing them over to US forces. Lastly, the Chamber has not considered it necessary to examine the applications separately under Article 6 of the Convention with respect to the complaint that the hand-over exposes the applicants to the risk of an unfair trial by the US authorities.

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## VIII. REMEDIES

324. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this connection, the Chamber shall consider issuing orders to cease and desist, monetary relief, and provisional measures.

325. The applicants have made compensation claims in the amount of several hundred thousand Convertible Marks (Konvertibilnih Maraka, "KM") in relation to the pecuniary and non-pecuniary damages suffered by the applicants themselves and their families. These claims include compensation for lost income, compensation for mental suffering of both the applicants and their families, and reimbursement for their attorney fees. Both respondent Parties summarily reject the compensation claims as ill-founded and in any event excessive.

326. The Chamber found violations with respect to all four applicants of Article 1 of Protocol No. 7 to the Convention (expulsion); Article 5 paragraph 1 of the Convention (illegal detention) and Article 1 of Protocol No. 6 to the Convention (abolition of death penalty). In addition the Chamber found a violation of Article 6 paragraph 2 of the Convention (presumption of innocence) with regard to the applicants Boudellaa, Lakdhar and Nechle.

327. Considering its findings regarding the delivery of the decisions on refusal of entry to the applicants, made in the context of the discussion under Article 1 of Protocol No. 7 to the Convention (see paragraphs 177 to 188 above), the Chamber orders the Federation to take all necessary steps to annul the decisions on refusal of entry of 10 January 2002.

328. The Chamber also orders Bosnia and Herzegovina to take all necessary steps to decide, as a matter of urgency, on the appeal of the applicant Lahmar against his expulsion order, taking into account, *inter alia*, its duties under Article 34 of the Law on Immigration and Asylum. Bosnia and Herzegovina shall promptly inform the applicant's representative of this decision.

329. With regard to the applicants Boudellaa, Nechle, and Lakdhar, the Chamber orders the Federation to take all necessary steps to ensure that the administrative dispute before the Supreme Court concerning the decisions revoking the citizenship of the three applicants is decided, taking into account the Chamber's decision.

330. The Chamber further orders Bosnia and Herzegovina to use diplomatic channels in order to protect the basic rights of the

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applicants. In particular, the Chamber orders Bosnia and Herzegovina to take all possible steps to establish contacts with the applicants and to provide them with consular support. Bosnia and Herzegovina is further ordered to take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including attempts to seek assurances from the United States via diplomatic contacts that the applicants will not be subjected to the death penalty.

331. The respondent Parties are also ordered to retain lawyers authorised and admitted to practice in the relevant jurisdictions and before the relevant courts, tribunals or other authoritative bodies in order to take all necessary action to protect the applicants' rights while in US custody and in case of possible military, criminal or other proceedings involving the applicants. The respondent Parties will each bear half the cost of the attorney fees and expenses of such lawyers.

332. The Chamber further orders the respondent Parties to compensate each applicant in the amount of 10,000 KM for their suffering arising from the violations found with respect to the illegal detention under Article 5, the expulsion under Article 1 of Protocol No. 7, and the failure to seek assurances that the applicants will not face the death penalty under Article 1 of Protocol No. 6. The respondent Parties will each bear half the cost of this compensation for non-pecuniary damages. As the applicants are currently not able to receive such compensation, the compensation shall be placed on an account for the applicants. Should the applicants return to Bosnia and Herzegovina within 12 months from the delivery of the decision, the compensation shall be immediately paid to them. If the applicants do not return to Bosnia and Herzegovina within twelve months of the delivery of this decision, then the non-pecuniary compensation shall be paid to their respective wives and children living in Bosnia and Herzegovina by 11 November 2003.

#### **IX. CONCLUSIONS**

333. For these reasons, the Chamber decides,

1. unanimously, to declare inadmissible the complaints in regard to the length of proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina in the administrative dispute against the revocations of citizenship;
2. by 8 votes to 6, to declare admissible the remainder of the applications;
3. by 8 votes to 6, that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina,

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violated the right of all four applicants not to be arbitrarily expelled, as guaranteed by Article 1 of Protocol No. 7 to the European Convention on Human Rights, the respondent Parties thereby being in breach of Article I of the Human Rights Agreement;

4. by 13 votes to 1, that there has been no violation of the right to liberty and security of person of any of the four applicants as guaranteed by Article 5 paragraph 1 of the Convention, with regard to the period of time from the original arrest until the entry into force of the decision of the Supreme Court of the Federation of Bosnia and Herzegovina to release the applicants on 17 January 2002;

5. by 8 votes to 6, that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, violated the right to liberty and security of person of all four applicants as guaranteed by Article 5 paragraph 1 of the Convention, with regard to the period from the entry into force of the decision of the Supreme Court of the Federation of Bosnia and Herzegovina to release the applicants on 17 January 2002 until the hand-over of the applicants to US forces, the respondent Parties thereby being in breach of Article I of the Agreement;

6. by 7 votes to 7, with the casting vote of the President, that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, violated the right to liberty and security of person of all four applicants as guaranteed by Article 5 paragraph 1 of the Convention, with regard to the period from the hand-over of the applicants to US forces until their forceful removal from the territory of Bosnia and Herzegovina, the respondent Parties thereby being in breach of Article I of the Agreement;

7. by 7 votes to 7, with the casting vote of the President, that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, in the decisions withdrawing the citizenship, violated the right of the applicants Boudellaa, Lakdhar and Nechle to be presumed innocent until proven guilty according to the law as guaranteed by Article 6 paragraph 2 of the Convention, the respondent Parties thereby being in breach of Article I of the Agreement;

8. by 7 votes to 7, with the casting vote of the President, that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, violated the right of all four applicants not to be subjected to the death penalty, as guaranteed by Article 1 of Protocol No. 6 to the Convention, by failing to seek assurances from the United States of America that the applicants would not be subjected to the death penalty, the respondent Parties thereby being in breach of Article I of the

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Agreement;

9. by 11 votes to 3, that there has been no violation of the right not to be subjected to torture or to inhuman or degrading treatment as guaranteed by Article 3 of the Convention;
10. by 12 votes to 2, that it is not necessary to consider the cases under Article 8 of the Convention;
11. by 10 votes to 4, that it is not necessary to consider the applicants' complaints that they will not receive a fair trial after their hand-over to US forces under Article 6 of the Convention;
12. by 7 votes to 7, with the casting vote of the President, to order the Federation of Bosnia and Herzegovina to take all necessary steps to annul the decisions on refusal of entry to the four applicants of 10 January 2002;
13. unanimously, to order Bosnia and Herzegovina, to take all necessary steps to decide, as a matter of urgency, on the appeal of the applicant Lahmar against his expulsion order, taking into account, *inter alia*, its duties under Article 34 of the Law on Immigration and Asylum and to inform the applicant's representative of this decision;
14. by 8 votes to 6, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina concerning the decisions revoking the citizenship of the applicants Boudellaa, Nechle, and Lakdhar is decided, taking into account the Chamber's decision;
15. by 10 votes to 4, to order Bosnia and Herzegovina to use diplomatic channels in order to protect the basic rights of the applicants, taking all possible steps to establish contacts with the applicants and to provide them with consular support;
16. by 9 votes to 5, to order Bosnia and Herzegovina to take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including seeking assurances from the United States via diplomatic contacts that the applicants will not be subjected to the death penalty;
17. by 9 votes to 5, to order both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, to retain lawyers authorised and admitted to practice in the relevant jurisdictions and before the relevant courts, tribunals or other authoritative bodies in order to take all necessary action to protect the applicants' rights while in US custody and in case of possible military, criminal or other proceedings

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involving the applicants, each of the respondent Parties bearing half the cost of the attorney fees and expenses;

18. by 8 votes to 6, to order both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, to pay to each applicant 10,000 Convertible Marks (Konvertibilnih Maraka) by way of compensation for non-pecuniary damages, no later than 11 November 2002, each of the respondent Parties bearing half the cost of the compensation;

19. by 8 votes to 6, to order both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, to place the compensation awarded in sub-paragraph 18 above in an account for the applicants, which shall be paid to them immediately should they return to Bosnia and Herzegovina within 12 months from the delivery of this decision. If the applicants do not return to Bosnia and Herzegovina by 11 October 2003, then the respondent Parties are ordered to pay the compensation established in sub-paragraph 18 above to their respective wives and children in Bosnia and Herzegovina by 11 November 2003; and

20. unanimously, to order both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, to report to it no later than 11 November 2002, and thereafter periodically every two months until full implementation of the Chamber's decision is achieved, on all steps taken by the respondent Parties to implement the decision.

(signed)

Ulrich GARMS

Registrar of the Chamber

Chamber

(signed)

Michèle PICARD

President of the

Annex I Partly dissenting opinion of Ms. Michèle Picard  
 Annex II Partly dissenting opinion of Mr. Dietrich  
 Rauschnig  
 Annex III Partly dissenting opinion of Mr. Viktor Masenko-  
 Mavi and Mr. Giovanni Grasso  
 Annex IV Dissenting opinion of Mr. Mato Tadic, joined by Mr.  
 Miodrag Pajic

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ANNEX I

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mme. Michèle Picard:

## PARTLY DISSENTING OPINION OF MS. MICHÈLE PICARD

I disagree with the decision of the majority of the Chamber that it is not necessary to examine the applications separately under Article 6 of the Convention (see paragraph 322 above). In the *Soering* decision, the European Court of Human Rights did not exclude that a decision on extradition could exceptionally raise a problem under Article 6, where there is a risk that the applicant would suffer "a flagrant denial of justice" in the receiving State (Eur. Court HR, *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161, paragraph 113).

While there are considerable doubts whether the applicants will face the death penalty, there seems to be no doubt that the risk of suffering a flagrant denial of justice exists. It was well known already before their expulsion that they were to be detained with an unclear legal status for an undetermined period of time and with no access to a lawyer, like all the other detainees in Guantanamo Bay, Cuba. Moreover, they will not benefit from the guarantees, especially the US Constitutional guarantees, protecting every criminal defendant in the United States. Finally, we are forced to note that all the safeguards provided for in the Military Commission Order No. 1 of 21 March 2002 can be excluded by a decision of the presiding officer of the Military Commission in charge of the trials (see, e.g., Section 4(A)(5)(a) of MC Order No. 1). This applies to the presence of the public, the presence of the accused himself during the proceedings, the defense's right to obtain a copy of the documents used as evidence, the defense's right to call witnesses and to cross-examine witnesses and, above all, the right of the accused to choose his defense counsel (see, e.g., *id.* and Sections 5 and 6(D) of MC Order No. 1).

Considering the rules of criminal proceedings in force in the American legal system, that is an "accusatory" system, which relies to a great extent on the equality of arms between the defense and the prosecution, the absence of these guarantees might lead to a totally unfair trial.

When they handed over the applicants to the United States, the authorities of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina were aware of this legal situation concerning the detainees in Guantanamo Bay. Nevertheless, they did not try to seek any guarantees. Therefore, I am of the opinion that the Chamber should have found a violation of Article 6 of the Convention as well.

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(signed)  
Mme.

Michèle Picard

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## ANNEX II

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Dietrich Rauschnig.

### PARTLY DISSENTING OPINION OF MR. DIETRICH RAUSCHNIG

1. I am part of the majority finding that the respondent Parties have violated the human rights of the applicants guaranteed by the European Convention on Human Rights (the "Convention") and Protocol No. 7 to the Convention, as stated under paragraphs 3 and 5 of the conclusions. But I dissent with the decisions carried by the dominant half of the Chamber with the casting vote of the President contained in paragraphs 6, 7 and 8 of the conclusions, and I disagree with the corresponding reasoning of the dominant judges.

I. Violation of the duty of the respondent Parties to seek assurances from the United States that the applicants would not be subjected to the death penalty, conclusion no. 8

2. My main dissent concerns the findings of the dominant half of the Chamber leading to conclusion no. 8, based on the reasoning in paragraphs 270 *seq.* of the decision. I share the starting point of the dominant opinion derived from the decisions of the European Court of Human Rights in the cited cases of *Soering v. United Kingdom* (Eur. Court HR, judgment of 7 July 1989, Series A no. 161), *Cruz Varas and Others v. Sweden* (Eur. Court HR, judgment of 20 March 1991, Series A no. 201), and *Vilvarajah and Others v. United Kingdom* (Eur. Court HR, judgment of 30 October 1991, Series A no. 215). According to these judgments, it may not be permissible to extradite or expel an applicant:

"where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned" (*Vilvarajah* at paragraph 103; paraphrased by the Grand Chamber in *H.L.R v. France*, judgment of 29 April 1997, Reports of Judgments and Decisions 1997-III, paragraph 34).

There is no dispute that this principle is applicable as well for the risk being subjected to the death penalty. Consequently, the normative formula may be adjusted to read as follows:

where substantial grounds exist for believing that the person concerned faced a real risk of being subjected to the death penalty in the receiving State.

The respondent Parties may have violated the human rights of the applicants if such substantial grounds existed for believing that the applicants face a real risk being subjected to the death

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penalty by the authorities of the United States.

3. The applicants were handed over to US forces on 18 January 2002 and were brought into US custody outside of Bosnia and Herzegovina. This resulted in an expulsion. As to the decisive time for the assessment, there is no reason to deviate from the established jurisprudence of the European Court of Human Rights, as stated in the *Vilvarajah* decision:

"Further, since the nature of the Contracting State's responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears" (*Vilvarajah* at paragraph 107 (emphasis added)).

If the expulsion has already taken place, then an applicant may challenge whether the respondent Parties have ignored *substantial grounds for believing that such a real risk exists*. In these cases the material point in time for this assessment can only be the time of the expulsion; however, this does not preclude the Chamber from taking into account later developments supporting the assessment made at the decisive time.

4. In paragraph 274 of the dominant opinion, the premise for further examination has been shortened to "whether the applicants risk being sentenced to death". This shortening diverts from the established requirements for finding a violation by the respondent Party, as developed in the jurisprudence of the European Court of Human Rights, yet no reason for this divergence is provided.

5. In paragraphs 275 to 277, the dominant opinion challenges that the extradition procedures provided in the law of Bosnia and Herzegovina have not been followed. During the proceedings, the respondent Parties have stated consistently that the hand-over of the applicants was not an extradition with the aim to prosecute the applicants under the authority of the United States, but rather, an expulsion. The respondent Parties had attempted to expel the applicants to their country of origin, Algeria, without success. After such failure, they handed over the applicants to a foreign State, the United States, that had agreed to receive them. Neither the respondent Parties nor the United States has ever stated that the applicants were handed over with the aim to be prosecuted in criminal proceedings. The stated reason for the detention of the applicants by the United States consistently has been that they are a danger to security; the statements of the

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respondent Parties are in conformity with this stated reason. Consequently, there was no reason to apply the extradition procedures. As a result, I cannot agree with the dominant opinion that the omission of extradition procedures leads to the conclusion that the applicants have been placed at risk of suffering imposition of the death penalty.

6. As stated in paragraph 2 above of this dissenting opinion, the obligation of the respondent Parties not to expose a person under their jurisdiction to a foreign authority where substantial grounds exist for believing that the person concerned faced a real risk of being subjected to the death penalty in the receiving State applies as well in cases of expulsion. Substantial grounds for believing that the applicants faced a real risk of being subjected to the death penalty under the authority of the United States can only exist if, for cases like the applicants' cases, the applicable law of the United States provides for the death penalty—otherwise there could be no risk of the death penalty.

7. In assessing this question on 18 January 2002, the respondent Parties had to rely on the US President's Military Order of 13 November 2001. That Military Order states in Section 2 that an individual who is or was a member of al Qaida or who has engaged in acts or preparation of international terrorism is detained, "and, if the individual is to be tried", he is tried only in accordance with Section 4. Section 4 of the US President's Military Order regulates the authority to establish military commissions. Section 4(a) provides that "when tried" an individual "may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death" (emphasis added). This provision circumscribes the general competence of the military commissions, but is not the material basis for imposition of the death penalty. Rather, the US President's Military Order expressively refers to applicable law as the substantive legal basis for a sentence to death. Consequently, the Military Order itself is not a sufficient ground upon which to base a belief in the risk of imposition of the death penalty against the applicants.

8. The US President's Military Order primarily emphasises detaining members of the enemy forces in this war against terrorism, which is regarded by the United States as an armed military conflict. In the first 10 months after the issuance of the Military Order, no military commissions have been established, and it is not certain that they ever will be. This latter fact supports the attitude of the respondent Parties in January 2002 when they did not focus on the death penalty issue, but rather on the security aspects.

9. In January 2002 when the respondent Parties assessed the risk of the applicants, they could assume that the US authorities are convinced of the following: that the applicants had conspired to launch a bomb attack on the US Embassy in Sarajevo; that no

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overt acts in this direction occurred; that no explosives or weapons have been found; and that the applicants had contact with the al Qaida network. During the proceedings before the Chamber, the respondent Parties provided information about their knowledge of the potential charges that could be brought against the applicants by US authorities. Such information was made known to them during the criminal proceedings against the applicants in Bosnia and Herzegovina. The respondent Parties could assume that the US authorities had not withheld information from them that could result in more severe charges against the applicants. On the basis of the information made known to them, the respondent Parties were obliged to assess whether, under the law to be applied by US authorities, substantial grounds existed for believing that the applicants faced a real risk of being subjected to the death penalty by US authorities.

10. In the first instance, the respondent Parties could refer to the Federal Criminal Code of the United States as the "applicable law". The requirements for imposition of the death penalty in criminal proceedings governed by US federal law are prescribed in the US Code, Title 18, Section 3591 (see paragraph 98 above of the decision). Section 3591 first requires that the accused "has been found guilty of ... any other offense for which a sentence of death is provided". In these cases, the applicants at most committed an inchoate or incomplete criminal offence in the form of a conspiracy. Plans to bomb a US Embassy may be considered under the following sections of the US Code:

- 18 U.S.C. §§ 844 (f), (i), (n), (destroy property);
- 18 U.S.C. §§ 1111, 1114, 1117 (murder);
- 18 U.S.C. § 2332 (homicide of US national outside US);
- 18 U.S.C. §2332a (use of weapons of mass destruction).

However, none of these provisions allow for imposition of the death penalty for the inchoate form of the crime, i.e., for a conspiracy. Section 2332b of Title 18 of the US Code, which defines acts of terrorism transcending national boundaries (see paragraph 98 above of the decision), could not be applied against the applicants because it pertains only to acts with results within the United States. None the less, even this provision does not allow for imposition of the death penalty in cases of a conspiracy to commit acts of terrorism transcending national boundaries. Thus, the first requirement for application of Section 3591, that the death penalty is provided for in the specific criminal offence at issue, cannot be met.

11. Nevertheless, I will address the second condition for application of Section 3591 as well. The general rule on application of the death penalty contained in Section 3591 requires that the accused:

- "(A) intentionally killed the victim; ...
- "(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that

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lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act" (18 U.S.C. § 3591, see paragraph 98 above of the decision).

However, in these cases, no one claims that the applicants killed any person or intentionally participated in an act directly resulting in the death of any victim. Consequently, the second condition for imposition of the death penalty cannot be met in the cases of the applicants.

12. It follows that, because neither of the two conditions prescribed by Section 3591 of Title 18 of the US Code can be met, the US Federal Criminal Code does not provide for imposition of the death penalty for any potential charges which could be brought against the applicants by US authorities and which therefore formed the foundation for the respondent Parties' assessment of the risk to the applicants (see paragraph 9 above of this opinion).

13. The dominant opinion intentionally neglects that it follows from Title 18 of the US Code that the respondent Parties could not have had substantial grounds for believing that the applicants faced a real risk of being subjected to the death penalty under the authority of the United States. The dominant opinion does not even consider the decisive provision of Section 3591 of Title 18 of the US Code. Instead, in paragraph 282 of the decision, the dominant opinion states summarily that it follows from the Notice of Intent to Seek a Sentence of Death filed on 28 March 2002 in *United States v. Moussaoui* in the US District Court for the Eastern District of Virginia that "the death penalty is available for conspiracies related to the events of 11 September 2001". Based upon this, the dominant opinion then concludes that "if the applicants were charged or convicted on any similar count involving these offences, they could face capital punishment" by US authorities.

14. However, firstly it must be recognised that the respondent Parties cannot be blamed for failing to draw the same conclusion at the decisive time of the applicants' expulsion in January 2002, because the Notice in *United States v. Moussaoui* was filed on 28 March 2002, more than two months after the applicants' expulsion. Secondly, the substantive conclusion reached by the dominant opinion based upon that Notice, namely that the death penalty could be imposed upon the applicants, contradicts the provisions of Section 3591 of Title 18 of the US Code and is ill-founded.

a. The Notice of Intent to Seek a Sentence of Death, which is filed by the attorney for the Government, is a special procedural act prescribed in Section 3593 of Title 18 of the US Code. It reserves the possibility to seek imposition of the death penalty "if the defendant is found guilty ... of an offense described in section 3591" (18 U.S.C.

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§ 3595(b)). The filing of the Notice results in a special proceeding before a jury or a court after a conviction or guilty plea to determine the appropriate sentence and the possible imposition of the death penalty. Therefore, from this mere procedural act in a different case arising under different facts and circumstances, the respondent Parties could not be required to assume that a possible conspiracy charge against the applicants could result in the imposition of the death penalty against them (see paragraph 9 above of this dissenting opinion).

b. The applicants' cases cannot be considered the same as the *Moussaoui* case: Mr. Moussaoui has been charged with being a member of the group of about 20 persons who prepared and implemented the terrorist attack on 11 September 2001 on the World Trade Center in New York, resulting in the deaths of more than 3000 victims. Allegedly he trained, together with some other core members of the group, to pilot the hijacked aircrafts. During the criminal proceedings against Mr. Moussaoui, the US Government has changed the indictment to include having "caused the deaths of thousands of persons" by his behaviour (*United States v. Moussaoui*, Superseding Indictment). These details can easily be confirmed by reviewing the docket of the proceedings, which is available on the Internet.

In the applicants' cases, nobody was injured by any act in Bosnia and Herzegovina for which the applicants can be charged with a criminal offence. The only evidence of the applicants' relationship to the al Qaida network known to the respondent Parties is that the telephone number of a liaison of Osama bin Laden was found in the apartment of an alleged co-conspirator of the applicants. Even if this piece of evidence were interpreted in the worst case scenario, i.e., that the applicants are related to the al Qaida network, there is still no substantial ground to believe that the applicants can be charged with setting a cause or failing to prevent the killing of more than 3000 victims on 11 September 2001.

This opinion corresponds with the criminal practice in the United States: The indictment in the case of *United States v. Ernest James Ujaama* before the US District Court for the Western District of Washington charges the defendant with Conspiracy to Provide Material Support and Resources to Designated Foreign Terrorist Organizations, US Code, Title 18, § 2339B. The death penalty is not provided in this indictment, even if the death of any person results from the charged offence. Moreover, the defendant, who has more ties to the al Qaida network than mere telephone contact, has not been indicted for participating in the attacks of 11 September. Another example of an indictment limited to providing support to terrorists is the indictment in the

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case of *United States v. Karim Koubriti and Others* before the US District Court for the Eastern District of Michigan, Southern Division. However, the dominant judges omit this argument in their reasoning.

For these reasons, the respondent Parties cannot be seriously blamed for not believing that any person in the world having any alleged relations with the al Qaida network is subject to imposition of the death penalty by US authorities just because a telephone number of a liaison of the al Qaida network was found in the room of a co-conspirator.

15. I regret that the dominant judges refused to consider these legal issues in their reasoning, but stated instead that the death penalty is available for conspiracies related to the events of 11 September 2001 (see paragraph 282 of the decision). Furthermore, the last sentence of that paragraph has no basis in the US Federal Criminal Code with regard to the provisions referred to; rather, they make an incorrect sweeping statement on US federal criminal law (*id.*).

16. It is likely that the applicants will not be prosecuted at all, but only held as prisoners during the armed conflict. However, if they would be prosecuted, it is doubtful that the US Federal Criminal Code, discussed above, will be applied by the military commissions in charge of the criminal proceedings (see paragraph 279 of the decision). The military commissions may apply the laws of war, as provided in Section 1(e) of the US President's Military Order of 13 November 2001. However, it is established in the US law and in international law as well that the death penalty can only be imposed for grave breaches of the law. In the present cases, it cannot be considered that the presumed relationship to the al Qaida network as such constitutes a grave breach of the laws of war. Neither can the suspicion of planned terrorist attacks in Bosnia and Herzegovina, which involved no overt act and which resulted in no injuries, be deemed to constitute grave breaches of the laws of war.

I am not sure whether the dominant judges are really drawing conclusions from the death penalties imposed in the Sioux Wars 140 years ago which can be applied to the law applicable today (see paragraph 280 of the decision) and whether these conclusions can be utilised to conclude further that in these cases the respondent Parties have substantial grounds to believe that the applicants face the real risk of being sentenced to death by US authorities. In addition, the facts of the US Supreme Court case of *Ex parte Quinn*, in which German saboteurs were captured after landing in the United States with equipment to blow up public utilities and were sentenced to death in 1942, cannot be compared to the presumed possible charges against the applicants.

The fact that the military commissions may apply the laws of war against detainees in Camp X-Ray in the event of any possible future prosecutions does not in itself provide substantial

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grounds for the respondent Parties to believe that the applicants face a real risk of being sentenced to death.

17. The reasoning of the dominant opinion continues to develop arguments based upon the prescribed procedures of the military commissions and reaches the conclusion that these tribunals will tend to issue death penalties because they do not fulfil the requirements of Article 6 of the Convention (paragraphs 284-299 of the decision). However, the European Court of Human Rights has not, up until the present day, applied Article 6 as a yardstick to measure the judicial system of a non-Contracting State in cases of expulsion or extradition. The dominant opinion develops this argument as a reason for its belief that imposition of the death penalty is more likely by the military commissions, and to this end, it examines the US Department of Defense Military Commission Order No. 1 of 21 March 2002. I admit that this Order sheds light on the nature of the military commissions, and I further admit that the procedures for the military commissions do not meet the requirements of Art. 6. None the less, I doubt that these arguments can form *substantial grounds for believing that the applicants face a real risk of being sentenced to death*. On the one hand, the respondent Parties could not have known and ought not to have known (see Eur. Court HR, *Vilvarajah and Others v. United Kingdom*, judgment of 30 October 1991, Series A no. 215, paragraph 107) about the Department of Defense Order at the time of the applicants' expulsion since it was issued three months after the expulsion. On the other hand, the reasoning of the dominant opinion draws a one-sided and distorted picture of the rules on military commissions. For example, paragraph 291 of the dominant opinion gives the wrong impression that the judicial members of the military commission are subordinate to the Appointing Authority in their judicial functions. It neglects the important functions of the judge advocates, who are known as very qualified and independent jurists. And it omits to mention that a death sentence requires a unanimous affirmative vote of all seven members of the commission (MC Order No. 1 § 6(F) and (G)). Thus, it cannot be said that the substance of the rules and procedures of the military commissions have been prescribed in a manner that is likely to result in a bending of the law at the expense of the applicants.

18. In my opinion the conclusion of the dominant judges in paragraph 300 of the decision is not convincing. There is no separate right of the applicants nor obligation of the respondent Parties to seek assurances that the death penalty would not be imposed. The applicants' expulsion would have violated their human rights in regard to the protection of their lives only if:

*substantial grounds would have existed at the time of the expulsion, which were known or ought to have been known by the respondent Parties, for believing that the applicants faced a real risk of being subjected to the death penalty*

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under the authority of the United States. If these grounds exist, then the expelling state may remedy the situation by asking for the said assurances.

In answering the decisive question with respect to its substantive aspect, the dominant opinion states only that "the US criminal law most likely applicable to the applicants provides for the death penalty for the criminal offences with which the applicants could be charged" (paragraph 300 of the decision). This statement is, in my opinion, ill-founded. The conclusion of the dominant opinion further refers to various "uncertainties", which result in the breach of the obligation to ask for assurances "that the death penalty would not be imposed upon the applicants" (*id.*). But these reasons do not constitute substantial grounds for the respondent Parties to believe that the applicants faced a real risk of being subjected to the death penalty. Consequently, there was no reason for the respondent Parties to seek assurances from the United States concerning the death penalty before handing over the applicants.

This result does not contradict conclusion no. 3 of the decision that the applicants were handed over to US forces in violation of Article 1 of Protocol No. 7 to the Convention.

II. Violation of the right to liberty of the applicants with regard to the period from the hand-over of the applicants to US forces until their forceful removal from the territory of Bosnia and Herzegovina, conclusion no. 6

19. I could not vote in favour of conclusion no. 6 with the reasoning given by the dominant judges in paragraphs 235 to 237 of the decision. The dominant opinion merely states that the applicants were handed over into "illegal detention by US forces" (see paragraphs 235 and 237 of the decision). The United States considers itself to be in an armed conflict with the international terrorist network of al Qaida and to be using its right of self-defence. It claims that it is entitled to detain members of the enemy's forces according to international law. The questions may remain open whether such position follows from the rules of the laws of warfare and whether these rules are applicable in this context. However, these questions must be considered before the dominant opinion may state that the applicants were handed over into illegal detention by US forces. Yet the dominant opinion omits these considerations.

III. Violation of the presumption of innocence, conclusion no. 7

20. I consider that the ground given by the authorities of the Federal Ministry of Interior for the revocation of citizenship of three of the applicants is without sense. It cannot be concluded from the fact that criminal charges of terrorism were brought against the applicants that, when they applied for citizenship of Bosnia and Herzegovina some years ago, they gave false statements on their intentions to respect the Constitution (see paragraph 241 of the decision). The respondent Parties submitted that

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there were other reasons for the revocation of the citizenship, such as the applicants using multiple identities and giving false statements about the loss of their citizenship of origin. It is up to the national courts to decide whether the revocation of citizenship is valid and effective.

21. The dominant judges find that the reference to the bringing of criminal charges against the applicants as a reason for revoking their citizenship violates the rights of the three applicants stated in Article 6, paragraph 2 of the Convention to be "presumed innocent until proved guilty according to law". I share the view that Article 6, paragraph 2 of the Convention was applicable to protect the three applicants, who had been charged with a criminal offence (see paragraph 245 of the decision), and I admit that the presumption of innocence may be applicable in special cases outside the criminal proceedings concerning this charge.

22. However, firstly, I cannot agree with the interpretation written in paragraph 243 of the decision that the Federal Ministry of Interior "concluded that the applicants were guilty of the offences". The Ministry referred to the fact that these "charges were brought to the Federal Prosecution". The fact referred to was true. Moreover, to conclude from this fact that the applicants gave false statements in the proceedings of naturalisation some years ago is ill-founded, regardless of whether or not the Ministry thought they were guilty. The Ministry did not state that they were guilty, and nothing more can be inferred from the illogical conclusion that the applicants gave false statements.

23. The more substantial question is whether the presumption of innocence precludes the authorities in administrative matters from basing a decision on charges of having committed a criminal offence before the guilt of the accused has been established by a criminal judgment. No jurisprudence is known to address this problem. The decision on admissibility of the European Commission on Human Rights in *N.D. v. Netherlands* (no. 22078/93, decision on admissibility of 6 April 1994) may be helpful. In that case, the applicant was charged with the criminal offence of arson, but these criminal charges were later dropped for lack of evidence. Thereafter, civil proceedings ensued between the applicant and the insurer of the burned building. The civil court rejected the applicant's claim against the insurance company, because it found that the applicant bore a certain responsibility for the fire. In its decision declaring the application inadmissible the Commission stated:

"The Commission recalls that a distinction must be made between civil proceedings and criminal proceedings arising out of the same events. By virtue of the different standards of proof normally observed in such proceedings, acquittal at the end of a criminal trial, because the accused has not been shown guilty of an offence beyond all

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reasonable doubt, does not necessarily preclude that same person's civil liability on the balance of probabilities" (*id.*).

24. In administrative law the subject matter at issue determines what standards of proof must be applied. In various laws it may be stated that certain consequences require a conviction in criminal proceedings. For questions of public security with an aim to prevent danger, many states have established a legal rule that behaviour which could be prosecuted can be used in an administrative decision independently of its establishment in a criminal judgment. The presumption of innocence does not forbid that decisions in those administrative matters may be based on other evidence, such as a decision of the prosecutor to open a criminal investigation. The presumption of innocence contained in Article 6, paragraph 2 of the Convention, which aims to protect the fairness of criminal proceedings, cannot be interpreted so widely as to forbid that. It is up to the national administrative law and the competent courts to decide what standards of proof are to be applied, but in administrative law, such determination does not raise human rights issues concerning the presumption of innocence.

25. For these reasons I was forced to vote against conclusion no. 7 of the decision.

(signed)  
Dietrich  
Rauschning

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## ANNEX III

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Messrs. Viktor Masenko-Mavi and Giovanni Grasso.

PARTLY DISSENTING OPINION OF MESSRS. VIKTOR MASENKO-MAVI  
AND GIOVANNI GRASSO

This case is one of those cases which tests the viability of the European Convention on Human Rights (the "Convention") in the changing world. We are pleased that the majority of the Chamber is of the opinion that the measures to be taken by European democratic governments in order to cope with newly emerging problems (like international terrorism) must comply with the provisions of the Convention. In paragraphs 265 and 267 of the decision, the Chamber rightly acknowledges that the obligation to co-operate in the international fight against terrorism does not relieve the respondent Parties from their obligation to ensure respect for the human rights protected by the Convention. This is why we agreed with the majority in finding the violations specified in the Conclusions.

However, we are of the opinion that in these cases there were also violations of Articles 3 and 6 of the Convention. The respondent Parties, when they in January 2002, by extra-legal actions, contributed to the hand-over of the applicants to military forces of the United States, were aware or should have been aware of the intention and the relevant legislation of the requesting State, especially of the US President's Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism of 13 November 2001. It should have been the duty of the respondent Parties, apart from observing the domestic rules and procedures on extradition, also to weigh carefully the consequences of their actions in light of the requirements of the Convention. The rights secured by Articles 3 and 6 of the Convention are of extreme importance, and in cases where there is a real risk of their flagrant violation, the extraditing or expelling State is bound either to take measures aimed at securing the guarantees enshrined in them or to refuse the extradition or expulsion. This obligation of member States of the Convention has been recognised by the European Court of Human Rights in several of its judgments (see, e.g., Eur. Court HR, *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161; *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240). The Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, adopted on 15 July 2002, also points out this obligation of member States (see paragraph 94 above). It clearly states that extradition may not be granted when there is a serious reason to believe that the person concerned will be subjected to torture or to inhuman or degrading treatment.

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Furthermore, the Guidelines specifically draw the attention of member States to the following: "When the person whose extradition has been requested makes out an arguable case that he/she has suffered or risks suffering a flagrant denial of justice in the requesting State, the requested State must consider the well-foundedness of that argument before deciding whether to grant extradition" (Guidelines, Section XIII, paragraph 4 (emphasis added)).

We think that in light of the measures adopted by the State taking over the custody of the applicants and placing them under its jurisdiction, the applicants have presented an arguable claim that there is a serious reason to believe that their rights secured by Articles 3 and 6 of the Convention might be violated. The legal uncertainty created by the US President's Military Order of 13 November 2001 should have prompted the authorities of Bosnia and Herzegovina and the Federation to carefully consider the issues covered by Articles 3 and 6 of the Convention. As a result of this Order, the applicants' rights guaranteed by Articles 3 and 6 of the Convention are in real danger. There are no clear indications which concrete charges would be brought against the applicants, under which applicable law, when they would be charged, how long they would be detained without trial, or which legal remedies they would be entitled to use to challenge the legality of their detention (see paragraph 300 above). Unlimited detention without concrete charges and a trial, effectuated only for preventive purposes can and should be considered as inhuman treatment covered by Article 3 of the Convention. The mental anguish of persons so detained, resulting from the complete uncertainty as to when, how, and on the basis of which law they would be charged, and also resulting from the uncertainty concerning whether they would be released at all if found not-guilty, is within the domain of suffering which qualifies as inhuman, the infliction of which is prohibited by Article 3 of the Convention.

The same legal uncertainty prevails in respect of the problem of a fair trial in general and not only in respect of the fairness of a trial connected to the imposition of the death penalty. Had there been no death penalty at issue in these cases, the problems concerning the fairness of the trial would still have been under consideration, as specified by the Chamber in paragraphs 284 to 300 of the decision. This kind of uncertainty in respect of the fairness of criminal proceedings is not acceptable: a sending State is liable if it expels a person to a State where the basic principles of a fair trial are seriously endangered. In addition to all these uncertainties, the machinery established for a possible trial of the applicants "is not independent from the executive power" and "operates with significantly reduced procedural safeguards" (see paragraph 300 above).

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The measures taken by the member States to fight terrorism should be carried out by lawful means, with due respect for human rights and the principle of the rule of law. Terrorism is an ultimate threat to human rights, but the fight against terrorism might also jeopardise human rights if it goes unreasonably beyond the limits of recognised human rights standards. When adopting measures to combat terrorism, the community of States should also be alert to the danger, as it has been pointed out by the European Court of Human Rights, of "undermining or even destroying democracy on the ground of defending it" (Eur. Court HR, *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, paragraph 49).

For these reasons, we respectfully dissent.

(signed)  
Viktor Masenko-  
Mavi

(signed)  
Giovanni Grasso

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## ANNEX IV

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Mato Tadic, joined by Mr. Miodrag Pajic.

DISSENTING OPINION OF MR. MATO TADIC,  
JOINED BY MR. MIODRAG PAJIC

In the portion of the decision on admissibility (see paragraph 163 above), as well as in conclusion no. 2, the majority of the Chamber declared the applications admissible, having found a violation of human rights in the merits. However, I am of the opinion that the applications are inadmissible in their entirety as follows:

a) In accordance with the Human Rights Agreement and the Chamber's Rules of Procedure, a basic requirement of admissibility is the exhaustion of domestic remedies.

In the present cases, three of the applicants received procedural decisions on the revocation of their citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina, which were issued by the Ministry of Interior of the Federation of Bosnia and Herzegovina on 16 and 20 November 2001, respectively. These procedural decisions are final and enforceable immediately upon their delivery, unless the possibilities granted by the domestic law are used.

Article 19 of the Law on Administrative Disputes (OG FBiH no. 2/98) stipulates as follows:

"As a rule, an action shall not prevent the enforcement of the administrative act that the action is filed against, unless otherwise established by law.

On the plaintiff's request, the body competent for enforcement of a contested administrative act shall postpone the enforcement until the issuance of a valid court decision if the enforcement would inflict damage to the plaintiff that would be irreparable, and if the postponement is neither contrary to the public interest nor would inflict major irreparable harm to the opposite party. ... The competent body must issue a procedural decision on any request at the latest three days after receipt of the request to postpone enforcement."

On 20 December 2001 the applicants filed an action with the Supreme Court of the Federation of Bosnia and Herzegovina, thus initiating an administrative dispute related to the procedural decisions issued by the Ministry of Interior of the Federation of Bosnia and Herzegovina. However, they did not request the

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postponement of the enforcement, thus allowing the domestic authorities to continue the proceedings. The defence's statement that a positive outcome could not be expected is unacceptable. In this regard, the Chamber, in my opinion, has not provided satisfactory reasoning to support its decision on the admissibility of the applications. Since it has not been shown by any means that this remedy is ineffective, the available domestic remedies have not been exhausted. Therefore, the applications should have been declared inadmissible in their entirety pursuant to Article VIII(2)(a) of the Agreement.

b) The respondent Parties have also accepted the United Nations Security Council Resolution 1373 and joined the fight against all forms of terrorism, aiming to prevent the actions of potential perpetrators or conspirators; thereby, they obliged themselves to take appropriate steps. Certainly, that fight against terrorism does not imply human rights violations. At the same time, however, Bosnia and Herzegovina, being an infant State in transition and under a special kind of protectorate, should not be expected to meet such highly demanding standards which would hardly even be complied with by some countries with highly established legal systems and the rule of law.

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Also, for the aforementioned reasons, the applications should have been declared inadmissible. As far as I am concerned, the applications are absolutely inadmissible and it is not necessary to address specific conclusions resulting from any finding of a human rights violation.

(signed)  
Mato Tadic

(signed)  
Miodrag Pajic

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**Exhibit B(d).**  
Letter from Bosnian Chief  
Federal Prosecutor to  
UNOHCHR Sarajevo

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*-Unofficial Translation-*

Bosnia and Herzegovina  
Federation of Bosnia and Herzegovina  
Federal Prosecution Office  
Of the Federation of Bosnia and Herzegovina  
Sarajevo  
Number: KT-115/01  
Sarajevo, 8 November 2004

High Commission for Human Rights -- UN  
TO: Head of Office,  
Sarajevo  
Kolodvorska Street 6

Fax: 033 660109

(Dear Madame)

In reply to your request made on November 4, 2004, we inform you that the Federal Prosecution of the Federation of Bosnia and Herzegovina, decided June 24, 2004 on the dismissal of the investigations against Belkacem Bensayah, Saber Lahmar, Ait Idir Mustafa, Boudella Hadz, Boumediene Lakhdar, Nechle Mohamed based on criminal activity according to 168 paragraph 1, in connection with article 20 paragraph 1 of the Federal criminal law.

On the same day, our prosecution office decided to continue the investigation on Saber Lahmar based on criminal activities article 353 paragraph 1 of the Federal criminal law.

If you need more detailed information please do not hesitate to contact us.

(Sincerely yours,)

Federal Chief Prosecutor  
Zdravko Knezevic

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**FEDERACIJA BOSNE I HERCEGOVINE**  
**FEDERALNO TUŽILAŠTVO**  
**FEDERACIJE BOSNE I HERCEGOVINE**  
**SARAJEVO**  
**BROJ: KT-115/01**  
*Sarajevo, 08.11.2004.godine*

**VISOKI KOMESARIJAT ZA LJUDSKA PRAVA UN**  
*n/r Šefa Ureda,*  
**SARAJEVO**  
*Ul. Kolodvorska br. 6*

*fax: 033 660-109*

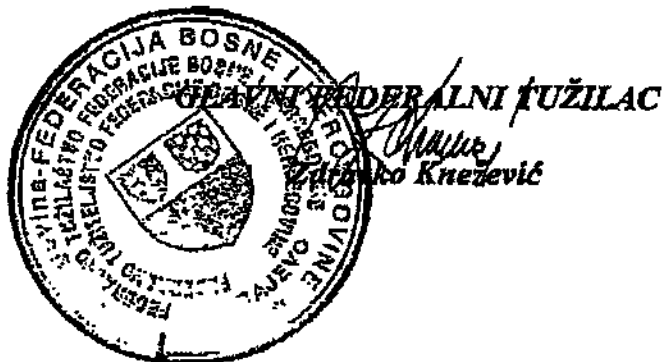
**Poštovana,**

*Povodom Vašeg dopisa od 04.11. 2004. godine, obavještavate se da je Federalno tužilaštvo Federacije Bosne i Hercegovine donijelo 24.06.2004. godine naredbu o obustavljanju istrage protiv Belkacem Bensayaha, Saber Lahmara, Ait Idir Mustafe, Boudella Hadža, Boumediene Lakhdera i Nechle Mohameda zbog krivičnog djela iz člana 168 stav 1 u vezi sa članom 20 stav 1 KZ-a FBiH.*

*Protiv Saber Lahmara ovo tužilaštvo je donijelo istog dana naredbu o nastavku provođenja istrage zbog krivičnog djela iz člana 353 stav 1 KZ-a FBiH.*

*U slučaju potrebe dostavljanja detaljnijih informacija stoji Vam se na raspolaganju.*

**Uz srdačan pozdrav,**



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**Exhibit B(e).**  
Dayton Peace Agreement,  
Annex 6, Agreement on  
Human Rights

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**Office of the High Representative****Dayton Peace Agreement**

Thursday, December 14, 1995

Dayton Peace Agreement  
The General Framework Agreement: Annex 6

**ANNEX 6****Agreement on Human Rights**

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

**Chapter One: Respect for Human Rights****Article I: Fundamental Rights and Freedoms**

The Parties shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex. These include:

1. The right to life.
2. The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
3. The right not to be held in slavery or servitude or to perform forced or compulsory labor.
4. The rights to liberty and security of person.
5. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
6. The right to private and family life, home, and correspondence.
7. Freedom of thought, conscience and religion.
8. Freedom of expression.
9. Freedom of peaceful assembly and freedom of association with others.
10. The right to marry and to found a family.
11. The right to property.
12. The right to education.
13. The right to liberty of movement and residence.
14. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in the Annex to this Constitution secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Chapter Two: The Commission on Human Rights**

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**Part A: General****Article II: Establishment of the Commission**

1. To assist in honoring their obligations under this Agreement, the Parties hereby establish a Commission on Human Rights (the "Commission"). The Commission shall consist of two parts: the Office of the Ombudsman and the Human Rights Chamber.
2. The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:
  - a. alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or
  - b. alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ.
3. The Parties recognize the right of all persons to submit to the Commission and to other human rights bodies applications concerning alleged violations of human rights, in accordance with the procedures of this Annex and such bodies. The Parties shall not undertake any punitive action directed against persons who intend to submit, or have submitted, such allegations.

**Article III: Facilities, Staff and Expenses**

1. The Commission shall have appropriate facilities and a professionally competent staff. There shall be an Executive Officer, appointed jointly by the Ombudsman and the President of the Chamber, who shall be responsible for all necessary administrative arrangements with respect to facilities and staff. The Executive Officer shall be subject to the direction of the Ombudsman and the President of the Chamber insofar as concerns their respective administrative and professional office staff.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina. The salaries and expenses shall be fully adequate to implement the Commission's mandate.
3. The Commission shall have its headquarters in Sarajevo, including both the headquarters Office of the Ombudsman and the facilities for the Chamber. The Ombudsman shall have at least one additional office in the territory of the Federation and the Republika Srpska and at other locations as it deems appropriate. The Chamber may meet in other locations where it determines that the needs of a particular case so require, and may meet at any place it deems appropriate for the inspection of property, documents or other items.
4. The Ombudsman and all members of the Chamber shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. When the Ombudsman and members of the Chamber are not citizens of Bosnia and Herzegovina, they and their families shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.
5. With full regard for the need to maintain impartiality, the Commission may receive

assistance as it deems appropriate from any governmental, international, or non-governmental organization.

### *Part B: Human Rights Ombudsman*

#### **Article IV: Human Rights Ombudsman**

1. The Parties hereby establish the Office of the Human Rights Ombudsman (the "Ombudsman").
2. The Ombudsman shall be appointed for a non-renewable term of five years by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE), after consultation with the Parties. He or she shall be independently responsible for choosing his or her own staff. Until the transfer described in Article XIV below, the Ombudsman may not be a citizen of Bosnia and Herzegovina or of any neighboring state. The Ombudsman appointed after that transfer shall be appointed by the Presidency of Bosnia and Herzegovina.
3. Members of the Office of the Ombudsman must be of recognized high moral standing and have competence in the field of international human rights.
4. The Office of the Ombudsman shall be an independent agency. In carrying out its mandate, no person or organ of the Parties may interfere with its functions.

#### **Article V: Jurisdiction of the Ombudsman**

1. Allegations of violations of human rights received by the Commission shall generally be directed to the Office of the Ombudsman, except where an applicant specifies the Chamber.
2. The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights within the scope of paragraph 2 of Article II. The Parties undertake not to hinder in any way the effective exercise of this right.
3. The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
4. The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period, explain in writing how it will comply with the conclusions.
5. Where an allegation is received which is within the jurisdiction of the Human Rights Chamber, the Ombudsman may refer the allegation to the Chamber at any stage.
6. The Ombudsman may also present special reports at any time to any competent government organ or official. Those receiving such reports shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions offered by the Ombudsman.
7. The Ombudsman shall publish a report, which, in the event that a person or entity does not comply with his or her conclusions and recommendations, will be forwarded to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, as well as referred for further action to the Presidency of the appropriate Party. The Ombudsman may also initiate proceedings before the Human Rights Chamber based on such Report. The Ombudsman may also intervene in any

proceedings before the Chamber.

#### Article VI: Powers

1. The Ombudsman shall have access to and may examine all official documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.
2. The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained, except where required by order of the Chamber, and shall treat all documents and files in accordance with applicable rules.

#### *Part C: Human Rights Chamber*

#### Article VII: Human Rights Chamber

1. The Human Rights Chamber shall be composed of fourteen members.
2. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members and the Republika Srpska shall appoint two members. The Committee of Ministers of the Council of Europe, pursuant to its resolution (93)6, after consultation with the Parties, shall appoint the remaining members, who shall not be citizens of Bosnia and Herzegovina or any neighboring state, and shall designate one such member as the President of the Chamber.
3. All members of the Chamber shall possess the qualifications required for appointment to high judicial office or be jurists of recognized competence. The members of the Chamber shall be appointed for a term of five years and may be reappointed.
4. Members appointed after the transfer described in Article XIV below shall be appointed by the Presidency of Bosnia and Herzegovina.

#### Article VIII: Jurisdiction of the Chamber

1. The Chamber shall receive by referral from the Ombudsman on behalf of an applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.
2. The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:
  - a. Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
  - b. The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure or international investigation or settlement.
  - c. The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.
  - d. The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body

- responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.
- e. In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
  - f. Applications which entail requests for provisional measures shall be reviewed as a matter of priority in order to determine (1) whether they should be accepted and, if so (2) whether high priority for the scheduling of proceedings on the provisional measures request is warranted.
3. The Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such result is consistent with the objective of respect for human rights.

#### Article IX: Friendly Settlement

1. At the outset of a case or at any stage during the proceedings, the Chamber may attempt to facilitate an amicable resolution of the matter on the basis of respect for the rights and freedoms referred to in this Agreement.
2. If the Chamber succeeds in effecting such a resolution it shall publish a Report and forward it to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the OSCE and the Secretary General of the Council of Europe. Such a Report shall include a brief statement of the facts and the resolution reached. The report of a resolution in a given case may, however, be confidential in whole or in part where necessary for the protection of human rights or with the agreement of the Chamber and the parties concerned.

#### Article X: Proceedings before the Chamber

1. The Chamber shall develop fair and effective procedures for the adjudication of applications. Such procedures shall provide for appropriate written pleadings and, on the decision of the Chamber, a hearing for oral argument or the presentation of evidence. The Chamber shall have the power to order provisional measures, to appoint experts, and to compel the production of witnesses and evidence.
2. The Chamber shall normally sit in panels of seven, composed of two members from the Federation, one from the Republika Srpska, and four who are not citizens of Bosnia and Herzegovina or any neighboring state. When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the Ombudsman, to review the decision; such review may include the taking of additional evidence where the Chamber so decides. References in this Annex to the Chamber shall include, as appropriate, the Panel, except that the power to develop general rules, regulations and procedures is vested in the Chamber as a whole.
3. Except in exceptional circumstances in accordance with rules, hearings of the Chamber shall be held in public.
4. Applicants may be represented in proceedings by attorneys or other representatives of their choice, but shall also be personally present unless excused by the Chamber on account of hardship, impossibility, or other good cause.
5. The Parties undertake to provide all relevant information to, and to cooperate fully with,

## The General Framework Agreement: Annex 6

the Chamber.

**Article XI: Decisions**

1. Following the conclusion of the proceedings, the chamber shall promptly issue a decision, which shall address:
  - a. whether the facts found indicate a breach by the Party concerned of its obligations under this Agreement; and if so
  - b. what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.
2. The Chamber shall make its decision by a majority of members. In the event a decision by the full Chamber results in a tie, the President of the Chamber shall cast the deciding vote.
3. Subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding.
4. Any member shall be entitled to issue a separate opinion on any case.
5. The Chamber shall issue reasons for its decisions. Its decisions shall be published and forwarded to the parties concerned, the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the Secretary General of the Council of Europe and the OSCE.
6. The Parties shall implement fully decisions of the Chamber.

**Article XII: Rules and Regulations**

The Chamber shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions, including provisions for preliminary hearings, expedited decisions on provisional measures, decisions by panels of the Chamber, and review of decisions made by any such panels.

**Chapter Three: General Provisions****Article XIII: Organizations Concerned with Human Rights**

1. The Parties shall promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights.
2. The Parties join in inviting the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance and access.
3. The Parties shall allow full and effective access to non-governmental organizations for purposes of investigating and monitoring human rights conditions in Bosnia and Herzegovina and shall refrain from hindering or impeding them in the exercise of these functions.
4. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the organizations established in this Agreement; any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in the

Appendix to this Annex; the International Tribunal for the Former Yugoslavia; and any other organization authorized by the U.N. Security Council with a mandate concerning human rights or humanitarian law.

#### Article XIV: Transfer

Five years after this Agreement enters into force, the responsibility for the continued operation of the Commission shall transfer from the Parties to the institutions of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

#### Article XV: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina.

#### Article XVI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

#### Appendix: Human Rights Agreements

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto
4. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
5. 1957 Convention on the Nationality of Married Women
6. 1961 Convention on the Reduction of Statelessness
7. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
8. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
9. 1966 Covenant on Economic, Social and Cultural Rights
10. 1979 Convention on the Elimination of All Forms of Discrimination against Women
11. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
12. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
13. 1989 Convention on the Rights of the Child
14. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
15. 1992 European Charter for Regional or Minority Languages

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16. 1994 Framework Convention for the Protection of National Minorities

**Office of the High Representative**

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283 501

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[www.ohr.int](http://www.ohr.int)

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**Exhibit B(f).**

Unofficial translation of  
Commission Report by  
Bosnia-Herzegovina  
Parliament House of  
Representatives Commission  
on Human Rights, Refugees,  
Immigration and Asylum  
(April 21, 2004)

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Bosnia and Herzegovina  
BiH Parliament  
House of Representatives  
Commission on Human Rights, Refugees, Immigration and Asylum

Number: 01/5-059-1030/04  
Sarajevo, 21 April 2004

In accordance with the Article 40 of the Rules of Procedures of the BiH Parliament House of Representatives (Official Gazette BiH number 20/00) the Commission for human rights, refugees, immigration and asylum on the session held on 21 April 2004 passed the following

#### Report

On 26 February 2004 the Commission for human rights, refugees, immigration and asylum of the BiH Parliament House of Representatives (in further text the Commission) received submission by Nada Dizdarevic from Sarajevo, street Emila Zole 10/5-22. In her submission the applicant stated that her husband Hadz Boudella together with other members of the so-called "Algerian group" is illegally detained in United States of America (USA) in military base "Guantanamo", Cuba due to omission of the authorities of FBiH and BiH. She further states that her husband is citizen of BiH, without prior criminal record and that the HR Chamber assessed in its decision from 2002 that both him and others were illegally detained. The applicant stated in her submission that it's the last moment for the state organs to initiate proceedings for their return home since those detainees live in very severe conditions.

On 8 April 2004 the commission held the 10<sup>th</sup> session and adopted the conclusion to establish the sub-commission to deal with the application of Nada Dizdarevic. The sub-commission was tasked to review documentation submitted by Nada Dizdarevic; Decision by the HR Chamber and to conduct other necessary activities in terms of finalizing the report responding to the applicant submission which was finished on 20 April 2004.

On 21 April 2004 on its 11 session the Commission discussed the submission of the applicant Nada Dizdarevic. At the same session the Sub-commission report was reviewed and it was concluded that the sub-commission has reviewed documentation submitted by the applicant on 26 February and 16 March 2004. The applicant has also orally presented her submission on the session of the Commission from 8 April 2004. The Sub-commission in its report has concluded that there is no need of inviting other participants and taking statements from them since there were sufficient materials in memos and attachments of the submission.

It was concluded that the Sub-Commission dealt with issues of human rights violations that are guaranteed by the ECHR (O.G. number 6/99) which BiH is the state party to (in further text the Convention) and also the issue of the legality of the work of some institutions in this case in order to systematically resolve eventual violations of human rights and freedoms.

The Sub-commission has reviewed the following documents:

- Different correspondence between the applicant and institutions both in English and native language
- Written statement of the applicant to the Commission on human rights IHRL, draft, April
- Decision on admissibility and meritum of the HR Chamber of BiH numbers CH/02/8679 CH/02/8689, CH/02/8690/ CH/02/8691 from 3 September 2002

From the above Sub Commission's report, documents presented by the applicant and oral statements of the applicant the following facts are establish:

- Applicant spouse Hadz Boudellaa was the citizen of BiH and other members of the so-called "Algerian group" (Boumediene Lakhdar, Mohamed Nechle i Saber Lahmar) were either citizens of BiH or were illegally residing at the territory of BiH.
- In October 2001 members of the so-called "Algerian group" were taken into custody on suspicion having planning terrorist acts against embassies of UK and USA.
- In November 2001 the Federal Ministry of Interior issued decision revoking the citizenship to Boudellaa, Lakhdar, and Nechle and the Ministry for Human Rights and Refugees issued the decision terminating the permit for permanent residence for Lahmar in BiH.
- On 17 January 2002 the investigate judge of the Supreme Court of FBiH issued the decision terminating their pre-trial detention, but instead of being released they were immediately taken into custody of the Federation Police, and the following day were handed over to USA military forces which are deployed to BiH as Stabilisation Force under NATO. After that they were transferred to military prison in Guantanamo Bay, Cuba.
- On 17 January 2002 the HR Chamber issued orders for provisional measures ordering the authorities of FBiH and BiH to take all necessary steps to prevent the applicants of being taken out of territory of BiH by the use of force.
- On 17 January 2002 the investigate judge of the Supreme Court of FBiH issued the decision terminating their pre-trial detention on the ground that there were no further reasons or circumstances upon which the pre-trial detention could be ordered. This decision referrers to Boudellaa, Lakhdar, and Nechleas the citizens of BiH and Lahmar as a permanent resident of BiH.

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- During the night between 17 and 18 January 2002 an unauthorized demonstration of approximately 500 persons took place outside the Sarajevo prison during which eight police officers were injured, one of them badly.
- Forces of FBiH Ministry of Interior of and forces of Ministry of Interior of Sarajevo Canton handed them over to US forces at 06:00 hrs on 18 January 2002.

After the discussions, review of the report of the Sub-commission and review of submitted documentation the Commission has unanimously adopted the following

## Conclusions

The Commission is accepting the HR Chamber conclusions in which is concluded that BiH and FBiH have violated

- o Right to liberty and security of Hadz Boudellaa, Boumediene Lakhdar, Mohameda Nechle and Sabera Lahmar. This right is violated during 17 January 2002 until they were handed over to US forces and their forced expulsion from territory of BiH.
  - o Presumption of innocence (everyone charged with a criminal offense shall be presumed innocent until proved guilty according to the law) provide by the Article 6 paragraph 2.
  - o Right not be subjected to substantial risk of imposition of death penalty, guaranteed by the Article 1 of the Protocol 6 of the Convention.
  - o Right not to be subjected to torture, inhuman and degrading treatment and punishment guaranteed by the Article 6 of the Convention.
  - o And other rights as mentioned in the HR Chamber decision.
- The Commission accepts other conclusions as well as other measures mentioned in the decision of the HR Chamber address to the Government of BiH and FBiH.
- The Commission is ordering BiH authorities (The Council of Ministers of BiH) and FBiH authorities (Government of FBiH) to completely implement the decision of the HR Chamber number CH/02/8697 and others from 3 September 2002.
  - The authorities of BiH and FBiH are requested to initiate immediately proceedings with the authorities of USA related to the return of the applicants spouse and others in this case detainees held in the military base Guantanamo, Cuba.
  - International legal documents on human rights protection, which are accepted by the BiH, have to be part of all laws and other regulations pending on the content and be strictly upheld by the BiH authorities.
  - The authorities of the BiH and FBiH have to report back on all activities undertaken by the BiH and FBiH within the deadline of one month from recipient of this conclusion to this Commission and subsequently to report on monthly basis until the decision is fully implemented.

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- This report will be also delivered to the House of Representatives of the BiH Parliament for their information.

Chair of the Commission

Elmir Jahic

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**Exhibit B(g).**

Unofficial translation of  
adoption of April 21, 2004  
Commission Report by the  
full House of Representatives  
of Bosnian Parliament (May  
11, 2004)

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Bosnia and Herzegovina  
Parliamentary Assembly  
Bosnia and Herzegovina  
House of Representatives

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Number: 01-50-1-15-36/04.  
Sarajevo, 11 May 2004

Based on the Article 64 of the Book of Procedure of the House of Representatives (Official Gazette BiH no. 20/00) the House of Representative of the Preliminary Assembly of Bosnia and Herzegovina discussed the report by the Commission on Human Rights, immigration, refugees and asylum to the submission by Nada Dizdarevic, on its 36 session on 11 May 2004 has adopted the following

## Conclusion

1. We are acknowledging the Report of the Commission on human rights, immigration, refugees and asylum on the submission by Nada Dizdarevic.
2. The House of Representatives fully supports activities undertaken by the Commission as well as its positions and conclusions contained in the report.
3. The House of Representatives will request from the responsible organs, which were copied with the Commission report to respond to the House of Representatives on what they have done in relation to the Commissions conclusions.
4. The Council of Ministers is requested to prepare and deliver information on the implementation of the Decision of the Human Rights Chamber with the plan of activities on its implementation.
5. The Council of Ministers is requested to deliver information on deported citizens of BiH in 2002 and 2003 from the perspective of human rights protection.

The Chair of the House of Representatives  
Martin Raguz

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**Exhibit B(h).**  
Statement by Bosnian  
Minister of Justice, Slobodan  
Kovac (January 31, 2005)

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**UNCLASSIFIED****[UNOFFICIAL TRANSLATION]**

Regarding the status of the so-called Algerian group, or individuals who are in Guantanamo, and who are either citizens of BiH or came to Guantanamo from BiH, and after comprehensive analysis of this situation by the Ministry of Justice, I am issuing following

**STATEMENT**

The extradition procedure is regulated by the Law on Criminal Procedure of BiH (articles from 414 until 431). The Chapter that regulates this proceeding is named the Proceeding for extradition of suspects, in other words accused and convicted individuals. So, in order to launch the extradition proceeding from other country into BiH, an individual against there is a proceedings needs to be in status of suspect, or accused or convicted person, which means that there is in BiH a criminal proceeding launched against that individual, or that that individual is convicted by final and binding decision by court of BiH to prison term.

Since individuals Ait Idir Mustafa, Boudella Hadz, Boumediene Lakhdar, Nechle Mohamed, who are citizens of BiH have not been convicted by the court in BiH, and since against them there is no on-going criminal proceeding, then the extradition of them can not be sought by provisions of Law on Criminal Procedure of BiH. Ministry of Justice of BiH is interested in getting these individuals back in BiH, by we think that this part of the work is the authority of the Ministry of Security, within which is the Interpol office. This because whenever Ministry of Justice deals with extradition procedures, after the permission from another state for extradition of certain individual into BiH, all other work is taken by the Ministry of Security (the Interpol office and the State Border Service).

So, in such instances, it is Interpol office that arranges place, time and the way of accepting certain individuals, while the members of the State Border Service are engaged in physical acceptance of those individuals. Because of that reason, I suggest that Ministry of Security leads further activities about taking over these individuals, and in a concrete conduct to appoint contact person from Interpol Office Sarajevo, while the Ministry of Justice would propose extradition of individuals from this group for whom there are legal precondition for launching such an initiative. Ministry of Justice will, in addition, provide all other legal assistance with a goal of returning the whole group, and everything within its competence.

Article 428 of the Law on Criminal Procedure of BiH precisely states: "If there is a criminal proceeding against an individual that resides in foreign country or if that individual is convicted by the domestic court, the Minister of responsible Ministry can issue a request for extradition." In a concrete case the Minister of responsible Ministry is Minister of Justice of BiH.

It is not an accident that this article emphasizes that "Minister can issue a request...", and that it is not stated that he must do it. The essence of this provision is in that fact that responsible organ that leads criminal proceeding (the Prosecution or the Court) has to show an interest in continuation of this proceeding, and with that goal gives an initiative to the Minister of Justice to issue a request for extradition of individuals against whom there is proceeding. I do not have such an initiative in relation to suspects Saber Lahmar and Belkacem Bensayah, but I will, though I am not obliged to do so, ask for such an initiative from responsible Prosecution, and in

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accordance with that will issue a request for their extradition, if the legal preconditions for that will be met.

The request is being delivered by diplomatic way and with it need to be attached documents and data from article 416 of this law (Certificate on Citizenship, Charges, Sentence or Decision on Detention, an extract from the text of Criminal Code whose provisions are going to be applied).

In any case, the Ministry of Justice will within its competence give the full contribution for resolution of this problem. I emphasize that I will personally do my best to issue the request for extradition of individuals for whom there are legal preconditions met to apply extradition procedure. At the same time the Ministry of Security should take a lead role in activities of bringing back the rest of the group, and I will suggest this solution to the Council of Ministers of BiH.

Sarajevo, 31 January 2005

Minister

Slobodan Kovac (signature)

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У вези са статусом изв. алжирске групе, односно лица која се налазе у Гватанаму, која су држављани БиХ или су из БиХ доспјели у Гватанаму, а након свестране анализе ове ситуације од стране Министарства правде БиХ, дајем слиjedeће

## СЛОПШТЕЊЕ

Поступак екстрадиције је регулисан Законом о кривичном поступку БиХ (одредбе од чл. 414. до 431.). Само поглавље које уређује овај поступак носи назив Поступак за изручење (екстрадицију) осумњичених, односно оптужених и осуђених лица. Дакле, да би се покренуо поступак екстрадиције из друге земље у БиХ, лице против кога се води поступак мора имати својство осумњиченог, односно оптуженог или осуђеног лица, што значи да се у БиХ против истог води кривични поступак или је то лице правноснажном пресудом суда у БиХ осуђено на казну затвора.

Како лица ЛИТ ИДИР МУСТАФА, БОУДЕЛЛА ХАЦ, БОУМЕДИЕНЕ ЛАКХДАР, НЕЦХЛЕ МОХАМЏД, који су држављани БиХ нису правноснажно осуђена у БиХ, нити се против истих води кривични поступак, то се изручење истих не може тражити по одредбама ЗКП-а БиХ. Министарство правде БиХ је иначе заинтересовано за враћање ових лица у БиХ, али цијенимо да је за овај дио посла надлежно Министарство безбједности БиХ у чијем саставу је и Интерпол. Ово из разлога, јер када Министарство правде БиХ поступи у екстрадицијама, након одобрења друге државе за екстрадицију одређеног лица у БиХ, све даље радње предузима Министарство безбједности БиХ (ИНТЕРПОЛ и Државна гранична служба БиХ).

Дакле у таквим случајевима ИНТЕРПОЛ договара мјесто, вријеме и начин преузимања лица, док припадници ДС-а врше физичко преузимање тог лица. Из тог разлога предлагем да Министарство безбједности води даље активности око преузимања ових лица, а у конкретној реализацији да одреди контакт особу из састава ИНТЕРПОЛ-а Сарајево, док ће се Министарство правде БиХ заложити за екстрадицију лица из ове групе за која постоје законске претпоставке. Министарство правде ће пружити и сл. другу потребну прашну помоћ у циљу враћања комплетне групе, а све у оквиру своје надлежности.

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Чланом 428. ЗКП-а БиХ прецизирано је: «Ако се против лица које се налази у иностраној држави води у БиХ кривични поступак или ако је лице које се налази у иностраној држави домаћи суд казнио, министар надлежног министарства БиХ може поднијети молбу за издавање.»

У конкретном случају министар надлежног министарства БиХ је Министар правде БиХ.

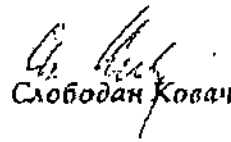
Овим чланом се не наглашава случајно да «министар надлежног министарства може поднијети молбу.....», а није речено да мора. Суштина ове одредбе састоји се у томе да надлежни орган који води кривични поступак (тужилаштво или суд) мора да покаже интерес за наставком тог поступка, па у том правцу даје иницијативу министру правде да поднесе молбу за изручење лица против кога се води поступак у БиХ. Ја такву иницијативу немам у односу на осумњачене САБЕР ЛАХМАРА И БЕЛКАЦЕМ БЕИСАЈАХА, али ћу је иако нисам обавезан затражити од надлежног тужилаштва и слиједом тога ћу поднијети молбу за њихово изручење, уколико за то буду испуњени законски услови.

Молба се подноси дипломатским путем и уз њу се прилажу исправе и подаци из чл. 416. овог закона (увјерење о држављанству, оптужница, пресуда или одлука о притвору, извод из текста кривичног закона који се има или ће се примјенити).

У сваком случају Министарство правде БиХ ће у оквиру своје надлежности дати пуни допринос разрјешавању овог проблема, с тим што ћу се ја, као министар лично залажити за упућивање молби за екстрадицију лица за које за то постоје услови, док би Министарство безбједности БиХ било главни носилац активности за враћање осталих лица, те ћу овакво рјешење предложити и Савјету министара БиХ.

Сарајево, 31.01.2005. године

МИНИСТАР

  
Слободан Ковач

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**Exhibit C.**  
**Ait Idir CSRT Decision**  
**Report:**

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**Exhibit C(a).**  
**Unclassified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (1)**

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL:       #7        
ISN #:       10004      

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The Tribunal hearing commenced on 6 October 2004. The Recorder presented Exhibits R-1 through R-3 during the unclassified portion of this Tribunal session. Exhibit R-1, the Unclassified Summary of Evidence, states that the detainee: is associated with Al Qaida; is Algerian, but acquired Bosnian citizenship in the Bosnian military in 1995; is associated with the Armed Islamic Group (GIA), a recognized extremist organization with ties to Al Qaida; associated with a known Al Qaida operative while living in Bosnia; planned to travel to Afghanistan once his Al Qaida contact arrived there and had made the necessary arrangements; and was arrested by Bosnian authorities on 18 October 2001 because of his involvement with a plan to attack the U.S. Embassy located in Sarajevo. The Recorder presented no other unclassified evidence and called no witnesses.

The detainee initially elected to participate in the Tribunal process, but then changed his mind and affirmatively declined to participate. His election is indicated on the Detainee Election Form, which was admitted into evidence as Exhibit D-a. Because he elected not to participate, his request for two witnesses was not pursued and the Tribunal proceeding was held in the detainee's absence. In addition to Exhibit D-a, the Personal Representative introduced Exhibit D-b into evidence during the unclassified session. Exhibit D-b is a letter from the U.S. Ambassador to Bosnia and Herzegovina (BH) to the detainee's family explaining that the detainee had been taken into U.S. custody. The Personal Representative called no witnesses on behalf of the detainee.

During the classified session of the Tribunal on 6 October, the Recorder presented Exhibits R-4 through R-26 without comment. The Personal Representative introduced no additional classified evidence, but did comment on the classified evidence introduced by the Recorder. After the Tribunal read the classified exhibits and reconvened, the

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ISN #10004  
Enclosure (1)  
Page 1 of 5

Tribunal President asked the Recorder to produce additional evidence. Accordingly, the Tribunal recessed to give the Recorder the opportunity to retrieve the requested information.

On 11 October 2004, the Tribunal reconvened to allow the Recorder to present the evidence requested by the Tribunal. Because one of the documents the Recorder sought to introduce was unclassified (Exhibit R-38), the Personal Representative met with the detainee prior to the 11 October 2004 session to go over the document. After seeing Exhibit R-38, which is an affidavit from the detainee's wife, the detainee asked to participate in the proceeding. The Tribunal President granted the request, and the 11 October 2004 Tribunal session began as an open Tribunal session, with the detainee providing his sworn testimony after the Recorder introduced Exhibit R-38 into evidence. During his testimony, the detainee denied the allegations on the Unclassified Summary of Evidence and provided a detailed account of the events surrounding his arrest by the BH government. The Personal Representative also admitted Exhibit D-c, which was a revised Detainee Election Form indicating the detainee's desire to participate in the hearing. The Tribunal President also explained that given the detainee had previously declined to participate, the Tribunal would not revive the witness requests the detainee had made before his declination, which the detainee understood. The detainee's testimony is summarized in Enclosure (3) to the CSRT Decision Report.

During the classified session of the Tribunal on 11 October, the Recorder presented Exhibits R-27 through R-37, all of which are classified, for the Tribunal's consideration. The Recorder did not comment on the additional evidence; however, the Personal Representative did. The Tribunal then closed for deliberations.

Before the Tribunal had completed the Tribunal Decision Report, the Recorder informed the Tribunal that additional classified information had been found which was relevant to the determination of the detainee's status. Accordingly, the Tribunal reconvened on 20 October 2004 to consider the additional classified evidence. Because the Personal Representative had transferred to the headquarters office for the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) in Washington, D.C., the additional classified session was convened via a secure teleconference. At the session, the Recorder introduced additional classified Exhibits R-39 through R-44, copies of which had previously been provided to the detainee's Personal Representative in Washington, D.C. Neither the Recorder nor the Personal Representative commented on the additional classified exhibits, and the Tribunal closed for deliberations. After carefully considering all of the testimony and evidence provided to the Tribunal, the Tribunal concluded that the detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces.



### 3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-44, and D-a through D-c.
- b. Testimony of the following persons: None.
- c. Sworn statement of the detainee:

See Enclosure (3) to the CSRT Decision Report.

### 4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

As noted above in paragraph 2, the detainee initially requested two witnesses, but then changed his mind and decided not to participate in the Tribunal process. Accordingly, his witness requests were not pursued. After the 6 October 2004 session of the Tribunal had concluded, the detainee asked to be permitted to testify at a subsequent open session of the Tribunal to be held on 11 October 2004. The Tribunal President granted the request, but noted it would be unreasonable at that point in time to reconsider the witness requests, which the detainee understood.

During the detainee's testimony on 11 October 2004, he mentioned that when he was turned over into U.S. custody, he and the others arrested with him had a number of documents with them, including their passports and some papers from the Bosnian court that had earlier heard their cases. The Personal Representative tried to obtain the documents, but could only find the detainee's Algerian and Bosnian passports. The Personal Representative did not search further for the documents once the detainee indicated that he would not participate in the Tribunal process. When specifically questioned about the documents during his testimony on 11 October 2004, the detainee indicated they were not necessary to prove his case.

### 5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

- a. The Recorder offered Exhibits R-1 through R-3 and R-38 into evidence during the unclassified sessions of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 provided no usable evidence. Accordingly, the Tribunal had to look to other evidence for support of the Unclassified Summary of Evidence.

b. Exhibit R-3 is an excerpt concerning the GIA from the Terrorist Organization Reference Guide. Exhibit R-38 is an affidavit from the detainee's wife filed with the U.S. District Court for the District of Columbia in conjunction with the detainee's Habeas Corpus petition. The Tribunal considered both of these exhibits in reaching its conclusions.

c. The Tribunal also considered the detainee's sworn testimony given during an open session of the Tribunal on 11 October 2004. In sum, the detainee denied the allegations on the Unclassified Summary of Evidence. Specifically, he denied: serving in the Bosnian military; any association with the GIA; being associated with a known Al Qaida operative; having planned to travel to Afghanistan; and any involvement with a plan to attack the U.S. Embassy in Sarajevo. He then answered questions posed by the Personal Representative and Tribunal members. He was, however, unwilling to answer several questions pertaining to two fellow detainees, asserting he was concerned that the information was being sought for interrogation purposes. He was otherwise cooperative. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3).

Before reaching its decision, the Tribunal also considered the classified evidence offered by the Recorder (Exhibits R-4 through R-37 and R-39 through R-44). A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report. After considering all of the evidence, including the detainee's sworn testimony, the Tribunal determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces.

#### 6. Consultations with the CSRT Legal Advisor

The Tribunal consulted the CSRT Assistant Legal Advisor regarding allegations of mistreatment made by the detainee during his testimony on 11 October 2004 (see Enclosure (3) to the CSRT Decision Report). As per instructions, the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO was notified of the matters on 15 October 2004.

The Tribunal also consulted with the CSRT Assistant Legal Advisor to arrange legally sufficient procedures for conducting the 20 October 2004 classified Tribunal session via a secure conference call. The classified session involved the Tribunal, Recorder and Reporter in Guantanamo Bay, Cuba, and the Personal Representative in Washington, D.C.

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**7. Conclusions of the Tribunal**

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings and actively participated in the hearing on 11 October 2004.
- c. The detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces.

**8. Dissenting Tribunal Member's report**

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army  
Tribunal President

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ISN #10004  
Enclosure (1)  
Page 5 of 5

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**Exhibit C(b).**  
**Classified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (2)**

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

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# Exhibit C(c). Exhibit R-1

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (21 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – AIT IDR, Mustafa.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida, and participated in military operations against the United States or its coalition partners.
  - a. The detainee is associated with al Qaida:
    1. The detainee is Algerian, but acquired Bosnian citizenship by serving in the Bosnian military in 1995.
    2. The detainee is associated with the Armed Islamic Group (GIA).
    3. GIA is a recognized extremist organization with ties to al Qaida.
    4. While living in Bosnia, the detainee associated with a known al Qaida operative.
    5. At the time of his capture, the detainee had planned to travel to Afghanistan once his al Qaida contact arrived there and had made the necessary arrangements.
  - b. The detainee participated in military operations against the United States or its coalition partners.
    1. The detainee was arrested by Bosnian authorities on 18 October 2001.
    2. The detainee was arrested because of his involvement with a plan to attack the U.S. embassy located in Sarajevo.

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Pg 1 of 2  
Exhibit R-1

UNCLASSIFIED

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

UNCLASSIFIED

pg 2 of 2



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# **Exhibit C(d). Exhibit R-2**

Memorandum

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To : Department of Defense                      Date 09/25/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
Col. ██████████ OIC, CSRT

From : FBI GTMO  
Counterterrorism Division  
Asst. Gen. ██████████

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
US9AG-10004DP

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 10004 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 08/17/2002  
FD-302 dated 08/26/2002  
FD-302 dated 05/01/2003

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

UNCLASSIFIED

13 of 2

Exhibit R-2

Memorandum from [REDACTED]  
Re: REQUEST FOR REDACTION, 09/25/2004

If you need additional assistance, please contact Asst.  
Gen. Counsel [REDACTED]  
[REDACTED] or, Intelligence Analyst [REDACTED]  
[REDACTED] or  
Intelligence Analyst [REDACTED]  
[REDACTED]

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# **Exhibit C(e). Exhibit R-3**

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U.S. Department of Homeland Security  
U.S. Customs and Border Protection  
Office of Border Patrol

NOTE: This report is based upon information obtained from various open sources. No classified information was used in the preparation of this report.

Office of Border Patrol  
624 SSG Sims Road,  
AF,  
, TX 79908  
Address: Attn. BPSCC P.O. Box 6017  
, Texas 79906  
Agent D. Thew  
(5) 724-3218

## Terrorist Organization Reference Guide

January 2004

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Pg 1 of 2

Exhibit 9-3

#### 4. Armed Islamic Group (GIA)

##### Description

An Islamic extremist group, the GIA aims to overthrow the secular Algerian regime and replace it with an Islamic state. The GIA began its violent activity in 1992 after Algiers voided the victory of the Islamic Salvation Front -the largest Islamic opposition party -in the first round of legislative elections in December 1991.

##### Activities

Frequent attacks against civilians and government workers. Since 1992, the GIA has conducted a terrorist campaign of civilian massacres, sometimes wiping out entire villages in its area of operation, although the group's dwindling numbers have caused a decrease in the number of attacks. Since announcing its campaign against foreigners living in Algeria in 1993, the GIA has killed more than 100 expatriate men and women - mostly Europeans -in the country. The group uses assassinations and bombings, including car bombs, and it is known to favor kidnapping victims and slitting their throats. The GIA hijacked an Air France flight to Algiers in December 1994. In 2002, a French court sentenced two GIA members to life in prison for conducting a series of bombings in France in 1995.

##### Strength

Precise numbers unknown, probably fewer than 100.

##### Location/Area of Operation

Algeria.

##### External Aid

None known.

#### 5. 'Asbat al-Ansar

##### Description

'Asbat al-Ansar - the League of the Followers - is a Lebanon-based, Sunni extremist group, composed primarily of Palestinians and associated with Usama Bin Ladin. The group follows an extremist interpretation of Islam that justifies violence against civilian targets to achieve political ends. Some of those goals include overthrowing the Lebanese Government and thwarting perceived anti-Islamic and pro-Western influences in the country.

Exhibits C(f) through C(mm) are  
withheld in full under  
5 U.S.C. § 552(b)(1) and (b)(7) as they  
contain classified and law enforcement  
sensitive information.

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# Exhibit C(nn). Exhibit R-38

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (R/L)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF SABIHA DELIC - AIT IDIR

I, SABIHA DELIC - AIT IDIR, of Branislava Nusica 112, Sarajevo, Bosnia and Herzegovina, being duly sworn, depose and state as follows.

1. I was born on September 26, 1970, in Kakanj, Bosnia and Herzegovina ("BiH"). I am a Bosnian citizen. I married Ait Idir Mustafa in a religious ceremony held in Zenica in June 1996; the civil ceremony was held and registered in Vogosca Municipality in September 1996. We have three children: Muhamed, born in 1997; Hamza, born in 2000; and Abdulah, born in 2002. All of our children are Bosnian citizens.
2. My husband ~~Ait Idir Mustafa~~ was born on July 9, 1970, in Sidi Mhmad, Algeria, as an Algerian citizen; his parents are Hashemi and Sadija Tasadi. My husband lived with his parents, six brothers and two sisters up until 1993. He has completed two years of post-secondary education, and training in the field of information technology. (S)
3. I am one of six children. As my family is religious, my brothers and sisters and I attended the Sarajevo Medresa, a well-known and highly regarded school with a long history and tradition. I graduated from the Medresa in 1989, and began work in April 1990, as a teacher in a religious community, based in Capljina and serving Stolac, Ljubuski, Pocitelj and surrounding villages. Because of the outbreak of the civil war, I was forced to leave BiH for Split, Croatia. I worked as a teacher with Bosnian refugees who were living in refugee camps in Split and in the surrounding area. In early 1994, I was transferred to work in Zagreb, as there was a greater need for teachers there. In May 1994, I returned to my family home in Kakanj. I worked for the humanitarian aid

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EXHIBIT R-38

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organization Katar in Zenica, from December 1994 until May 1996. Since then, I have graduated from Islamic Pedagogical Academy, and am pursuing further education.

4. My husband came to Croatia in 1993 when his job as an IT specialist was relocated from Algeria. For business purposes, he regularly traveled to BiH in 1994. By November 1994, he was permanently residing in BiH and working for the humanitarian aid agency, Igasa. He applied for and received BiH citizenship in February 1995. In 1995, he applied and was hired for the position of general-secretary for the humanitarian aid organization Katar based in Zenica. In his spare time, he taught karate at the Zenica Karate Club. In March 1996, he was transferred to work in the Tuzla office of Katar, which closed in December 1996. Following the closure of the Katar Tuzla office, he moved to Sarajevo. In March 1997, he was employed by the humanitarian aid organization Taibah, as the IT system administrator, where he worked up until the time of his arrest. He had many interests and activities, such as the karate club Bosna, where he was a member, and later a coach. On weekends he volunteered at the Red Crescent society, where he worked with orphaned children. He is a responsible, devoted father and family man. After the birth of his first son, he actively supported my further education by taking responsibility for the care of our son while I was at school.
5. On October 18, 2002, at 1:05 a.m. several BiH police officers accompanied by unidentified foreigners speaking English came to our apartment with a search warrant. They told us they were looking for weapons. They also demanded to see my husband's identification papers, and seized both his Algerian and BiH passports. At 3:15 a.m., he was taken into BiH police custody. All of this took place in front of me and our children. On 19 October at 00.30 a.m. our lawyer informed me that the police had arrested my husband in connection with suspected terrorist activity. On January 17, 2002, the Bosnian Supreme Court ordered his immediate release on the ground that there were no reasons upon which pre-trial detention could be ordered. Disregarding this decision, the Federation Police transferred my husband to United States custody at 6:00 a.m. on January 18, 2002.
6. The expulsion of Ait Idit Mustafa, a citizen of BiH, was made possible by the fact that his Bosnian citizenship was revoked shortly after his arrest. The revocation was based only on the charges alleged against him; the criminal charges were treated as evidence of guilt. He appealed the revocation, but was handed over to the United States forces before the Supreme Court reviewed the revocation proceeding; on December 19, 2002, the Supreme Court annulled the decision to revoke my husband's citizenship, and held that my husband never lost his citizenship. Accordingly, at the time of his expulsion, he was a citizen of BiH.
7. After his wrongful expulsion, I lodged an application on my husband's behalf with the Human Rights Chamber for BiH ("Chamber"). According to the April 4, 2003 decision of the Chamber, the respondent parties, BiH and the Federation of Bosnia and Herzegovina, violated my husband's rights not to be arbitrarily expelled, to be presumed innocent until proven guilty, and not to be subjected to the death penalty. The Chamber also ordered the respondent parties to take all necessary action to protect my husband's

- 2 -

BOSTON 196607v1

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rights while in United States custody and to compensate my husband for non-pecuniary damages.

8. On December 31, 2002, the United States Embassy in Sarajevo sent me a letter, telling me that my husband had been transported to Guantanamo Bay by United States forces on January 19, 2002 as an "enemy combatant." The Embassy informed me that he would be detained for an indefinite period of time, although no charges had been brought against him. My husband is also prevented for an unlimited time from being visited by family members. I am deeply concerned that the indefinite term of his custody and isolation from his family may cause him severe psychological and/or physical damage. In fact, in one letter he sent to me, he told me he was on a hunger strike. As time passed, his letters became more and more pessimistic.
9. I am in irregular contact with my husband with the assistance of the International Committee of the Red Cross. In the last few months I did not receive any news from my husband. Only recently I received letters and postcards from him, all dated September and October 2003. They were heavily censored, perhaps more so than the earlier ones. Even though I do not know if and how many of my letters my husband receives, I write to him often, and include in my letters the letters our son writes to him and pictures of our children.
10. Since my husband was taken into custody, I have worked very hard on his behalf. My activities for my husband's release include regular contacts with BiH government and international organizations, especially human rights organizations.
11. My financial situation has been very difficult since my husband was taken to Guantanamo. He used to provide financial support for my children and me. Despite my efforts to find work, I am unemployed. I live with my sister, and receive support from my family and friends. Apart from financial problems, it is very hard for me to explain the situation to my children. First, I tried to hide it from my eldest son; but this was not possible. He asks me everyday when his father is coming back, and writes to his father very often. Due to the sudden disappearance of his father and related trauma, Hamza, our four year old son, started to pronounce his first words only just a few months ago. Abdulah, our youngest son, who was born 5 months after his father was expelled from BiH, knows his father only through our stories.
12. It is my belief, based on the messages my family received, and from everything I know about my husband, that he is seeking my assistance and support and would want me to take appropriate legal action on his behalf as his next friend. In this capacity, I have retained and hereby request Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to act on my own and Ait Idir Mustafa's behalf and to take whatever legal steps they consider to be in our best interests, in connection with my husband's detention at Guantanamo.

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I know the facts deposed herein to be true to the best of my knowledge.

Sworn to by the deponent on this tenth day of August, 2004.



Sabiha Delic Ait Idir



Witness: Liliانا Scasascia Kleiser

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (RJI)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF SABIHA DELIC AIT IDIR AUTHORIZING REPRESENTATION

I, Sabiha Delic Ait Idir, hereby depose and say:

1. I am Sabiha Delic Ait Idir, of Branislava Nusica 112, Novi Grad, Sarajevo.
2. I am acting as the next friend of my husband Ait Idir Mustafa, who is in the custody of the United States at Guantanamo Bay Naval Base, Cuba.
3. I hereby authorize Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to represent me in all proceedings relating to my husband's detention by the United States, and any and all proceedings related to my husband's status under custody of the United States.

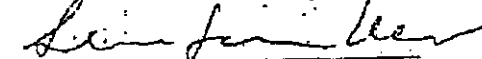
Signed:



Date:

10/08 / 2004

Witnessed:



Lihana Scasascia Kleiser

Date:

10 August, 2004

BOSTON 1962048v1

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**Exhibit C(oo).**  
Mr. Ait Idir's statement to the  
Tribunal, Enclosure (3)

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DETAINEE ELECTION FORM

Date: 23 Sep 2004

Start Time: 1015

End Time: 1220

ISN#: 10004

Personal Representative (Name/Rank) 

Translator Required? YES Language? ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

**Detainee Election:**

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

**Personal Representative Comments:**

Detainee will attend the Tribunal. He has request 2 witnesses. The witness will testify he was never in the Bosnian Army and he knows nothing about al Qaida. The witnesses are 10006 and 10003.

5 Oct 2004 after, discussions on the evidence the Detainee affirmatively declined to participate in the tribunal.

Personal Representative 

Exhibit D-a

Summarized Detainee Statement

Tribunal President: Mustafa, you may now present any evidence you have to the Tribunal or make a statement. You have the assistance of your Personal Representative in doing so. Do you want to present information to this Tribunal?

Detainee: First thing I would like to ask is, do you have time?

Tribunal President: Yes, we have time.

Detainee: Because it might take a while.

Tribunal President: No problem. Would you like to make your statement under oath?

Detainee: Not a problem.

**The detainee was sworn using the Muslim oath. The detainee testified to the Tribunal in substance as follows:**

Tribunal President: Mustafa, you may begin.

Detainee: First thing I want to talk about is my detention or imprisonment here. Do you want any comments related to my detention here?

Tribunal President: Are you being treated well?

Detainee: Not just my detention here, but from the moment I was captured up until this moment right now?

Tribunal President: Whatever you would like to present to us would be fine.

Detainee: Then I will start from the beginning. I don't remember the exact date, but a few days before I was captured or arrested, the American and the Bosnian Embassies closed their doors. They stated they closed their doors because of threats they received in Sarajevo. A few days after that, some individuals came to my house and knocked on my door. I opened the door and it was the police. The police were civilian police. I can recall two of them were wearing police uniforms and three were global police, international police from the United Nations. One was from Argentina, the second one was from Ghana, and the third one was from Jordan. They came to me and said they wanted to search my house. I asked them if they had a letter from the courts stating they could search my house. This is in Sarajevo, not Afghanistan. I just want you to know I am from Bosnia, not Afghanistan. So they gave me the paper. I read it and saw they had the right to search my house. A woman was with them also. They entered my house and I told them my wife and children were sleeping. It was late at night. So they said they would have the woman search the room where my wife was sleeping. The woman went

ISN #10004  
Enclosure (3)  
Page 1 of 24



into the room and the men started searching my apartment. They searched in a polite manner and they did not leave anything untouched. They would look at my things and, if they found nothing, they would put it back like it was. They looked through my videotapes and books.

Detainee (continued): After they were all done, I asked them what they were looking for. They told me that they were just searching, but I felt they were searching for weapons. They searched everything. I had a computer and a laptop I was in the process of fixing that belonged to a company. I had a few drives, CD-ROMs, and floppy disks. They took some papers and the computers with them. I said to them that I would not be responsible for the computer if it had anything on it. I was responsible for it up until that point. I told them to ask their supervisors if they could bring an extra hard drive to copy everything from the computer; they could take the hard drive with them. So they said they were going to take it with them, but they promised they were not going to add or take anything else to or from the original hard drive. I told them if they put anything new on the hard drive, I would be able to see what it was and when it was added the next time I would log on to the computer. So the authorities took the computers and some CDs with them. They also had a video camera and they filmed the entire search. So they left.

Detainee (continued): One of them came back and told me to come with him to the police station for questioning. So I grabbed my car keys to go with the policeman. The policeman then said I did not have to drive, but I should ride with him and they would bring me back home. I went to the police station. My fingerprints were taken. This was the first time anything like this ever happened to me. I did not know how it worked. I asked the police why they were doing this and they told me for anyone who is suspected of committing a crime, fingerprints must be taken. We have to make sure you did not commit a previous crime. The police officer told me that this did not mean I was a criminal.

Detainee (continued): After taking my fingerprints, I was taken from the police station to the Ministry of Interior. I was going to be asked questions. It was about three a.m. I told them to ask me questions, but I was told that a lawyer had to be present. So we had to wait for the lawyer to get there. So in the morning a lawyer arrived. I asked him who he was. He told me he was a lawyer and my wife called him. Then I was asked questions. They were normal questions, like where I worked, my age, where I lived, and so forth. They asked me if I knew certain individuals. There were six from Bosnia and I was asked about five of these individuals. I was the sixth person. Two of the individuals I did not know and I had never seen them before. I told them I knew the other three. I stayed in the police station for the next twenty-four hours. I was then told I had to be taken to the higher court. In Bosnia, there is a regular court then there is the higher court. I was taken to an interrogator. I was again asked some questions. The same questions as before. The interrogator asked me an additional question. She asked me if I knew where the American Embassy was located. I told the interrogator that was a stupid question.

Detainee (continued): I don't think one person in Sarajevo does not know where the American Embassy is located. Anyone who lives or resides in Sarajevo knows the American Embassy is located in the center of the city. Everyone knows that. I told the interrogator even my youngest son would know where the American Embassy was located. The interrogator asked me if I knew a person named Abu Zubayda. I asked her where this person lived in Sarajevo. I thought maybe this was someone I knew under a different name. The interrogator said that this person was the second or third highest person in Al Qaida and no one knew where Zubayda lived. I thought Zubayda was a person who lived in Sarajevo. I did not know this person was involved with Al Qaida.

Detainee (continued): The questions were finished, but the interrogator told me I was going to have to remain in custody for anywhere from another twenty-four hours to one month. The lawyer asked why I was going to be held in custody and what evidence or proof of wrongdoing they had against me. The interrogator told my lawyer and I - and this is something you should emphasize or write in very large letters. She, the interrogator, stated this matter was much bigger than her and she could not be involved with it. I knew at that point this matter was some type of game. I knew this interrogator came to talk to me so I could be placed in prison. The interrogator could not do anything to tie or untie me.

Detainee (continued): I went to prison for the first time in my life. I would see prisons on TV but I had never been in a real one before. You can only imagine how a person feels when they go to prison for the first time. I was placed into a cell with persons who were in prison for drug offenses, theft, and embezzlement of millions of dollars. I entered the prison about four a.m. One of the prisoners pointed out an empty bed, so I slept on that bed. I woke up later that morning and read the newspaper. I saw a headline that was very strange. The headline said several members of the Islamic Armed Group were arrested along with members of Al Qaida. I realized they were talking about me and the five other people I had been asked about earlier. The article stated we were planning to think to bomb the American Embassy. There was a television there in the prison also. I would flip the channels and all the Bosnian channels were talking about it. After a few days, I was waiting for this month to end.

Detainee (continued): Sorry, I forgot something. When I was with the interrogator and she asked me about the location of the American Embassy, I knew it was related to why I was there. I was aware the embassy had been closed. I told the interrogator I wanted representatives from the American Embassy, the U.S. Army, and representatives from the British Embassy to come interrogate me. I wanted these people to ask me if I had ever threatened anyone via telephone or face to face; or if I was ever seen going into the American Embassy; or if there was any proof or evidence at my house that I was involved with this matter. The interrogator did not call or bring anyone else in. She stated the matter was bigger or higher than she was.

ISN #10004  
Enclosure (3)  
Page 3 of 24

Detainee (continued): So I stayed in the jail for about a month. The longer I stayed, the more I thought this matter has some kind of twist to it. There were lawyers who were talking at press conferences saying this whole matter was untrue. Why? Because I was told I would remain in prison from twenty-four hours to a month. Long enough for them to look into the computers they took from my house or to trace any phone call that I made. But I will tell you something regarding the computers. If the hard drive had forty gigabytes - that was full, which is impossible, it would only take a week for a group of people to analyze the computer. They can obtain a list of all my phone calls from the post office. If I needed the listing for a person, I would go to the post office, give them the request, and I would get the listing within a day or two. The Bosnians said it was difficult for them to obtain all this information and it would take over a month. Every time something like this would happen, I suspected this was a game and this was not real. When the month was over, I was told I would have to stay an additional two months in jail, making it three months total. I was told the investigation was still ongoing and the search of the phone records and computer search had not been completed. During this period of time, my Bosnian citizenship was revoked. The reason cited was I was planning on attacking the American Embassy.

Detainee (continued): After that, the decisions came from the courts regarding the investigation of this matter. There was nothing found on my computer related to terrorism. I remember it was written down that they found pictures of waterfalls, trees, sunsets and sunrises on the computer, some software programs, and games I had downloaded for my son. As far as my cell phone and home phone, they wrote the same note; nothing was found relating to terrorism. If I remember correctly, they looked through my phone calls from the previous six months. The investigation was completed and they had to either release me from prison or extend my stay.

Detainee (continued): My wife and family had been in contact with the Algerian Embassy from the first day I was imprisoned. The Algerian Ambassador would speak with the Bosnian authorities. I was alleged to be a part of the Armed Islamic Group, but the Ambassador stated that I did not have any relationship with this armed group because I was registered with the Algerian Embassy from 1993 until the year 2001, when I was brought to Cuba. There was one day left for the police to hand me over to the Americans. I did not know I was going to be handed over, but I felt it. There was talk about it in the news and the newspapers. There were secret meetings between the communists in Bosnia and the American military. The Bosnian government at that time was communist. The President was communist. I knew these meetings were about me, I felt it. On the last day before I was handed over, my wife spoke with the Ambassador once more. My wife inquired if I was going to be turned over to the Americans. The Ambassador told my wife if that happened, the Algerian government would sue the Bosnian Government in the International Court because it was verified Mustafa did not have any problems. It was the Bosnian Government's right to interrogate me, and if there is proof of wrongdoing, then imprison me. Also, if the Bosnian government no longer wanted me in their country, I would be welcome to return to Algeria. But for the Bosnian government to turn me over to another country for no real reason, this would not be accepted.

ISN #10004  
Enclosure (3)  
Page 4 of 24

Detainee (continued): Thursday, January 17<sup>th</sup>, during the night, I had to be released because the time had run out. The law from the court said anyone that was found innocent had to be released from prison before four p.m., because the courts are open until three p.m. So then they take you back to the prison, you get the paper saying you are innocent, and then you leave. The Bosnian news on television said I was found innocent and I was being released. At that moment, the police officers came to me, gave me the paper saying I was innocent, and released me to leave the prison to return to my house. I changed the TV channel, and I saw there was a large number of people outside the prison. The crowd had found out I was being turned over to the U.S. military. There was a lawyer for one of the other individuals – maybe it was Muhammed's lawyer. The lawyer stated he had an official announcement. The lawyer stated we [the Algerian Six] would be turned over to the Americans. We were going to be moved from Sarajevo to most likely Germany; then from Germany to Cuba. So we all left that prison and we were turned over to the Americans. There seemed to be a big problem outside the prison. The people wanted to grab us from the police. The police were hitting people and the people were hitting the police. I heard the police talking on the radio and estimated there were 5,000 people outside the prison. From what I saw, there were women, old and young people, men, and children. All kinds of people. There was a fight between these people and the police because they were trying to grab us from the police because they heard we were innocent and the Bosnians were still turning us over. The fighting went on from midnight to about six a.m. The people were flipping police cars over and the roads had been closed.

Detainee (continued): That part was over. Now I would like to talk about the three days when we were being moved. During those three days we were being transferred here, animals would never have been treated the way we were. In Bosnia, the temperature was -20 degrees and there was ice and snow. It was very cold. They took off all my clothes and they gave me very thin clothes – like that tablecloth [detainee points to the white sheet covering the Tribunal table]. They placed me in a room that was very cold. As they moved me from country to country, my ears, mouth and eyes were covered. I could not even talk or breath. A mask with a metal piece was place over my mouth and nose. Why am I saying this? When I sat with the Personal Representative, I was given a letter from the American Ambassador in Bosnia that lied and said I was moved in a humane manner. When I got to Cuba, the first four or five months I could not feel my left leg. From my thigh to my back, I could not feel anything at all. It was like when you administer anesthesia to someone. Anyway, we were moved here and what happened had happened.

Detainee (continued): I am not going to get into the problems with the bad treatment from the guards in Cuba. For example, a twenty-year-old guard came into my room and was swearing towards my mother and father for no reason whatsoever. I was not even talking to this guard. I was just sitting there. I am not going to talk about these things. Outside everyone knows this is going on from the news.

ISN #10004  
Enclosure (3)  
Page 5 of 24

Detainee (continued): I was taken to the interrogations. I am now going to speak about the interrogations. I remember everything about the interrogations. I do not know the interrogator's names, but I remember every single detail. I remember how the interrogator was sitting, who was sitting next to him; I have a very good memory. I am going to tell you everything the interrogator told me. At Camp X-ray, I told the interrogators I did not want to talk to them, and I was not going to tell them anything. The interrogator asked why I did not want to speak. I answered because I did not know why I was brought to Cuba. The interrogator asked if I knew what the accusations were against me from Bosnia. I told the interrogator I knew what the accusations were. He asked me what they were. I told the interrogator that the accusation was that I was a member of Al Qaida. The interrogator wrote it down and then drew an "X" over it. The interrogator told me to forget about this matter. Then I told the interrogator another accusation was I was a member of the Algerian Armed Group. The interrogator did the same as before with the "X" on what he had written down. The third accusation I stated was that I intended to think to attack the U.S. Embassy in Sarajevo. The interrogator told me to forget about this. The interrogator said something else but I cannot remember it right now. I told the interrogator that was what I knew.

Detainee (continued): The interrogator told me I was there to give up information about Bosnia, and information about the Arabs living in Bosnia, and the rescue organizations that are present in Bosnia. I said to the interrogator that he would not hear one word from me starting on that day. I also said to the interrogator, the story on the outside was I was captured because of terrorism, and now here you are telling me you want me to give up information about rescue organizations and Arabs and how the Arabs are living? I said if there are accusations against me, I will talk with you about those accusations. But in spite of that, I did speak with the interrogators about these things.

Detainee (continued): Another interrogator told me the Bosnia and Herzegovina Government wanted to get involved with the war on terrorism. This communist government received very large monetary assistance from America. They took this money and gave six people to the Americans. They took the money and then they tricked us by handing over people who did not have or know anything. I asked the interrogator if he knew this, then why was I being held in prison in Cuba? The interrogator told me this matter was out of his hands and it was above him. Many of the interrogators told me many different things. If I had a piece of paper earlier I would have written it all down. I don't remember everything right at this moment. Another interrogator told me I was bought with very large sums of money and I did not have any information, but I could not be released. I asked the interrogator why, and if there were any accusations or evidence against me. The interrogator said to me that they would find something, meaning I could not be released from Cuba without them finding some accusation against me. I could not have been held in Cuba in prison for three years, then all of a sudden be found innocent and released. The interrogator stated there was a big problem and they could not release me and say I was innocent because the Bosnian Embassy was told there was classified

ISN #10004  
Enclosure (3)  
Page 6 of 24

UNCLASSIFIED//~~FOUO~~

evidence against me. So if I were released, the Bosnian government would ask for the classified evidence.

Detainee (continued): If I was released after three years, although the American government said I was a criminal, it is impossible a court would give a sentence of three years to a person who wanted to bomb an embassy. It is impossible. The least amount would have been fifteen to twenty years because it is an act of terrorism. So the interrogator said now there was a problem. We could not let you go home, but we cannot keep you here. Right now I was a problem to them and they did not know what to do with me. These are the words of the interrogator, not the words of Mustafa. The interrogators informed me the Bosnian government had reinstated my Bosnian citizenship because they knew I was wronged and my citizenship was taken from me illegally.

Detainee (continued): The Bosnian government had changed and a new government was in place. The Americans did not want to return me to Bosnia. Why? Because the Americans claimed to have evidence against me. I can't be returned and found innocent. I could not be returned to Algeria because Algeria had created a problem with the Bosnian Government. The Algerian Government questioned the Bosnian Government as to why I was arrested without any reason. So now I am sitting here in Cuba and I do not know why. I do not know what is happening outside; I do not know. But what I do know is that this is a game. These were the words of the interrogators. Even in movies, these things do not happen. The accusations are the same thing. They are very strange. I can give you more accusations in addition to the ones in front of you, if you would like to write them down. The interrogators gave me more accusations than what you have given me.

Detainee (continued): One of the accusations implied I knew where Bin Laden was hiding while I am here in prison. Another accusation implied I knew where Bin Laden kept his nuclear weapons. Another accusation implied I was Usama Bin Laden's right hand man. Many accusations like this, many things. Another accusation was Bin Laden contacted me to be a personal bodyguard. You can just add these accusations on the ones you already have in front of you. So that way, things will be clear. The interrogators told me with their own tongues that they did not have anything on me and I had done nothing wrong. So this is all I will say about the interrogations, I am done with that. I will now talk about this Tribunal.

Detainee (continued): Regarding my treatment here in prison, I am a person that lived a very good life. I never had any problems with people whatsoever. Within my family itself, I had no problems. I never had any problems with my neighbors. The team I trained with consisted of Muslims, Catholics and Orthodox; many different people. My neighbors were the same way. I made very good wages from my jobs. I never had any problems with money, people, anything. My life has changed completely. It has turned 360 degrees to this, where I am now. There are times when a soldier, who maybe never even went to school and barely knew how to hold a weapon, comes to you and swears at you; he says things to you that you have never ever heard of in your life. As an example,

ISN #10004  
Enclosure (3)  
Page 7 of 24

UNCLASSIFIED//~~FOUO~~

a soldier broke my finger. [Detainee holds up his left hand. The left pinky finger is distanced about 1½ inches from the four remaining fingers. The detainee is unable to bring the left pinky finger in alignment with his other fingers.] Can you see? I cannot bring this finger close to my other fingers. I cannot close this gap. On the middle finger [detainee points to the center knuckle on the middle finger of his right hand], my knuckle has been broken. You probably cannot see that. But my finger [detainee holds up his left hand, the left pinky finger] you can see that clearly.

Tribunal President: Let me ask you a question? Are you saying a soldier in Guantanamo Bay, Cuba, broke your fingers?

Detainee: Yes. Soldiers took me and placed me on the ground in the rocks outside. My hands and my feet were bound. The soldiers put my face on the ground. You can see maybe my eye - a small little hole near my eyes [detainee points to the outside corner on his right eye]. One soldier put my head on the ground, and then another soldier came and put his knee on my face. The soldier hit me on the other side of my face that was not touching the ground [detainee points to the left side of his face]. If my head was turned a little bit more [detainee turns his head to the right attempting to show the Tribunal the position of his head at the time of the alleged incident] the rocks would have gone into my eye. Next to my eye [detainee points to his right] there is a little hole. There are a lot of things regarding the soldiers, but I won't talk about all of them.

Detainee (continued): Regarding this Tribunal, I am speaking to you, but inside I don't really believe this Tribunal. Not you as individuals. Like the interrogator said, after holding a person in prison for three years, this Tribunal cannot just say I am innocent and let me go home. That is what I feel inside. So like the interrogator said to me, you have to find anything to charge me with, being or not being an enemy combatant. But no problem, I am still going to talk to you. If you want me to talk with you regarding the accusations, I will talk about them. Or if you have questions, you can ask me. To tell you the truth, I forgot many things I wanted to talk about because I did not write them down.

Tribunal President: You were given the opportunity to appear before the Tribunal when it was held earlier?

Detainee: Yes.

Tribunal President: But you chose not to participate in the Tribunal? Is that correct?

Detainee: You said I decided not to attend? Yes.

Tribunal President: This time you have decided to talk because you had an opportunity to take a look at this document [Exhibit R-38]?

Detainee: Yes.

ISN #10004  
Enclosure (3)  
Page 8 of 24

Tribunal President: You can present any information that you would like to and the Tribunal will take the opportunity to ask any questions. If you are ready to conclude your statement, then we can go on.

Detainee: Regarding the accusations, do I just talk about the accusations? Or will you read them one by one to me and I talk about them?

Tribunal President: Are you talking about the accusations read to you earlier?

Detainee: Yes.

Tribunal President: You can answer them if you'd like. Do you remember what they were?

Detainee: May I ask the Translator a question?

Tribunal President: The Tribunal would have to know what you asked her.

Detainee: No problem.

Tribunal President: Okay.

Detainee: I have kidney stones and I have to go to the bathroom every few moments. Before I came in I asked the soldier and the soldier said no, he would not take me to the bathroom. I was in the room over there.

Tribunal President: We can take a recess to allow you to go to the restroom.

Detainee: Please forgive me. I want to talk about the accusations, but I just have go to the restroom. Thank you.

Tribunal President: I understand.

Recorder: All Rise.

The Tribunal took a brief recess.

Tribunal President: Just before the recess we were about to review the allegations. Translator, do you have the translated version [of the Unclassified Summary of Evidence]?

Translator: Yes, I do.

Tribunal President: Is it you plan to go through each allegation?



Detainee: Yes.

Translator: The detainee asked me to read the allegations in English because he knows them and he understands them.

Tribunal President: I need to make sure you understand what is being read to you, so I would like for the allegations to be translated to you.

Detainee: Okay.

Tribunal President: Recorder, read each one aloud and then allow the detainee to respond to each allegation.

Recorder: [Item 3.a.1.] The detainee is Algerian, but acquired Bosnian citizenship by serving in the Bosnian military in 1995.

Detainee: This is the first accusation?

Recorder: Yes.

Detainee: As I said to my Personal Representative earlier, I have some papers that were with me when I was transferred over here. They could not find those papers. The papers proved I was not living in Bosnia in 1995. I acquired the citizenship while living in Croatia in February 1995. I entered Bosnia, if I remember correctly, in July or August, about two or three months before the war ended. I am going to give you proof I was living in Croatia. In the year 1995, Croatia divided into two parts; Jupania and Dalmatia. I was the [martial arts] champ in Dalmatia in 1995. I was present there, and I took part in the championship competition. It was impossible for me to be living in Bosnia and participating in a championship in Croatia. That is the first thing. The certificate that says I won the championship is probably still in my house. It even has the date on it. This means I was living in Croatia, not Bosnia. Another paper that proves I was living in Croatia was a paper requesting I vote while I was living in Croatia and Algeria. The elections in Algeria were in 1995. The Algerian Embassy came to Zagreb, which is the capital of Croatia. The Algerians living in Croatia vote. That is the proof I was living there because I voted. The paper I used to vote, the date is written on it. The third thing, the rescue organization I was working with in Split. I would like to verify when the last time I received a paycheck from them and the date I stopped working for them. The fourth thing, the team I used to train with, when I stopped training with them. The fifth, my Algerian passport, the old one - it has the date of when I entered Bosnia. You can also make sure of this. There is a sixth thing. Where I acquired my Bosnian passport. I got it from the Bosnian Embassy in Zagreb. This is proof I was living in Croatia. You can also verify this through the police in Split where I used to live. A paper from the police verifying your residence has the dates and address of where I used to live. You can verify from the landlord when I stopped paying him and when I moved from that

ISN #10004  
Enclosure (3)  
Page 10 of 24

address. Many things prove I lived in Croatia when I obtained my Bosnian citizenship. I got the citizenship in February 1995 or the end of 1994. In the end of 1994, I went to Bosnia to sign some paperwork that had to be signed. I am not sure if it was the end of 1994 or January 1995, but it was around that time. The proof of that was I had an UNHCR [United Nations High Commission on Refugees] identification card. It was something regarding refugees. I had this identification because I was working with a rescue organization.

Tribunal Member: Was it the United Nations Human Council on Refugees?

Detainee: Yes, they are the blue....

Tribunal Member: Yes.

Detainee: I had that identification card. I traveled from Split Bosnia in a plane with the United Nations. I traveled for a day or two. Or maybe a few days, long enough for me to sign the paperwork and return. I returned on the same plane to Split. You can verify this with the United Nations. Maybe they will have a list of the names of all the people who were on that plane on the way there and back. You can also verify the number of days between me going there and coming back was a few days. You can check with other companies or employees that worked in the building that I worked in. They can verify I was there. These things all proved I acquired my citizenship while I was living in Croatia. I did not even go to Bosnia at all. In the building where I worked, there was an office for the Bosnian Government. That is where I turned in my paperwork. Anyone who wanted Bosnian citizenship had to go and turn in paperwork with some money. It was very normal. It was about \$900.00 dollars. This was not strange, it was very normal. The American ambassador has Bosnian citizenship. Ask the Ambassador why he got the Bosnian citizenship. Why do you ask me why I got the citizenship and you don't ask the Ambassador? An American basketball player who plays in Bosnia has Bosnian citizenship. My wife is Bosnian and my kids are Bosnian. I was a champ in Bosnia for several years and I trained a Bosnian team. Representatives from Bosnia and Herzegovina were with me on the team. You ask me how I got the citizenship? It was a normal thing. I had more of a right to get it than the American ambassador. So this all proves how I acquired the citizenship and I was not in Bosnia in the first place.

Tribunal President: Can we move on to the second point?

Recorder: The Detainee is associated with the Armed Islamic Group (GIA).

Detainee: I don't want to ask you about the evidence because you said the evidence was classified. If you have any evidence, you can tell me. It is no problem. I am going to tell you and if you have any evidence, you can tell that to me.

Tribunal President: Are you responding to that with either a yes or no?

ISN #10004  
Enclosure (3)  
Page 11 of 24

Detainee: Of course, no. What proves that if I was with the Algerian Armed Group, I would not have been able to go to the Algerian Embassy? They would not have seen or accepted me there. The second thing is, when my Algerian passport had expired, I had to go to the embassy and renew it.

Tribunal President: Let's clarify. [Item 3.a.2.] The allegation reads the Detainee is associated with the Armed Islamic Group, not the Algerian Group.

Detainee: Maybe you are not aware of something, but I am just going clarify this. What they mean by the Islamic Army is that it is in Algeria. In Algeria it is called the GIA, as well. It stands for the Armed Algerian Group. Where is another armed group besides Algeria? I am sure they mean the Algerian Army because it is called the GIA. In French it is called the GIA, too. Some say the "A" stands for army. Some says the "A" stands for Algeria. If it is not that, then I don't know what it is, but I will respond to that accusation as the armed group. If this is how you are saying or what you meant by it, then I do not know it and I am not a part of it. I know nothing of it. But if this is the Armed Algerian Group as I think it is, then I say to you that this is impossible, as I was registered with the Algerian Embassy. I had to hand in registration papers, which they take and send to the Interior Ministry in Algeria. The Interior Ministry sends those papers to the area where I lived in Algeria to verify all the information. So if I had any relationship with an armed group or drugs or weapons or anything, the response to the Algerian Embassy would be not to register me. My new Algerian passport is from the embassy from 1993 until 2001, when I was brought here to the prison. My children are registered in the embassy and my wife is registered in the embassy. Every so often, there is a meeting with the ambassador, meaning if I had any relation with an armed group, I would not be able to meet with the Algerian ambassador. I would have been sent back to Algeria. Also, evidence I do not have a relationship with this armed group is when I was captured in Bosnia, the Algerian Government and Algerian Embassy stepped in. Here in prison, all the Arab representatives came here from all countries, not just Arabic countries. The Algerians are the only ones that did not come. Why? Because I was captured from Bosnia and brought to Cuba for no reason. I can tell you that I am not a member of this group. You can contact Algeria and ask them. The interrogator told me that information was gathered from Algeria that I am not a member of the armed group. That is what I have regarding this. If you have any evidence you can say, I will answer.

Tribunal President" Let's respond to the next one, 3-a-3.

Recorder: [Item 3.a.3.] GIA is a recognized extremist organization with ties to Al Qaida.

Detainee: How can I respond to this? It is not a question and it is not an accusation.

Tribunal President: You are right. Let's move on to the next one.

Recorder: [Item 3.a.4.] While living in Bosnia, the Detainee associated with a known Al Qaida operative.

Detainee: Give me his name.

Tribunal President: I do not know.

Detainee: How can I respond to this?

Tribunal President: Did you know of anybody that was a member of Al Qaida?

Detainee: No, no.

Tribunal President: I'm sorry, what was your response?

Detainee: No.

Tribunal President: No?

Detainee: No. This is something the interrogators told me a long while ago. I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if the person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team. But I do not know if this person is Bosnian, Indian or whatever. If you tell me the name, then I can respond and defend myself against this accusation.

Tribunal President: We are asking you the questions and we need you to respond to what is on the unclassified summary. If you say you did not know or you did know anyone that was apart of Al Qaida, that is the information we need to know.

Detainee: I have only heard of Al Qaida after the attacks in the United States. Before that, I had never heard of Al Qaida. Even after I heard of Al Qaida, I felt that Al Qaida was the Taliban and the Taliban was Al Qaida. Then after watching the news, I knew Al Qaida was associated with Bin Laden and the Taliban was associated with the Afghans.

Recorder: [Item 3.a.5.] At the time of his capture, the detainee had planned to travel to Afghanistan once his Al Qaida contact arrived there and had made the necessary arrangements.

Detainee: I can respond to this accusation with a question. May I?

Tribunal President: Please do.

Detainee: Did they find any stamps or visas on my passport to any countries close to Afghanistan? Did they catch me with a suitcase on the plane? Was I seen going into an

embassy for one of the countries close to Afghanistan? Was I seen sitting and talking with anyone known to be apart of Al Qaida? How can they know that I planned? I do not know how they can know this. Do you have anything that is clear or proves clearly that I planned these things? How do you say I planned these things? The answer that I am able to give you is just to tell you that I did not plan these things. But I do not have any papers or anything to prove that. I already told you earlier how I was captured from my house. I was not running or trying to escape. I was inside my house. The police came in and arrested me.

Recorder: [Item 3.b.1.] The detainee was arrested by Bosnian authorities on 18 October 2001.

Detainee: Yes, but this phrase "arrested by," I just want to make that very clear I was not arrested. I was in my house and they told me to come with them so they could asked me some questions. When you say arrested, it means I was fleeing, they came in, and I was fighting.

Recorder: [Item 3.b.2.] The detainee was arrested because of his involvement with a plan to attack the U.S. Embassy located in Sarajevo.

Detainee: The same answer as before. The only thing I can tell you is I did not plan or even think of that. Did you find any explosives with me? Any weapons? Did you find me in front of the embassy? Did you find me in contact with the Americans? Did I threaten anyone? I am prepared now to tell you, if you have anything or any evidence, even if it is just very little, that proves I went to the embassy and looked like that [Detainee made a gesture with his head and neck as if he were looking into a building or a window] at the embassy, then I am ready to be punished. I can just tell you that I did not plan anything. Point by point, when we get to the point that I am associated with Al Qaida, but we already did that one.

Recorder: It was statement that preceded the first point.

Detainee: If it is the same point, but I do not want to repeat myself. These accusations, my answer to all of them is I did not do these things. But I do not have anything to prove this. The only thing is the citizenship. I can tell you where I was and I had the papers to prove so. But to tell me I planned to bomb, I can only tell you that I did not plan.

Tribunal President: Mustafa, does that conclude your statement?

Detainee: This is it, but I was hoping you had evidence that you can give me. If I was in your place - and I apologize in advance for these words - but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them. Sorry about that. [Everyone in the Tribunal room laughs.]

Tribunal President: We had to laugh, but it is okay.

ISN #10004  
Enclosure (3)  
Page 14 of 24

Detainee: Why? Because these are accusations that I can't even answer. I am not able to answer them. You tell me I am from Al Qaida, but I am not an Al Qaida. I don't have any proof to give you except to ask you to catch Bin Laden and ask him if I am a part of Al Qaida. To tell me that I thought, I'll just tell you that I did not. I don't have proof regarding this. What should be done is you should give me evidence regarding these accusations because I am not able to give you any evidence. I can just tell you no, and that is it.

Tribunal President: Mustafa, we allowed you the opportunity to tell the Tribunal your side of the story so we can consider your story, plus the unclassified evidence from your family. We will consider all of the information you have given us, and this document [Exhibit R-38] in our decision.

Detainee: The evidence of proving I was living in Croatia, I do not know how I can get that to you. My wife can send papers or I can talk to the Ambassador about this. Maybe he can send papers that I was living in Croatia.

Tribunal President: You have the opportunity to get that information. I do not know how or what the procedure is, but you really should take the opportunity to get that information.

Detainee: How when I am in GTMO?

Tribunal President: For the purpose of this Tribunal, we have to look at the information that is presented to us at this time. In the beginning [i.e., when the detainee met with his Personal Representative], when you said you did not want to participate and you did not want to have any witnesses or get any documents – the Tribunal cannot consider those things now. You will have the opportunity at another time and I will explain the Administrative Review Board process to you and you can use those documents then. Mustafa, we will consider everything you have told us today, and also about the documents that you have. The Tribunal will consider that information to make a decision.

Detainee: Also, excuse me, but my Personal Representative told me there were some papers that could not be found. I am a little surprised that these papers could not be found, because when I came here, I had a bag that hung around my body and my passports, both Algerian and Bosnian; my embassy registration papers that proved I was registered there; my voting paper was in there; the paper from the courts that said I was innocent and allowed me to get out of the Bosnian prison; and the court's report about what was found on my computer and telephones; and my clothes. My Personal Representative told me that these items could not be found.

Tribunal President: Personal Representative, did someone take the time to look for those documents?

ISN #10004  
Enclosure (3)  
Page 15 of 24

Personal Representative: Yes, Ma'am. I personally went over to detainee property and asked for those documents. I was told the only items that were there were the detainee's Bosnian and Algerian passports and a sheet of paper with pictures on it. None of the other documents were available.

Detainee: This is strange because everything was in the same bag. So everything should be lost. It impossible that they only had a few of the things that were in the bag. Maybe those certain papers were hidden.

Tribunal President: Did you ask your Personal Representative to get those documents for you?

Detainee: Yes, I did ask him.

Tribunal President: Including the Bosnian and Algerian passports?

Detainee: All of it. It was in a bag that I placed right here [detainee points to his torso]. The bag had both my passports and even my driver's license in it.

Tribunal President: My question is, did you ask the Personal Representative to get those documents for you to present to the Tribunal?

Detainee: I remember I told him about my papers that proved I was living in Croatia and that I had voted. The Personal Representative went there to look for them, but he could not find them.

Tribunal President: I understand, but unless you asked the Personal Representative to get those documents for you to present to the Tribunal, then he would not have done that without your permission.

Detainee: Of course I asked him. I am sure I asked him.

Tribunal President: Personal Representative, did Mustafa ask you to get those documents and present them to the Tribunal?

Personal Representative: Yes, Ma'am. In our earlier meeting, the detainee did ask me to get those documents. I told the detainee part of the documents he wanted were not here, and I had no idea where they were. In a follow-on meeting when the detainee decided not to participate, the detainee gave me a statement he wanted me to give to the Tribunal. The Bosnian passport and the Algerian passport are here and I can retrieve those items in less than five minutes.

Detainee: It's no problem.

Tribunal President: Do you want us to get those documents to be presented?

ISN #10004  
Enclosure (3)  
Page 16 of 24

Detainee: I don't think those items have anything to offer. The Algerian passport is a new one and has nothing in it. The Bosnian passport has nothing to do with this matter, but if you want it brought in, then the Representative can bring it.

Tribunal President: I only want the information presented if it is going to help us in our determination, or if it is going to answer any of the questions in the evidence.

Detainee: No, they will not answer any of those questions. The Algerian passport has nothing in it and the Bosnian passport is new.

Tribunal President: Does that conclude your statement?

Detainee: I do not have anything else about this. All I have else to say is if there is anything else about me that you may want to know. How I went to Croatia? How I started working? Anything like that. That I can talk to you about if you want me to.

Tribunal President: The Tribunal will probably ask you some questions. But before that, Personal Representative, do you have any questions for the Detainee?

Personal Representative: No, Ma'am.

Tribunal President: Recorder, do you have any questions for the Detainee?

Recorder: No, Ma'am.

Tribunal President: Do any of the Tribunal Members have any questions for the Detainee?

Tribunal Member: Yes, Ma'am. One of the allegations cites you served in the Bosnian military. Have you ever been in any military?

Detainee: I never in my life wore any uniform like that you have on [detainee points to the military uniforms worn by the Tribunal Members]. To answer the question, I left Algeria and I had not even registered for the Algerian Army. Sometimes when I was living in Croatia, if I wanted to go on a holiday or vacation for one month to Algeria, I could not go. I knew if I went there I would be forced to serve in the Algerian Army. In 1998, I had a paper from the Algerian Government that was issued to men who reached a certain age excusing me from serving in the Algerian Army. So the Algerian Embassy sent me a paper.

Detainee: I presented to the embassy information or papers that said I was married and had children. In exchange, I was given a certificate excusing me from military service. Even this certificate was in that bag with me.

ISN #10004  
Enclosure (3)  
Page 17 of 24



Tribunal Member: Does your Bosnian passport have stamps to prove your whereabouts in 1995, or is it newer than that?

Detainee: The Bosnian passport is renewed every two years. So even if there were stamps inside, it would have been changed by now. You can verify from the Bosnian Government where my first passport was issued. It was issued from the Bosnian Embassy in Zagreb, the capital of Croatia.

Tribunal Member: Who were you working for at the time you were taken into custody?

Detainee: Taibah, an organization. Would you like me to explain what Taibah is?

Tribunal Member: Can I get the full name of the company first?

Detainee: It is Taibah International.

Tribunal Member: Can you explain what you did for Taibah?

Detainee: This organization is a Saudi Arabian charitable organization. It is also registered as American, so it is Saudi-American. It is registered in Washington and registered in Saudi Arabia. It works in teaching. They teach mainly the English language and computers. But all of its work is on the teaching side. In some instances, during Eid, which is a Muslim holiday, sometimes they would slay sheep and cattle and distribute them to the poor, but very, very rarely. But the organization's main function was computers and teaching the English language. My job was to fix the computer software or hardware. Sometimes there would be a course and the professor would teach computer skills. My job would be to examine all the computers before the students come in to make sure they were working properly before being used. Occasionally, if there was something wrong with the computer or the hardware, I would fix it. That is what my job was.

Tribunal Member: How long had you been working for Taibah?

Detainee: I am not sure of the date I started. I am afraid to make a mistake in the date, but I will tell you what I think it was. I started working for Taibah after I stopped working for the organization of Qatar. It was the end of 1996 or the beginning of 1997, I think, until the day I came here. But the actual date itself, I am not sure. It was about four years.

Tribunal Member: What was the organization you worked for prior to Taibah?

Detainee: In 1993, I was working in rescue, the International Islamic Rescue Organization from Saudi Arabia. I worked there from 1993, 1994 and up until the end of 1995. Then, in Bosnia, I worked for the organization Qatar. From 1993 through 1995, I

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was working in Split in Croatia. Then in the end of 1995, 1996 and 1997, in the Qatar organization. Then in Taibah. I had other jobs too, besides this one.

Tribunal Member: I just want to make sure I understand the different times. For the International Islamic Organization from 1993 to 1995?

Detainee: In 1993. I am sure of that because I left straight from Algeria to come. I was sent a paper to come to Split and work for the International Islamic Rescue Organization. All my work is related to computers.

Tribunal Member: Is the International Islamic Rescue Organization also known as the International Islamic Relief Organization? Are they the same thing?

Detainee: I-G-A-S-A. The last two letters stand for Saudi Arabia, I know that. I do not know the rest.

Tribunal Member: So that was from 1993 to 1995?

Detainee: Yes.

Tribunal Member: What did you do for IGASA?

Detainee: The same things. I worked on computers.

Tribunal Member: Computers, okay.

Detainee: They had orphans, and I would enter and retrieve data on the orphans. If the President or the boss would write a report, I would enter that also. I did anything dealing with the computers.

Tribunal Member: Was that also in Split?

Detainee: Yes, that was in Split.

Tribunal Member: Then from 1995, but also in 1996 and 1997, you worked for Qatar?

Detainee: Yes.

Tribunal Member: What did you do for Qatar?

Detainee: I again worked with the computers, and at that time I was also a secretary to the president. During this period of time, I was working in two cities. The first period was in Zenitza. But then the president or manager sent me to another city to work in. I worked there for a while, and I became the manager in that company.

ISN #10004  
Enclosure (3)  
Page 19 of 24

UNCLASSIFIED//~~FOUO~~

Tribunal Member: Where was that?

Detainee: Qatar.

Tribunal Member: I am sorry, I meant the name of the city.

Detainee: Tuzla.

Tribunal Member: Tuzla.

Detainee: I was the manager only in Tuzla, nowhere else. The general manager was in Zenitza. So I worked there for maybe a year. Then they closed, and I went back to Sarajevo. One of the reasons I moved to the capital, to Sarajevo, was because I was training and teaching karate.

Tribunal Member: You worked for Qatar for only one year?

Detainee: From the end of 1995, all of 1996 and the beginning of 1997. It all amounted to maybe two years.

Tribunal Member: Okay. What did Qatar do?

Detainee: The main line of work was dealing with orphans. But they also distributed food to the poor sometimes.

Tribunal Member: What did IGASA do?

Detainee: The same thing. Pretty much all of the relief organizations in Bosnia, the Islamic and non-Islamic ones. They all work in this area, distributing food and clothes to the poor. Giving the orphans money, about \$25.00 every month. All the relief organizations in Bosnia Herzegovina did the same thing. Maybe the Taibah organization I worked for was the only one that taught also. Maybe there were some other organizations that do that, but I do not know what they were.

Tribunal Member: You mentioned that you know some of the other Algerian people who were taken into custody at the same time? Who were the ones that you knew?

Detainee: Now, I would like to ask the Tribunal a question. Is this an interrogation?

Tribunal Member: No. This is for the Tribunal.

Detainee: Muhammed, Al Haj and Al Akhdar.

Tribunal Member: Are those three different people?

Detainee: Yes. Muhammed's number is 10003; Al Akhdar is 10005, and Al Haj is 10006, maybe.

Tribunal Member: How did you know these people? What was your relationship to them?

Detainee: I do not want to answer this question because I feel it is related to the interrogations. I am sorry. This question about these three individuals, I have talked about them so much you can fill a CD. I can only tell you now, if one of those three are a terrorist, then I am a terrorist. If one of them is from Al Qaida, then I am from Al Qaida. If you imprison one of them for a terrorist act, then I am prepared to go to prison with him. I say these things because I know them as well as I know my wife and kids. That is all I can say about them

Tribunal Member: I have no further questions.

Detainee: Thank you.

Tribunal President: Can you tell me how long you have known the other Algerians you just named?

Detainee: Same as before, I cannot answer that question. The only reason I do not want to answer the question is because it is related or went into the interrogations.

Tribunal President: That might be true, but the Tribunal has not had the opportunity to read those interrogations. This is your opportunity to answer our questions, but you do not have to if you do not want to.

Detainee: I understand.

Tribunal President: Have you ever traveled to Afghanistan?

Detainee: Not only did I not travel to Afghanistan, but I never even thought of traveling to Afghanistan.

Tribunal President: Do you know anyone that lives in Afghanistan, or have you communicated with anyone that lives in Afghanistan?

Detainee: You mean here in prison?

Tribunal President: No. Prior to coming here?

Detainee: No. Never.

Tribunal President: I don't have any other questions. Mustafa, do you have anything else you would like to present to us?

Detainee: I just want to say a small thing. I hope that this is real. I am not berating you with these words, but this is something I don't want to keep inside. I hope this Tribunal is really real. I hope that a person who has made a mistake would admit to making a mistake. No matter who this person is. Even if he is the closest person to you. What I mean by this is, if America made a mistake by bringing me here to Cuba, not just because it is hard for them to admit a mistake was made, but to prevent me from leaving here, then bring all these accusations against me. I will tell you something else, if you have evidence, big or small, that I have any relationship with terrorism or if I helped any terrorists, I am prepared for any kind of punishment in any country. I am saying this to you now, and if you wish for me to, I will sign a piece of paper saying these same words. I know people and I talk to people, but I have no way of knowing they are terrorists or not. For me to know a person, and to know for sure if he is a terrorist and I am knowingly dealing with him, that is not true. My history is known. The Algerian government knows me. In the years of 1990 through 1992, I was a champion in Algeria. The Algerian government knows my very well. They know where I live, my wife, my kids, my father and my mother. I left Algeria and went to Croatia. I was working in that organization. The team I used to train with and train has maybe one Muslim. The rest are all Catholics and Orthodox. Those people knew me very well and they respect me very much. Never did I have any problem with anyone who was not Muslim. I lived with them. Never, did I ever go into a police station. I only went to get my driver's license or passports. But to go there for a problem, never. Maybe I had a speeding ticket or something like that. Any other problems involving fighting with people, never. Nothing like that. Then comes this problem. You can also verify this in Bosnia Herzegovina, the place I lived, and who I worked with, who I trained with on the team; did I ever have any problems, or if they knew if I am an extremist in my religion or a terrorist or anything. That is what I have.

Detainee (continued): Truthfully, I read the paper that was brought to me today (Exhibit R-38), the one from the lawyer. I swear to God that I was touched. It was very hard for me to read my wife and children are suffering. My wife cannot work because she has three children and she is a teacher. My wife had to go and live with her sister because she is unable to work and has no income. Thank God I had my salary when I was working in Bosnia Herzegovina. Maybe ministers in Bosnia did not have this salary. Thank God for my work with computers. For my wife to go from that to living with her friends and her sister; and my wife's sisters are helping her because some idiots acted stupidly and do not want to right their wrongs. They do not want to say that we made a mistake. Or they admit to making a mistake but they won't do anything about it. Today is the 11<sup>th</sup> of October, I think. In seven more days, I will have been in this prison for three years. I swear to God I will tell you something, if I had a relationship with Al Qaida, I swear I would not be scared of anyone and I would tell you I am from Al Qaida. I would not be concerned about America. If I had a relationship with terrorism, I would tell you I am a really a terrorist and I would not be concerned. When I tell you that I

ISN #10004  
Enclosure (3)  
Page 22 of 24

don't have a relationship, it is not because I am scared of you, it is because it is the truth. I don't have a relationship. So I hope that the mistake that you made; not you personally, you did not make this mistake, but those who are responsible, will fix this mistake. That is all I have.

Tribunal President: All evidence having been provided to this Tribunal, this concludes this Tribunal session. Personal Representative, do you want to present an updated Detainee Election Form?

Personal Representative: Yes, Ma'am. I am handing the Tribunal President an updated Detainee Election Form marked as Exhibit "D-C."

**Exhibit "D-C" is accepted into evidence by the Tribunal.**

Detainee: This election form says what?

Tribunal President: I will read it to you. It says, "The detainee wants to participate in the Tribunal." That is what allowed you to be here today.

Detainee: Okay.

Tribunal President: And it says that "You requested two witnesses. The witness will testify that you were never in the Bosnian Army and that you knew nothing of Al Qaida." It also says "The witnesses are 10006 and 10003. On 5 October the detainee determined he would not attend the Tribunal. Affirmatively declined to participate since all documents would not be presented to the detainee. On 11 October," which is today, "after reviewing additional unclassified information, the detainee elected to attend the Tribunal." Is that correct?

Detainee: Yes, it is.

Tribunal President: I am sorry, I did not hear your response. I want to make sure that we understand.

Detainee: Yes, that is correct.

Tribunal President: Okay. So I am assuming at this point we have all unclassified evidence. Recorder?

Recorder: Yes, Ma'am.

Tribunal President: Personal Representative?

Personal Representative: Yes, Ma'am.

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The Tribunal President instructs the Detainee on how he would be notified of the Tribunal results and the ARB process.

The open session of the Tribunal adjourned at 1421 hours, 11 October 2004.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.

[REDACTED]

Colonel, U.S. Army  
Tribunal President

ISN #10004  
Enclosure (3)  
Page 24 of 24

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UNCLASSIFIED

Sarajevo, Bosnia and Herzegovina  
March 13, 2002

The Ambassador

Ms. Nadja Dizdarevic  
Emila Zole 10  
Novi Grad  
Sarajevo  
Bosnia and Herzegovina

Dear Families:

Thank you for your letter dated February 13th, 2002. The individuals referred to in your letter posed a credible security threat to United States personnel and facilities as well as to the people of Bosnia and Herzegovina. We brought the matter to the attention of appropriate domestic authorities, who detained them before transferring them to U.S. control at U.S. request.

The United States military subsequently transferred them to the United States facility at Guantanamo Bay. This approach allows the United States to safely detain these individuals while continuing to investigate.

All detainees at Guantanamo are being provided correspondence materials, and the means to send mail, as well as the ability to receive mail, subject to security screenings. It is important to note, however, that incoming mail is subject to censoring, and correspondence deemed inappropriate by authorities may not get through. Below you will find the necessary routing information, which will permit you to send correspondence to the detainees:

Bensayah Belkacem (A-JJJA)  
Sapir Lahmar (A-JJJB)  
Mohamed Nechele (A-JJJC)  
Mustafa Ait-Idr (A-JJJD)  
Lakhdar Boumediene (A-JJJE)  
Hajj Omar Boudella (A-JJJF)

Exhibit D-6

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160 Camp X-Ray  
Washington, DC  
20355  
U.S.A.

Let me assure you that the United States has treated  
and will continue to treat all Guantanamo Bay detainees  
humanely.

Sincerely,



Clifford G. Bond

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DETAINEE ELECTION FORM

Date: 23 Sep 2004

Start Time: 1015

End Time: 1220

ISN#: 10004

Personal Representative: [REDACTED]  
(Name/Rank)

Translator Required? YES Language? ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

-----  
Detainee Election:

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

Personal Representative Comments:

Detainee will attend the Tribunal. He has request 2 witnesses. The witness will testify he was never in the Bosnian Army and he knows nothing about al Qaida. The witnesses are 10006 and 10003.

5 OCT 04, detainee determined he would not attend the Tribunal. Affirmatively declined to participate, since all documents would not be presented to him.

11 Oct 04, after reviewing an addition unclassified information the Detainee elected attend the Tribunal

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Personal Representative: [REDACTED]

Exhibit D-e

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**Exhibit D.**  
**Boudella CSRT Decision**  
**Report:**

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**UNCLASSIFIED**

**Exhibit D(a).**  
**UnClassified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (1)**

**UNCLASSIFIED**

**UNCLASSIFIED SUMMARY OF BASIS-FOR TRIBUNAL  
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL:           #12            
ISN #:           10006          **1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this Detainee is properly classified as an enemy combatant because he is considered as being part of, or supporting, forces associated with Al-Qaeda, which is engaged in hostilities against the United States and its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The unclassified evidence presented to the Tribunal by the Recorder asserted that the Detainee was affiliated with associated forces engaged in hostilities against the United States and its coalition partners. The Detainee chose to participate in the Tribunal process. He requested five witnesses (three of which were produced), requested two unclassified documents be produced, and made a sworn verbal statement. The Tribunal President found three requested witness reasonably available and two not reasonably available. For the two not reasonably available, alternative means of producing the witness's testimony were also not reasonably available. The Tribunal President ordered the unclassified document requested by the Detainee to be produced but the Recorder was unable to comply because the document could not be located. The Tribunal President directed the Recorder and Personal Representative to continue searching for the requested document and, if they were successful in locating it, to bring it to the Tribunal's attention so it could be introduced and considered as an exhibit on behalf of the Detainee. The Detainee, in his verbal statement, denied being affiliated with any terrorist organization. He also denied any involvement in any plan to attack the U.S. embassy in Sarajevo, Bosnia-Herzegovina. The Tribunal President's evidentiary and witness rulings are explained below.

**3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and D-b, and R-1 through R-33.

b. Testimony of the following persons: Mohammed Nechele, Mustafa Ait Idr, and Lakhdar Boumedienne. The internment serial numbers of these three detainees are included in the classified enclosure to this report (Enclosure (2)).

c. Sworn statement of the Detainee.

#### 4. Rulings by the Tribunal on Requests for Evidence or Witnesses

The Detainee requested the following witnesses be produced for the hearing (Note: Exhibit D-b denotes the Tribunal President's approval of the request as he deemed these witnesses relevant):

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Mohammed Nechele	Reasonably Available	Yes
Mustafa Ait Idir	Reasonably Available	Yes
Lakhdar Boumedienne	Reasonably Available	Yes
Planyah Muo	Not Reasonably Available	No
Razy Al-Monajad	Not Reasonably Available	No

Planyah Muo is the Detainee's father in law and has been since 1993. He was expected to testify as to the Detainee's background and activities. Razy al-Monajad was expected to testify as to the Detainee's background and work habits. Coordination was made with the Department of State in an attempt to secure these witnesses but according to the Department of State they could not be located. The other witness were fellow detainees and therefore were produced

The Detainee requested the following additional evidence be produced:

<u>Evidence</u>	<u>President's Decision</u>	<u>Produced?</u>
1. Copy of Court Document (apparently, a Bosnian Supreme Court Decision declaring him not guilty)	Not Reasonably Available	No
2. Copy of Humanity of The People Document (Bosnia) dealing with his detention in Cuba	Not Reasonably Available	No

The Detainee insisted that he had seen these documents since his detention in Cuba. The Personal Representative said he had tried to locate them but was told they were not here. The Tribunal President directed the Recorder and Personal Representative to conduct additional searching for this document, and for it to be produced if found.

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c. The Detainee is properly classified as an enemy combatant because he is considered as being part of or supporting forces associated with Al-Qaeda, which is engaged in hostilities against the United States or its coalition partners.

d. The Detainee acquitted himself well at the hearing. He was particularly respectful, appeared sincere, and apologized to the Tribunal for some of the responses given, and attitudes displayed, by his witnesses. He asked the Tribunal to consider his record of cooperative behavior while detained in Guantanamo Bay. He claims he does not consider the United States as an enemy and offered that he had had numerous opportunities to engage in terrorist activities against the United States (which he claims he has not done) or to evade custody while in B-H (which he claims he could have done but did not do). The Tribunal recommends that any Administrative Review Board convened in the future concerning this Detainee consider these matters, and, should the Board conclude that he no longer represents a danger to the United States or its allies, that he be considered for release to his home country.

c. As a side note, this Tribunal was originally scheduled for the panel for which [REDACTED] was Tribunal President (hence his approval of the witness requests as indicated in Exhibit D-b). However, due to [REDACTED] departure from Guantanamo Bay, Cuba on 16 October 2004 at the conclusion of his assignment, this case was reassigned to the panel for which I am Tribunal President.

#### **8. Dissenting Tribunal Member's report**

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

[REDACTED]

Colonel, U.S. Marine Corps  
Tribunal President

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ISN #10006  
Enclosure (1)  
Page 3 of 5

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**Exhibit D(b).**  
**Classified Summary of Basis**  
**for Tribunal Decision,**  
**Enclosure (2)**

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) and (b)(7) as it  
contains classified and law enforcement  
sensitive material.

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**Exhibit D(c). Exhibit R-1**

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (6 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal: AL HAJJ, Boudella

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is associated with al Qaida.
  - a. The detainee is associated with al Qaida:
    1. The detainee was arrested with Bensayah Belkacem, a known al Qaida associate, for International Terrorism by the Bosnia-Herzegovina authorities.
    2. Bensayah Belkacem had phone conversations with Abu Zubaydah, a senior aide to Usama Bin Laden, who was in charge of screening recruits for al Qaida training camps in Afghanistan.
    3. The detainee and others acted as an organized terrorist group and they were in contact with known al Qaida member, Abu Zubaydah.
    4. Detainee was arrested by Bosnian authorities in connection with a planned attack on the American embassy.
    5. Detainee is a member of the Mujahadin network. Also, detainee is likely a member of Armed Islamic Group of Algeria, a militant organization.
    6. Armed Islamic Group of Algeria is on the list of sympathizers and helpers of Usama Bin Laden's al Qaida.

Page 1 of 2

UNCLASSIFIED

Exhibit R-1

UNCLASSIFIED

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Page 2 of 2

UNCLASSIFIED

**Exhibit D(d). Exhibit R-2**

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Memorandum



To : Department of Defense Date 09/30/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
[REDACTED] OIC, CSRT

From : FBI GTMO  
Counterterrorism Division  
Asst. Gen. [REDACTED]

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
US9AG-10006DP

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 10006 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 02/27/2002  
FD-302 dated 05/02/2003

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

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Memorandum from [REDACTED]  
Re: REQUEST FOR REDACTION, 09/30/2004

If you need additional assistance, please contact Asst.  
Gen. Counsel [REDACTED] or Intelligence Analyst [REDACTED]  
[REDACTED]  
Intelligence Analyst [REDACTED]  
[REDACTED]

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**Exhibit D(e). Exhibit R-3**

UNCLASSIFIED



# HATE CLUB

**An in-depth look at al-Qaeda, the sprawling terror network through which Osama bin Laden exploits the borderless globe with a secret army driven by a ruthless new brand of extremism**

By MICHAEL ELLIOTT

*"You know that al-Qaeda exists from Algeria to the Philippines... it's everywhere."*

—from a conversation secretly taped by the Italian police on March 22; the speaker was Essid Sami ben Khemais, a Tunisian arrested the next month for alleged terrorist offenses

It was the worst crime in American history, and it has triggered the greatest dragnet ever known. The investigation into the atrocities of Sept. 11 has involved police forces across the U.S. and around the world. From Michigan to Malaysia, from San Diego to Ciudad del Este, Paraguay, law-enforcement agencies have been trying to figure out how the terrorists carried out their attacks, who helped them—and what they might do next. Along the way, the American public has been introduced to a confusing mass of names and faces and has learned of more links between them than any but the most nimble fingered could ever untangle. After nearly two months, there is much that we know about the global terrorist network that goes by the name of al-Qaeda—but an awful lot that is still hunch. Still, an international investigation by **TIME** into al-Qaeda's structure reveals that it is more global in its range, and more ruthless in its ideology, than all but its most dedicated students could have ever imagined.

The essential story of Sept. 11 is straightforward. A group of 19 men spent months in the U.S. preparing for the hijackings. The cell had earlier been headquartered in Hamburg, Germany, where its alleged ringleader, an Egyptian named Mohamed Atta, 33, had lived off and on for eight years. Atta is thought to have piloted Flight 11, the first to make impact; two of the other suspected pilots,

Marwan Al-Shehhi and Ziad Samir Jarrah, were also residents of the Hamburg region. The Hamburg cell, in turn, is thought to have been an operating unit of a worldwide network of terrorists called al-Qaeda, the name of whose reclusive leader is now known all over the world: Osama bin Laden.

Al-Qaeda had its origins in the long war against the Soviet occupation of Afghanistan. After Soviet troops invaded the country in 1979, Muslims flocked to join the local *mujahedin* in fighting them. In Peshawar, Pakistan, which acted as the effective headquarters of the resistance, a group whose spiritual leader was a Palestinian academic called Abdallah Azzam established a service organization to provide logistics and religious instruction to the fighters. The operation came to be known as al-Qaeda al-Sulbah—the "solid base." Much of its financing came from bin Laden, an acolyte of Azzam's who was one of the many heirs to a huge Saudi fortune derived from a family construction business. Also in Peshawar was Ayman Al-Zawahiri, an Egyptian doctor who had been a constant figure on the bewildering mosaic of radical Islamic groups since the late 1970s. Al-Zawahiri, who acted primarily as a physician in Peshawar, led a group usually called Al Jihad; by 1998, his organization was effectively merged into al-Qaeda.

In 1989, while on his way with his two sons to Friday prayers in Peshawar, Azzam was killed by a massive explosion. His killers have never been identified; Azzam had many enemies. But by the time of his death, the group around al-Qaeda were debating what to do with the skills and resources that they had acquired. The decision was taken to keep the organization intact and use it

# WORLDWIDE WEB

**COUNTRIES WITH KNOWN OR SUSPECTED AL-QAEDA CELLS IN LIGHT GRAY**

**ACTIVITIES WITH POSSIBLE ISLAMIC TERRORIST LINKS:**

- ★ ARRESTS/DETENTIONS
- TERRORIST ATTACK
- FOILED TERRORIST ATTACK
- ◐ FINANCIAL BACKING

**UNITED STATES**

- ★ Of a total 2,147 arrests, fewer than 10 may be of people with information about the hijackers or the Sept. 11 attacks
- World Trade Center in 1993 and 2001; Pentagon and Pennsylvania in 2001
- Plans to blow up various bridges and tunnels around New York City and L.A. airport on New Year's Eve 2000

**CANADA**

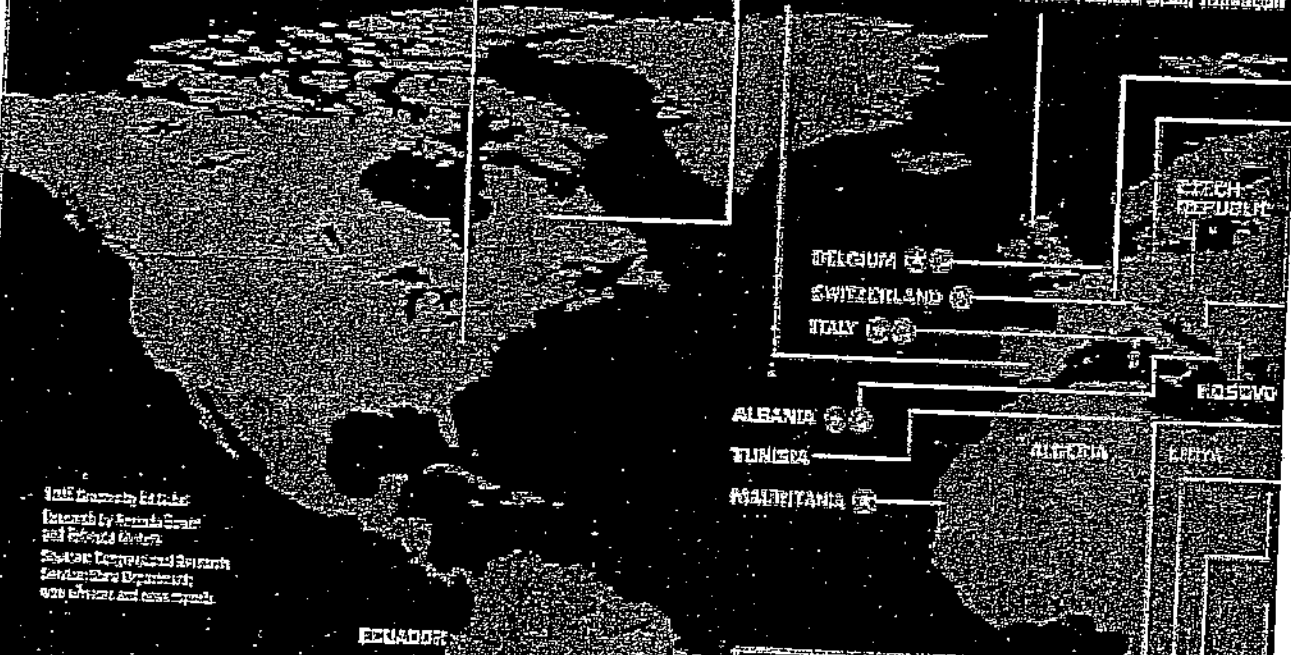
- ★ As many as 20 people have been taken into custody in possible connection with the Sept. 11 attacks, and one faces extradition to the U.S.

**BRITAIN**

- London in particular is seen by many as a terrorist recruiting zone
- ★ Key arrests include Latif Mansoor, who allegedly helped teach the hijackers how to fly; Manuel Daoud, a computer whiz suspected in the Paris plot; and Yasser al-Siri, who was charged last week in connection with the assassination of Afghan rebel leader Ahmad Shah Massoud

**SPAIN**

- Six members of an alleged sleeper cell picked up across the country since Sept. 11



**Italy** Security forces search for Osama bin Laden and his associates. Italian intelligence agencies are also active in the region.

**ARGENTINA, BRAZIL, PARAGUAY**

- ★ The area where all three countries meet is thought to be a terrorist financing center; banks are investigating dozens of accounts for links
- ★ Nineteen people in this "central bank" have been arrested, mostly on false documentation charges, and Paraguay has charged officials in 11 of its consulates with selling illegal passports and documents
- ★ Last November a Palestinian allegedly plotted to bomb the U.S. and Israeli embassies in Asunción

**URUGUAY**

- ★ Al-Said Hassan Mubasher, an Egyptian wanted for his alleged role in a 1997 attack on tourists in Luxor, Egypt, was arrested last July after fleeing through Uruguay in 1999. He is said to have trained in an al-Qaeda camp in Afghanistan
- ★ Last April U.S. embassies in Uruguay, Paraguay and Ecuador shut down for three days after receiving "credible threats" of attacks

**ISRAEL**

- ★ Israel says it has arrested two groups of suspected al-Qaeda operatives in Gaza and the West Bank

**SAUDI ARABIA**

- ★ At least half of the 19 hijackers are thought to have been Saudi
- ★ Saudi security services have carried out a small number of arrests of suspected supporters of the Saudi-born bin Laden
- ★ Five Americans were killed when a car bomb exploded outside a military base in Riyadh in 1995; 19 died in a truck-bomb attack two years ago

**EGYPT**

- ★ Authorities plan to put on trial 250 alleged members of three Islamist groups linked to al-Qaeda. All were arrested before Sept. 11

**SUDAN**

- ★ Khartoum was bin Laden's base from 1991 to '95. The U.S. responded to the 1993 embassy bombings with a missile assault on a suspected chemical weapons plant in the capital
- ★ The government has rounded up 30 foreign extremists since Sept. 11

# Osama bin Laden's network of influence reaches across five continents, creating a complex tangle of men, money and murder

## FRANCE

Eight people are still in custody as part of the so-called Beghal network. Djamel Beghal, first picked up in Dubai, has said he received his orders from bin Laden through Abu Zubaydah. Beghal described a plan to blow up the U.S. embassy in Paris. An earlier plot, uncovered last December, targeted Strasbourg cathedral.

## GERMANY

Alleged terrorist cells have been foisted in Munich, Hamburg and Frankfurt. Officials are most interested in the Hamburg operation, which included hijackers Mohamed Atta and Marwan al-Shehhi. These others thought to have helped in the planning of the Sept. 11 attacks are the subject of international arrest warrants.

## BOSNIA

NATO says it has disrupted a terror cell. The alleged instigator is linked to al-Qaeda, investigators say. The arrests uncoiled a comprehensive plot to attack Eagle Base, used by some 3,000 U.S. paratroopers, as well as the U.S. and U.K. embassies in Sarajevo.

TIME GRAPHIC BY ED GABEL

RESEARCH BY AMANDA BOWER AND REBECCA WINTERS

SOURCES: CONGRESSIONAL RESEARCH SERVICE; STATE DEPARTMENT; WIRE SERVICES AND NEWS REPORTS

## Who's Who in the Enemy Alliance

The top brass of al-Qaeda has wide-ranging ties to the shadowy world of international terror. A look at Osama bin Laden's lieutenants, their friends and alleged associates

### AYMAN AL-ZAWAHIRI EGYPTIAN

A physician whose group, al-Jihad, has effectively merged with al-Qaeda, al-Zawahiri, 50, is said to be the transforming mentor to bin Laden as well as his No. 2 man. Charged in connection with the 1981 assassination of President Anwar Sadat, he was convicted only of weapons possession.

### ABU ZUBAYDAH SAUDI PALESTINIAN

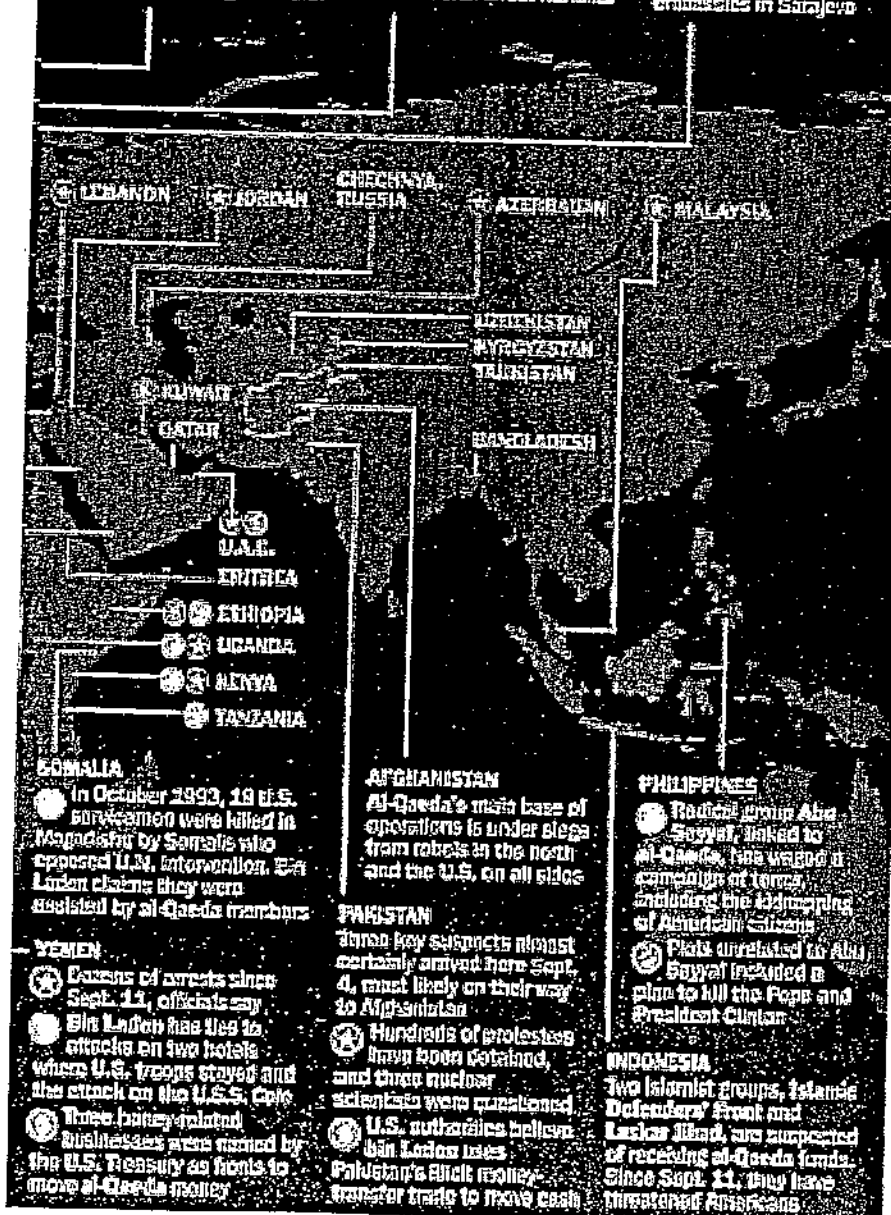
The only Palestinian in bin Laden's inner circle, the man reportedly nicknamed "the Mailman" coordinates international operations and helps select recruits for training in al-Qaeda camps.

### TOHIR YULDASHEV UZBEK

Condemned to death in absentia by the government of Uzbekistan, Yuldashev helps lead the Islamic Movement of Uzbekistan. The movement's armed wing, which trains in Afghan camps, has an estimated 6,000 fighters. The I.M.U. was part of an assassination attempt on Uzbek President Islam Karimov in February 1999, which left at least 15 dead and 100 wounded.

### AMIR KHATTAB SAUDI

Khattab, who commands rebels in Chechnya, trained in Afghanistan and was reportedly sent by bin Laden to support the breakout movement. Khattab is said to receive millions every month to finance camps that spend three months training (and, critics say, brainwashing) volunteers from all over the Muslim world.



## SOMALIA

In October 1999, 19 U.S. servicemen were killed in Mogadishu by Somalis who opposed U.S. intervention. Bin Laden claims they were assisted by al-Qaeda members.

## YEMEN

Dozens of arrests since Sept. 11, officials say. Bin Laden has ties to attacks on two hotels where U.S. troops stayed and the attack on the U.S.S. Cole. Three hijack-related businesses were named by the U.S. Treasury as fronts to move al-Qaeda money.

## AFGHANISTAN

Al-Qaeda's main base of operations is under siege from rebels in the north and the U.S. on all sides.

## PAKISTAN

Three key suspects almost certainly arrived here Sept. 4, most likely on their way to Afghanistan. Hundreds of protesters have been detained, and three nuclear scientists were questioned.

U.S. authorities believe bin Laden uses Pakistan's illicit money-transfer trade to move cash.

## PHILIPPINES

Radical group Abu Sayyaf, linked to al-Qaeda, has waged a campaign of terror, including the kidnapping of American citizens. Plans unrelated to Abu Sayyaf included a plan to kill the Pope and President Clinton.

## INDONESIA

Two Islamist groups, Islamic Defenders' Front and Laskar Jihad, are suspected of receiving al-Qaeda funds. Since Sept. 11, they have threatened Americans.

**KHADAFFY JANJALANI  
FILIPINO**

Janjalani is believed to have taken over as head of Abu Sayyaf, a radical separatist group terrorizing the southern Philippines in its quest to establish an independent Islamic state. Officials say the group was partly funded by bin Laden, and many of its members are trained in the Middle East. It is currently holding two Americans and at least 16 Filipinos hostage.

**MOHAMMED ATEF  
EGYPTIAN**

Ataf is bin Laden's military chief, and helped set up al-Qaeda networks in East Africa. He was indicted by the U.S. for the 1998 embassy bombings in Tanzania and Kenya.

**HASSAN HATTAB  
ALGERIAN**

Head of the Salafist Preaching and Combat Group, a three-year-old offshoot of Algeria's Armed Islamic Group. Many experts say the Salafists have been absorbed by al-Qaeda. Religious exerts believe the document found in hijacker Mohamed Atta's luggage bears signs of a Salafist tract.

**DJAMEL BEGHAL  
FRENCH ALGERIAN**

Arrested in Dubai in July for traveling on a false passport, Beghal later confessed to playing a prominent role in al-Qaeda's European operations, acting on orders from Abu Zubaydah. On the basis of Beghal's information, some of which he later retracted, authorities uncovered a plot to bomb the U.S. embassy in Paris.

**SAID BAHAJI  
MOROCCAN GERMAN**

Germany has issued an arrest warrant for Bahaji and fellow alleged Hamburg operatives Zakariya Essabar and Ramzi Bin alshibh, who almost certainly traveled back to Afghanistan, through Pakistan, before Sept. 11. All three are suspected of playing a significant role in planning the U.S. attacks.

**ZACARIAS MOUSSAOUI  
FRENCH MOROCCAN**

Moussaoui is a tantalizing suspect for U.S. authorities, but he isn't talking. Arrested in August on immigration violations, Moussaoui drew attention at a flight school because of his apparent lack of enthusiasm in learning how to take off or land. French authorities have long suspected him of involvement in terrorist activities. What does he know about Sept. 11?

to fight for a purer form of Islam. The initial target was not the U.S. but the governments of Saudi Arabia and Egypt, which al-Qaeda claimed were corrupt and too beholden to the U.S. It was only after the Gulf War, by which time bin Laden had moved his operations to Sudan (he would later be forced to shift back to Afghanistan), that he started to target Americans. To all but insiders, he first became notorious in 1998, when al-Qaeda operatives exploded truck bombs at the American embassies in Kenya and Tanzania, killing 12 Americans and hundreds of locals. Since then there has been a steady drumbeat of

attacks linked to al-Qaeda—some successful, some not—on American targets and those of U.S. allies around the world.

Al-Qaeda has its headquarters in training camps in Afghanistan. In addition to directing its own attacks, it acts as an umbrella group, financing and subcontracting operations to local networks like Algeria's Armed Islamic Group (GIA), a terrorist organization active throughout Europe. The camps in Afghanistan play a vital role. Whatever network they may originally have been aligned with, visitors to the camps meet men from other groups, forge relationships and acquire the stature of soldiers in a holy war. The high command of the group includes bin Laden, al-Zawahiri and Abu Zubaydah, a Saudi-born Palestinian who was identified in an American court case in July as the organizer of the camps and who investigators believe may be al-Qaeda's director of international operations.

Some of the best leads on al-Qaeda's directorate now seem to be coming from Djamel Beghal, a French-Algerian who is suspected of being an al-Qaeda ringleader and who was arrested in Dubai in July on his way from Pakistan to Europe. After being convinced by Islamic scholars in Dubai of the evils of terrorism, Beghal started talking. (He is now back in France and has attempted to retract his confession.) Beghal has said that while in Afghanistan in March, he received instructions from Abu Zubaydah on a bombing campaign against American interests in Europe, including the Paris embassy. "He's talking about very important figures in the al-Qaeda structure, right up to bin Laden's inner circle," a European official told TIME. "He's mentioned names, responsibilities and functions—people we weren't even aware of before. This is important stuff."

Though al-Qaeda has its roots in Afghanistan, investigators now think that the "Afghan" nature of the group is subtly changing. The war against the Soviets ended in 1991. Increasingly, al-Qaeda's captains in the field are too young ever to have fought in Afghanistan, though some may have joined Islamic brigades in Chechnya—or in Bosnia, as Abu Zubaydah did. Many of the new fighters were born and raised not in the Arab lands but in the Muslim communities of Europe, around which they travel with ease. And there is a growing sense that a number of them are "Takfiris," followers of an extremist Islamic ideology called Takfir wal Hijra (Anathema and Exile). That's bad news: by blending into host communities, Takfiris attempt to avoid suspicion. A French official says they come across as "regular, fun-loving guys—but they'd slit your throat or bomb your building in a second."

In addition to the ruthless nature of al-Qaeda's soldiers, investigators now also appreciate just how extensive are its tentacles. In mid-October, for example, NATO forces in Bosnia foiled a plot to attack U.S. and British targets there. Bensayah Belkacem, an Algerian thought to be at the center of a Bosnia-based terror group, had the number of Abu Zubaydah on a chit of paper in his apartment.

## When Terror Hides Online

Did you hear the one about Osama bin Laden hiding messages in porn websites? It sounds like one of those crazy Sept. 11 rumors, but it's actually a law-enforcement theory about how the al-Qaeda network disseminates instructions to operatives in the field.

It's no secret that bin Laden's terrorist army is Internet savvy. Hijacking ringleader Mohamed Atta made his reservations on Americanairlines.com. Some of his confederates seem to have communicated through Yahoo e-mail. And cell members went online to research the chemical-dispersing powers of crop dusters.

### How Secrets Are Concealed

#### DEVIL IN DETAIL

Hypothetically, a photo of a site to be attacked can be embedded in an innocuous image that is then posted on an existing website for terrorists to access for instructions

But secret Internet messages, known as steganography, may be the most insidious way bin Laden has taken his terrorist movement on line. Steganography, Greek for "hidden writing," allows messages to be slipped into innocuous picture and music files. The trick is that the insertions are so small they're impossible to detect with the naked eye, but easily retrieved through special software tools.

A terrorist mastermind could insert plans for blowing up a nuclear reactor in, say, the nose of a puppy on a pet-adoption website. Operatives in the field, told which nose to look at, could then check for their marching orders. Steganography is a fast, cheap, safe way of delivering murderous instructions. "It avoids the

operational security issues that exist anytime conspirators have a physical meeting," says Matthew Devost of the Terrorism Research Center. Terrorist watchers suspect al-Qaeda may be hiding its plans on online porn sites because there are so many of them, and they're the last place fundamentalist Muslims would be expected to go.

Even for netheads, steganography is a bit obscure. But bin Laden's followers may have learned about it when it burst on the pop-culture scene in recent movies like *Along Came a Spider*. The FBI has been close-mouthed on whether it has found any steganographic images from al-Qaeda. But a former government official in France has said that suspects who were arrested in September for an alleged plan to blow up the U.S. embassy in Paris were waiting to get their orders through an online photo:

Law enforcement is increasingly targeting terrorists' technology. After the Sept. 11 attacks, the FBI reportedly installed additional Carnivores, devices it has been using to surreptitiously read e-mail, on Internet service providers. The National Security Agency uses Echelon, a top-secret wiretapping device, to monitor e-mail, cell phones and faxes worldwide. And the antiterrorism law passed last month broadened law enforcement's powers to grab Internet communications.

Steganographic images can be detected through "steg analysis," a process of hunting for small deviations in expected patterns in a file. The hard part is knowing where to look in the vast expanse of the online world. Toughest of all to catch: so-called low-tech steganography, in which the message is conveyed overtly. A photo on a website with arms crossed could mean attack an East Coast nuclear power plant; a blue bandanna could mean West Coast bridges. "Sometimes," says Ben Venzke, a terrorism specialist at the security analyst firm IntelCenter, "the best technologies are the simplest ones."

—By Adam Cohen

On Oct. 28, Abu Sayyaf, a terrorist group in the Philippines that authorities believe has been supported in the past by al-Qaeda, bombed a food market, killing six people. And the Ugandan government announced that it had detained eight men on suspicion of belonging to al-Qaeda. How did one organization with an extremist ideology manage to acquire a reach that trembles governments from Bosnia to the Philippines to Uganda?

### THE BORDERLESS WORLD

"GLOABLIZATION MEANS INTERDEPENDENCE," SAYS EDMUND HULL, U.S. ambassador to Yemen and former State Department counterterrorism chief. "We have previously seen the benefits of this interdependence. Now we are seeing its risks." That goes to the heart of any attempt to understand al-Qaeda. For the past decade, globalization

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## Is He Osama's Best Friend?

How dangerous can an Afro comb and a plastic bottle of hot sauce be? When Officer Louis Pepe came by cell No. 6 at the Metropolitan Correctional Center in lower Manhattan on Nov. 1, 2000, he was distracted by a squirt in the face from the bottle before the sharpened comb was plunged like a bayonet through his eye and 2½ in. into his brain. The man in the cell, Mamdouh Mahmud Salim, then allegedly took the keys from the paralyzed Pepe and began to wander down the hall. Guards stopped Salim, and he didn't get away. Or did he?

Arrested and extradited from Germany in December 1998, Salim was a prize prisoner for the U.S. government, which originally planned to put him on trial with four others charged with the Aug. 7, 1998, bombing of the U.S. embassies in Africa. Salim had complained that he should not be tried with the others in the trial scheduled for February 2000 because he had not been charged with directly carrying out the bombings. The judge had refused to sever the charges, but the assault on Pepe gave the court no choice but to postpone his conspiracy trial. Salim, 43, will first be tried for the attempted murder of Pepe. Three weeks ago, on Oct. 18, all defendants in the embassy-bombing trial were found guilty and sentenced to prison for the rest of their lives.

Salim has made himself out to be small fry in the search for bin Laden associates. But could he be something bigger? The portrait painted of Salim in the embassy-bombing trial is of a powerful and malignant personality. Prosecutors described Salim (whose alias was Abu Hajar al Iraqi) not only

as one of Osama bin Laden's council of advisers, the Shura, but also as a key member of the fatwa committee, which helped formulate the theological justification for al-Qaeda's actions. Salim derived his prestige from being a religious scholar who has memorized the Koran, and he would alternate with bin Laden in delivering regular sermons to the al-Qaeda faithful. The government's star witness, a former top al-Qaeda operative, described Salim as bin Laden's "best friend." It was Salim, the prosecutors said, who provided al-Qaeda with a rationale for "collateral damage," citing an ancient fatwa calling for all-out war against pagan invaders, one that was likely to bring about the death of Muslim traders and civilians in the cross fire. If the civilian dead were indeed innocent, the argument went, they would be headed for heaven anyway.

The prosecutors provided evidence in the recent trial that Salim contributed more than theology. He was on the committee that helped al-Qaeda decide to relocate to Sudan in 1990 after the Afghan war. While Salim had told the Germans he handled finances for bin Laden's agriculture business, Thamar al Mubaraka, the prosecution's witness claimed that a significant part of one large farm owned by the company was used for training courses in explosives. The witness also said that Salim, who allegedly received a monthly salary of \$1,500; helped run bin Laden's Al Hijra Construction company, which ostensibly built roads and bridges but also had a permit to import explosives for construction use. The same witness said that Salim took him on a trip to a chemical-warfare-training facility in Sudan and was a critical link in the negotiations for an attempted \$1.5 million purchase of South African uranium in 1993.

*(continued on next page)*

has been understood as an economic process, rooted in the trade of goods and services. But the defining characteristic of our new world is not the movement of products or money but of people. Cheap air transport, the effects of decolonization and a population explosion in the poorer parts of the world have combined to create an unprecedented movement of humanity from one nation to another. Travel and emigration have broadened the mind and brought unparalleled opportunities to countless families. But they have also helped create havens for those seduced by the romance of terrorism.

French investigators believe Kamel Daoudi is one such recruit; his tale illuminates both the nature of modern terrorist cells and their global reach. Daoudi was the kind of child that immigrant parents dream of having. The son of Algerians who had immigrated to France, he took the tough post-high school exams a year early and started to study computer sciences at a university in Paris. But he

found the courses difficult, and according to reports, a family row exploded in 1999 when Daoudi's father found evidence of his son's appointments with psychiatrists. Daoudi left for Britain, his pockets bulging with the \$11,000 his family had saved for his education.

On Sept. 21, he made the same trip; this time, running not from his family but from the law. Daoudi slipped away from his apartment on the Boulevard John F. Kennedy after police across Europe started to round up the network that Beghal had assembled for his operations. (French investigators think Daoudi was the computer-and-communications whiz kid of the group.) Daoudi knew Britain well. He and Beghal had hung out there with Jerome Courtailler, one of two French brothers who had converted to Islam. For a while, Courtailler lived in south London with Zacarias Moussaoui, another French child of disappointed immigrant parents. Moussaoui grew up in the southern French town of Narbonne

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Salim admitted to German interrogators that he worked for bin Laden's business enterprises in Sudan, including Themar. But according to a transcript of his interrogation, he insisted that "my relationship with [bin Laden] was as an employee with a contract and monthly pay." When recruited to run the businesses, Salim said, he told bin Laden that "I was an electrical engineer, not a finance specialist. He said that was not important because he knew me to be an honest man and that I would manage."

Allan Haber, Salim's lawyer in the conspiracy case, says the prosecution's portrayal of Salim as a key bin Laden operative all comes down to the credibility of the government witness Jamal Ahmed al-Fadl and "whether or not you can believe a man who says he is a devout Muslim but steals money from his boss and tries to sell information to the government of Israel." (Al-Fadl sought protection with U.S. investigators after he embezzled \$100,000 from bin Laden.) The government says al-Fadl's testimony is accurate and can be corroborated.

When Salim was arrested in Munich, he said he had arrived in Germany for the first time in 1995, to buy electronics to set up an Arabic-language radio station in Sudan. The U.S. says the real goal was to get radio equipment that could be used by al-Qaeda to communicate with its operatives. The following year, however, found al-Qaeda in confusion: Sudan expelled bin Laden, and the group's members were scattered until their high command returned to Afghanistan. Salim was living in Dubai and by 1998 had made four more visits to Germany, ostensibly to look for a new wife and a car. "My wife had three operations on her uterus," he told interrogators. "I talked with my wife about this, and she agreed I should look for a second wife." (German police note that Salim's airfare from Dubai cost more than the car he hoped to purchase, a used Mercedes-Benz 230 station wagon.)

More important, Salim acknowledged to his German interrogators that he had opened an account at Deutsche Bank and that he gave signature power over the account to Mamoun Darkazanli, a Syrian businessman

who had settled in Hamburg in the 1980s and who has told reporters that he knew some of the Sept. 11 hijackers. Darkazanli attended the wedding of Said Bahaji, an alleged member of the cell that included suspects Mohamed Atta and Marwan Al-Shehhi. Bahaji's wedding album includes pictures of Atta and Al-Shehhi. Darkazanli's name is now on a list of 39 terrorists and organizations whose assets have been blocked by the U.S. Treasury Department. He remains, however, free to roam about Hamburg.

If Salim had been on trial for conspiracy in the embassy bombings, the U.S. would potentially have been able to establish his intimacy with the highest levels of al-Qaeda. In that case, the Darkazanli connection might be more than a tantalizing possibility: a clear link between a "best friend" of bin Laden's and someone in contact with the Sept. 11 hijackers.

In the past five years, al-Qaeda officials have shown deep concern over the secrets held by its high-ranking members. When their finance chief was nabbed by the Saudis in 1997, there were discussions about assassinating him before he could turn information over to Riyadh and the U.S. When the head of the military committee drowned in a ferry accident in Lake Victoria in Kenya in the spring of 1996, al-Qaeda agents were sent to verify that he was indeed dead and that no secrets had filtered out. But if Salim is a big shot who knows too much, al-Qaeda doesn't have to worry about him for a while. His trial for the attempted murder of Pepe was scheduled to begin the week of Sept. 17 and has been put off until early next year because of the logistical and bureaucratic chaos in lower Manhattan, where the court system is located. His conspiracy trial has not even been scheduled. The planes that devastated lower Manhattan have made sure that whatever secrets he holds will take their time coming to light.

—By Howard Chua-Eoan.

With reporting by Charles P. Wallace/Berlin

but left for Britain in 1992 and took a degree at London's South Bank University. Earlier this year, he enrolled in an Oklahoma flight school that had been visited by two of the Sept. 11 hijackers, and German authorities say he had called the house in Hamburg used by Atta. In August, after suspicious behavior at another flight school in Minnesota, Moussaoui was arrested on immigration charges. Today he is incarcerated in the Metropolitan Correctional Center in Manhattan, refusing to speak to investigators.

Daoudi, who was picked up in the British town of Leicester, sits silent in a French jail. "He isn't giving an inch," says a French official. His lawyer denies that Daoudi has ever been involved in plotting terrorist attacks.

Children of immigrants, Muslims in Europe, highly skilled, Daoudi and Moussaoui epitomize the kind of person investigators now think provides some of al-Qaeda's key recruits. Above all, both men were true global citizens: Moussaoui, a child of the warm south, ended up in

## TERRORIST HITS AND MISSES

### A CHRONOLOGY OF MAYHEM

#### ATTACK

DEC. 29, 1992 ADEN, YEMEN

One hundred U.S. servicemen had just left the Gold Mohur Hotel, on their way to duty in Somalia, when the bomb hit. It killed two people in the hotel and seriously wounded four tourists. Two suspects reportedly had 23 bombs, two antitank mines, dynamite and machine guns.

#### ATTACK

FEB. 26, 1993 WORLD TRADE CENTER, NEW YORK CITY

The first attempt to bring down the Twin Towers resulted in six deaths and more than 1,000 injuries. The al-Qaeda organization was never mentioned at the trial of convicted mastermind Ramzi Yousef, but he was later convicted of other foiled plots that authorities suspect had al-Qaeda links.

#### ATTACK

OCT. 3, 1993 MOGADISHU, SOMALIA

Bin Laden claims he supplied weapons and fighters to Somalis involved in a fierce battle that left 18 U.S. servicemen dead.

#### FOILED

LATE 1994, EARLY 1995 MANILA, PHILIPPINES

Then-fugitive Ramzi Yousef had already slipped out of the U.S. and the Philippines when officials investigated an explosion in a Manila apartment occupied by two people linked to him. Investigators discovered plots to assassinate the Pope and President Clinton during visits to the Philippines and to explode a dozen commercial jets over the Pacific.

#### FOILED

JUNE 26, 1995 ADDIS ABABA, ETHIOPIA

An assassination attempt on the motorcade of Egyptian President Hosni Mubarak was unsuccessful.

#### ATTACK

NOV. 13, 1995 RIYADH, SAUDI ARABIA

A car bomb at a U.S.-run training facility for the Saudi National Guard killed five Americans and two Indians. Four Saudis confessed on national television (they were later beheaded) and said they were "inspired" by bin Laden.

#### ATTACK

JUNE 25, 1996 DHAHRAN, SAUDI ARABIA

A massive truck bomb at the Khobar Towers apartment compound, where hundreds of U.S. Air Force personnel were stationed, killed 19 U.S. airmen and wounded hundreds more.

#### ATTACK

AUG. 7, 1998 DAR-ES-SALAAM, TANZANIA & NAIROBI, KENYA

Truck bombs hit U.S. embassies in both cities, killing 224, including 12 Americans. Bin Laden and 20 others were later indicted; four received life sentences.

#### FOILED

DEC. 14, 1999 PORT ANGELES, WASH.

Alert U.S. Customs agents noticed that Ahmed Ressay was sweating—in winter—while waiting to cross from Canada into the U.S. In his trunk, they found explosives. Ressay later confessed to a plot to blow up LAX airport.

#### FOILED

DECEMBER 1999 AMMAN, JORDAN

A tip to local intelligence officials revealed a plot to kill U.S. and Israeli millennium revelers by bombing a fully booked hotel and prominent Christian sites.

#### ATTACK

OCT. 12, 2000 ADEN, YEMEN

A boat laden with explosives rammed the U.S.S. *Cole*, killing 17 sailors and wounding more than 30. Bin Laden, at his son's wedding, wrote an ode to his supporters who carried out the attack: "The pieces of the bodies of the infidels were flying like dust particles."

#### FOILED

DEC. 25-26, 2000 STRASBOURG, FRANCE

German investigators picked up four men across the Rhine River in Frankfurt on the eve of what they said was a planned bomb assault on Strasbourg's cathedral and market.

#### ATTACK

SEPT. 11, 2001 NEW YORK CITY, WASHINGTON, PENNSYLVANIA

Four hijacked passenger airliners crashed into New York City's two tallest buildings, the Pentagon and a field in rural Pennsylvania. Thousands were killed.

#### FOILED

SEPT. 13, 2001 PARIS AND BRUSSELS

Evidence of plots to bomb the U.S. embassy in Paris, and possibly also NATO headquarters in Brussels, was uncovered after the earlier confession of Djamel Beghal. The information, despite being partially retracted, led to arrests.

#### FOILED

OCT. 8, 2001 SARAJEVO, BOSNIA

NATO officials say they disrupted an al-Qaeda cell that was planning to attack the U.S. embassy and Eagle Base airfield, used by some 3,000 U.S. peacekeepers.

—By Amanda Bower

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the state where ice fishing is a favorite sport. As they dig deeper, law-enforcement agencies are beginning to understand just how effectively globalization has spread terrorism around the planet.

Consider two countries half a world apart and far from the Islamic heartlands: the Philippines and Britain. It was in Manila, that most Catholic of cities, that Mohammed Sadeek Odeh found his vocation. Sentenced to life imprisonment on Oct. 18 for his part in the 1998 bombings of the American embassies in Kenya and Tanzania, Odeh seemed to have lived the predictable life of an al-Qaeda operative—he was born to exiled Palestinians in Saudi Arabia and grew up in Jordan. Yet he turned to radical Islam while studying engineering in the Philippines. It was there that Odeh first saw and heard videos and taped messages from Abdallah Azzam. In 1990 Odeh moved to Pakistan, and from there to the camps in Afghanistan and a new life as a soldier in al-Qaeda.

Other Muslims who had studied in the Philippines maintained links there. It was from Manila that Ramzi Yousef, the convicted mastermind behind the first World Trade Center bombing, hatched a plan to blow up 12 American airliners as they flew over the Pacific. In the mid-1990s, Mohammed Jamal Khalifa, married to one of bin Laden's sisters, allegedly funded Islamic schools in the south of the country, where Muslim insurgents have been fighting for years. The Filipino government has long claimed that Abu Sayyaf, the most bloodthirsty of the groups—its specialty is beheadings—has been supported by al-Qaeda. Abdurajak Janjalani, the group's late founder, fought in Afghanistan, reportedly with bin Laden and Yousef. The links may be a thing of the past; these days Abu Sayyaf's style runs more to kidnapping and ransom than to jihad. Still, Philippine President Gloria Macapagal Arroyo recently said Khalifa had offered to secure the release by Abu Sayyaf of 18 hostages, including an American missionary couple.

About the only thing that Manila has in common with London is damp—that and a reputation for giving succor to terrorist supporters. Britain has always had a habit of providing safe haven to political refugees; that's why Karl Marx is buried in Highgate cemetery. But in the past 20 years, says Neil Patrick, a Middle East analyst at the Royal United Services Institute, London has become "the capital of the Arab world." As they used to say in Britain: Whoever lost the Lebanese civil war, London won it. With Beirut in ruins, banks relocated from Lebanon; they were followed by Arabs from Saudi Arabia and the gulf who summered in Kensington Gardens, journalists, members of opposition groups—and radical Islamic clerics.

One such preacher, Abu Hamza al-Masri, arrived in 1981, having left one eye and both hands in Afghanistan. He was granted British citizenship in 1985, and his mosque in Finsbury Park, tucked among Victorian row houses one tube stop from Arsenal's soccer stadium, has become famous worldwide for preaching jihad. Mous-

sawi, the Courtailler brothers and Beghal all attended prayers there. Beghal is said also to be a follower of Abu Qatada, a radical who preached jihad from a community center on Baker Street and whose bank account, allegedly with \$270,000 in it, was frozen by the Bank of England in mid-October.

London's dirty secret is that it has long been a recruiting ground for terrorists. French authorities moan with frustration at the lack of British cooperation. For years the French were unable to get London to extradite suspected members of the Algeria-based CIA, responsible for a wave of bombings in Paris in the mid-1990s. The U.S. hasn't always had better luck; Americans have been trying to get their hands on Khalid al-Fawwaz, a London-based Saudi alleged to have set up an office for bin Laden in 1994 and now wanted for trial in relation to the African embassy bombings. (Al-Fawwaz's legal maneuverings have just reached Britain's highest court.)

The gears of British justice are starting to grind more quickly. London has detained and questioned a number of Sept. 11 suspects, including Lotfi Raissi, an Algerian alleged to have helped train the suicide pilots in the attacks. And last week Yasser al-Siri, whose bookstore and website are well known in London, was charged with conspiracy to murder Ahmed Shah Massoud, the leader of the anti-Taliban Afghan Northern Alliance. Massoud died after assassins bombed his headquarters on Sept. 9.

But al-Siri's case demonstrates the oddities of the international legal system. He is in Britain on asylum from Egypt, where he was sentenced to death for the attempted murder of the Prime Minister in 1993, a charge he denies. "That was a military court," he told TIME before his arrest. "I'm a civilian." Governments across Western Europe, their feet held to the fire by strong civil-liberties groups, have been protective of the rights of refugees and asylum seekers. And while the European Union has demolished barriers to the movement of goods and people, its 15 nations have been slow to develop common institutions of criminal justice and investigation. For Atta and his cell of alleged conspirators in Hamburg, the characteristics of modern European life were a godsend. In addition to the hijackers known to have lived there, other men alleged to be part of the Hamburg cell have had arrest warrants issued for them: Said Bahaji, Zakariya Essabar and Ramzi Binalshibh. German officials believe that last spring both Essabar and Binalshibh tried to get to the U.S. to take flying lessons. The three almost certainly arrived in Pakistan from Germany on Sept. 4 and have since gone to ground—possibly in Afghanistan.

Hamburg was an ideal long-term base; 1 in 7 of the city's population is foreign, as is 1 in 5 of the students at Atta's college. (Foreign students pay no tuition in Germany.) Atta and his friends could have stayed as long as they liked—Germany invented the perpetual student—since they had legal residence, could travel freely around the E.U. or leave it for a period, without arousing suspicion. It is hard to think of a way of life that so epitomized

the promise of a borderless world and then perverted globalization to such an evil end.

### YOUNG AND RUTHLESS

AFTER SEVEN WEEKS OF INVESTIGATIONS THERE IS NO HARD evidence that links the Hamburg cell to any other. There are fragments of a puzzle—Atta made a 10-day trip to Spain from Miami in July that continues to bother investigators, while French sources still think that Moussaoui may be connected to the Hamburg cell—but many pieces are missing.

For example: Was Mohammed Bensakhria, an Algerian arrested in June by Spanish police, bin Laden's key European lieutenant? If so, is there an American equivalent—and has he been picked up in the dragnet after the attacks? Did al-Qaeda's reputed training-camp chief Abu Zubaydah leave Afghanistan before Sept. 11, as European officials believe, and if so, where is he and what is he doing?

On one matter, however, European investigators are clear: there is something truly ruthless about the suspected terrorists they are finding. After six Algerians were picked up in Spain in September, police found videotapes in the apartment of one of the men. One tape showed four Algerian soldiers, with their throats cut, dying in a burning jeep.

For experts in terrorism, such incidents are suggestive. In Egypt in the 1960s, the Islamic ideology Takfir wal Hijra began to win adherents among extremist groups. One of them, the Society of Muslims, was led by Shukri Mustafa, an agricultural engineer. Mustafa denounced other Muslims as unbelievers and preached a "withdrawal" into a purity of the kind practiced by the Prophet Muhammad when he withdrew from Mecca to Medina. The ideology is particularly dangerous because it provides a religious justification for slaughtering not just unbelievers but also those who think of themselves as Muslim. Intensely undemocratic—for to accept the authority of anyone but God would be a blasphemy—Takfir wal Hijra is a sort of Islamic fascism.

European analysts now believe that Takfir thinking has won converts among terrorist groups. Beghal is Takfiri, and Daoudi is thought to be. Roland Jacquard, one of the world's leading scholars on Islamic terrorism, says flatly, "Atta was Takfiri." It is not just soldiers of al-Qaeda who may be following the Takfir line. Mustafa was executed in 1978, but his ideas lived on; the beliefs of al-Zawahiri's Al Jihad were dominated by Takfiri themes. Azzam Tamimi, director of the Institute of Islamic Political Thought in London, says of Zawahiri, "He is their ideologue now... His ideas negate the existence of common ground with others."

Bin Laden and al-Qaeda may have learned, by violent experience, to preempt and harness the new fanaticism. In late 1995, bin Laden's compound in Khartoum was attacked by gunmen believed to be Takfiri. A Sudanese

## The Suspects: a Bosnian Subplot

The conversation was in code, but to trained ears it was easily understood. Picked up by U.S. listening devices on Oct. 16 in Sarajevo, it ranged in topics from the bombing in Afghanistan to "what the response should be here," a senior Bosnian official told TIME. U.S. and British targets in Bosnia were mentioned. But it was the sign-off that got listeners' attention: "Tomorrow we will start." Both countries shut down their embassies and branch offices overnight. Using mobile-phone-card registration numbers, Bosnian police tracked down and arrested both callers—Algerian nationals with Bosnian citizenship. Within 72 hours three others, also Algerian born, were in custody in a Sarajevo prison, bringing the number of terror suspects apprehended in Bosnia in the past month to at least 10. In the process, NATO uncovered a separate plot to attack Eagle Base, the airfield used by some 3,000 U.S. peacekeepers in the country. "We are confirming the presence of the al-Qaeda network in Bosnia," said a spokesman for NATO-led peacekeepers. The arrests, he added, had "disrupted" the network, but "it has not been destroyed. Investigations are continuing."

### Belkacem made 70 calls to Afghanistan between the day of the U.S. attacks and his arrest

Direct links to bin Laden focus on just one man, the apparent leader of the Algerian cell, Bensayah Belkacem, 41, alias Mejd, lived with his Bosnian wife and two children in the central town of Zenica until his arrest last month. Combing through his dingy ground-floor apartment, investigators found two sets of identity papers (Algerian and Yemeni), blank passports and on a small piece of paper the number of a senior bin Laden aide, Abu Zubaydah, himself a veteran of the Bosnian war. Investigators say he is now in charge of screening recruits for al-Qaeda training camps in Afghanistan. According to phone transcripts, Zubaydah and Belkacem discussed procuring passports. There was more. Belkacem made 70 calls to Afghanistan between Sept. 11 and his arrest. U.S. officials are particularly interested in the fact that he repeatedly sought a visa to leave Bosnia for Germany just before the terrorist attacks, according to a source close to the investigation.

The other suspects are mostly foreign-born nationals and belong to a community of about 200 ex-mujahedin who came to Bosnia to fight alongside fellow Muslims during the war and later settled in the interior, often marrying Bosnian women and working at humanitarian agencies. Saber Lahmar, the Algerian who allegedly placed the incriminating phone call on Oct. 16, served time in Bosnia for auto theft before being pardoned in 2000. He worked at the Saudi High Commission for Relief, an agency that has given \$500 million to Bosnia. Others, according to local reports, worked at the Red Crescent society, Taibah International—a Saudi group—and Human Appeal. Bosnian authorities say that they are stepping up surveillance of aid agencies and their staffs.

After the latest arrests, the U.S. reopened its embassy, released a statement saying that the specific threat "appears to have passed," and thanked Bosnian authorities for their swift action. But officials tell TIME that there are five more alleged terrorists whom police and peacekeepers are seeking in the rugged hills of central Bosnia. And so, as elsewhere in the world, the hunt continues.

—By Andrew Purvis/Sarajevo

friend of bin Laden's who questioned the surviving attacker said, "He was like a maniac, more or less like the students in the U.S.A. who shoot other students. They don't have very clear objectives." By the time al-Qaeda had resettled in Afghanistan, ideological training was an integral part of the curriculum, according to a former recruit who went on to bomb the U.S. embassy in Nairobi. Students were asked to learn all about demolition, artillery and light-weapon use, but they were also expected to be familiar with the fatwas of al-Qaeda, including those that called for violence against Muslim rulers who contradicted Islam—a basic Takfiri tenet. French terrorism expert Jacquard describes Takfiri indoctrination this way: "Takfir is like a sect: once you're in, you never get out. The Takfir rely on brainwashing and an extreme regime of discipline to weed out the weak links and ensure loyalty and obedience from those taken as members."

The results of the boot camps are diehard but undetectable soldiers of the movement. "The Takfir," says Jacquard, "are the hard core of the hard core: they are the ones who will be called upon to organize and execute the really big attacks." French officials think that Takfiri beliefs have bred a distinct form of terrorism. "The goal of Takfir," says one, "is to blend into corrupt societies in order to plot attacks against them better. Members live together, will drink alcohol, eat during Ramadan, become smart dressers and ladies' men to show just how integrated they are."

For law-enforcement officials, the Takfiri connection is terrible news. By assimilating into host societies—some won't even worship with other Muslims—it's easy for Takfiris to escape detection. Those stories of the Sept. 11

## What-Makes Youths Volunteer?

To British lawyer Anjem Choudary, 40, a British passport means very little. For a true Muslim, he says, "a British passport is no more than a travel document." Abu Yahya, 26, a Londoner and veteran of military training camps in Kashmir and Afghanistan, agrees: "Our allegiance is solely to Allah and his messenger, not to the Queen and country. Nationality... means nothing."

Choudary and Yahya belong to the extremist Islamic group al-Muhajiroun, and though they speak for only a tiny fraction of Britain's 2 million Muslims, their views received grim publicity last week with the news that three British-born Muslims had been killed in Kabul—allegedly in a U.S. bombing raid on a Taliban compound—after volunteering for the jihad.

The deaths of the three young men shocked their families. In Crawley, an industrial town 33 miles south of London, the mother of Yasir Khan, 28, insisted her son had gone to Pakistan for humanitarian work. In Luton, 34 miles north of London, the parents of computer-engineering student Afzal Munir and taxi driver Aftab Manzoor, both 25, weren't aware the two had joined up. Both lived with their parents in modest suburban houses in this quiet town that is home to 22,000 Muslims.

Many Muslims in Britain, however, are loudly anti-American and highly critical of the bombing in Afghanistan. Al-Muhajiroun is capitalizing on this anger. The group had been saying for weeks that Britons were flocking to the bin Laden cause, much as Jewish youths went to Tel Aviv in 1967 to fight in the Arab-Israeli war. In Lahore, Pakistan, last week a spokesman—British university graduate Abu Ibrahim—put the numbers at between 600 and 700. British authorities, however, speculated that volunteers probably amounted to a few dozen. Conservative peer Norman Tebbit suggested that it would be treason for British citizens to take up arms against Anglo-American forces. Defense Secretary Geoff Hoon warned that those who did fight for the Taliban might face prosecution should they return.

The jihad volunteers are mostly from first-generation British families and feel oppressed by the stresses of biculturalism, suggests Mounir Daymi, executive director of Britain's Muslim Students Society. This alienation is felt most deeply in the poorer communities. That's where you will find "some people who want the clash of civilizations to happen," Daymi says. Adam Armstrong, 35, a Luton teacher who converted to Islam in 1989 because he felt "something was missing" in his life, endorses that view. The volunteers, however few, are "devout Muslims, often university students," he says, the sort of idealists who used to go to Chechnya and now go to Afghanistan. Asked why mostly Britons seem to have volunteered so far, he said that Muslims are better organized in Britain, often have families in Pakistan or Kashmir and enjoy greater freedom of movement. There are no national identity cards, giving authorities less knowledge of their whereabouts.

Most British Muslims reject al-Muhajiroun's militant campaigning; fellow Muslims in Luton have been giving the hard-liners a rough time. Al-Muhajiroun leaflets have been banned from Luton's Central Mosque, and last week the local al-Muhajiroun leader, known simply as Shahed, was attacked in the street after he staged a noisy demonstration in support of the Taliban. Although Daymi of the Muslim Students Society rejects al-Muhajiroun's message, he does believe that now is the time for jihad—but not the kind others are pursuing. "In these days of war, our jihad is to show the peaceful face of Islam," he says. "Retaliation and revenge will just lead to more retaliation and revenge. You can defend your religion peacefully." That may be the kind of jihad worth joining.

—By Helen Gibson. With reporting by Jeff Chu/Birmingham and Ghulam Hasnain/Karachi

hijackers drinking in bars and carousing in Las Vegas may now have an explanation. Jarrah's cousin Salim, who lives in the German town of Greifswald, claims that they "used to go to church more than to the mosque." Jarrah, says Salim, loved discos—"We didn't need veiled woman and all that"—and sneaked shots of whiskey during a family wedding. He makes Jarrah sound like a normal guy, and normal guys aren't easy to catch.

## BOLTING THE DOOR

THOSE CHARGED WITH CATCHING TERRORISTS WON'T STOP trying. And governments are reassessing their policies on immigration, asylum and open borders. New legislation is promised in Canada, Britain and Germany; the talks this year when Mexican and American officials seriously considered not tightening, but liberalizing, their immigration policies now bear the sad echo of a lost world.

The American refugee program, which had been responsible for bringing about 80,000 people into the U.S., is barely alive; President Bush hasn't signed its annual authorization. Last week Bush announced further measures to bolt the nation's door, including the formation of a Foreign Terrorist Tracking Task Force to coordinate federal efforts to keep terrorists out and hunt them down if they slip in. Authorities will now check to see that those who enter the U.S. on student visas actually attend school. But there is an air of desperation to the proposals. "This was not an immigration failure; it was an intelligence failure," says Charles Keely, professor of international migration at Georgetown University.

In Washington, the Immigration and Naturalization Service is regarded as a mess; even its spokesman, Russ Bergeron, says it has "languished for decades." In 1996 Congress told the INS to set up a computer system to track those who come into the U.S. on student visas; but with some 600,000 such people in a country with more than 22,000 educational institutions, the system is not yet up

and running. Only one of the 19 hijackers entered on a student visa. Can screenings in foreign countries be tightened? Maybe, but all 19 were run through a computerized "watch list" of suspected terrorists when they applied for visas (at least six were interviewed personally). Nothing turned up. In any event, as Kathleen Newland, co-director of the Migration Policy Institute in Washington, says, "The facts remain the same." Globalization will continue to spin people around the world. The U.S. will continue to have two enormous land borders with peaceful neighbors; we're never going to see watch towers along the 49th parallel. Each year, says Newland, there are 489 million border crossings into the U.S., involving 127 million passenger vehicles; each year, 820,000 planes and 250,000 ships enter U.S. airspace or waters. However terrorism is beaten, it won't be by American border controls.

Will it be by war? In the immediate aftermath of Sept. 11, there was a hope that police work might be able to rid the world of al-Qaeda and its associates. But the more we know of bin Laden's group, the less that seems likely, and not just because its operatives are ruthlessly fanatic.

Perhaps the single most important truth learned in seven weeks is the existence of a creepy camaraderie, an international bond among terrorists. Those ties are forged in Afghanistan. "The one thing that absolutely everyone involved in terrorist groups has in common," says a European official, "is passage through the al-Qaeda camps. When leaders are sent from Afghanistan to start organizing people, there are no questions asked: the camp experience allows everyone to recognize the bona fides or jihad." The B-52s pounding away from 40,000 ft. may not look like sleuths and cops. But if al-Qaeda's sinister appeal and global reach are ever to be broken, the bombers too must play their part.

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—Reported by Bruce Crumley/Paris, Helen Gibson and James L. Graff/London, Scott MacLeod/Cairo and Viveca Novak/Washington, with other bureaus

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From *Time*, November 12, 2001, pp. 58-68. © 2001 by Time, Inc. Magazine Company. Reprinted by permission.

**UNCLASSIFIED**

**Exhibit D(f). Exhibit R-4**

**UNCLASSIFIED**

UNCLASSIFIED

Jan 12 2001

BiH Federation  
BiH Federation Supreme Court  
KI-101/01

Footnote # 3 page 2

Sarajevo, Oct 30, 2001.  
Jasminka Putica, BiH Federation Supreme Court investigative judge in the process against Belkacem Bansayah et alia, because of the commission of criminal act as defined in Article 168, paragraph 1 of the FBiH Penal Code tied to Article 20, paragraph 1 of the FBiH Penal Code and Article 353, paragraph 1 of the FBiH Penal Code, and based on Article 151, paragraph 1&2 of (ZKP?), on Oct 30, 2001. issues this

**RESOLUTION**

**Investigation order Against accused:**

1. ~~XXXXXXXXXXXXXXXXXXXX~~ son of Ahmed & Alia, nee Esabahi, born on Sep 10, 1968 in Miswar, Sarajevo, residing at 124 Gorazdanska-Lukova Polje, Zenica. Currently detained at Zenica jail by Zenica County Court order.

SEE PAGE 3

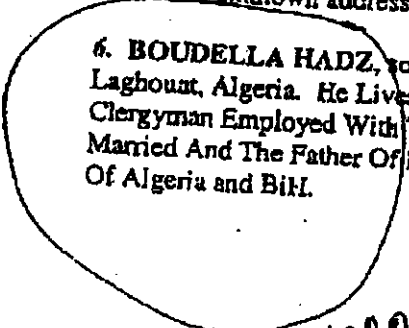
2. **SABER LAHMARA**, son of Mahvud & Akila, nee Sheih, born on May 22, 1969 in Constantine, Algeria, residing at 24 Mahmutovac in Sarajevo, teacher of Arabic language employed by Saudi High Committee Islamic Center. Married with one child; Muslim, Algerian citizen. Identity determined by passport #0705315 issued by the Algerian Embassy in Rome. Currently in detention.

3. **AIT IDIR MUSTAFA**, son of Hashemi & Sadia or Tasadi, nee Sachret, born on July 9, 1970 in Sidi Mhamed, Algeria, residing at 26/1 Tome Mendesa, Sarajevo. Citizen of Algeria & BiH, holds BiH pasaport #9699980 & Algerian passport #0189352 which was used to determine his identity. Currently in detention.

4. **KHALED EL ARBED**, born on 30 oct 1972 in tripolj, other information is unknown, unknown address

5. **ATIF MUNASSUR** aka "ABU NASAR", originates from alzir, other information is unknown, unknown address

6. **BOUDELLA HADZ**, son of Omar and Ajsa Nee Boudella, born on 18 Apr 1965 in Laghouat, Algeria. He Lives In Sarajevo on Dobojska Street, Number 1/4. He Is A Clergyman Employed With The Humanitarian Organization "Human Appeal. He Is Married And The Father Of Five Minor Children. He Is Arab, A Muslim And A Citize Of Algeria and BiH.



10006

TB: RM

Page 1 of 3

UNCLASSIFIED

Exhibit R-4

7. BOUMEDIENE LAKHDAR, Son Of Kada And Dzebli Rahma, Born On 27 Apr 1966 In Aynsultan, Algeria. He Lives In Sarajevo On Semira Fraste Street Number 16. He Is A Mechanic And An Administrator. He Is Employed With The Humanitarian Organization "Crveni Polumjesec" From The United Arab Emirates. He Is Married And The Father Of Two Minor Children. He Is Muslim And a Citizen Of Algeria And BiH

8. NECHILE MOHAMED aka "SHARFULDI", Son Of Abdel Kadera And Keljurn Nee Keljum, Born On 2 Apr 1968 In Laghvat, Algeria. He Lives In Bihac On Zavnobih Street Number 16/4. He Is An Administrator Employed With The Humanitarian Organization "Crveni Polumjesec" Bihac Office. He Is Married And The Father Of 2 Minor Children. He Is Arab, Muslim And A Citizen Of Algeria And BiH.

SEE PAGE 3

Due to based suspicion that they have: during 2000 and 2001 in Sarajevo, especially in September and October of 2001, in unison and in agreement they acted as an organized terrorist group. As such, they have made contact with an officer of the terrorist network "Al-Qaida" aka Abu Zubaydah via telephone number 00387 32 420737 in order to coordinate actions in that time frame. The telephone number belongs to the first charged Benacem Hajseyana. They also used the mobile telephone number 066 775 375. To date it is not known who this number belongs to. They completed this with a mobile phone number 066 775 375 pertaining to the US Embassy in Sarajevo. They have attempted to coordinate actions of the individuals pertaining to the US Embassy in Sarajevo in order to determine the security measures in order to successfully carry out an attack on the US Embassy and its personnel. They were thwarted in there actions by the employees of the Sarajevo federal MUP. Therefore, with the intent to strike back at their country - the U.S.A., they have attempted to attack the factory and the employees of the US Embassy in Sarajevo.

3.a.3

TB: RM

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~~FOUO~~

From:  
Sent: Friday, October 01, 2004 6:23 PM  
To:  
Subject:

-----Original Message-----

From:  
Sent: Friday, October 01, 2004 5:53 PM  
To:  
Subject:

Sir, Pls pass this to his should cover us.

<<footnote5.jpg>> <<footnote 6 7.jpg>> <<footnote1 4.jpg>>

Footnote 3:

BiH Federation  
BiH federation Supreme Court  
KI-101/01  
Sarajevo, Oct 30, 2001

Para 1.  
BELKACEM BANSAYAH, son of ahmed & Alla, nee Esabahi, born on Sep 10, 1960 in Miswar, Sana; Yemen, residing at 184 Gorazdanska-Lukovo Polje, Zenica, Yemeni & BiH citizen, farmer, married with two children. Currently detained at Zenica jail by Zenica County Court order.

Excerpt below Para 8:

Due to based suspicion that they have: during 2000 and 2001 n Sarajevo, especially in September and October of 2001, in unison and in agreement they acted as an organized terrorist group. As such, they have made contact with an officer of the terrorist network "Al-Qaida" aka Abu Zubaydah via telephone number 00387 32 420737 in order to coordinate actions in that time frame. The telephone number belongs to the first charged Belkacem Banasaha. They also used the mobile telephone number 066 775-373. To date it is not known who this number belongs to. They completed this with the goal to inflict harm to the U.S.A., in particular to the US embassy in Sarajevo. They have organized surveillance of the facility and personnel at the U.S. embassy in Sarajevo in order to determine the movement pattern of the employed personnel and high officials. They have implemented control and security measures in order to successfully carry out an attack of the U.S. embassy and it's personnel. They were thwarted in their actions by the authorized employees of the Sarajevo federal MUP. Therefore, with the intent to place harm to a foreign country-the U.S.A., they have attempted to attack the facility and the employees of the U.S. embassy in Sarajevo.

3.A.3

V/r  
Capt

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~~FOUO~~

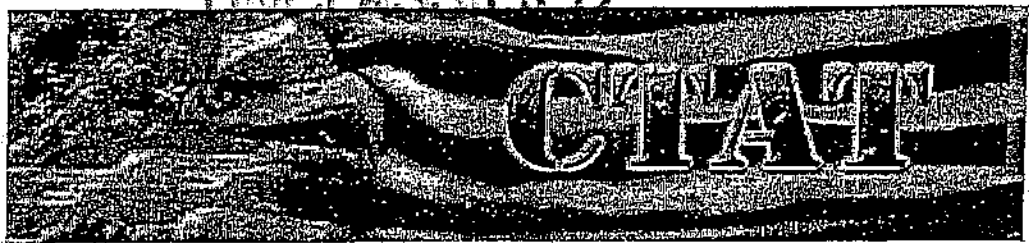
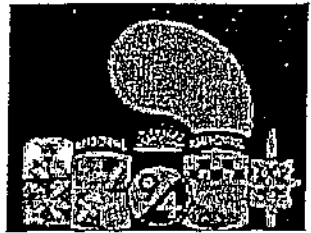


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# Exhibit D(g). Exhibit R-5

UNCLASSIFIED

UNCLASSIFIED



Tuesday April 02, 2002 Counter-Terrorism Analysis Team

## GIA Members Arrested and Detained

["Exclusive" report by Azhar Kalamujic: "Federal Police Uncover Network of Algerian GIA Organization in B-H?"]

[FBIS Translated Text]

Over the past 17 days the federal police have arrested six Algerians employed in a number of humanitarian organizations in Sarajevo, Zenica, and Bihac on suspicion of being linked with international terrorism, while two others, also Algerians, are still being sought. *Oslobodjenje* has learnt this from MUP [Interior Ministry] sources in the Federation of Bosnia-Herzegovina.

*Belkacem Zenica Sarajevo*  
*ib. 2. 2.*  
*her*

The well-coordinated operation by the federal police and the police of the three cantons started on 8 October, when Bensai Belkacem Mej, a humanitarian worker and citizen of Algeria and Bosnia-Herzegovina, was arrested in Zenica. Ten days later, Mustafa Adir, an employee of the Taibah humanitarian organization, and Saber Lahmar, an official of the Saudi High Committee, were detained in Sarajevo. The police operation continued over the next three days, first in Bihac on 19 October, when Muhamed Nehle, alias Serefdin, was detained; and then in Sarajevo on 20 and 21 October with the detention of Lakdar Bumadyan, a humanitarian worker with the Red Crescent, and Budalah Haj, from the Human Appeal humanitarian organization.

There are unconfirmed reports from American intelligence sources that the detained Algerians, as well as two of their fellow countrymen, Khaled Arbad and Atif Manasur, known as Abu Nasr, whom the police are still seeking, are part of the European network of the Algerian GIA [Armed Islamic Group] militant organization, which is on the list of the sympathizers and helpers of Usamah Bin Ladin's al-Qa'ida.

*3. a. 5.*  
*3. a. 6.*

*Oslobodjenje*, however, learns that only one of the eight Algerians on the list of those arrested or sought is of "security" interest to FBI agents and those US intelligence services that are actively involved in counterterrorist operations in Bosnia-Herzegovina.

Our source warns that suspicions about a link between the above-mentioned Algerians and world terrorism are still being checked, and that beside the police the Ministry of Civil Affairs and the Ministry of Internal Affairs are involved in this task and are trying to establish whether the suspects acquired Bosnia-Herzegovina nationality, that is to say passports, legally. The Federal Financial Ministry has been given the task of checking their bank accounts and transactions.

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# **Exhibit D(h). Exhibit R-6**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (R.JL)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF EMINA PLANJA

I, Emina Planja, of 24 Butilska Street, Sarajevo, Bosnia and Herzegovina ("BiH"), depose and state as follows.

1. I was born on January 19, 1979 in Rogatica, BiH. I am a citizen of BiH. I married Boudella Hadj on February 20, 1999 in Sarajevo. We have four children: Abdulrahman, born September 16, 1994, Aisa, born August 24, 1996, Sajmaa, born May 7, 1999, and Ali, born February 15, 2002. They are all citizens of BiH.
2. My husband Hadj Boudella was born on April 18, 1965 in Laghouat, Algeria, and is an Algerian citizen. His parents are Omar and Aicha Boudella. He came to Bosnia and Herzegovina in 1992 to work for the humanitarian organization El Ber. He served in the BiH Army during the civil war until 1993, when he was injured and returned to work for El Ber. He was granted Bosnian citizenship on January 2, 1995.
3. Until the beginning of the civil war, in 1992, I lived with my parents in Rogatica where I went to elementary school. Due to the hostilities we had to leave Rogatica. We came to Zenica as displaced persons; I finished elementary school, but was not able to continue my education.
4. Until coming to BiH, Hadj lived in Algeria, with his parents and his brother. Hadj also has three more brothers and one sister who live with their own families in Algeria. He was raised in an ordinary, religious family and worked as a professor of physics and chemistry in Algeria; he also qualified as an imam.

- 1 -

Page 1 of 6

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Exhibit R-6

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5. In 1996, my husband started to work for the humanitarian aid organization Human Appeal, and we moved to Sarajevo. He worked as a social worker with war-orphaned children. He loved working with children; he is also a very affectionate and loving father to his own children and spent all his free time taking care of them.
6. On October 21, 2001, upon receiving a call from the police, my husband went to the police station in Sarajevo. He then returned to our apartment with police officers, Stabilization Forces, and International Police Task Forces members. The police conducted a search of our home, but found no relevant evidence. My husband was arrested the same day, in connection with suspected terrorist activity. On January 17, 2002, the Bosnian Supreme Court ordered my husband's immediate release on the ground that there were no reasons upon which pre-trial detention could be ordered. Disregarding that decision, the Federation Police transferred my husband to United States custody at 6:00 a.m. on January 18, 2002.
7. The expulsion of Hadj Boudella, a Bosnian citizen, was made possible by the fact that his Bosnian citizenship was revoked shortly after his arrest. The decision to revoke his citizenship was based only upon the charges alleged against him, and not on any determination of the merits of his case. My husband appealed the revocation, but was handed over to United States forces before the validity of the revocation proceeding was reviewed by the Supreme Court. On December 19, 2002, the Supreme Court annulled the revocation of my husband's citizenship and stated that my husband never lost his citizenship. Accordingly, at the time of his abduction, he was a citizen of BiH.
8. On January 14, 2002, my husband lodged an application with the Human Rights Chamber for Bosnia and Herzegovina ("Chamber"). According to the decision of the Chamber, the respondent parties, BiH, and the Federation of Bosnia-Herzegovina, violated my husband's rights not to be arbitrarily expelled, to be presumed innocent until proven guilty, and not to be subjected to the death penalty. The Chamber also ordered the respondent parties to take all necessary action to protect my husband's rights while in the custody of the United States and to pay compensation for non-pecuniary damages.
9. A few days after his abduction, I learned from the International Committee of the Red Cross that my husband was being held at Guantanamo. I received the first official notice that he was in United States custody in March 2002 from the United States Embassy in Sarajevo. Since he has been at Guantanamo, my husband has written me more than twenty letters; they are all censored. Initially I received letters more frequently, since September 2003 they have become rare. The last letter was dated October 2003; I received it in May 2004. Based on the letters I have received from him, it appears that my husband is not receiving all the letters I am writing to him. In his letters, he asked me to write to him in Arabic since there apparently are not enough Bosnian interpreters.
10. Since my husband was taken into custody, I have worked very hard on his behalf. My activities for my husband's release include regular contacts with BiH government and international organizations, especially human rights organizations.

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- 11. My family's financial situation has been very difficult since my husband was taken to Guantanamo. My husband used to provide financial support for my children and me. I live now with my parents; I am unemployed and my family is supporting my children and I. My youngest daughter was born with a heart ailment and needs special care; my youngest son is now two and one-half years old and has never seen his father. The elder children know where their father is and miss him a lot; every day they ask when their father will be coming back to them.
- 12. Based on the messages my family received and from everything I know about my husband, I believe he is seeking my assistance and support and would want me to take appropriate legal action on his behalf, as his next friend. In this capacity, I have retained and hereby request Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to act on my own and Hadj Boudella's behalf and to take whatever legal steps they consider to be in our best interests, in connection with my husband's detention at Guantanamo.

I know the facts deposed herein to be true to the best of my knowledge.

Sworn to by the deponent on this tenth day of August, 2004.

*Emina Emina*  
 Emina Emina

*Liliana Scasascia Kleiser*  
 Witness: Liliana Scasascia Kleiser

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (RJL)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF EMINA PLANJA AUTHORIZING REPRESENTATION

I, Emina Planja, hereby depose and say:

1. I am Emina Planja, of 24 Butilska Street, Sarajevo, Bosnia and Herzegovina.
2. I am acting as the next friend of my husband Boudella Hadj, who is in the custody of the United States at Guantanamo Bay Naval Base, Cuba.
3. I hereby authorize Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to represent me in all proceedings relating to my husband's detention by the United States, and any and all proceedings related to my husband's status under custody of the United States.

Signed:

Planja Emina

Date:

10. August, 2004

Witnessed:

Liliana Scasascia Kleiser

Liliana Scasascia Kleiser

Date:

10. August, 2004



UNCLASSIFIED

Sarajevo, Bosnia and Herzegovina  
March 13, 2002

The Ambassador

Ms. Nadja Dizdarevic  
Emila Zole 10  
Novi Grad  
Sarajevo  
Bosnia and Herzegovina

Dear Families:

Thank you for your letter dated February 13th, 2002. The individuals referred to in your letter posed a credible security threat to United States personnel and facilities as well as to the people of Bosnia and Herzegovina. We brought the matter to the attention of appropriate domestic authorities, who detained them before transferring them to U.S. control at U.S. request.

The United States military subsequently transferred them to the United States facility at Guantanamo Bay. This approach allows the United States to safely detain these individuals while continuing to investigate.

All detainees at Guantanamo are being provided correspondence materials, and the means to send mail, as well as the ability to receive mail, subject to security screenings. It is important to note, however, that incoming mail is subject to censoring, and correspondence deemed inappropriate by authorities may not get through. Below you will find the necessary routing information, which will permit you to send correspondence to the detainees:

Bensayah Belkacem (A-JJJA)  
Sabir Lahmar (A-JJJB)  
Mohamed Nechele (A-JJJC)  
Mustafa Ait-Idr (A-JJJD)  
Lakhdar Boumediene (A-JJJE)  
Hajj Omar Boudella (A-JJJF)

Page 5 of 6

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150 Camp X-Ray  
Washington, DC  
20355-  
U.S.A.

Let me assure you that the United States has treated  
and will continue to treat all Guantanamo Bay detainees  
humanely.

Sincerely,



Page 6 of 6

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UNCLASSIFIED

Exhibits D(i) to D(ii) are withheld in full under 5 U.S.C. § 552(b)(1) and (b)(7) as they contain classified and law enforcement sensitive material.

UNCLASSIFIED

**Exhibit D(jj).**  
**Mr. Boudella's statement to**  
**the Tribunal, Enclosure (3)**

UNCLASSIFIED

DETAINEE ELECTION FORM

Date: 28 Sept 2004

Start Time: 1000

End Time: 1130

ISN#: 10006

Personal Representative: [REDACTED]  
(Name/Rank)

Translator Required? YES Language? ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? BOTH

**Detainee Election:**

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

**Personal Representative Comments:**

Detainee will participate in the Tribunal. Detainee request five (three in the camp and two outside of the camp) witnesses:

1. ISN 10004, ISN 10003, and ISN 10005 they have known the detainee since 1997 and can testify on the detainee's background and activities.
2. Planyah Muo, detainee father-in-law since 1993, can also testify on the detainee's background and activities.
3. Razy Al-Monajad, detainee's manager for his job at The Office of Human Appeal INT can testify on the detainee's background and work habits. Phone number: 232398

The detainee has also request a copy of the court document from his trial in Bosnia (American Embassy). There should be a copy of the document here. Additionally, he would like a copy of a document from Humanity of the People (Bosnia) the document is dealing with his detention here.

Personal Representative: [REDACTED]

UNCLASSIFIED//~~FOUO~~

D-a

Summarized Sworn Detainee Statement

With the permission of the Tribunal President, I would like to say something before I respond to the accusations.

In the name of Allah, when I was in Bosnia, everybody knows I was very moderate and very nice. I was not an extremist. This is very well known. I was brought up not to harm anyone, but to be just and fair, that's how I grew up. I learned that my religion forbids harming others. In our Koran, it says it is absolutely forbidden to kill a human being. The Koran says killing one person is like killing all of humanity. If you bring one person to life, it's like giving life to all of humanity. You can check this in the English version of the Koran.

With God as my witness, if you believe me or not, it's not important, but I absolutely never supported and always condemned any terrorist act against the United States or anybody else.

As I love life for myself, my family and my kids, I love that for everybody else. I believe all religions should live in harmony and in peace.

For these reasons, I am against any and all terrorist attacks. That's why I'm surprised I'm in this camp, in prison now, classified as a terrorist or enemy combatant.

*The Detainee responded to each point in the Unclassified Summary of Evidence.*

- 3(a) The Detainee is associated with Al Qaeda.

This is absolutely not true. I've never heard of them until the 9/11 incident. I heard about it through the media. How can you associate me with an organization I've never heard of? As I said before, I'm against any terrorist attacks.

I've lived in Bosnia for a long time, and you can check and see that I've never been associated with or belonged to any terrorist or criminal organizations. Further, all the years I spent in Bosnia, I never broke the law, not even for one day. I've never harmed Bosnians, or foreigners, ever.

You say I'm associated with this organization, so if you have any proof just bring it.

If I was thinking of terrorism, I would have thought about it for a while, not just at the last moment.

You have these people's names. You can double check with them. I have no relations with terrorists whatsoever.

- 3(a)(4) Detainee was arrested by Bosnian authorities in connection with a planned attack on the American embassy.

First, that's not true. When I heard about the accusations, I went to the police myself. They didn't capture me, I went myself.

I never walked the streets the American embassy was on, I never observed or watched it or anything ever. If you have any proof of this, it's no problem, please bring me proof and confront me with it.

Also, the Supreme Court of Bosnia found us innocent because there was no proof and nothing to sustain the allegation that we were plotting to attack. They set us free. We were found innocent by the Supreme Court of Bosnia.

Plus, if I was really a terrorist, or if I were to do any terrorism act, instead of going to the police, I could've easily escaped and left the country.

I knew that the three that were going to be witnesses were captured, so I had plenty of time. Before I went to the police, I heard of their capture and I went myself. They were captured 2 or 3 days before I went to talk to the police, so I had plenty of time if I wanted to do something. I still went to the police on my own. I could have easily escaped if I wanted to because I had my passport and I had money.

The papers from the Court that say we are innocent do exist. When the Bosnian Commission was here, they showed me the papers and I read them myself. It said the International Human Rights Organization was suing the Bosnian government for our treatment.

They went to court on our behalf because they treated us badly. The document didn't just show that we were innocent, but they also gave us compensation for our families. They gave us 10,000 marks each. I saw the document showing that amount.

I believe you can get these documents because the Bosnian Delegation showed them to me. It shouldn't be too hard to get it back from them or to get a copy from them.

ISN# 10006  
Enclosure (3)  
Page 3 of 25

*The Tribunal President advised the Detainee we would continue to try to find those documents.*

- 3(a)(5) Detainee is a member of the Mujahadin network. Also, Detainee is likely a member of Armed Islamic Group of Algeria, a militant organization.

What do you mean by Mujahadin? Where? When? What do you mean by this? This is not clear. It is just a general statement.

First, this is not true. The accusation is not clear, saying I'm part of Mujahadin. You say I'm a member of this Islamic Algerian Armed organization. I left Algeria in 1990, and from what I know, this organization was formed long after I left Algeria. You can contact the officials in the Algerian government and ask them if I really belonged to this organization and they will be able to give you the right answer.

- 3(a)(6) Armed Islamic Group of Algeria is on the list of sympathizers and helpers of Usama Bin Laden's Al Qaeda.

As I mentioned before, I am against any terrorist acts. How could I belong to an organization that I strongly believe harmed my people in Algeria?

This is all I have to say. I'm convinced and I believe that you will look at my responses and accusations with an eye of justice and fairness. My response to the accusations has ended, but I would like to bring the witnesses.

*The Tribunal President advised the Detainee that the witnesses will be brought in later, but the Tribunal Members have some questions to ask.*

#### Tribunal Members Questions to the Recorder

Q: The Detainee mentioned he had seen a document from the Supreme Court of Bosnia that indicated he was innocent of the charges against him. I presume that refers to exhibit R-4. Do you have any knowledge of the document he is speaking of?

A: I am familiar with this document [R-4], but I don't believe it is the document the Detainee is referring to.

#### Tribunal Members Questions to the Personal Representative

Q: Are you familiar with the document the Detainee has spoken of?

A: I am familiar that it was a requested piece of evidence that was unable to be located.

ISN# 10006  
Enclosure (3)  
Page 4 of 25

Q: Do you happen to know what efforts were made to locate it?

A: No, I don't.

Q: As the President said, we'd like the Recorder and the Personal Representative to work together at the conclusion of these proceedings to try to locate that document.

Tribunal Members Questions to the Detainee

Q: How long have you been living in Bosnia?

A: From 1992 until I was captured.

Q: You are married with five children?

A: I now have seven. I've had two since I was captured.

Q: Congratulations.

A: Thank you.

Q: I presume you moved from Algeria to Bosnia in 1992?

A: Yes, but not directly. First I studied in Pakistan and then I moved to Bosnia. I finished my studies, got my degree, got certified and then I went to Bosnia.

Q: It says here (on exhibit R-4) you are a clergyman.

A: Yes.

Q: That is your primary occupation?

A: Yes, that is my job.

Q: You were able to make a sufficient living as an Imam?

A: As I said, I was working with a humanitarian organization and I was making decent money. According to the Bosnian income, it was very good money.

Q: Can you describe what duties you had with this organization in Bosnia?

A: I worked with orphaned boys that don't have fathers.



- Q: Did you live in Sarajevo the entire time, or were you in different places in Bosnia?
- A: Most of that period was in Sarajevo, but I lived in other places too.
- Q: Can you give examples?
- A: I lived in a city called Tesanj, then Tuzla and then Sarajevo. From 1996 on, I was in Sarajevo.
- Q: We recall that during that time Bosnia was in the midst of a terrible civil war.
- A: Yes, before 1995, not after.
- Q: Prior to 1995, while the war was still going on, people in Sarajevo suffered terribly, as I understand.
- A: All Bosnians suffered from the war.
- Q: Did anyone ever approach you to assist the Bosnian army to fight against the Serbs or the Croats?
- A: I enlisted in the Bosnian military because as a Bosnian, I am married to a Bosnian and her family was Bosnian. I had to enlist. For example, if I was living in the United States and I am a nationalized American, if there was an attack against the United States, and every man has to enlist, I should enlist. It's the same thing here.
- Q: Did you volunteer to serve in the Bosnian military or is it mandatory service?
- A: You can't really say if it was volunteer or not. Everybody has to, it's not explicit, by force or obligation, but everybody feels that way.
- Q: How long was your term of service with the Bosnian military?
- A: I don't remember exactly. It was from the beginning of 1994 until the end of 1995. From the beginning of 1992 I was working with them, teaching. They consider me one of them since 1992. I was a clergy person and they know me and I was part of them.
- Q: Did you have those duties while you were serving in the military as well, or only before that?
- A: While I was in the military that's what I was doing. Just as a teacher, Imam and a clergy person.

- Q: Did the Bosnians give you regular military training, common to all soldiers?
- A: In the beginning it was not a regular army. There was no training and it was not organized. At the end of 1995 when the European nations and the United States intervened, they formed a regular army.
- Q: No one trained you on basic military skills, weapons or anything of that nature?
- A: No, I never sat down with someone and got trained.
- Q: They didn't issue you weapons for protection?
- A: Weapons were available, but they didn't give me one because I was a teacher and a clergy. I didn't go to the fighting lines. I was just a teacher and clergy.
- Q: Were those the only responsibilities you had during your term of service in the military?
- A: That's all. Just teaching, nothing else.
- Q: Prior to moving to Bosnia, when you were in Algeria, do they also have mandatory military service?
- A: Yes.
- Q: You were required to serve in the Algerian military?
- A: Yes, it's a law, everybody has to.
- Q: How long did you serve during that time?
- A: Two years.
- Q: What type of training did they give you there?
- A: We didn't have too many weapons, we only trained on the Russian Kalashnikov. We didn't have any other training.
- Q: What were your responsibilities as an Algerian soldier?
- A: I used to work in the administration. I was the postman in the military. I took care of mail, bringing letters to soldiers.
- Q: What years did you serve there?

A: I believe 1987 to 1989.

Q: Prior to the insurgency of the Armed Islamic Group?

A: Way before that. The problems started in the 90's. I believe the problems in Algeria started in 1992.

Q: While you were in Algeria, you decided to become an Imam, conducted your studies in Algeria and Pakistan, and decided to settle in Bosnia?

A: That is true.

Q: Why did you choose to go to Bosnia, as opposed to any other place you could go?

A: The Humanitarian organization needed people to go work for them in Bosnia. That's how I ended up in Bosnia.

Q: How did you first know about this organization?

A: I first worked with this organization in Pakistan for a little while. My studies matched what they needed, so I went with them to Bosnia.

Q: Did you do the same type of work in Pakistan that you did in Bosnia?

A: Yes, it was the same.

Q: The reason you chose to go to Bosnia was because they had a greater need for you there?

A: I wouldn't say the need was greater, it was just because I finished my studies. They needed someone to work for them and I went.

Q: So, from 1992 until 2001, your primary duty was as an Imam on one hand and assisting this organization on the other?

A: Yes. My main job was working with the orphans, but I volunteered to be an Imam and to teach. My job was to work with the orphans.

Q: What kind of things would you do for them [orphans]?

A: Our job...we had people who sponsored the orphans. They would bring money and clothing and things like that. Our job was to see that things were run properly and the orphans got what was meant for them.

Q: If I understood you earlier, did you say that no one ever approached you about a plot to attack the American embassy?

A: Never.

Q: But, you heard the police were looking for you or concerned about your possible involvement?

A: What happened is, when they [Bosnian authorities] captured those three people, they [Bosnia authorities] asked them about me. They told the Bosnian authorities that I had nothing to do with it and neither did they. They gave the Bosnian authorities my number and told them to call me. The police contacted me and I said okay, I was coming.

Q: Why did they mention your name if you didn't have anything to do with it?

A: I don't know, by mistake or whatever. I want you to know one thing. If I really had anything to do with it, I had plenty of time and there was a great opportunity for me to leave and escape easily to any neighboring country if I wanted to. That shows you that I'm not guilty.

Q: The three people you said gave them your name, are these people known to you?

A: Yes, they are the three people I called as witnesses.

Q: So, you heard the police wanted to speak with you, you turned yourself in and then they arrested you?

A: Yes. They called me and asked me if I could come to the station and I said sure. But, before that I had heard about those people being captured through the news.

Q: So, when they said please come in, you went in, and then what?

A: I went in, found an investigator, and he said they wanted to investigate me for a few hours and after that I'd leave. I said, sure, go ahead, no problem. After that, when he finished with me, he said he had to check with his superiors to see the status. His superiors said I couldn't go, I had to go to court. I said no problem, because I have nothing, so I went. After that, we went to court.

Q: Did you have one court proceeding or more than one?

A: Only one time. The investigator stayed with me about 8 hours at one time and then we went to court. It was only one session and that was it.

- Q: Were you originally found guilty and the verdict was overturned by the Supreme Court, or did the Court you were at find you not guilty?
- A: From the beginning, our case went straight to the Supreme Court. From the beginning the Supreme Court decided that we were innocent.
- Q: You were declared innocent and what happened after that?
- A: After that, they said we were free, we left, went outside the prison and found the Bosnian Special Police with the Americans and they captured us and we ended up here.
- Q: How long have you been here?
- A: Almost three years.
- Q: How many others were taken with you?
- A: We were six. I know about the six from reading the newspapers and watching TV. When they took us, we were blindfolded and couldn't see anything.
- Q: But, this person who's name we were given, Bensayah Belkacem, he was not one of the six?
- A: The media said he was one of the six, but I don't know him. I've not seen him. Maybe he's here, I don't know. I'm sure he's here because they've asked me about him many times in interrogations and they told me he was here, so he must be here, but I don't know him.
- Q: You never met him in Bosnia or ever heard his name mentioned?
- A: Never. I first heard his name here in this prison. In the beginning, when we were in the old spot, in the old jail, they put all of us there. They had us all in one area and they were saying the Algerian or Bosnian Six. He was there and I saw him there.

With permission, I'd like to say something I forgot to mention earlier. I've been here for three years and these accusations were just told to me. Nobody or any interrogator ever mentioned any of these accusations you are talking to me about now. I've been here for three years, been through many interrogations and no interrogator ever mentioned any of these accusations, so how did they just come now? Not even one mentioned the embassy thing, the terrorist organization, this Algerian Islamic organization. It's weird how this just came up now.

Q: We cannot answer that because we ourselves don't have any access to any other information at this point except what you're telling us now and the accusations told to you.

A: I was just observing and making a point.

Q: We understand. That is why it is necessary for us to ask you these questions.

A: I don't object to any of your questions. Ask any question you want, I'm just mentioning what I observed. I just can't understand how accusations came out and nobody talked about it in investigations or interrogations. It just seems strange to me.

Q: At this point, we don't know why you're being accused of being a member of the Armed Islamic Group. Do you have any idea why you are being connected with this group?

A: - I don't know. All I know is that after the horrible problem with 9/11, all of the nations in the world wanted to help because it was a big problem. I think that Bosnia didn't find anything to give to the United States, so they said okay, let's give them these six Algerians; they are Muslims. We were sacrificed just to show they gave something. There is no other way to look at this.

I'm asking you. You are just people, if I did a crime in the United States, would you take me to the courts in the United States? Of course. You are not going to deliver me to another country. If you find me innocent you'd let me go free, if not, you'd take me to jail. If I was innocent, it is impossible that you would give me to another nation.

Even though we were innocent, we were delivered to another nation and we don't know why.

Q: We didn't realize you had never been confronted with these allegations.

A: No, nobody ever mentioned anything about any of these things. I should admit, that one time one investigator asked me if I walked by the street the embassy is located on. I said no, I never walked on that street; I never went there.

Q: I don't mean to recount three years of interrogations, but can you give us a brief summary of things you have been asked about?

A: I was asked about my life story, from the day I was born until the day I got here. I asked the interrogator if he'd give me a copy of that, it would be great! I would not have a chance to go through my life story again. I asked for it as a souvenir.

Then they asked me where I worked, where did I go, all the details. I was very cooperative and told them everything freely. You can ask, I always cooperated and always told them whatever they asked for.

I want to make an observation, also. I have a lawyer in the United States and he sent me a letter. He urged me not to participate, but to show you my good faith, I said I wanted to participate and I want to show you that I am really innocent and I want you to see. I can defend myself. If you're innocent, no matter how people try to cover your innocence, it will come out.

Q: We appreciate your decision to participate.

A: Thank you.

Q: Do you happen to know if any of the other people in the so-called Bosnian Six have connections with the Armed Islamic Group of Algeria?

A: As I told you, I only know three of them. Those three, I can guarantee you 100% it is impossible for anyone of them to be a member of any organization, especially terrorist. I know them as they know me. I know very well they are not part of this organization.

Q: You're quite sure of this?

A: I am certain. They are my friends and if I had even the slightest doubt that they might be members of those organizations, I would not be their friend and I would not be associated with them. I do not want to be dragged in things that are against the law or associated with things that are against the law. Plus, I condemn all things like that.

Q: You said you were released by the Bosnian Supreme Court and you walked outside the doors. You were greeted by the Bosnian Special Police and the Americans?

A: Yes, because we saw the Bosnian Police and other people wearing Bosnian clothes, but they couldn't speak Bosnian, they were speaking English, so they were obviously Americans. I know Bosnia very well, and just by looking at them it's easy to tell they are not Bosnians.

Q: Do you have any idea what organization the Americans belonged to?

A: No, I don't know these things. The only thing I know is we were taken by the Bosnians, delivered to the Americans and the next thing we knew, we were here.

We spent four days with our eyes closed, with bandages on our eyes, tape on our mouths, with shackled hands and feet. Tuesday through Sunday.

Q: You were not in the same prison or jail you were in while you were waiting for the Supreme Court?

A: No, we were separated. Each of us was in one cell.

Q: But it was a different jail? Was it a different jail than when you were waiting for the Supreme Court trial?

A: [No response. The Detainee did not appear to understand the question.]

Q: Before the Supreme Court trial happened, you were in jail.

A: We were in Sarajevo prison.

Q: You were not placed in Sarajevo prison after you were released by the Special Police and the Americans?

A: No, they took us to an American place, I don't know the name, or where it is.

Q: No one asked anything about your innocence from the Bosnian Supreme Court decision?

A: I tried to clarify this to all of the interrogators, but they keep telling me it's not their job for me to convince them of my innocence. It's their job to interrogate me.

Q: At any time, did you admit to anything that you did not do, hoping that it might make it easier for you?

A: No, I never admitted or confirmed anything, because I had nothing to admit or confirm. I am innocent.

Q: You said you never even walked by the American embassy and you also said you never watched the American embassy. Why did you say you never watched the American embassy?

A: I never needed a visa or anything. I have nothing to do with the American embassy, so why would I go and look at it? That's what I meant. I have no business there and I don't need anything, so why would I go?

When the witnesses are brought in, is it possible to salute them?



Tribunal President: Of course.

*The Personal Representative called Nechele Mohammed (Mohammed Nechele).*

Detainee's Questions to the Witness, Nechele Mohammed (ISN 10003)

*The Witness, Nechele Mohammed, was sworn.*

Q: Hello, Mohammed. Do you know if I belong to any terrorist organization or if I am a terrorist?

A: All I know about this person [Detainee] is that he is a very nice and a very good person. He takes good care of his family. He is a family man. He works for a humanitarian organization.

Our case is very well known because we are called Algerian/Bosnians. Everybody knows that we have nothing really. We have no terrorism connections or anything. We are just wrongfully accused.

This is the truth, he [Detainee] is not a terrorist, because if he is a terrorist, that means I am a terrorist too. I know he is a straight and good person. He has nothing to do with terrorism. I know him very well, as much as I know myself or even more. If I knew he had anything bad about him, I would not be his friend. I would not be associated with him. God is my witness.

Personal Representative Questions to the Witness, Nechele Mohammed (ISN 10003)

Q: What did he [Detainee] do for the humanitarian organization? Can you describe it?

A: He worked with the orphans, that was his job with this organization.

Tribunal Members' Questions to the Witness, Nechele Mohammed (ISN 10003)

Q: So, you were arrested, along with this Detainee here?

A: I was detained before him. He was detained after me.

Q: What charges did they make known to you that you were being accused of?

A: All I know is through the media. They said we were planning a terrorist attack against the American embassy in Bosnia. This is not true. The Supreme Court of Bosnia found us innocent and when they took us out, they brought us here.

ISN# 10006  
Enclosure (3)  
Page 14 of 25

Q: Describe the circumstances when you were released by the court and then ended up here. Tell us what happened.

A: We heard the news like everybody else. The Supreme Court found us innocent. There was news and media. We went outside the jail, our families were waiting for us, and as soon as we walked out, they captured us and the next thing we knew, we were here. This is briefly what happened.

Q: Do you know who Bensayah Belkacem is?

A: He was jailed with us, but I don't know him as a person. I just know he was captured with us.

Q: Is he Algerian/Bosnian also?

A: They say that he is Algerian, but I don't know. The only people I know are those three, Hajj, Mustafa and Lakhdar.

Q: Do you know anything about the Armed Islamic Group of Algeria?

A: All I know about this organization is through the media. From the media I know they are labeled as a terrorist organization and they kill people and they do bad things. We don't approved of these things; we are against these kinds of acts.

Q: Have you ever been accused of being involved with them?

A: When? Before, or when I got to Cuba?

Q: At any time.

A: Yes, here I was accused of that. The interrogator came and said I was a member and I said no, that was not true.

Q: Why would someone accuse you of being a member of this group when you say you are not a member?

A: I don't know. Throwing accusations is so easy, but you have to have the proof. It is impossible for me to belong to this organization. Even in Bosnia, they were saying we might have connections to these organizations. They contacted the Algerian government and the Algerian government confirmed that we have no relation with this organization, whatsoever.

The Algerian government told them, if you found them innocent for what you are accusing them of, you have to let them go, because there is nothing against them.

Q: You've never had any associations with Al Qaeda or any other people?

A: No, it's impossible because from what I know, Al Qaeda is a terrorist organization and they kill innocent people. We don't approve of killing innocent people or killing anybody, so I can't belong to such an organization.

You investigated me for three years, and I'm sure you found out I have nothing to do with it. Even if you continue to investigate me for another ten years, you will find out that I have no relations with them.

Q: Before you were captured in Bosnia, what was your occupation?

A: I used to work with the Red Crescent.

Q: How long have you lived in Bosnia?

A: Almost five years.

Q: How long have you and Hajj [Detainee] been friends?

A: I met him as soon as I got to Bosnia, in 1997.

Q: You're very good friends?

A: Yes, he's a good friend. He's very straight and a very good human. That's why we're friends. Since I've been friends with him, I've never seen anything bad from him.

My testimony is said before God. I'm not saying it for anything, just to tell the truth.

Q: In your free time, what were your favorite things to do together?

A: I used to come to Sarajevo only once a month because I lived far from where he lived. Whenever I'd come, we just talked about business, life and things like that.

Q: How long would you stay? One day, three days?

A: It depends. The organization I work with was there, so sometimes it'd be one day, sometimes two days. It depended on the need.

Q: You stayed at his house?

A: No, I just used to go visit him because we have an office there. I'd go and visit him and have coffee, that's it.

*The witness, Nechele Mohammed, was excused.*

*The Personal Representative called Aet Adeer Mustafa (Mustafa Ait Adir).*

Detainee's Questions to the Witness, Aet Adeer Mustafa (ISN 10004)

*The Witness, Aet Adeer Mustafa, was sworn.*

Q: Hello, Mustafa. Do you know if I am a terrorist, or if I belong to any terrorist organizations, or anything that is close to that? Do you know if anything of this nature has to do with me? If I had the intention of doing any terrorist acts against the embassy, or anything else?

A: First, I would like to talk about this tribunal, if it's possible, then I want to reply to what he asked me.

Tribunal President: You are here only to testify on behalf of the Detainee.

A: I know Al Hajj very well, as well as I know my pocket right here [pointing toward pocket on shirt]. If he is accused of terrorist acts, that means I am also accused of that.

With regard to the American embassy in Bosnia, if you don't believe the Bosnian government who told you that we are innocent, how are you going to believe me? How are you going to believe Hajj?

The Bosnian government declared us innocent and we have the document. You took those documents and you brought us here. You have the documents to prove that we are innocent and we have no relation with this embassy, period. It is impossible to believe me if you don't believe the Bosnian government.

Now, I'm going to talk to you about what the investigators said. All the investigators told me this just a play, just a joke. There is no American embassy and nothing that has any relation to terrorism in regard to us.

The Bosnian government took money from the American government to deliver terrorists. So the Bosnian government took that money and delivered six of us, just to show and we have nothing to do with all that. These are not my words, these are the words of the investigator. A tape of this does exist. That's what they told me. I don't know if they told Hajj the same thing.

The investigator told me personally that they have a big problem with us. In Bosnia they said they have classified proof against us and here they say they have nothing against us. The problem is that they cannot return us to Bosnia because they will ask where the proof is. If they keep us for three years in prison and tell us to go home, somebody who is plotting to bombard the American embassy should not stay only three years, he should stay the rest of his life. Now they have a problem with us, they don't know if they should release us or if they are going to keep us here. Therefore, this investigator kept telling me that we can't leave here until they find something against us.

I'm talking about myself, but I'm also talking about him [Detainee]. We have the same issue and the same problem. As I told you, I know Hajj very well, just as I know my pocket. If you think he's a terrorist, that means I'm a terrorist. If he thought about putting explosives in the American embassy, that means I thought about it too. If you're going to keep him in jail, I want to stay with him. I know him to the level I know my wife and my kids.

This is all I know about his case, but regarding this terrorism and putting explosives in the embassy, this is all false and all lies.

I'm going to tell you further things the interrogators are telling us about this issue. When I stopped talking to the interrogators, they asked me why I stopped talking. I stopped talking until I was told why we are here. He told me you still don't know the accusation against you? I said I didn't know. He asked what they accused me of in Bosnia. I told him they say we intended to think of doing this. I intended to think of putting explosives in the American embassy in Bosnia.

Forget about this. All of this is not true. He asked me if there were any other accusations besides this. I told him they said we are members of the Algerian Islamic Military organization. Forget this one, too.

There was another accusation, I forget. Maybe Hajj will remember.

Q: Did I ever talk to you about his Bensayah Belkacem that is mentioned in the accusations? Have I ever mentioned this person to you? Have I ever spoke to you about this person?

A: First of all, this guy [Bensayah Belkacem] is with us here. He is one of the six that were brought here. I've never seen him with Hajj and Hajj never even once mentioned his name. I am sure if Hajj knows this person, I would know this person too because I'm with Hajj almost every day in Bosnia. We are always together. It is impossible for him to know this person and for me not to know him. I would have at least seen him with him and he never talked to me about this person.

They asked me about this person in Bosnia, but I didn't know him. I met him here in this prison.

Q: Do you know of me knowing anybody belonging to Al Qaeda, or have I ever mentioned anything to you about this?

A: Absolutely never.

Tribunal Members' Questions to the Witness, Aet Adeer Mustafa (ISN 10004)

Q: As I understand it, you deny being associated with any terrorist organization at any time?

A: Are you asking me about myself?

Q: Yes.

A: I thought this was a tribunal for Hajj, not my tribunal. When it is my tribunal, then you ask me.

Q: I was listening closely to your testimony and I thought you said you were not affiliated with these groups, so I just wanted to make sure I understand what you said.

A: I don't want to answer you. If you ask me about Hajj I will answer you, but if you ask me about myself, I'm not answering. My tribunal is over, and I already talked to them about my case.

Q: How long have you known Hajj?

A: I believe I met him in Tuzla in 1996, when I moved there.

Q: Been very good friends ever since?

A: Yes.

Q: In your free time, what is your favorite thing to do together?

A: We had some free time, but unfortunately his free time is different than mine. Me, personally, I don't have a lot of free time. I work in the morning and in the evening I am a coach for a team. Mostly we just go have coffee. We'll go to Sarajevo to a sidewalk place and just have coffee or go to the Mosque. Sometimes we'd go to Friday prayer.

Q: You know Hajj as well as your wife and kids, always together. What was Hajj's favorite thing to do?

A: He likes to buy cars and he likes soccer.

Tribunal President's Questions to the Witness, Aet Adeer Mustafa (ISN 10004)

Q: Did your families ever get together for celebrations or festivities?

A: Yes.

Q: What is your occupation?

A: I'm a computer designer. I program and repair computers, software and hardware.

Q: What sport did you coach?

A: Karate. I am member of the national team in Bosnia.

*The witness, Aet Adeer Mustafa, was excused.*

Detainee: I apologize for the way the he answered your questions.

Tribunal Member: Thank you.

*The Personal Representative called Bomedienne Lakhdar Mohammed (Lakhdar Mohammed Boumedienne)*

Detainee's Questions to the Witness, Bomedienne Lakhdar Mobammed (ISN 10005)

*The witness was reluctant to take the oath. He explained that he did not know why he was here. He said he would testify and take the oath, if Hajj had asked for him. It was explained to the witness that Hajj did ask for him and the Tribunal President apologized for not making it known to the witness why he was here.*

*The witness, Bomedienne Lakhdar Mohammed, was sworn.*

Q: Lakhdar, do you know of me being part of any terrorist group, or have I ever mentioned anything to do with terrorism? Do you know of me associating with anything to do with terrorism or any terrorist organization?

A: Never.

Q: Have I ever talked to you about anybody that belonged to Al Qaeda, or to Muslim Algerian Military organization, or anything of this kind?

A: Never.

Tribunal Members Questions to the Witness, Bomedienne Lakhdar Mohammed  
(ISN 10005)

Q: Do you know why anyone would accuse Al Hajj of being involved with terrorist organizations?

A: No, I don't know.

Q: You were apprehended with him in Bosnia and taken here as well?

A: Yes.

Q: You went through the same trial in Bosnia with the same result?

A: Yes.

Q: Do you know Bensayah Belkacem?

A: During the investigations, they have talked to me about him.

Q: Do you know whether or not he is associated with Al Qaeda?

A: I don't know.

Q: Do you know if he is associated with the Armed Islamic Group of Algeria?

A: Are you talking about him [Detainee] or the other guy [Bensayah Belkacem]?

Q: The other guy.

A: No, I don't know.

Q: Do you know if Al Hajj has any enemies that might have accused him of being involved with any of this?

A: No, I don't know, but he is a very nice person and I don't think he would have enemies.

Q: Do you consider yourself a friend of his?



A: Yes, he is my brother.

Q: How long have you known each other?

A: From the time I got to Bosnia?

Q: Which was when?

A: 1997.

Q: How often did you see him in Bosnia?

A: I don't have a number. I didn't write down every time I saw him, but I used to see him. I don't know how many times.

Q: I don't need to know exactly, but I'm looking for frequently...occasionally...what?

A: He's not my wife, so I'm not going to tell you I see him every day. I see him once in a while, yes. I don't see him every day.

Q: Did you socialize together?

A: We used to visit each other.

Q: What were some of the things you enjoyed doing together?

A: We used to like to eat, drink and watch soccer on T.V.

Q: What was your line of work in Bosnia before you came here?

A: I worked with a humanitarian organization that deals with orphans, the Red Crescent.

Q: This is a different organization than Hajj is associated with?

A: Yes.

Q: Hajj coached a sport. Which sport?

Detainee: That was Mustafa, not me.

Q: You were good friends. He coached a sport. Do you know which sport that was?

A: We used to play soccer, but he wasn't the coach.

Q: He also had a part-time job, exchanging things, buying and selling things. Do you know what that was?

A: No, I don't know.

Tribunal President's Questions to the Witness, Bomedienne Lakhdar Mohammed  
(ISN 10005)

Q: You indicated you worked for the Red Crescent?

A: Yes.

Q: Did anyone else work with the Red Crescent that was captured with you?

A: Yes.

Q: Who was that?

A: Mohammed (Nechele).

Q: Your occupation, did you have any other occupation besides your work with orphans?

A: No.

Q: What else can you tell us about Al Hajj that could convince us that he has nothing to do with any terrorist organization?

A: Well, to tell you the truth, this is just like a play. This is all politics. First of all, may I ask a question? If you know you are a terrorist and you know people are looking for you, are you going to escape or not? Answer me.

Q: You're posing the question to us?

A: Yes, I'm asking you. You said you want me to convince you, so I'm asking you.

Q: You would have reasonable thought that a person would try to flee, yes.

A: Good. When they captured me and told me the accusations, I was surprised. I was actually shocked. When they asked me about people I know or not, on the list was Al Hajj's name. I thought for sure there was confusion on the subject. I asked the head of the investigation the same question I asked you. He told me, of course, if accused of this and the police were looking for him, he'd flee.

I told him, how about I call him [Detainee] on the phone and he'll come himself. At that time, I thought it was democracy and there was a mistake or a problem. If they wanted to investigate, that was okay. I didn't know that these things were cooked from way up top and they were such a big thing. After that, Al Hajj walked by himself to the investigator's office and now he is in chains.

It is unreasonable that a terrorist would deliver himself to the police. That doesn't make sense. I have other things, but this is the most important thing.

**Tribunal Members Questions to the Witness, Bomedienne Lakhdar Mohammed (ISN 10005)**

Q: When you were on trial in Bosnia, were all of you on trial at the same time?

A: Yes, of course. In Bosnia, we didn't go to official court, similar to this. We were in jail and they told us that we were acquitted and had official papers that we were acquitted and there was nothing against us. It was announced on the national T.V. and everywhere.

Q: Did you have representatives on your behalf? Any lawyers or anything?

A: Yes, we had lawyers.

Q: Did you have to pay for them yourself or did someone pay for them for you?

A: I'm talking about myself. I don't know who paid for Hajj, but I know that the organization I worked with paid for mine.

*The witness, Bomedienne Lakhdar Mohammed, was excused.*

Witness: Why, you can ask. It's no problem.

Tribunal Members: I have no further questions.

*The Witness and the Detainee had a conversation as the witness was being removed. The Witness told the Detainee that he would not do this for his own tribunal, but for his brother, he would testify.*

Witness: You people who are asking these questions, you don't know that Hajj is innocent?

*The witness was removed from the Tribunal room.*

Detainee: I apologize to the Tribunal and to the Translator for the witness' behavior. It was unnecessary.

Detainee: This is all that I have. But, also those documents in Bosnia will help my case.

Tribunal President: Very well.

Detainee: Also, during my time here, my behavior with investigators, interrogators, and the guards was exemplary. I was very kind to them and they know that. This might also help and show that I was very kind to everybody.

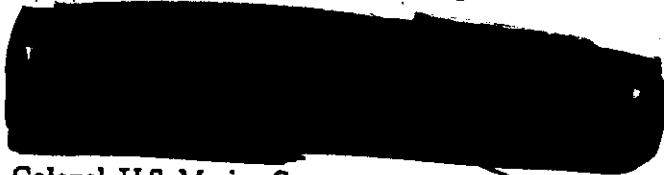
Tribunal President: We'll certainly take that into consideration.

Detainee: I know and I am confident that the Tribunal is experienced in this field and they took the oath and they are just people. I'm sure they will get to the right answer and do the right thing.

Thank you for listening and for your patience, and also for your patience with the witnesses also. I thank you very much.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.

A large black rectangular redaction box covering the signature of the Tribunal President.

Colonel, U.S. Marine Corps  
Tribunal President

**UNCLASSIFIED**

**Exhibit E.**  
**Lahmar CSRT Decision**  
**Report:**

**UNCLASSIFIED**

**UNCLASSIFIED**

**Exhibit E(a).**  
**Unclassified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (1)**

**UNCLASSIFIED**

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL:       #11        
ISN #: 10002

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al-Qaida. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that the detainee is a member of, or affiliated with, al-Qaida. The detainee chose to participate in the Tribunal process. He called one witness, requested one document be produced, and made a verbal statement. The Tribunal President found the requested witness reasonably available. The detainee, in his verbal statement, denied being a member of al-Qaida or associated with al-Qaida. The Tribunal President's evidentiary and witness rulings are explained below.

**3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a through D-b and R-1 through R-21.
- b. Sworn statement of the detainee.

**4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses**

The Detainee requested one witness be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Belkacem, Bensayah	Approved	no

\* The detainee requested one witness that is a current detainee held in GTMO and was reasonably available; however, the requested witness was contacted and refused to testify at this Tribunal.

The Detainee requested the following additional evidence be provided:

<u>Evidence</u>	<u>President's Decision</u>	<u>Produced?</u>
Bosnian government document finding detainee not guilty of attempting to bomb US Embassy.	not reasonably available	no*

\*The Tribunal president initially approved the request and the information was given to the U.S. State Department, which attempted to acquire the requested document. The Bosnian government was unable to provide any such document.

The Detainee requested no additional evidence be produced; no rulings were required.

##### 5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The recorder offered Exhibits R-1 through R-6 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 provided no usable evidence. Exhibit R-3 is used to provide a link that the detainee is a member of or associated with a terrorist organization. Exhibit R-4 is the detainee's Petition for Writ of Habeas Corpus on behalf of the detainee. Exhibit R-5 contains a sworn affidavit from the detainee's wife that briefly discusses the detainee's work and arrest in Bosnia. Exhibit R-5 offered no new evidence. Exhibit R-6 is used to provide a link that the detainee associated with known al-Qaida members.

b. The unclassified evidence provided some background and possible links from the detainee to known terrorist organizations. Additionally the Tribunal considered the detainee's sworn testimony and transcribed written notes (Exhibit D-b). A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the detainee testified that he is not a member of al-Qaida or a member of the Armed Islamic Group (GIA). In the detainee's testimony he refuted items 3a, 3a1, 3a2, 3a3, 3a4, 3a7, 3a8, 3a10 made in the unclassified summary (Exhibit R-1). The detainee admitted he was arrested for items 3a5 and 3a6 but was found not guilty by the Bosnian government. This is the evidence the detainee wanted to provide, but was unavailable from the Bosnian government. In regard to item 3a11, the detainee said he



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had already served his time for and had been released and considered the matter closed. The Tribunal President agreed on that matter and said that it had no bearing on this case. Overall, the Tribunal did not find the detainee's testimony persuasive and turned to classified evidence for further clarification.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

**6. Consultations with the CSRT Legal Advisor**

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

**7. Conclusions of the Tribunal**

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings. He asked no questions regarding his rights and actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al-Qaida.

**8. Dissenting Tribunal Member's report**

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

  
Colonel, USAF

Tribunal President

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ISN #10002  
Enclosure (1)  
Page 3 of 3

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**Exhibit E(b).**  
Classified Summary of Basis  
for Tribunal Decision,  
Enclosure (2)

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

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# **Exhibit E(c). Exhibit R-1**

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (23 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal LAHMAR, Sabir Mahfouz.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is a member of al Qaida.
  - a. The detainee is associated with al Qaida:
    1. The detainee is associated with a known al Qaida facilitator..
    2. Bensayah Belkecem, alias Mejd is the apparent leader of the Algerian cell and has a direct link to Usama Bin Laden.
    3. Bensayah Belkecem made phone calls to Abu Zubaydah, a senior aide to Usama Bin Laden, who was in charge of screening recruits for al Qaida training camps in Afghanistan.
    4. The detainee and Bensayah Belkecem were arrested on suspicion of being linked with international terrorism.
    5. The detainee had charges filed against him by the Bosnia-Herzegovina govt for International Terrorism.
    6. The detainee was arrested in October 01 under suspicion of planning to attack the American Embassy in Sarajevo, Bosnia-Herzegovina.
    7. The detainee advocated attacking U.S. forces and supported the Fatwa issued by Usama Bin Laden.

Exhibit 14

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8. The detainee is a member of the Algerian Armed Islamic Group and attempted to assume leadership in the organization in November 2000.

9. The Algerian Armed Islamic Group is listed as a terrorist organization in the United States Department of Homeland Security Terrorist Organization Reference Guide.

10. The detainee applied for a visa in Sarajevo for travel to Afghanistan on 27 September 2001.

11. The detainee was jailed in late 1997, for robbing a U.S. Citizen.

4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses:

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# Exhibit E(d). Exhibit R-2

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Unclassified

Memorandum



To : Department of Defense  
Office of Administrative Review  
for Detained Enemy Combatants,  
[REDACTED] OIC, CSRT  
Date 09/16/2004

From : FBI, GTMO  
Counterterrorism Division,  
Office of General Counsel,  
Asst. Gen. Counsel [REDACTED]

Subject: REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
ISN US9AG-10002DP

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 10002 have been redacted by the FBI and provided to the OARDEC, GTMO:

FD-302 dated 02/25/2002

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

Exhibit 22



Unclassified

Memorandum from [REDACTED]  
Re: REQUEST FOR REDACTION, 09/16/2004

If you need additional assistance, please contact  
Assistant General Counsel [REDACTED] or Intelligence Analyst [REDACTED]  
[REDACTED]

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# Exhibit E(e). Exhibit R-3

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Unclassified

UNCLASSIFIED



U.S. Department of Homeland Security  
U.S. Customs and Border Protection  
Office of Border Patrol

NOTE: This report is based upon information obtained from various open sources. No classified information was used in the preparation of this report.

f Border Patrol  
1624 SSG Sims Road,  
AF,  
, TX 79908  
Address: Attn. BPSCC P.O. Box 6017  
, Texas 79906  
ent D. Thew  
5) 724-3218

## Terrorist Organization Reference Guide

January 2004

UNCLASSIFIED

Exhibit R-3

#### 4. Armed Islamic Group (GIA)

##### Description

An Islamic extremist group, the GIA aims to overthrow the secular Algerian regime and replace it with an Islamic state. The GIA began its violent activity in 1992 after Algiers voided the victory of the Islamic Salvation Front -the largest Islamic opposition party -in the first round of legislative elections in December 1991.

##### Activities

Frequent attacks against civilians and government workers. Since 1992, the GIA has conducted a terrorist campaign of civilian massacres, sometimes wiping out entire villages in its area of operation, although the group's dwindling numbers have caused a decrease in the number of attacks. Since announcing its campaign against foreigners living in Algeria in 1993, the GIA has killed more than 100 expatriate men and women - mostly Europeans -in the country. The group uses assassinations and bombings, including car bombs, and it is known to favor kidnapping victims and slitting their throats. The GIA hijacked an Air France flight to Algiers in December 1994. In 2002, a French court sentenced two GIA members to life in prison for conducting a series of bombings in France in 1995.

##### Strength

Precise numbers unknown, probably fewer than 100.

##### Location/Area of Operation

Algeria.

##### External Aid

None known.

#### 5. 'Asbat al-Ansar

##### Description

'Asbat al-Ansar - the League of the Followers - is a Lebanon-based, Sunni extremist group, composed primarily of Palestinians and associated with Usama Bin Ladin. The group follows an extremist interpretation of Islam that justifies violence against civilian targets to achieve political ends. Some of those goals include overthrowing the Lebanese Government and thwarting perceived anti-Islamic and pro-Western influences in the country.

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# Exhibit E(f). Exhibit R-4

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November 13, 2001, *see* Exhibit G, Order on Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, November 13, 2001, attached to Affidavit of Stephen H. Oleskey ("Detention Order"), or alternatively, consistent with his authority as Commander in Chief and under the laws and usages of war. Accordingly, Respondent Bush is responsible for the Detained Petitioners' unlawful detention. He is sued in both his official and personal capacities.

18. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to either the Detention Order or the President's authority as Commander in Chief and under the laws and usages of war, Respondent Rumsfeld has been charged with maintaining the custody and control of the Detained Petitioners. He is sued in both his official and personal capacities.
19. Respondent Hood is the Commander of Joint Task Force-GTMO, which operates the detention facilities at Guantánamo Bay. He has supervisory responsibility for the Detained Petitioners and is sued in both his official and personal capacities.
20. Respondent Cannon is the Commander of Camp Delta at Guantánamo Bay. He is the custodian immediately responsible for their detention, and is sued in both his official and personal capacities.

#### IV. STATEMENT OF FACTS

##### A. Petitioners' Detention

21. The Detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants in any context involving hostilities against the citizens, government or armed forces of the United States.
22. The Detained Petitioners are not, nor have they ever been, "enemy combatants," who were "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there," *see Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2639 (2004) (internal quotations omitted), or anywhere.
23. Petitioners seek a judicial determination of the adequacy of the Respondents' determination that the Detained Petitioners are "enemy combatants."

24. Until shortly before Respondents unlawfully detained him, Petitioner Boumediene had worked for the Red Crescent of the Emirate of Abu-Dhabi since at least 1995. (Bouadjmi Aff. ¶ 3.) The Red Crescent is the arm of the International Federation of Red Cross and Red Crescent Societies that operates in Islamic countries. See International Federation of Red Cross and Crescent Societies, available at <http://www.ifrc.org/who/movement.asp> (last visited August 16, 2004). In October 2001, at the time of his arrest and detention in Bosnia and Herzegovina ("Bosnia"), Mr. Boumediene had been living and working there for four years. (Bouadjmi Aff. at ¶¶ 5, 6.)
25. Following his arrest, Mr. Boumediene was held in pre-trial detention in Bosnia for three months, but was then ordered released from confinement on January 17, 2002, by the investigating judge of the Supreme Court of Bosnia and Herzegovina, who had determined there were no further reasons or circumstances upon which pre-trial detention could be ordered. See *Boudellaa v. Bosnia and Herzegovina*, Nos. CH/02/8679; CH/02/8689; CH/02/8690; CH/02/8691, H.R. Chamber for Bosnia and Herzegovina, at ¶ 53 (Oct. 11, 2002), attached as Exhibit H to Affidavit of Stephen Oleskey, Esq. ("H.R. Chamber Decision").
26. Contrary to the judge's Order, however, Mr. Boumediene was not released but instead was immediately taken into custody by the Federation Police of Bosnia and Herzegovina under the authority of the Federal Ministry of Interior. (*Id.* at ¶ 55.) Those forces, and forces of the Ministry of the Interior of Sarajevo Canton, then handed over Mr. Boumediene to U.S. forces at 6:00 a.m. on January 18, 2002. (*Id.*) United States forces then flew Mr. Boumediene out of Bosnia and delivered him to what was then called Camp X-Ray at Guantánamo Bay. (*Id.*) Ms. Bouadjmi has not been able to learn since that time why her husband is being held. (Bouadjmi Aff. at ¶ 9.)
27. When he originally was detained, Petitioner Nechle, like Petitioner Boumediene, worked for the United Arab Emirates' Society of the Red Crescent. (Baouche Aff. ¶ 5.) He worked as an aid worker, helping orphans. (*Id.*) Mr. Nechle and Ms. Baouche had lived in Bihartch, Bosnia, for approximately five years. (*Id.* at ¶ 6.)



28. On October 19, 2001, Mr. Nechle was arrested by police in Bihartch, Bosnia. (Baouche Aff. ¶ 7.) He was held and interrogated for approximately twenty-four hours. (*Id.*) Mr. Nechle was then held in pre-trial confinement for three months, but then ordered released on January 17, 2002 by the investigative judge of the Supreme Court of Bosnia and Herzegovina, also on the ground that there were no further reasons or circumstances upon which pre-trial detention could be ordered. *See* H.R. Chamber Decision at ¶ 53. Like Petitioner Boumediene, and in the same fashion, Mr. Nechle was delivered on January 18, 2002 to U.S. forces in Bosnia who transported him to Guantánamo Bay. (*Id.* ¶ 57.)
29. Until before Respondents unlawfully detained him, Petitioner Boudella, like Petitioners Boumediene, and Nechle worked for a humanitarian aid organization in Bosnia and Herzegovina. (Planja Aff. ¶¶ 2, 5). He worked with war-orphaned children on behalf of a group named Human Appeal. (Planja Aff. ¶ 5).
30. On October 21, 2001, in response to a call from the local police, Mr. Boudella went to the police station in Sarajevo. (Planja Aff. ¶ 6). After the police accompanied him to his home and searched his home, they arrested him. On January 17, 2002, following three months of pre-trial detention, the Bosnian Supreme Court ordered the immediate release of Mr. Boudella. *See* H.R. Chamber Decision at ¶ 53. Contrary to the Chamber's Order, however, Mr. Boudella was not released and instead, the Federation Police delivered Petitioner Boudella to the custody of the forces of the United States at 6:00 a.m. on January 18, 2002. (Planja Aff. ¶ 6).
31. Petitioner Bensayah formerly worked in an administrative position at a local government office in Algeria. (*See* Kobilica Aff. ¶ 2). He was arrested in Zenica in Bosnia and Herzegovina on October 8, 2001 on unspecified criminal charges. (Kobilica Aff. ¶ 5). On January 16, 2002 a court in Zenica ended Petitioner Bensayah's detention (Kobilica Aff. ¶ 6). However, based on terrorism allegations lodged against him in Sarajevo while he was in custody, on January 16, 2002 Mr. Bensayah was transferred to the central prison in Sarajevo. The next day Mr. Bensayah was ordered released (Kobilica Aff. ¶ 7). However, despite that order, Federation Police transferred Mr. Bensayah to the forces of the United States on January 18, 2002. (*Id.*)

Mr. Bensayah thereafter was transferred to the United States facility at Guantánamo Bay, Cuba. (Kobilica Aff. ¶ 10).

32. Petitioner Mustafa Ait Idir moved from Algeria to Croatia in 1993. (See Ait Idir Aff. ¶ 4).

Since at least November 1994, he had been residing in Bosnia and Herzegovina and working for humanitarian aid agencies. At the time of his arrest, he was employed by the humanitarian aid agency, Taibah, as its IT system administrator. (Ait Idir Aff. ¶ 4). While employed by Taibah, he volunteered on many weekends to work with orphaned children at facilities operated by the Red Crescent in Bosnia and Herzegovina. (*Id.*)

33. Petitioner Mustafa Ait Idir was arrested at 3:15 a.m. following a two-hour police raid and search of his apartment, in front of his wife and children. (Ait Idir Aff. ¶ 5) Following three months of post pre-trial detention, the Bosnian Supreme Court ordered his immediate release on January 17, 2002 based on the grounds that there were no reasons upon which to continue pre-trial detention. As was the case with Petitioners Boumediene, Nechle and Boudella, however, rather than freeing Petitioner Mustafa Ait Idir, Federation Police instead delivered him to the custody of United States forces at 6:00 a.m. on January 18, 2002. (Delic Aff. ¶ 5) Since shortly after his transfer to the forces of the United States, Petitioner Mustafa has been held illegally at Guantánamo Bay. (*Id.* ¶ 8). The United States has informed Petitioner Sabiha Delic-Ait Idir that her husband may be held indefinitely at Guantánamo Bay. (See Dec. 31, 2002 Letter from Christopher Hoh, Chargé d'Affaires (attached to Ait Idir Aff.))

34. Petitioner Lahmar worked as a professor of Arab language at the Islamic Center of the High Saudi Commission. (Lahmar Aff. ¶ 4). The Bosnia and Herzegovina Ministry of Human Rights and Refugees terminated Lahmar's permanent residency in 2001 because of a prior criminal conviction. (Lahmar Aff. ¶ 5). He appealed the decision of the Ministry of Human Rights and Refugees, but had not received a decision on his appeal when he was taken into custody by the forces of the United States.

35. Petitioner Lahmar was arrested on October 18, 2001. Following three months of pre-trial detention, on January 17, 2002 the Bosnian Supreme Court ordered his release on the grounds

that there were not reasons upon which pre-trial detention could be ordered. *See* H.R. Chamber Decision at ¶ 53. As was the case with the other Petitioners, Federation Police ignored that order and instead transferred Petitioner Lahmar to the custody of the forces of the United States on January 18, 2002. (Lahmar Aff. ¶ 8). At this time Petitioner Lahmar is being held in the custody of the United States at Guantánamo Bay. (*Id.*)

36. In the wake of the September 11, 2001 terrorist attacks, the United States, at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized Respondent Bush to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Sept. 18, 2001).
37. On November 13, 2001, Respondent Bush issued the Detention Order, which purports to authorize indefinite detention without due process of law. The Detention Order authorizes Respondent Rumsfeld to detain anyone Respondent Bush has "reason to believe":

- i. is or was a member of the organization known as al Qaeda;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

*See Exhibit D* to Oleskey Aff. Respondent Bush must make this determination in writing. The Detention Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

38. On information and belief, at the time of their detention, Mr. Boumediene, Mr. Nechle, Mr. Boudella, Mr. Bensayah, Mr. Ait Idir and Mr. Lahmar were (i) not members of the al Qaeda terrorist network; (ii) had not caused any harm to American personnel or property; and

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*Unclassified*

(iii) had no involvement in either the terrorist attacks of September 11, 2001, or any act of international terrorism attributed by the United States to al Qaeda or any terrorist group. They are not properly subject to the Detention Order issued by Respondent Bush. As they did not participate in any armed conflict involving the United States or its coalition allies, they are not properly subject to the Executive's authority as Commander in Chief and under the laws and usages of war.

39. None of the Detained Petitioners were in or near Afghanistan, or any other theater of war, at the time of their unlawful detention on January 18, 2002.
40. The recent involvement of each Detained Petitioner with local authorities and the fact that they were delivered to U.S. forces by those local authorities suggests U.S. forces should have had no questions about the identities of the Detained Petitioners. Because of the circumstances surrounding their seizure and detention, it is not possible to state whether the Detained Petitioners promptly requested that the United States provide them with access to their families and to legal counsel. However, the fact that four of the Detained Petitioners had pressed their cases in Bosnian courts, suggests the detainees were aware of the assistance lawyers could provide to them. On information and belief, all of the Detained Petitioners were kept blindfolded against their wills for lengthy periods while being taken involuntarily to Guantánamo Bay; have been and will be interrogated repeatedly there by agents of the United States Departments of Defense and Justice and by intelligence agencies of U.S. allies, though they have not been charged with any offense or been notified of any pending or contemplated charges; have made no appearance before either a military or civilian tribunal of any sort, or been provided counsel or the means to contact counsel; and have not been informed meaningfully of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, customary international law and the recent decisions of the United States Supreme Court. Indeed, press reports indicate Respondents have publicly taken the position that Guantánamo detainees should not be told of

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such rights. Absent action by this Court, the Detained Petitioners are completely unable either to protect, or to vindicate their rights under U.S. and international law.

B. The Detention Order

41. The Detention Order seeks to vest Respondent Bush with unfettered discretion to identify the individuals that fall within its scope. It establishes no standards governing his discretion. The Detention Order contains no provision requiring notice to a person detained of the charges he may face. On the contrary, the Detention Order purports to authorize that detainees be held without charges. It contains no provision requiring that detainees receive notice of their rights under domestic and international law, and provides neither the right to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and does not provide for appeal to an Article III court. In fact, the Detention Order seeks expressly to bar review by any court. The Detention Order purports to authorize indefinite and unreviewable detention, based on nothing more than Respondent Bush's written determination that an individual is subject to its terms.
42. The Detention Order was promulgated in this judicial district, the decision to detain Petitioners was made by Respondents in this judicial district, the decision to detain the Petitioners at Guantánamo Bay was made in this judicial district, and the decision to continue detaining the Petitioners was, and is, being made by Respondents and in this judicial district.
43. On information and belief, Respondent Bush has never certified or determined, in writing or otherwise, that the Detained Petitioners are subject to this Detention Order.
44. The Detained Petitioners are not properly subject to the Detention Order.
45. In a related case, Respondents have contended that the Petitioners in that case are being detained not pursuant to the Detention Order, but rather, under the authority of Respondent Bush as Commander in Chief and under the laws and usages of war. *See Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002). However, that rationale cannot, in good faith, be applied here because—unlike the petitioner in *Rasul*—the Detained Petitioners in this matter were not arrested or detained by the United States in the course of an armed conflict.

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C. Guantánamo Bay Naval Base

46. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray, at Guantánamo Bay. The United States military transported the Detained Petitioners to Camp X-Ray approximately one week later. In April 2002, all prisoners, including the Detained Petitioners, were transferred to a more permanent internment facility at Camp Delta. Guantánamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the sole and complete jurisdiction and control of the United States. Guantánamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. Offenses committed by both civilians and foreign nationals living at Guantánamo Bay are brought before federal courts on the mainland, where defendants enjoy the full panoply of Constitutional rights. In *Rasul v. Bush*, decided on June 28, 2004, the United States Supreme Court held that the habeas statute §§ 2241–2243, App. 19, confers a right to judicial review of the legality of an indefinite Executive detention of aliens such as these Petitioners at Guantánamo Bay, a territory over which the United States exercises plenary and exclusive jurisdiction but not “ultimate sovereignty.” *Rasul v. Bush*, 124 S. Ct. 2686, 2698 (2004).

V. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF  
(DUE PROCESS – FIFTH AMENDMENT  
TO THE UNITED STATES CONSTITUTION)

47. Petitioners incorporate paragraphs 1–46 by reference as if fully set forth herein.

48. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of the Detained Petitioners, without Due Process of Law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of the Fifth Amendment, since they act at the direction of Respondent Bush. The Detention Order violates the Fifth Amendment.

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# **Exhibit E(g). Exhibit R-5**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (RJL)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF EMINA LAHMAR

I, Emina Lahmar, of Mahmutovac 24, Sarajevo, Bosnia and Herzegovina ("BiH"), depose and state as follows:

1. I was born on September 17, 1976, in Sarajevo, BiH as Emina Susic. I am a Bosnian citizen. I married Saber Lahmar in April 2001. We have one child, our daughter Sara, born February 13, 2002. My husband has another child, his son Muad, born in 1999. Muad lives with his mother in Zenica. Both children are citizens of BiH.
2. My husband was born on May 22, 1969, in Algeria, in the settlement of Constantine, as an Algerian citizen. His parents are Mahfud and Akila nee Sajh. My husband completed his Islamic Theological faculty studies in Medina in 1996. He then came to BiH in 1997 to work for the High Saudi Committee and on April 4, 1997, he was granted a permit for permanent residence in BiH.
3. I completed my training as a dentist technician in Sarajevo. I then began my theological studies at the Islamic Theological Faculty in Sarajevo. My studies were interrupted during the second year when my husband was removed from BiH and I did not resume my studies. I have never worked. When my husband was living in BiH, we lived with my parents. I continue to live with my parents, brother, and daughter in my parents' home.
4. My husband worked as a professor of Arab language and worked at the Islamic Center of the High Saudi Committee. When my husband first arrived in BiH in 1997, he lived in

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Mostar. He moved to Sarajevo in 2000, where we first met. He paid for my education. He also provided financial support to his son in Zenica, and we often went from Sarajevo together to visit his son. My husband had regular contacts with his family in Algeria, and, in his free time, he liked to play football and read literature.

5. My husband never had Bosnian citizenship, because he never applied for it. On November 23, 2001, the Ministry of Human Rights and Refugees issued a decision terminating my husband's permanent residence permit on the ground that he had been sentenced to imprisonment in 1998 for 5 years. He had served part of his sentence, and on January 6, 2000, was released on parole. My husband appealed the decision of the Ministry for Human Rights and Refugees terminating his residency permit. However, he was taken into United States' custody before the appeal was decided. The revocation of my husband's residence permit was affirmed on May 27, 2002; but due to his absence he was not able to appeal this decision.
6. My husband was arrested on October 18, 2001, in connection with suspected terrorist activity. On January 17, 2002, the Bosnian Supreme Court ordered my husband's immediate release on the ground that there were no reasons upon which pre-trial detention could be ordered. Disregarding that decision, the Federation Police transferred my husband to United States custody at 6:00 a.m. on January 18, 2002.
7. On January 16, 2002, my husband lodged an application with the Human Rights Chamber for BiH ("Chamber"). According to the decision of the Chamber, the respondent parties, BiH and the Federation of Bosnia Herzegovina, violated my husband's right not to be arbitrarily expelled and his right not to be subjected to death penalty. The Chamber also ordered the respondent parties to take all necessary action to protect my husband's rights while in United States custody and to pay compensation for non-pecuniary damages.
8. Presently, my husband is being held in custody of the United States military at Guantanamo Bay, Cuba. I was first notified of my husband's removal from BiH by a Bosnian police officer a few days after January 18, 2002. A few days later, a representative of the International Committee of the Red Cross ("ICRC") told me that my husband was in Guantanamo Bay. At the beginning, I regularly received letters from him but since September 2002 I have not received any correspondence from him. In response to my concerns, the United States Embassy in Sarajevo told me that I most likely did not receive any new letters from my husband because he did not want to write to me. I cannot accept this explanation because my husband was always very considerate and interested in family matters and would not simply stop communicating with us. In fact, a representative of the ICRC told me that he was present when my husband opened a letter from me containing a picture of our new baby and observed that my husband was overjoyed. Until approximately two months ago, I had no more news at all about my husband. Recently, I received news through released inmates of Guantanamo Bay, who told me my husband is alive. I am extremely worried, however, about the conditions under which my husband is being held.

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9. My financial situation has been very difficult since my husband was taken to Guantanamo. I interrupted my studies, and now spend a lot of my time trying to seek assistance for my husband. My activities include regular contacts with the BiH government, international organizations and human right groups. My only income is child support provided by the BiH government. My daughter and I receive support from my family and my husband's family in Algeria. In our family, my mother is the only one who has a job; my father used to work for the United States Embassy in Sarajevo, but he lost his job on October 20, 2001, as a result of my husband's arrest a few days before. My brother lost his job for the same reason. Since my stepson's family in Zenica is also in serious economic difficulties, we try to help them as well.
10. It is my belief, based on the messages my family received, and from everything I know about my husband, that he is seeking my assistance and support and would want me to take appropriate legal action on his behalf as his next friend. In this capacity, I have retained and hereby request Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to act on my own and Saber Lamar's behalf and to take whatever legal steps they consider to be in our best interests in connection with my husband's detention at Guantanamo.

I know the facts deposed herein to be true to the best of my knowledge.

Sworn to by the deponent on this 10 day of August, 2004.

Lahmar Emina  
Emina Lahmar

Liliana Scasascia Kleiser  
Witness: Liliana Scasascia Kleiser

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (R/L)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF EMINA LAHMAR AUTHORIZING REPRESENTATION

I, Emina Lahmar, hereby depose and say:

1. I am Emina Lahmar, of Mahmutovac 24, Sarajevo, Bosnia and Herzegovina.
2. I am acting as the next friend of my husband Saber Lahmar, who is in the custody of the United States at Guantanamo Bay Naval Base, Cuba.
3. I hereby authorize Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to represent me in all proceedings relating to my husband's detention by the United States, and any and all proceedings related to my husband's status under custody of the United States.

Signed:

Emina Lahmar

Date:

10.8, 2004

Witnessed:

Liliana Scasascia Kleiser

Liliana Scasascia Kleiser

Date:

10. August, 2004

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# **Exhibit E(h). Exhibit R-6**

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# HATE CLUB

**An in-depth look at al-Qaeda, the sprawling terror network through which Osama bin Laden exploits the borderless globe with a secret army driven by a ruthless new brand of extremism**

By MICHAEL ELLIOTT

*"You know that al-Qaeda exists from Algeria to the Philippines... it's everywhere."*

—from a conversation secretly taped by the Italian police on March 22; the speaker was Essid Sami ben Khemals, a Tunisian arrested the next month for alleged terrorist offenses

It was the worst crime in American history, and it has triggered the greatest dragnet ever known. The investigation into the atrocities of Sept. 11 has involved police forces across the U.S. and around the world. From Michigan to Malaysia, from San Diego to Ciudad del Este, Paraguay, law-enforcement agencies have been trying to figure out how the terrorists carried out their attacks, who helped them—and what they might do next. Along the way, the American public has been introduced to a confusing mass of names and faces and has learned of more links between them than any but the most nimble fingered could ever untangle. After nearly two months, there is much that we know about the global terrorist network that goes by the name of al-Qaeda—but an awful lot that is still hunch. Still, an international investigation by TIME into al-Qaeda's structure reveals that it is more global in its range, and more ruthless in its ideology, than all but its most dedicated students could have ever imagined.

The essential story of Sept. 11 is straightforward. A group of 19 men spent months in the U.S. preparing for the hijackings. The cell had earlier been headquartered in Hamburg, Germany, where its alleged ringleader, an Egyptian named Mohamed Atta, 33, had lived off and on for eight years. Atta is thought to have piloted Flight 11, the first to make impact; two of the other suspected pilots,

Marwan Al-Shehhi and Ziad Samir Jarrah, were also residents of the Hamburg region. The Hamburg cell, in turn, is thought to have been an operating unit of a worldwide network of terrorists called al-Qaeda, the name of whose reclusive leader is now known all over the world: Osama bin Laden.

Al-Qaeda had its origins in the long war against the Soviet occupation of Afghanistan. After Soviet troops invaded the country in 1979, Muslims flocked to join the local *mujahedin* in fighting them. In Peshawar, Pakistan, which acted as the effective headquarters of the resistance, a group whose spiritual leader was a Palestinian academic called Abdallah Azzam established a service organization to provide logistics and religious instruction to the fighters. The operation came to be known as al-Qaeda al-Sulbah—the "solid base." Much of its financing came from bin Laden, an acolyte of Azzam's who was one of the many heirs to a huge Saudi fortune derived from a family construction business. Also in Peshawar was Ayman Al-Zawahiri, an Egyptian doctor who had been a constant figure on the bewildering mosaic of radical Islamic groups since the late 1970s. Al-Zawahiri, who acted primarily as a physician in Peshawar, led a group usually called Al Jihad; by 1998, his organization was effectively merged into al-Qaeda.

In 1989, while on his way with his two sons to Friday prayers in Peshawar, Azzam was killed by a massive explosion. His killers have never been identified; Azzam had many enemies. But by the time of his death, the group around al-Qaeda were debating what to do with the skills and resources that they had acquired. The decision was taken to keep the organization intact and use it

# WORLDWIDE WEB

## COUNTRIES WITH KNOWN OR SUSPECTED AL-QAEDA CELLS IN LIGHT GRAY

### ACTIVITIES WITH POSSIBLE ISLAMIC TERRORIST LINKS:

- ★ ARRESTS, DETENTIONS
- TERRORIST ATTACK
- FOILED TERRORIST ATTACK
- ⊙ FINANCIAL BACKING

## UNITED STATES

● Of a total 1,247 arrests, fewer than 10 may tie of people with information about the hijackers or the Sept. 11 attacks

- World Trade Center in 1993 and 2001; Pentagon and Pennsylvania in 2001
- Plans to blow up various bridges and tunnels around New York City and L.A. airport on New Year's Eve 2000

## CANADA

● As many as 20 people have been taken into custody in possible connection with the Sept. 11 attacks, and one faces extradition to the U.S.

## SPAIN

● Six members of an alleged sleeper cell picked up across the country since Sept. 12

## BRITAIN

London in particular is seen by many as a terrorist recruiting zone

● Key arrests include Latif Raouf, who allegedly helped teach the hijackers how to fly; Hamed Ghadi, a computer whiz suspected in the Paris plot; and Yasser al-Siri, who was charged last week in connection with the assassination of Afghan rebel leader Ahmad Shah Massoud



Map created by Al Qaeda  
 Prepared by Al Qaeda since  
 9/11 attacks  
 Source: International Security  
 Service - New Department  
 and other sources

## ARGENTINA, BRAZIL, PARAGUAY

● The area where all three countries meet is thought to be a terrorist financing center; banks are investigating dozens of accounts for links

● Nineteen people in this "controlband capital" have been arrested, mostly on false-documentation charges, and Paraguay has charged officials in 11 U.S. consulates with selling illegal passports and documents

● Last November a Palestinian allegedly plotted to bomb the U.S. and Israeli embassies in Asunción

## URUGUAY

● Al-Said Hassan Makid, an Egyptian wanted for his alleged role in a 1997 attack on tourists in Luxor, Egypt, was arrested leaving Brazil through Uruguay in 1998. He is said to have trained in an al-Qaeda camp in Afghanistan

● Last April U.S. embassies in Uruguay, Paraguay and Ecuador shut down for three days after receiving "credible threats" of attacks

## ISRAEL

● Israel says it has arrested 100 groups of suspected al-Qaeda operatives in Gaza and the West Bank

## SAUDI ARABIA

At least half of the 19 hijackers are thought to have been Saudis

● Saudi security services have carried out a series of arrests of suspected supporters of the Saudi-born bin Laden

● Five Americans were killed when a car bomb exploded outside a military building in Riyadh in 1995; 19 died in a truck-bomb attack the next year

## EGYPT

● Authorities plan to put on trial 253 alleged members of three Islamist groups linked to al-Qaeda. All were arrested before Sept. 11

## SUDAN

● Khartoum was bin Laden's base from 1991 to '96. The U.S. responded to the 1993 embassy bombings with a missile assault on a suspected chemical weapons plant in the capital

● The government has rounded up 30 "foreign extremists" since Sept. 11

# Osama bin Laden's network of influence reaches across five continents, creating a complex tangle of men, money and murder

TIME GRAPHIC BY ED GABEL  
RESEARCH BY AMANDA BOWER AND REBECCA WINTERS  
SOURCES: CONGRESSIONAL RESEARCH SERVICE; STATE DEPARTMENT; WIRE SERVICES AND NEWS REPORTS

**FRANCE**  
 Eight people are still in custody as part of the so-called Beghat network. Djamel Beghat, first picked up in Dubai, has said he received his orders from bin Laden lieutenant Abu Zubaydah. Beghat described a plan to blow up the U.S. embassy in Paris. An earlier plot, uncovered last December, targeted Strasbourg cathedral.

**GERMANY**  
 Alleged terrorist cells have been linked in Munich, Hamburg and Frankfurt. Officials are most interested in the Hamburg operation, which included hijackers Mohamed Atta and Marwan al-Shehhi. These others thought to have helped in the planning of the Sept. 11 attacks are the subject of international arrest warrants.

**BOSNIA**  
 NATO says it has disrupted a terror cell. The alleged mole is linked to al-Qaeda, investigators say. The arrests uncovered a comprehensive plot to attack Eagle Base, used by some 3,000 U.S. paratroopers, as well as the U.S. and U.K. embassies in Sarajevo.

## Who's Who in the Enemy Alliance

The top brass of al-Qaeda has wide-ranging ties to the shadowy world of international terror. A look at Osama bin Laden's lieutenants, their friends and alleged associates

### AYMAN AL-ZAWAHIRI EGYPTIAN

A physician whose group, al-Jihad, has effectively merged with al-Qaeda, al-Zawahiri, 50, is said to be the transforming mentor to bin Laden as well as his No. 2 man. Charged in connection with the 1981 assassination of President Anwar Sadat, he was convicted only of weapons possession.

### ABU ZUBAYDAH SAUDI PALESTINIAN

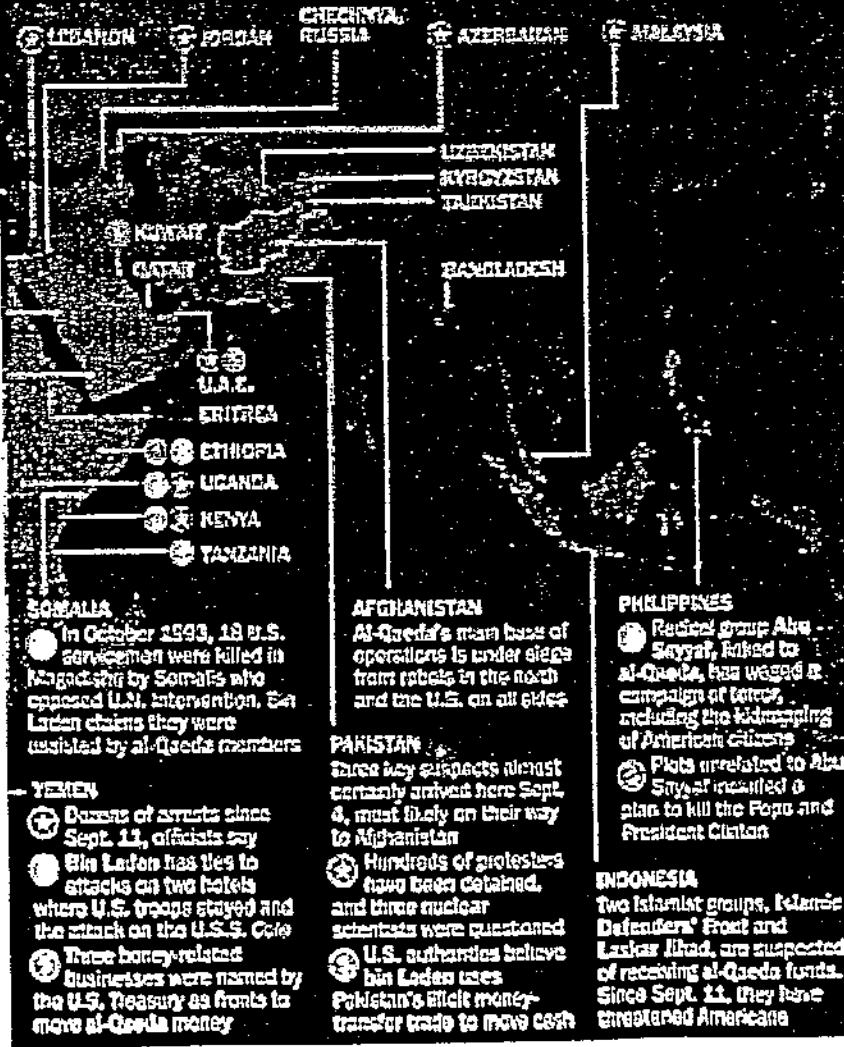
The only Palestinian in bin Laden's inner circle, the man reportedly nicknamed "the Mailman" coordinates international operations and helps select recruits for training in al-Qaeda camps.

### TOHIR YULDASHEV UZBEK

Condemned to death in absentia by the government of Uzbekistan, Yuldashev helps lead the Islamic Movement of Uzbekistan. The movement's armed wing, which trains in Afghan camps, has an estimated 6,000 fighters. The I.M.U. was part of an assassination attempt on Uzbek President Islam Karimov in February 1999, which left at least 15 dead and 100 wounded.

### AMIR KHATTAB SAUDI

Khattab, who commands rebels in Chechnya, trained in Afghanistan and was reportedly sent by bin Laden to support the breakaway movement. Khattab is said to receive millions every month to finance camps that spend three months training (and, critics say, brainwashing) volunteers from all over the Muslim world.





**KHADAFFY JANJALANI  
FILIPINO**

Janjalani is believed to have taken over as head of Abu Sayyaf, a radical separatist group terrorizing the southern Philippines in its quest to establish an independent Islamic state. Officials say the group was partly funded by bin Laden, and many of its members are trained in the Middle East. It is currently holding two Americans and at least 16 Filipinos hostage.

**MOHAMMED ATEF  
EGYPTIAN**

Ataf is bin Laden's military chief, and helped set up al-Qaeda networks in East Africa. He was indicted by the U.S. for the 1998 embassy bombings in Tanzania and Kenya.

**HASSAN HATTAB  
ALGERIAN**

Head of the Salafist Preaching and Combat Group, a three-year-old offshoot of Algeria's Armed Islamic Group. Many experts say the Salafists have been absorbed by al-Qaeda. Religious experts believe the document found in hijacker Mohamed Atta's luggage bears signs of a Salafist tract.

**DJAMEL BEGHAL  
FRENCH ALGERIAN**

Arrested in Dubai in July for traveling on a false passport, Beghal later confessed to playing a prominent role in al-Qaeda's European operations, acting on orders from Abu Zubaydah. On the basis of Beghal's information, some of which he later retracted, authorities uncovered a plot to bomb the U.S. embassy in Paris.

**SAID BAHAJI  
MOROCCAN GERMAN**

Germany has issued an arrest warrant for Bahaji and fellow alleged Hamburg operatives Zakariya Essabar and Ramzi Bin al-Shibh, who almost certainly traveled back to Afghanistan, through Pakistan, before Sept. 11. All three are suspected of playing a significant role in planning the U.S. attacks.

**ZACARIAS MOUSSAOUI  
FRENCH MOROCCAN**

Moussaoui is a tantalizing suspect for U.S. authorities, but he isn't talking. Arrested in August on immigration violations, Moussaoui drew attention at a flight school because of his apparent lack of enthusiasm in learning how to take off or land. French authorities have long suspected him of involvement in terrorist activities. What does he know about Sept. 11?

to fight for a purer form of Islam. The initial target was not the U.S. but the governments of Saudi Arabia and Egypt, which al-Qaeda claimed were corrupt and too beholden to the U.S. It was only after the Gulf War, by which time bin Laden had moved his operations to Sudan (he would later be forced to shift back to Afghanistan), that he started to target Americans. To all but insiders, he first became notorious in 1998, when al-Qaeda operatives exploded truck bombs at the American embassies in Kenya and Tanzania, killing 12 Americans and hundreds of locals. Since then there has been a steady drumbeat of

attacks linked to al-Qaeda—some successful, some not—on American targets and those of U.S. allies around the world.

Al-Qaeda has its headquarters in training camps in Afghanistan. In addition to directing its own attacks, it acts as an umbrella group, financing and subcontracting operations to local networks like Algeria's Armed Islamic Group (GIA), a terrorist organization active throughout Europe. The camps in Afghanistan play a vital role. Whatever network they may originally have been aligned with, visitors to the camps meet men from other groups, forge relationships and acquire the stature of soldiers in a holy war. The high command of the group includes bin Laden, al-Zawahiri and Abu Zubaydah, a Saudi-born Palestinian who was identified in an American court case in July as the organizer of the camps and who investigators believe may be al-Qaeda's director of international operations.

Some of the best leads on al-Qaeda's directorate now seem to be coming from Djamel Beghal, a French-Algerian who is suspected of being an al-Qaeda ringleader and who was arrested in Dubai in July on his way from Pakistan to Europe. After being convinced by Islamic scholars in Dubai of the evils of terrorism, Beghal started talking. (He is now back in France and has attempted to retract his confession.) Beghal has said that while in Afghanistan in March, he received instructions from Abu Zubaydah on a bombing campaign against American interests in Europe, including the Paris embassy. "He's talking about very important figures in the al-Qaeda structure, right up to bin Laden's inner circle," a European official told TIME. "He's mentioned names, responsibilities and functions—people we weren't even aware of before. This is important stuff."

Though al-Qaeda has its roots in Afghanistan, investigators now think that the "Afghan" nature of the group is subtly changing. The war against the Soviets ended in 1991. Increasingly, al-Qaeda's captains in the field are too young ever to have fought in Afghanistan, though some may have joined Islamic brigades in Chechnya—or in Bosnia, as Abu Zubaydah did. Many of the new fighters were born and raised not in the Arab lands but in the Muslim communities of Europe, around which they travel with ease. And there is a growing sense that a number of them are "Takfiris," followers of an extremist Islamic ideology called Takfir wal Hijra (Anathema and Exile). That's bad news: by blending into host communities, Takfiris attempt to avoid suspicion. A French official says they come across as "regular, fun-loving guys—but they'd slit your throat or bomb your building in a second."

In addition to the ruthless nature of al-Qaeda's soldiers, investigators now also appreciate just how extensive are its tentacles. In mid-October, for example, NATO forces in Bosnia foiled a plot to attack U.S. and British targets there. Bensayah Belkacem, an Algerian thought to be at the center of a Bosnia-based terror group, had the number of Abu Zubaydah on a chit of paper in his apartment.

## When Terror Hides Online

Did you hear the one about Osama bin Laden hiding messages in porn websites? It sounds like one of those crazy Sept. 11 rumors, but it's actually a law-enforcement theory about how the al-Qaeda network disseminates instructions to operatives in the field.

It's no secret that bin Laden's terrorist army is Internet savvy. Hijacking ringleader Mohamed Atta made his reservations on Americanairlines.com. Some of his confederates seem to have communicated through Yahoo e-mail. And cell members went online to research the chemical-dispersing powers of crop dusters.

### How Secrets Are Concealed

#### DEVIL IN DETAIL

Hypothetically, a photo of a site to be attacked can be embedded in an innocuous image that is then posted on an existing website for terrorists to access for instructions

But secret Internet messages, known as steganography, may be the most insidious way bin Laden has taken his terrorist movement on line. Steganography, Greek for "hidden writing," allows messages to be slipped into innocuous picture and music files. The trick is that the insertions are so small they're impossible to detect with the naked eye, but easily retrieved through special software tools.

A terrorist mastermind could insert plans for blowing up a nuclear reactor in, say, the nose of a puppy on a pet-adoption website. Operatives in the field, told which nose to look at, could then check for their marching orders. Steganography is a fast, cheap, safe way of delivering murderous instructions. "It avoids the

operational security issues that exist anytime conspirators have a physical meeting," says Matthew Devost of the Terrorism Research Center. Terrorist watchers suspect al-Qaeda may be hiding its plans on online porn sites because there are so many of them, and they're the last place fundamentalist Muslims would be expected to go.

Even for netheads, steganography is a bit obscure. But bin Laden's followers may have learned about it when it burst on the pop-culture scene in recent movies like *Along Came a Spider*. The FBI has been close-mouthed on whether it has found any steganographic images from al-Qaeda. But a former government official in France has said that suspects who were arrested in September for an alleged plan to blow up the U.S. embassy in Paris were waiting to get their orders through an online photo.

Law enforcement is increasingly targeting terrorists' technology. After the Sept. 11 attacks, the FBI reportedly installed additional Carnivores, devices it has been using to surreptitiously read e-mail, on Internet service providers. The National Security Agency uses Echelon, a top-secret wiretapping device, to monitor e-mail, cell phones and faxes worldwide. And the antiterrorism law passed last month broadened law enforcement's powers to grab Internet communications.

Steganographic images can be detected through "steg analysis," a process of hunting for small deviations in expected patterns in a file. The hard part is knowing where to look in the vast expanse of the online world. Toughest of all to catch: so-called low-tech steganography, in which the message is conveyed overtly. A photo on a website with arms crossed could mean attack an East Coast nuclear power plant; a blue bandanna could mean West Coast bridges. "Sometimes," says Ben Venzke, a terrorism specialist at the security analyst firm IntelCenter, "the best technologies are the simplest ones."

—By Adam Cohen

On Oct. 28, Abu Sayyaf, a terrorist group in the Philippines that authorities believe has been supported in the past by al-Qaeda, bombed a food market, killing six people. And the Ugandan government announced that it had detained eight men on suspicion of belonging to al-Qaeda. How did one organization with an extremist ideology manage to acquire a reach that trembles governments from Bosnia to the Philippines to Uganda?

### THE BORDERLESS WORLD

"GLOBLIZATION MEANS INTERDEPENDENCE," SAYS EDMUND HULL, U.S. ambassador to Yemen and former State Department counterterrorism chief. "We have previously seen the benefits of this interdependence. Now we are seeing its risks." That goes to the heart of any attempt to understand al-Qaeda. For the past decade, globalization

## Is He Osama's Best Friend?

How dangerous can an Afro comb and a plastic bottle of hot sauce be? When Officer Louis Pepe came by cell No. 6 at the Metropolitan Correctional Center in lower Manhattan on Nov. 1, 2000, he was distracted by a squirt in the face from the bottle before the sharpened comb was plunged like a bayonet through his eye and 2½ in. into his brain. The man in the cell, Mamdouh Mahmud Salim, then allegedly took the keys from the paralyzed Pepe and began to wander down the hall. Guards stopped Salim, and he didn't get away. Or did he?

Arrested and extradited from Germany in December 1998, Salim was a prize prisoner for the U.S. government, which originally planned to put him on trial with four others charged with the Aug. 7, 1998, bombing of the U.S. embassies in Africa. Salim had complained that he should not be tried with the others in the trial scheduled for February 2000 because he had not been charged with directly carrying out the bombings. The judge had refused to sever the charges, but the assault on Pepe gave the court no choice but to postpone his conspiracy trial. Salim, 43, will first be tried for the attempted murder of Pepe. Three weeks ago, on Oct. 18, all defendants in the embassy-bombing trial were found guilty and sentenced to prison for the rest of their lives.

Salim has made himself out to be small fry in the search for bin Laden associates. But could he be something bigger? The portrait painted of Salim in the embassy-bombing trial is of a powerful and malignant personality. Prosecutors described Salim (whose alias was Abu Hafar al Iraqi) not only

as one of Osama bin Laden's council of advisers, the Shura, but also as a key member of the fatwa committee, which helped formulate the theological justification for al-Qaeda's actions. Salim derived his prestige from being a religious scholar who has memorized the Koran, and he would alternate with bin Laden in delivering regular sermons to the al-Qaeda faithful. The government's star witness, a former top al-Qaeda operative, described Salim as bin Laden's "best friend." It was Salim, the prosecutors said, who provided al-Qaeda with a rationale for "collateral damage," citing an ancient fatwa calling for all-out war against pagan invaders, one that was likely to bring about the death of Muslim traders and civilians in the cross fire. If the civilian dead were indeed innocent, the argument went, they would be headed for heaven anyway.

The prosecutors provided evidence in the recent trial that Salim contributed more than theology. He was on the committee that helped al-Qaeda decide to relocate to Sudan in 1990 after the Afghan war. While Salim had told the Germans he handled finances for bin Laden's agriculture business, Themar al Mubarak, the prosecution's witness claimed that a significant part of one large farm owned by the company was used for training courses in explosives. The witness also said that Salim, who allegedly received a monthly salary of \$1,500, helped run bin Laden's Al Hijra Construction company, which ostensibly built roads and bridges but also had a permit to import explosives for construction use. The same witness said that Salim took him on a trip to a chemical-warfare-training facility in Sudan and was a critical link in the negotiations for an attempted \$1.5 million purchase of South African uranium in 1993.

*(continued on next page)*

has been understood as an economic process, rooted in the trade of goods and services. But the defining characteristic of our new world is not the movement of products or money but of people. Cheap air transport, the effects of decolonization and a population explosion in the poorer parts of the world have combined to create an unprecedented movement of humanity from one nation to another. Travel and emigration have broadened the mind and brought unparalleled opportunities to countless families. But they have also helped create havens for those seduced by the romance of terrorism.

French investigators believe Kamel Daoudi is one such recruit; his tale illuminates both the nature of modern terrorist cells and their global reach. Daoudi was the kind of child that immigrant parents dream of having. The son of Algerians who had immigrated to France, he took the tough post-high school exams a year early and started to study computer sciences at a university in Paris. But he

found the courses difficult, and according to reports, a family row exploded in 1999 when Daoudi's father found evidence of his son's appointments with psychiatrists. Daoudi left for Britain, his pockets bulging with the \$11,000 his family had saved for his education.

On Sept. 21, he made the same trip; this time, running not from his family but from the law. Daoudi slipped away from his apartment on the Boulevard John F. Kennedy after police across Europe started to round up the network that Beghal had assembled for his operations. (French investigators think Daoudi was the computer-and-communications whiz kid of the group.) Daoudi knew Britain well. He and Beghal had hung out there with Jerome Courtailler, one of two French brothers who had converted to Islam. For a while, Courtailler lived in south London with Zacarias Moussaoui, another French child of disappointed immigrant parents. Moussaoui grew up in the southern French town of Narbonne

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Salim admitted to German interrogators that he worked for bin Laden's business enterprises in Sudan, including Themar. But according to a transcript of his interrogation, he insisted that "my relationship with [bin Laden] was as an employee with a contract and monthly pay." When recruited to run the businesses, Salim said, he told bin Laden that "I was an electrical engineer; not a finance specialist. He said that was not important because he knew me to be an honest man and that I would manage."

Allan Haber, Salim's lawyer in the conspiracy case, says the prosecution's portrayal of Salim as a key bin Laden operative all comes down to the credibility of the government witness Jamal Ahmed al-Fadl and "whether or not you can believe a man who says he is a devout Muslim but steals money from his boss and tries to sell information to the government of Israel." (Al-Fadl sought protection with U.S. investigators after he embezzled \$100,000 from bin Laden.) The government says al-Fadl's testimony is accurate and can be corroborated.

When Salim was arrested in Munich, he said he had arrived in Germany for the first time in 1995, to buy electronics to set up an Arabic-language radio station in Sudan. The U.S. says the real goal was to get radio equipment that could be used by al-Qaeda to communicate with its operatives. The following year, however, found al-Qaeda in confusion: Sudan expelled bin Laden, and the group's members were scattered until their high command returned to Afghanistan. Salim was living in Dubai and by 1998 had made four more visits to Germany, ostensibly to look for a new wife and a car. "My wife had three operations on her uterus," he told interrogators. "I talked with my wife about this, and she agreed I should look for a second wife." (German police note that Salim's airfare from Dubai cost more than the car he hoped to purchase, a used Mercedes-Benz 230 station wagon.)

More important, Salim acknowledged to his German interrogators that he had opened an account at Deutsche Bank and that he gave signature power over the account to Mamoun Darkazanli, a Syrian businessman

who had settled in Hamburg in the 1980s and who has told reporters that he knew some of the Sept. 11 hijackers. Darkazanli attended the wedding of Said Bahaji, an alleged member of the cell that included suspects Mohamed Atta and Marwan Al-Shehhi. Bahaji's wedding album includes pictures of Atta and Al-Shehhi. Darkazanli's name is now on a list of 39 terrorists and organizations whose assets have been blocked by the U.S. Treasury Department. He remains, however, free to roam about Hamburg.

If Salim had been on trial for conspiracy in the embassy bombings, the U.S. would potentially have been able to establish his intimacy with the highest levels of al-Qaeda. In that case, the Darkazanli connection might be more than a tantalizing possibility: a clear link between a "best friend" of bin Laden's and someone in contact with the Sept. 11 hijackers.

In the past five years, al-Qaeda officials have shown deep concern over the secrets held by its high-ranking members. When their finance chief was nabbed by the Saudis in 1997, there were discussions about assassinating him before he could turn information over to Riyadh and the U.S. When the head of the military committee drowned in a ferry accident in Lake Victoria in Kenya in the spring of 1996, al-Qaeda agents were sent to verify that he was indeed dead and that no secrets had filtered out. But if Salim is a big shot who knows too much, al-Qaeda doesn't have to worry about him for a while. His trial for the attempted murder of Pepe was scheduled to begin the week of Sept. 17 and has been put off until early next year because of the logistical and bureaucratic chaos in lower Manhattan, where the court system is located. His conspiracy trial has not even been scheduled. The planes that devastated lower Manhattan have made sure that whatever secrets he holds will take their time coming to light.

—By Howard Chua-Eoan  
With reporting by Charles P. Wallace/Berlin

but left for Britain in 1992 and took a degree at London's South Bank University. Earlier this year, he enrolled in an Oklahoma flight school that had been visited by two of the Sept. 11 hijackers, and German authorities say he had called the house in Hamburg used by Atta. In August, after suspicious behavior at another flight school in Minnesota, Moussaoui was arrested on immigration charges. Today he is incarcerated in the Metropolitan Correctional Center in Manhattan, refusing to speak to investigators.

Daoudi, who was picked up in the British town of Leicester, sits silent in a French jail. "He isn't giving an inch," says a French official. His lawyer denies that Daoudi has ever been involved in plotting terrorist attacks.

Children of immigrants, Muslims in Europe, highly skilled, Daoudi and Moussaoui epitomize the kind of person investigators now think provides some of al-Qaeda's key recruits. Above all, both men were true global citizens; Moussaoui, a child of the warm south, ended up in

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# TERRORIST HITS AND MISSES

## A CHRONOLOGY OF MAYHEM

### ATTACK

DEC. 29, 1992 ADEN, YEMEN

One hundred U.S. servicemen had just left the Gold Mohur Hotel, on their way to duty in Somalia, when the bomb hit. It killed two people in the hotel and seriously wounded four tourists. Two suspects reportedly had 23 bombs, two antitank mines, dynamite and machine guns.

### ATTACK

FEB. 26, 1993 WORLD TRADE CENTER, NEW YORK CITY

The first attempt to bring down the Twin Towers resulted in six deaths and more than 1,000 injuries. The al-Qaeda organization was never mentioned at the trial of convicted mastermind Ramzi Yousef, but he was later convicted of other foiled plots that authorities suspect had al-Qaeda links.

### ATTACK

OCT. 3, 1993 MOGADISHU, SOMALIA

Bin Laden claims he supplied weapons and fighters to Somalis involved in a fierce battle that left 18 U.S. servicemen dead.

### FOILED

LATE 1994, EARLY 1995 MANILA, PHILIPPINES

Then-fugitive Ramzi Yousef had already slipped out of the U.S. and the Philippines when officials investigated an explosion in a Manila apartment occupied by two people linked to him. Investigators discovered plots to assassinate the Pope and President Clinton during visits to the Philippines and to explode a dozen commercial jets over the Pacific.

### FOILED

JUNE 26, 1995 ADDIS ABABA, ETHIOPIA

An assassination attempt on the motorcade of Egyptian President Hosni Mubarak was unsuccessful.

### ATTACK

NOV. 13, 1995 RIYADH, SAUDI ARABIA

A car bomb at a U.S.-run training facility for the Saudi National Guard killed five Americans and two Indians. Four Saudis confessed on national television (they were later beheaded) and said they were "inspired" by bin Laden.

### ATTACK

JUNE 25, 1996 DHAHRAN, SAUDI ARABIA

A massive truck bomb at the Khobar Towers apartment compound, where hundreds of U.S. Air Force personnel were stationed, killed 19 U.S. airmen and wounded hundreds more.

### ATTACK

AUG. 7, 1998 DAR-ES-SALAAM, TANZANIA & NAIROBI, KENYA

Truck bombs hit U.S. embassies in both cities, killing 224, including 12 Americans. Bin Laden and 20 others were later indicted; four received life sentences.

### FOILED

DEC. 14, 1999 PORT ANGELES, WASH.

Alert U.S. Customs agents noticed that Ahmed Ressaam was sweating—in winter—while waiting to cross from Canada into the U.S. In his trunk, they found explosives. Ressaam later confessed to a plot to blow up LAX airport.

### FOILED

DECEMBER 1999 AMMAN, JORDAN

A tip to local intelligence officials revealed a plot to kill U.S. and Israeli millennium revelers by bombing a fully booked hotel and prominent Christian sites.

### ATTACK

OCT. 12, 2000 ADEN, YEMEN

A boat laden with explosives rammed the U.S.S. *Cole*, killing 17 sailors and wounding more than 30. Bin Laden, at his son's wedding, wrote an ode to his supporters who carried out the attack: "The pieces of the bodies of the infidels were flying like dust particles."

### FOILED

DEC. 25-26, 2000 STRASBOURG, FRANCE

German investigators picked up four men across the Rhine River in Frankfurt on the eve of what they said was a planned bomb assault on Strasbourg's cathedral and market.

### ATTACK

SEPT. 11, 2001 NEW YORK CITY, WASHINGTON, PENNSYLVANIA

Four hijacked passenger airliners crashed into New York City's two tallest buildings, the Pentagon and a field in rural Pennsylvania. Thousands were killed.

### FOILED

SEPT. 13, 2001 PARIS AND BRUSSELS

Evidence of plots to bomb the U.S. embassy in Paris, and possibly also NATO headquarters in Brussels, was uncovered after the earlier confession of Djamel Beghal. The information, despite being partially retracted, led to arrests.

### FOILED

OCT. 8, 2001 SARAJEVO, BOSNIA

NATO officials say they disrupted an al-Qaeda cell that was planning to attack the U.S. embassy and Eagle Base airfield, used by some 3,000 U.S. peacekeepers.

—By Amanda Bower

8 17

the state where ice fishing is a favorite sport. As they dig deeper, law-enforcement agencies are beginning to understand just how effectively globalization has spread terrorism around the planet.

Consider two countries half a world apart and far from the Islamic heartlands: the Philippines and Britain. It was in Manila, that most Catholic of cities, that Mohammed Sadeek Odeh found his vocation. Sentenced to life imprisonment on Oct. 18 for his part in the 1998 bombings of the American embassies in Kenya and Tanzania, Odeh seemed to have lived the predictable life of an al-Qaeda operative—he was born to exiled Palestinians in Saudi Arabia and grew up in Jordan. Yet he turned to radical Islam while studying engineering in the Philippines. It was there that Odeh first saw and heard videos and taped messages from Abdallah Azzam. In 1990 Odeh moved to Pakistan, and from there to the camps in Afghanistan and a new life as a soldier in al-Qaeda.

Other Muslims who had studied in the Philippines maintained links there. It was from Manila that Ramzi Yousef, the convicted mastermind behind the first World Trade Center bombing, hatched a plan to blow up 12 American airliners as they flew over the Pacific. In the mid-1990s, Mohammed Jamal Khalifa, married to one of bin Laden's sisters, allegedly funded Islamic schools in the south of the country, where Muslim insurgents have been fighting for years. The Filipino government has long claimed that Abu Sayyaf, the most bloodthirsty of the groups—its specialty is beheadings—has been supported by al-Qaeda. Abdurajak Janjalani, the group's late founder, fought in Afghanistan, reportedly with bin Laden and Yousef. The links may be a thing of the past; these days Abu Sayyaf's style runs more to kidnapping and ransom than to jihad. Still, Philippine President Gloria Macapagal Arroyo recently said Khalifa had offered to secure the release by Abu Sayyaf of 18 hostages, including an American missionary couple.

About the only thing that Manila has in common with London is damp—that and a reputation for giving succor to terrorist supporters. Britain has always had a habit of providing safe haven to political refugees; that's why Karl Marx is buried in Highgate cemetery. But in the past 20 years, says Neil Patrick, a Middle East analyst at the Royal United Services Institute, London has become "the capital of the Arab world." As they used to say in Britain: Whoever lost the Lebanese civil war, London won it. With Beirut in ruins, banks relocated from Lebanon; they were followed by Arabs from Saudi Arabia and the gulf who summered in Kensington Gardens, journalists, members of opposition groups—and radical Islamic clerics.

One such preacher, Abu Hamza al-Masri, arrived in 1981, having left one eye and both hands in Afghanistan. He was granted British citizenship in 1985, and his mosque in Finsbury Park, tucked among Victorian row houses one tube stop from Arsenal's soccer stadium, has become famous worldwide for preaching jihad. Mous-

saoui, the Courtailler brothers and Beghal all attended prayers there. Beghal is said also to be a follower of Abu Qatada, a radical who preached jihad from a community center on Baker Street and whose bank account, allegedly with \$270,000 in it, was frozen by the Bank of England in mid-October.

London's dirty secret is that it has long been a recruiting ground for terrorists. French authorities moan with frustration at the lack of British cooperation. For years the French were unable to get London to extradite suspected members of the Algeria-based GIA, responsible for a wave of bombings in Paris in the mid-1990s. The U.S. hasn't always had better luck; Americans have been trying to get their hands on Khalid al-Fawwaz, a London-based Saudi alleged to have set up an office for bin Laden in 1994 and now wanted for trial in relation to the African embassy bombings. (Al-Fawwaz's legal maneuverings have just reached Britain's highest court.)

The gears of British justice are starting to grind more quickly. London has detained and questioned a number of Sept. 11 suspects, including Lotfi Raissi, an Algerian alleged to have helped train the suicide pilots in the attacks. And last week Yasser al-Siri, whose bookstore and website are well known in London, was charged with conspiracy to murder Ahmed Shah Massoud, the leader of the anti-Taliban Afghan Northern Alliance. Massoud died after assassins bombed his headquarters on Sept. 9.

But al-Siri's case demonstrates the oddities of the international legal system. He is in Britain on asylum from Egypt, where he was sentenced to death for the attempted murder of the Prime Minister in 1993, a charge he denies. "That was a military court," he told TIME before his arrest. "I'm a civilian." Governments across Western Europe, their feet held to the fire by strong civil-liberties groups, have been protective of the rights of refugees and asylum seekers. And while the European Union has demolished barriers to the movement of goods and people, its 15 nations have been slow to develop common institutions of criminal justice and investigation. For Atta and his cell of alleged conspirators in Hamburg, the characteristics of modern European life were a godsend. In addition to the hijackers known to have lived there, other men alleged to be part of the Hamburg cell have had arrest warrants issued for them: Said Bahaji, Zakariya Essabar and Ramzi Binalshibh. German officials believe that last spring both Essabar and Binalshibh tried to get to the U.S. to take flying lessons. The three almost certainly arrived in Pakistan from Germany on Sept. 4 and have since gone to ground—possibly in Afghanistan.

Hamburg was an ideal long-term base; 1 in 7 of the city's population is foreign, as is 1 in 5 of the students at Atta's college. (Foreign students pay no tuition in Germany.) Atta and his friends could have stayed as long as they liked—Germany invented the perpetual student—since they had legal residence, could travel freely around the E.U. or leave it for a period, without arousing suspicion. It is hard to think of a way of life that so epitomized

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the promise of a borderless world and then perverted globalization to such an evil end.

## YOUNG AND RUTHLESS

AFTER SEVEN WEEKS OF INVESTIGATIONS THERE IS NO HARD evidence that links the Hamburg cell to any other. There are fragments of a puzzle—Atta made a 10-day trip to Spain from Miami in July that continues to bother investigators, while French sources still think that Moussaoui may be connected to the Hamburg cell—but many pieces are missing.

For example: Was Mohammed Bensakhria, an Algerian arrested in June by Spanish police, bin Laden's key European lieutenant? If so, is there an American equivalent—and has he been picked up in the dragnet after the attacks? Did al-Qaeda's reputed training-camp chief Abu Zubaydah leave Afghanistan before Sept. 11, as European officials believe, and if so, where is he and what is he doing?

On one matter, however, European investigators are clear: there is something truly ruthless about the suspected terrorists they are finding. After six Algerians were picked up in Spain in September, police found videotapes in the apartment of one of the men. One tape showed four Algerian soldiers, with their throats cut, dying in a burning jeep.

For experts in terrorism, such incidents are suggestive. In Egypt in the 1960s, the Islamic ideology Takfir wal Hijra began to win adherents among extremist groups. One of them, the Society of Muslims, was led by Shukri Mustafa, an agricultural engineer. Mustafa denounced other Muslims as unbelievers and preached a "withdrawal" into a purity of the kind practiced by the Prophet Muhammad when he withdrew from Mecca to Medina. The ideology is particularly dangerous because it provides a religious justification for slaughtering not just unbelievers but also those who think of themselves as Muslim. Intensely undemocratic—for to accept the authority of anyone but God would be a blasphemy—Takfir wal Hijra is a sort of Islamic fascism.

European analysts now believe that Takfir thinking has won converts among terrorist groups. Beghal is Takfiri, and Daoudi is thought to be. Roland Jacquard, one of the world's leading scholars on Islamic terrorism, says flatly, "Atta was Takfiri." It is not just soldiers of al-Qaeda who may be following the Takfir line. Mustafa was executed in 1978, but his ideas lived on; the beliefs of al-Zawahiri's Al Jihad were dominated by Takfiri themes. Azzam Tamimi, director of the Institute of Islamic Political Thought in London, says of Zawahiri, "He is their ideologue now... His ideas negate the existence of common ground with others."

Bin Laden and al-Qaeda may have learned, by violent experience, to preempt and harness the new fanaticism. In late 1995, bin Laden's compound in Khartoum was attacked by gunmen believed to be Takfiri. A Sudanese

## The Suspects: a Bosnian Subplot

The conversation was in code, but to trained ears it was easily understood. Picked up by U.S. listening devices on Oct. 16 in Sarajevo, it ranged in topics from the bombing in Afghanistan to "what the response should be here," a senior Bosnian official told TIME. U.S. and British targets in Bosnia were mentioned. But it was the sign-off that got listeners' attention: "Tomorrow we will start." Both countries shut down their embassies and branch offices overnight. Using mobile-phone-card registration numbers, Bosnian police tracked down and arrested both callers—Algerian nationals with Bosnian citizenship. Within 72 hours three others, also Algerian born, were in custody in a Sarajevo prison, bringing the number of terror suspects apprehended in Bosnia in the past month to at least 10. In the process, NATO uncovered a separate plot to attack Eagle Base, the airfield used by some 3,000 U.S. peacekeepers in the country. "We are confirming the presence of the al-Qaeda network in Bosnia," said a spokesman for NATO-led peacekeepers. The arrests, he added, had "disrupted" the network, but "it has not been destroyed. Investigations are continuing."

## Belkacem made 70 calls to Afghanistan between the day of the U.S. attacks and his arrest

Direct links to bin Laden focus on just one man, the apparent leader of the Algerian cell, Bensayah Belkacem, 41, alias Mejd, lived with his Bosnian wife and two children in the central town of Zenica until his arrest last month. Combing through his dingy ground-floor apartment, investigators found two sets of identity papers (Algerian and Yemeni), blank passports and on a small piece of paper the number of a senior bin Laden aide, Abu Zubaydah, himself a veteran of the Bosnian war. Investigators say he is now in charge of screening recruits for al-Qaeda training camps in Afghanistan. According to phone transcripts, Zubaydah and Belkacem discussed procuring passports. There was more. Belkacem made 70 calls to Afghanistan between Sept. 11 and his arrest. U.S. officials are particularly interested in the fact that he repeatedly sought a visa to leave Bosnia for Germany just before the terrorist attacks, according to a source close to the investigation.

The other suspects are mostly foreign-born nationals and belong to a community of about 200 ex-mujahedin who came to Bosnia to fight alongside fellow Muslims during the war and later settled in the interior, often marrying Bosnian women and working at humanitarian agencies. Saber Lahmar, the Algerian who allegedly placed the incriminating phone call on Oct. 16, served time in Bosnia for auto theft before being pardoned in 2000. He worked at the Saudi High Commission for Relief, an agency that has given \$500 million to Bosnia. Others, according to local reports, worked at the Red Crescent society, Taibah International—a Saudi group—and Human Appeal. Bosnian authorities say that they are stepping up surveillance of aid agencies and their staffs.

After the latest arrests, the U.S. reopened its embassy, released a statement saying that the specific threat "appears to have passed," and thanked Bosnian authorities for their swift action. But officials tell TIME that there are five more alleged terrorists whom police and peacekeepers are seeking in the rugged hills of central Bosnia. And so, as elsewhere in the world, the hunt continues.

—By Andrew Purvis/Sarajevo

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friend of bin Laden's who questioned the surviving attacker said, "He was like a maniac, more or less like the students in the U.S.A. who shoot other students. They don't have very clear objectives." By the time al-Qaeda had resettled in Afghanistan, ideological training was an integral part of the curriculum, according to a former recruit who went on to bomb the U.S. embassy in Nairobi. Students were asked to learn all about demolition, artillery and light-weapon use, but they were also expected to be familiar with the fatwas of al-Qaeda, including those that called for violence against Muslim rulers who contradicted Islam—a basic Takfiri tenet. French terrorism expert Jacquard describes Takfiri indoctrination this way: "Takfir is like a sect: once you're in, you never get out. The Takfir rely on brainwashing and an extreme regime of discipline to weed out the weak links and ensure loyalty and obedience from those taken as members."

The results of the boot camps are diehard but undetectable soldiers of the movement. "The Takfir," says Jacquard, "are the hard core of the hard core: they are the ones who will be called upon to organize and execute the really big attacks." French officials think that Takfiri beliefs have bred a distinct form of terrorism. "The goal of Takfir," says one, "is to blend into corrupt societies in order to plot attacks against them better. Members live together, will drink alcohol, eat during Ramadan, become smart dressers and ladies' men to show just how integrated they are."

For law-enforcement officials, the Takfiri connection is terrible news. By assimilating into host societies—some won't even worship with other Muslims—it's easy for Takfiris to escape detection. Those stories of the Sept. 11

## What Makes Youths Volunteer?

To British lawyer Anjem Choudary, 40, a British passport means very little. For a true Muslim, he says, "a British passport is no more than a travel document." Abu Yahya, 26, a Londoner and veteran of military training camps in Kashmir and Afghanistan, agrees: "Our allegiance is solely to Allah and his messenger, not to the Queen and country. Nationality... means nothing."

Choudary and Yahya belong to the extremist Islamic group al-Muhajiroun, and though they speak for only a tiny fraction of Britain's 2 million Muslims, their views received grim publicity last week with the news that three British-born Muslims had been killed in Kabul—allegedly in a U.S. bombing raid on a Taliban compound—after volunteering for the jihad.

The deaths of the three young men shocked their families. In Crawley, an industrial town 33 miles south of London, the mother of Yasir Khan, 28, insisted her son had gone to Pakistan for humanitarian work. In Luton, 34 miles north of London, the parents of computer-engineering student Afzal Munir and taxi driver Aftab Manzoor, both 25, weren't aware the two had joined up. Both lived with their parents in modest suburban houses in this quiet town that is home to 22,000 Muslims.

Many Muslims in Britain, however, are loudly anti-American and highly critical of the bombing in Afghanistan. Al-Muhajiroun is capitalizing on this anger. The group had been saying for weeks that Britons were flocking to the bin Laden cause, much as Jewish youths went to Tel Aviv in 1967 to fight in the Arab-Israeli war. In Lahore, Pakistan, last week a spokesman—British university graduate Abu Ibrahim—put the numbers at between 600 and 700. British authorities, however, speculated that volunteers probably amounted to a few dozen. Conservative peer Norman Tebbit suggested that it would be treason for British citizens to take up arms against Anglo-American forces. Defense Secretary Geoff Hoon warned that those who did fight for the Taliban might face prosecution should they return.

The jihad volunteers are mostly from first-generation British families and feel oppressed by the stresses of biculturalism, suggests Mounir Daymi, executive director of Britain's Muslim Students Society. This alienation is felt most deeply in the poorer communities. That's where you will find "some people who want the clash of civilizations to happen," Daymi says. Adam Armstrong, 35, a Luton teacher who converted to Islam in 1989 because he felt "something was missing" in his life, endorses that view. The volunteers, however few, are "devout Muslims, often university students," he says, the sort of idealists who used to go to Chechnya and now go to Afghanistan. Asked why mostly Britons seem to have volunteered so far, he said that Muslims are better organized in Britain, often have families in Pakistan or Kashmir and enjoy greater freedom of movement. There are no national identity cards, giving authorities less knowledge of their whereabouts.

Most British Muslims reject al-Muhajiroun's militant campaigning; fellow Muslims in Luton have been giving the hard-liners a rough time. Al-Muhajiroun leaflets have been banned from Luton's Central Mosque, and last week the local al-Muhajiroun leader, known simply as Shahed, was attacked in the street after he staged a noisy demonstration in support of the Taliban. Although Daymi of the Muslim Students Society rejects al-Muhajiroun's message, he does believe that now is the time for jihad—but not the kind others are pursuing. "In these days of war, our jihad is to show the peaceful face of Islam," he says. "Retaliation and revenge will just lead to more retaliation and revenge. You can defend your religion peacefully." That may be the kind of jihad worth joining.

—By Helen Gibson. With reporting by Jeff Chu/Birmingham and Ghulam Hasnain/Karachi



hijackers drinking in bars and carousing in Las Vegas may now have an explanation. Jarrah's cousin Salim, who lives in the German town of Greifswald, claims that they "used to go to church more than to the mosque." Jarrah, says Salim, loved discos—"We didn't need veiled woman and all that"—and sneaked shots of whiskey during a family wedding. He makes Jarrah sound like a normal guy, and normal guys aren't easy to catch.

## BOLTING THE DOOR

THOSE CHARGED WITH CATCHING TERRORISTS WON'T STOP trying. And governments are reassessing their policies on immigration, asylum and open borders. New legislation is promised in Canada, Britain and Germany; the talks this year when Mexican and American officials seriously considered not tightening, but liberalizing, their immigration policies now bear the sad echo of a lost world.

The American refugee program, which had been responsible for bringing about 80,000 people into the U.S., is barely alive; President Bush hasn't signed its annual authorization. Last week Bush announced further measures to bolt the nation's door, including the formation of a Foreign Terrorist Tracking Task Force to coordinate federal efforts to keep terrorists out and hunt them down if they slip in. Authorities will now check to see that those who enter the U.S. on student visas actually attend school. But there is an air of desperation to the proposals. "This was not an immigration failure; it was an intelligence failure," says Charles Keely, professor of international migration at Georgetown University.

In Washington, the Immigration and Naturalization Service is regarded as a mess; even its spokesman, Russ Bergeron, says it has "languished for decades." In 1996 Congress told the INS to set up a computer system to track those who come into the U.S. on student visas; but with some 600,000 such people in a country with more than 22,000 educational institutions, the system is not yet up

and running. Only one of the 19 hijackers entered on a student visa. Can screenings in foreign countries be tightened? Maybe, but all 19 were run through a computerized "watch list" of suspected terrorists when they applied for visas (at least six were interviewed personally). Nothing turned up. In any event, as Kathleen Newland, co-director of the Migration Policy Institute in Washington, says, "The facts remain the same." Globalization will continue to spin people around the world. The U.S. will continue to have two enormous land borders with peaceful neighbors; we're never going to see watch towers along the 49th parallel. Each year, says Newland, there are 489 million border crossings into the U.S., involving 127 million passenger vehicles; each year, 820,000 planes and 250,000 ships enter U.S. airspace or waters. However terrorism is beaten, it won't be by American border controls.

Will it be by war? In the immediate aftermath of Sept. 11, there was a hope that police work might be able to rid the world of al-Qaeda and its associates. But the more we know of bin Laden's group, the less that seems likely, and not just because its operatives are ruthlessly fanatic.

Perhaps the single most important truth learned in seven weeks is the existence of a creepy camaraderie, an international bond among terrorists. Those ties are forged in Afghanistan. "The one thing that absolutely everyone involved in terrorist groups has in common," says a European official, "is passage through the al-Qaeda camps. When leaders are sent from Afghanistan to start organizing people, there are no questions asked: the camp experience allows everyone to recognize the bona fides or jihad." The B-52s pounding away from 40,000 ft. may not look like sleuths and cops. But if al-Qaeda's sinister appeal and global reach are ever to be broken, the bombers too must play their part.

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—Reported by Bruce Crumley/Paris, Helen Gibson and James L. Graff/London, Scott MacLeod/Calro and Viveca Novak/Washington, with other bureaus

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From *Time*, November 12, 2001, pp. 58-68. © 2001 by Time, Inc. Magazine Company. Reprinted by permission.

Exhibits E(i) to E(w) are withheld in full under 5 U.S.C. § 552(b)(1) and (b)(7) as they contain classified and law enforcement sensitive material.

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**Exhibit E(x).**  
**Mr. Lahmar's statement to  
the Tribunal, Enclosure (3)**

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DETAINEE ELECTION FORM

Date: 28 September 2004

Start Time: 0845

End Time: 1130

ISN#: 10002

Personal Representative: [REDACTED]  
(Name/Rank)

Translator Required? Y Language? ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

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Detainee Election:

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

Personal Representative Comments:

Detainee will participate, provided four pages of handwritten notes for a statement, likely the PR will read this. Although, not stated, he will also participate orally. He wants a written document. He was arrested in Sarajevo, Bosnia by Bosnian authorities. He says the Bosnian Supreme Court tried him on the charges of attempting to bomb the US Embassy and found him not guilty. This occurred sometime between mid 01 and the end of the year. He also wants ISN 10001 to testify. He has been questioned on his relationship with 10001 and he says he only met him in situations like running into him at a market and finding a fellow Algerian and speaking to him briefly. He wants 10001 to confirm this.

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Personal Representative: [REDACTED]

Summarized Detainee Statement

When asked by the Tribunal President if he understood the CSRT Process, the Detainee answered, "yes".

When asked if he had any questions concerning the process, the Detainee answered as follows:

Detainee: I hope this hearing looks at the truth and represents true justice. This country has been a symbol of justice for more than two hundred years. I hope these hearings are not just one movie from many movies that have pasted by us. I also hope I will be judged by the law and not by politics. Please leave the politics on one side and put the law on the other side.

Others that have been judged were promised they would receive the results of the Tribunal within three weeks. Over a month has passed and they still have not received the results. This causes me to doubt the seriousness of this trial. In spite of that, I shall start but before I do, I would like to comment on the accusations that have been made about me.

Tribunal President to Detainee: You will have time to comment on the accusations in just a few moments. We have a time set aside for that. This Tribunal is here to review the facts and not politics. If someone understood they were to be notified in three weeks, I am not sure were they got that understanding from. We do not control the process by which notifications are returned to the Detainees. I cannot tell you how long it will take. When we are done, we forward our decision to Washington, D.C. They review what we have done. Once they approve it, they will come back and tell you at that time. I do not know how long that process will take. Do you have any questions about the process we are doing today?

Detainee: I don't have any, but if my Personal Representative wants to say anything please go ahead.

Tribunal President: The Personal Representative will present evidence on your behalf in just a moment.

Tribunal President: The Detainee has requested one witness and one document for this Tribunal. The Detainee requested his fellow Detainee (10001) be brought in as a witness to talk about their relationship while in Bosnia. The witness has refused to testify at this Tribunal.

The Detainee also requested a document be presented from Bosnia concerning his court case. We have not been able to locate this document through the Bosnian government. We were not able to find that for you.

When asked if the Detainee wished to make a statement, the Detainee stated:

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Yes, I would like to respond to the accusations that have been presented. I might not respond to the accusations in the correct order, since I don't have the unclassified summary in front of me.

Tribunal President: That is okay, we understand.

When asked by the Tribunal President if he wanted to take an Oath, the Detainee answered:

I don't have a problem either way, but I prefer not to swear. Don't focus on me not swearing. The focus should be on what I say and the accusations. If I swear, it will not help me in any way. What will help me is the presentation of the accusations, and my answers to them. This is how the problem will be solved. In my eyes, the problem cannot be solved by swearing under oath, but by the truth.

Tribunal President: We agree.

The Detainee made the following statement:

[The Personal Representative asked the Detainee if he would like him to present his written statement. The Detainee stated he preferred to talk.]

Detainee: Words are better than a written statement. The hearing is being recorded, so I prefer to speak.

I would like to point out something important. My detention from Sarajevo to Cuba was not legal. There is no current law in the world that allows for my detention from my country to another country. If I am accused of something in a country I was in, I should have been detained in that country. That country is recognized worldwide and therefore it has laws and courts. The court from the country should have tried me.

Let's assume I was guilty of something and received punishment for it. The punishment should have been in that country. I have nothing to do with Cuba. The intimidation from the Americans is what caused my illegal detention from one country to another country.

The Combatant Status Review Tribunal states I am an enemy combatant. Those words in my view are ridiculous and have no meaning. A sane person or a small child would never say anything like. The words 'enemy combatant' means a prisoner that has been arrested on the frontlines of the battlefield holding a weapon. In my case, I was kidnapped from my home by Americans. Therefore, the words enemy combatant doesn't apply to me.

Regarding paragraph 3.a.6, [The Detainee was arrested in October 01 under suspicion of planning to attack the American Embassy in Sarajevo, Bosnia-Herzegovina.]

ISN #10002  
Enclosure (3)  
Page 2 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

The day I was detained at Sarajevo, I asked the interrogators why? They told me they didn't know anything about it, the Intelligence Department at the Embassy in Sarajevo was responsible. As far as they were concerned, there weren't any accusations against me. The pressure came from the Americans.

From my first day in Cuba, I asked the interrogators to question me regarding the bombing of the Embassy. They tried to avoid asking me questions regarding that matter. On occasion, they told me they knew I didn't attempt to blow up the Embassy; they only brought me to Cuba for information. They told me if I gave them information, they would let me go. I refused to talk to them until they addressed the accusation of the bombing of the Embassy. This lasted for eight months before they gave up on me talking. I was punished and placed in solitary confinement for three months. I was released, and again I was asked to talk. I refused to talk until they interrogated me on the matter regarding the Embassy. Approximately one and a half years passed, when an interrogator named James (who is still here) told me he wanted to be honest with me for the first time. He told me he wanted to tell me things he hadn't told me before. They didn't want to interrogate me about the night of the Embassy, because that information wasn't contained anywhere in my file. He went on to say he'd hope I would forget about the matter. After that, I started talking to them about other things.

The accusation I tried to bomb the Embassy is merely a move cooked up by the intelligence people in Sarajevo. The intelligence community advertises to the terrorist media in Sarajevo. The news reported some people wanted to bomb the Embassy in Sarajevo. The people accused of the bombing were free at that time, they were in (inaudible). They should have been detained before the information was released. (I for example could have fled anywhere and they wouldn't have been able to catch me), I was arrested five days after the release of this information. If that were my intention, it wouldn't have made sense to stay in my house.

I want the judge to ask the intelligence people, were working at that time, the truth behind my detention. From my first day in Cuba until now, I have not been interrogated on this matter. How can I be accused of something I haven't been interrogated on? Is that justice?

I am not asking to be presented with evidence on this matter. I challenge you to come up with any proof that I planned to bomb this Embassy. I have a witness who can testify I am innocent. I was detained in Sarajevo, tried and acquitted. But, Americans are Americans.

Paragraph 3.a.8, [The Detainee is a member of the Algerian Armed Islamic Group and attempted to assume leadership in the organization in November 2000.]

I left Algeria approximately fifteen years ago, in 1992. I met an Islamic group in the city. My whole life consisted of studying, until I graduated from the University. I then went to Bosnia where I worked for a charitable organization. After which, I was detained and brought to Cuba. If someone wants to become a leader in an armed Islamic organization

ISN #10002  
Enclosure (3)  
Page 3 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

in Algeria, that person should have lived in Algeria, not outside of Algeria. A leader is supposed to live with his group. It doesn't make sense if a group lives on one continent and their leader lives on another continent for several years.

The Algerian Embassy in Saudi Arabia, kept records of my time spent studying at the Islamic University. I have identification from the Embassy. The Algerian Embassy in Italy has a record of when I moved to Bosnia (Bosnia doesn't have an Algerian Embassy). If I had been a leader of an armed Islamic group and this group was considered dangerous to the Algerian government, I wouldn't have registered at the Algerian Embassy, because it would have been stupid. The government would have known where I was and they would have immediately arrested me and taken me to jail.

My passport was issued by the Algerian Embassy. If I were leader, as you have said, I wouldn't have gone to the Embassy for the passport. Algeria looks for everyone with any connection to this group. More importantly, the day I applied for the passport, the Ambassador told me over the phone he wasn't able to issue me a passport until certain procedures were met. The Ambassador told me he had to get in contact with the interior ministry in Algeria to verify the Algerian government wasn't looking for me. I was told it would take approximately four months. After four months, I was contacted by the Embassy and they said they were able to verify I didn't have any problems in Algeria. If I still wanted to apply for a passport, I would have to pay a fee. I received the passport and you have it with you.

I am not asking you for truth, but I challenge you to find proof or anything that looks like proof that I had anything to do with this group.

Paragraph 3.a.7, [The Detainee advocated attacking U.S. forces and supported the Fatwa issued by Usama Bin Laden.]

First, I am not a scholar or sheik to support Usama Bin Laden. I am not considered someone with great weight or great consideration. He wouldn't make me a leader, and I'm not a leader. I am just an employee who works in the Higher Saudi Arabia Charitable Organization. I was a professor who taught children Arabic in Bosnia and Herzegovina.

If you assume I am a scholar, Bin Laden is not a scholar. He is nothing more than a military man and I wouldn't help him. It might make sense if I helped him in military operations. However, I am not a soldier, my whole life has been related to books.

I did not go with Usama Bin Laden until after the events of 11 September.

I ask you and once again challenge you to find any proof that I aided Bin Laden in any of those Fatwas.

Paragraph 3.a.8, [The Detainee is a member of the Algerian Armed Islamic Group and attempted to assume leadership in the organization in November 2000.] [The translator

ISN #10002  
Enclosure (3)  
Page 4 of 9

UNCLASSIFIED / ~~FOUO~~



UNCLASSIFIED / ~~FOUO~~

referred to this paragraph after relaying the name Bensayah Belkecem. The response given by the Detainee could have actually been for paragraph 3.b.2, {Bensayah Belkecem, alias Mejd jis the apparent leader of the Algerian cell and has a direct link to Usama Bin Laden.}]

I do not carry the status of others. For example, you can say this man who was this man's son is a member of this group. This is not my crime. Whoever wrote this accusation may have been drunk. I have only seen him twice in my life. I don't remember the exact time between each visit, because they were many years apart.

[Tribunal member asked Detainee to clarify with whom he was referring.]

Detainee: Bensayah Belkecem.

I asked him to come here as a witness, but he refused because he thought my Personal Representative was lying to him. He told me if I wanted him to appear as a witness, to have my Personal Representative ask him again. He would appear. I refused. I told the Personal Representative I only wanted him to testify that I didn't have a relationship with him and he didn't have one with me. I have only seen him twice. His testimony is in his file. I am sure he was asked if he knew me; and he answered the question.

-Regarding the word 'apparent' in paragraph 3.a.2, [Bensayah Belkecem is the apparent leader of the Algerian cell] in matters of law, the word apparent isn't useful in any way. In law, either you did it or you didn't. I am being tried on a word that is not used in a court of law. 'Apparent' is not based on facts.

The accusation should be made against Bensayah Belkecem, not me. It would be humorous if I were accused as being a member of al Qaida just because my Personal Representative was a member. If he were a member of al Qaida, it had nothing to do with me.

Paragraph 3.a.1, [The Detainee is associated with a known al Qaida facilitator.]

I don't know anything about al Qaida or (inaudible) except after the surprising events of 11 September. In matters of law, you cannot say that I associated with a person; you have to tell me the name of this person. Who is it? Up until now, this man is imaginary. He doesn't exist. Also, assuming this person did exist, prove he is a member of al Qaida, and I am associated with this person. If you prove this person really is a member of al Qaida, it doesn't mean I am a member. I believe I have made a reasonable point.

I ask and challenge you to find one person or something that proves I had a relationship, or anything close to a relationship, with a man from al Qaida. You can look in Bosnia, the Earth, and the moon. If you find a man on the moon from al Qaida, tell me.

Paragraph 3.a.6, [The Detainee was arrested in October 01, under suspicion of planning to attack the American Embassy in Sarajevo, Bosnia-Herzegovina.]

ISN #10002  
Enclosure (3)  
Page 5 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

When I was detained for attempting to bomb the American Embassy in Sarajevo, I sat in the police station for forty-eight hours being interrogated. Shortly before the end of the forty-eight hours, the interrogator told me they were waiting for replies, regarding me, from all police stations in Bosnia-Herzegovina. After an hour, they were able to verify the police didn't have any issues with me in any city. The head of the police department provided me with a piece of paper that allowed me to leave. He said they no longer had a right to keep me there.

Shortly thereafter, The State Head of the police department apologized to me. He told me he was under pressure to keep me detained. He said he didn't want to go into details, but maybe I had an idea who the pressure was coming from. I was put in prison for three months before I was acquitted in court. I was then detained by the Americans and brought to Cuba. I believe it is important for the judge to get this document from the Sarajevo police department.

If I had problems in Bosnia-Herzegovina, I should have been tried there. Therefore, this accusation is not valid. There is a quote that states, "a chicken lays an egg and the rooster head hurts." The chicken's head should hurt, not the rooster's head. If all my problems were in Bosnia, then Bosnia's head should have hurt, not Americas.

I have not committed any criminal acts inside or outside of Bosnia.

Paragraph 3.a.10, [The Detainee applied for a Visa in Sarajevo for travel to Afghanistan on 27 September 2001.]

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How could I apply for a Visa in Bosnia-Herzegovina for Afghanistan, when there isn't an Afghani Embassy in Bosnia? To my knowledge, I have never known of an Afghani Embassy in Bosnia.

I would also like to point out, not everyone that travels to Afghanistan is a terrorist. Everyone has their own personal reasons for traveling to Afghanistan. Some travel to study, some travel for charitable organizations.

I would like you to provide me proof that I applied for a Visa from the Afghani Embassy, if there is such an Embassy.

Paragraph 3.a.5, [The Detainee had charges filed against him by the Bosnia-Herzegovina government for International terrorism.]

I don't support or advocate any terrorist acts whether they are local or worldwide.

I would like you to show me proof that I advocated terrorism. Provide me with one witness that will say I encouraged them to perform terrorist attacks.

Paragraph 3.a.11, [The Detainee was jailed in late 1997, for robbing a U.S. Citizen.]

ISN #10002  
Enclosure (3)  
Page 6 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

I was accused of that accusation in Bosnia-Herzegovina. After spending time in prison, I was acquitted by the court and released. Lets assume I did this, I served my time. I don't understand why it was presented again. This happened in Bosnia-Herzegovina and not in America. I have been punished for this, and I served my time. I considered the matter closed. You don't have the right to bring up this accusation, unless you want to be laughed at.

Tribunal President to Detainee: That is one thing we agree on. That point has no bearing on this case.

Detainee: God knows I have answered all the accusations. The last thing I would like to say is I hope this trial is fair. I am ready if you find anything on me then punish me as you see fit. I hope there is no political pressure on these trials. I also hope, there are no invisible hands playing (inaudible) regarding the trials of these people. I hope, that I am tried according to the law and nothing else. Regarding my Personal Representative, do you have anything? Thank you for listening to me.

Summarized Answers in Response to Questions by the Personal Representative

Q. When you were talking about Usama Bin Laden, the translation came out that you did not know him until after 11 September. I believe he meant he did not know of him until 11 September.

A. I did not know him or anything about him.

Q. Would you like me to give the Tribunal your written words that you provided me the other day to remind the Tribunal of your testimony?

A. Yes. I hope when you review the facts, you will pay more attention to what I said then what I wrote because there were things I remembered that were not on the paper.

Tribunal member to Detainee: The reporter will provide a transcript of your statement, and we will review that.

Detainee: Excellent.

[Translator clarified she made a mistake when the Detainee talked about studying in a city in Saudi Arabia. The Detainee said Medina. Medina can be referred to as a city or a place. In this case, Medina was the city in Saudi Arabia {not a city}.]

Summarized Answers in Response to Questions by the Tribunal Members

Q. Did you have any plans to, or ever want to travel to Afghanistan?

A. Never. I have never seen Afghanistan, and I never had any intentions of going there.

ISN #10002  
Enclosure (3)  
Page 7 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

Q. You stated when you left Algeria you went to work for a charitable organization?

A. When I left Algeria, I went to Medina to study. After I graduated from the university, I went to Bosnia.

Q. In Bosnia you worked for the charity organization?

A. I was a teacher at the Arab college. I taught children Arabic.

Q. What was the name of that organization?

A. The Higher Saudi Organization.

Q. Were you ever a member of the Algerian Armed Islamic Group?

A. I was never part of it. I was very young when this organization was formed. I left Algeria when I was twenty or twenty-one years old. Since I left, I have not returned to Algeria. When I wasn't studying at the Islamic University in Medina, I was in Bosnia-Herzegovina. That was from 1996 until I was detained and brought here.

Q. When you were captured in Bosnia, where were you?

A. I was leaving prison. Please repeat the question.

Q. When you were captured by the Americans, where were you?

A. I left prison and was headed for my house. It was nighttime, around 9:00 p.m., when I received my acquittal paperwork. The American forces and the United Nations, with the help of the Bosnian police, captured me.

Q. You never reached your home?

A. No.

Q. Who else was with you when you were captured?

A. There were five people. The day I was captured?

Tribunal President: Yes

A. When I was captured I was alone. They came to my house. The first to arrive was the Bosnian police (intelligence police). They came by at 8:00 p.m. and told me they wanted to search my house. I told them no problem, come in. I asked them, what was the problem? I was told there wasn't a problem they just wanted to search the house. For four hours they searched my house, from 8:00 p.m. until midnight. After they searched

ISN #10002  
Enclosure (3)  
Page 8 of 9

UNCLASSIFIED / ~~FOUO~~

UNCLASSIFIED / ~~FOUO~~

my house, they told me to come with them to search my car. They searched my car for an hour, before I was asked to go to the police station. I was interrogated for forty-eight hours I was transferred to the higher court. The judge ruled I would be detained for three months. After serving three months, I was acquitted. I was then kidnapped, as you know the story.

Q. When the Bosnian police came to your home, was there anyone else there?

A. Two individuals from the United Nations and the Bosnian police.

Q. Who did you have at your house before the police came?

A. My wife.

Q. No one else?

A. No.

Q. Personal Representative do you have any other evidence to present to this Tribunal?

A. No.


The Tribunal President asked the Detainee if he had any other evidence to present to this Tribunal. The Detainee stated, "no."

Detainee: I see the biggest problem regarding me is the bombing of the Embassy. I ask that you ask the intelligence authorities who were during that time in Sarajevo for the real reason I was detained. Then, you will know the truth.

Tribunal President: It is our objective to discover the truth. And we will do everything we can to find that truth.

### AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.

  
\_\_\_\_\_, Col, USAF  
Tribunal President

ISN #10002  
Enclosure (3)  
Page 9 of 9

UNCLASSIFIED / ~~FOUO~~

Exhibit E(y) withheld in full under 5  
U.S.C. § 552(b)(1) as it contains  
classified material.

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**Exhibit E(z).**  
Mr. Lahmar's written  
statement to the Tribunal

UNCLASSIFIED

unclassified

These are my detailed responses to the accusations that are facing Sabir Alahmar - from the side of the concerned authorities .

As for that I say :

As for me being an enemy combatant ( EC), this is basically wrong .I have been kidnapped, a kidnapping from the prisons of Bosnia and Hercegovina in Europe accordingly I have nothing to do with being an EC. As the EC is the one who had been arrested from the front line and in the fighting arena, with a gun at hand .

As for me having been associated with one of Al Qaida operatives This is all purely bull shit. This is an allegation that needs evidence, but evidences I also need to say : who is that person? Then you have to prove that he is AlQaida associate. Then get me his testimony that testifies that I have a relation with him. That you need to prove beyond doubt that this person is also a member of AlQaida .

As for the one named - Ben Sayeh Belgacem. Who may be as the committee of revision claims is one of the leaders of some Algerian cells, that is directly connected to Usama Ben Laden (UBL). I say: if that person is as such then what is my crime? I am not responsible for other's mistakes, and they being criminals. If they were so ..Every one is responsible for what he does, he himself no one else ..This is the conventional thing in all international tribunals.

Let us suppose I am responsible for what others did. Then the revising committee is not sure that Mr. Ben Sayeh Belgacem is the one leading this Algerian cell that is so close to UBL , as the committee says, maybe and maybe means doubt and you can not build anything on doubt .

AS for the fact that Mr. Sayeh Belgacem had contacted by phone ...etc.

I say : This accusation is supposed to face no one but Ben Sayeh Belgacem, not Sabir Alahmar, as I am not supposed to be punished for someone else's mistake .

- As for my being arrested on suspicion of being related to terrorism .

I say:

That this is a plot cooked by hidden guys well known to the Americans for sure. I have been arrested in Bosnia and Hercegovina for three months. All interrogations were done with me. Then I was charged by the Bosnian Justice. The result -that is- the judge's decision was -I am innocent and no authority, anywhere, has the right to follow me any more. But the American plot insisted to arrest me and to bring me to Cuba . .Then I say the day I was arrested the police authority in Sarajevo, the capital, has investigated me thoroughly, all through Bosnia police centers and Hercegovia. Accordingly they inquired about my situation in Bosnia, the answer from their side was I have no problem with any body at all and no one is looking for me all through the cities of that country for anything. The police director himself gave me a paper that proves that. This you can request from them or from my attorney in Sarajevo.

- AS for the accusation that I tried to blow the American Embassy in Sarajevo .This is all bull shit and plain wrong for the following reasons:

Since the day I was arrested and up to this people's day No one had interrogated me or.



this subject .. Yet so many times have I asked the interrogators to interrogate me for that but they were evading this each time. They even said to me about a year back, we do not want to talk to you about the Embassy subject because it is not at all in your file. Interrogator James said this to me, he is in this island now. We brought you here to give us information only. Accordingly I say that how can I face such an allegation that I have not been interrogated for, they even deny it.

- As for the allegation that I encourage fighting the USA and I am in favor of UBL (fatwas.) I say that this is base-less talk and is not true. This is an allegation that necessitates proof and you have not a single evidence for that. I hereby request the revision committee to give me one single proof or give me one word that I said in this line to encourage fighting the USA.

As for being in favor of any of UBL fatwas. I say that this UBL in fact I only knew him after September 11th events. Then again this man is not a scholar so that I should favor his fatwas. He is in my opinion nothing but a military man and who ever is like that can not be favored nor can he give fatwas. I request the revising committee to give me one single evidence that I support this man.

- As for my being a member of the Algerian Islamic Armed Group(AIAG), and that I tried to lead the group sometime in 2000. This is a belated mistake and a wrong allegation. My evidence against this is that you can inquire about me in the Algerian emabassy in Jeddah In Saudi Arabia where I used to live as a resident or the Algerian Embassy in Italy whence I used to live in Bosnia and Hescovia, where I was officially registered with them and hold a consulate card ..If I were a member of the AIAG I would not have gone to the Embassy of my home and registered myself with them also the same thing applies for Italy. Since in that case I will be arrested on the spot.

I say that because in around the year 2000 I renewed my passport in the Algerian Embassy in Italy. Before renewal they told me that they have to wait for response from the home affairs department in Algeria ( Ministry of interior) for the permission to renew it. Four months later the response came as OK, permitted to renew my passport as there is no search for me as I have no problem with any body at all. What is meant here is that If I were a memeber of the (AIAG) then I would have been arrested and my passport would not have been renewed And If I were a memeber of the (AIAG) I would not have registered myself in the Embassy as it makes my arrest easy and I would have uncovered myself.

-As for the allegation that I applied for a visa to enter Afghanistan in Sarajevo this is also plain lying as there is absolutely no embassy in Bosnia or Hescovia that gives Afghanistani entry visas.

As for my being imprisoned in Bosnia for stealing from some American This according to my knowledge occurred in 1996 in Bosnia and Hescovia. I spent some time in prison and went out free as there was a review of my case and I was declared innocent of that charge.

Then suppose that was true If ever it was that I stole from an American this stealing must have occurred a long time back, and I spent the prison punishment I had to and the Bosnian Justice took course. Why is this case reopened?

These are my responses to the allegations that I am facing. I hope you will be considerate in looking at it in depth.

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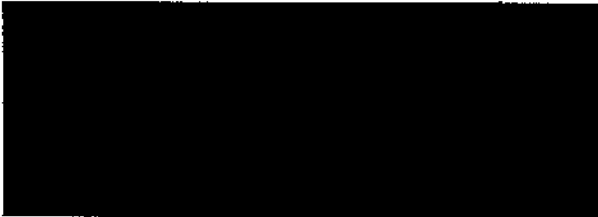
Personal Representative Review of the Record of Proceedings

I acknowledge that on 11 October 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #10002.

I have no comments.

My comments are attached.

\_\_\_\_\_  
Name



11 OCT 04  
Date

ISN #10002  
Enclosure (5)

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**Exhibit F.**  
**Bensayah CSRT Decision**  
**Report:**

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**Exhibit F(a).**  
**Unclassified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (1)**

**UNCLASSIFIED**

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: \_\_\_\_\_ #6  
ISN #: \_\_\_\_\_ 10001

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The initial session of this Tribunal was held on 28 September 2004. The Recorder presented Exhibits R-1 through R-6 during the unclassified portion of the Tribunal. The Unclassified Summary of Evidence (Exhibit R-1) indicates, among other things, that: the detainee is an Al Qaida member and is linked to Usama Bin Laden's operational network; he had phone conversations with Abu Zubaydah, a senior Al Qaida aide to Usama Bin Laden pertaining to procuring passports; he was identified as the primary Al Qaida facilitator in Bosnia; in late September 2001 in Bosnia-Herzegovina, he planned to join Jihadist elements in Afghanistan in anticipation of the U.S./coalition invasion, and encouraged other Algerians to do the same; he was going to assist the mid-October 2001 arrival of unidentified travelers from Afghanistan [to Bosnia-Herzegovina]; and he planned to coordinate from Tehran, Iran, the late-October 2001 travel to Bosnia-Herzegovina of an additional 30-40 travelers from Afghanistan. The Recorder called no witnesses.

The detainee chose not to attend the Tribunal as reflected in the Detainee Election Form (Exhibit D-A), and the Personal Representative presented no evidence and called no witnesses.

During the classified session of the Tribunal, the Recorder presented Exhibits R-7 through R-13. The Personal Representative presented no classified evidence, and neither the Recorder nor the Personal Representative commented on the classified exhibits. After the Tribunal read all of the classified exhibits, the Tribunal requested additional information and recessed until the Recorder could obtain it.

The Tribunal reconvened on 1 October 2004. In response to the Tribunal's request, the Recorder offered into evidence additional classified Exhibits R-14 through R-20 after giving the Personal Representative an opportunity to review the documents. Neither the Recorder nor the Personal Representative had any comments on the additional documents. After considering the unclassified and the classified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

### 3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-20 and D-A.
- b. Testimony of the following persons: None.
- c. Statement of the detainee: None.

### 4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

### 5. Discussion of Unclassified Evidence

a. The recorder offered Exhibits R-1 through R-6 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, the FBI redaction certification, provided no usable evidence. Accordingly, the Tribunal had to look to other exhibits for support of the Unclassified Summary of Evidence.

b. Exhibit R-3 is an affidavit of Anela Kobilica, the detainee's wife, dated 10 August 2004. The affidavit explains how the detainee came to be detained in Guantanamo Bay, Cuba. The affidavit has been filed in the United States District Court for the District of Columbia in support of a habeas petition on behalf of the detainee.

c. Exhibit R-4, as it was originally offered, was page 10 of a 12-page article on terrorism, marked as "Original Exhibit R-4." The focus of the article on page 10 is the detainee's case. Because the Tribunal could not tell the source of the article, the Tribunal requested that the Recorder produce the entire article for the Tribunal's consideration. The full article was submitted by the Recorder and is marked "Supplemental Exhibit R-4." The article provides information on the detainee, including links the detainee has to Abu Zubaydah, a senior Usama Bin Laden aide. Although the Tribunal found the article

informative, the Tribunal placed greater weight on the classified evidence than on this news article.

d. Exhibit R-5 is a request from the government of Bosnia and Herzegovina for information from Interpol. The exhibit did not provide any useful information.

e. Exhibit R-6 contains an undated news article concerning the detainee. No author or title to the document could be found by the Recorder after the Tribunal asked that the additional information be produced. The Tribunal did not rely upon this document in formulating its conclusions.

The Tribunal did rely upon certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

#### 6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT Legal Advisor.

#### 7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The detainee chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.

b. The Personal Representative informed the Tribunal that the detainee understood the Tribunal process, but chose not to participate, as indicated in Exhibit D-A.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

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8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army  
Tribunal President

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ISN #10001  
Enclosure (1)  
Page 4 of 4



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**Exhibit F(b).**  
**Classified Summary of Basis**  
**for Tribunal Decision,**  
**Enclosure (2)**

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

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# Exhibit F(c). Exhibit R-1

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (24 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal BELKACEM, Bensayah

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.

2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."

3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is an al-Qaida member.

The detainee is an al Qaida member:

1. The detainee traveled from Yemen to Bosnia-Herzegovina during November 1995.
2. Detainee is linked to Usama Bin Laden's operational network.
3. The detainee was in possession of Abu Zubaydah cell phone number in Afghanistan.
4. The detainee had phone conversations with Abu Zubaydah, a senior al Qaida aide to Usama Bin Laden pertaining to procuring passports.
5. The detainee made 70 phone calls to Afghanistan between September 11, 2001 and the time he was arrested.
6. The detainee was being investigated under the criminal acts for international terrorism in Bosnia.
7. The detainee was identified as the primary al Qaida facilitator in Bosnia.
8. In late September 2001 the detainee in Bosnia Herzegovina planned to join jihadist elements in Afghanistan in anticipation of the United States/coalition invasion and encouraged other Algerians to do the same.

Page 1 of 2

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9. On 1 October 2001, the detainee applied for a visa in Sarajevo, Bosnia - Herzegovina for onward travel to Afghanistan.
10. The detainee, prior to planned departure to Iran/Afghanistan, was to assist the mid-October 2001 arrival of unidentified travelers from Afghanistan.
11. The detainee planned to coordinate from Tehran, Iran the late October 2001 travel to Bosnia-Herzegovina of an additional 30-40 travelers from Afghanistan.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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**Exhibit F(d). Exhibit R-2**

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Memorandum



To : Department of Defense Date 09/16/2004  
Office of Administrative Review  
for Detained Enemy Combatants,  
[REDACTED] OIC, CSRT

From : FBI GTMO  
Counterterrorism Division,  
Office of General Counsel,  
Asst. Gen. Counsel [REDACTED]

Subject: REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
ISN US9AG-10001DP

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 10001 have been redacted by the FBI and provided to the OARDEC, GTMO:

FD-302 dated 02/20/2002

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

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Page 1 of 2  
~~FOUO~~  
EXHIBIT R-2

UNCLASSIFIED ~~FOUO~~

Memorandum from [REDACTED]  
Re: REQUEST FOR REDACTION, 09/16/2004

If you need additional assistance, please contact Assistant  
General Counsel [REDACTED] or Intelligence Analyst [REDACTED]

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# **Exhibit F(e). Exhibit R-3**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

*Petitioners,*

vs.

04-1166 (RJL)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; *in their  
individual and official capacities,*

*Respondents.*

AFFIDAVIT OF ANELA KOBILICA

I, ANELA KOBILICA, of Zmaja od Bosne 44/a, Zenica, Bosnia and Herzegovina (BiH), being duly sworn, depose and state as follows.

1. I was born on January 31, 1975, in Zenica BiH. I am a citizen of BiH. I have been married to Belkacem Bensayah since March 14, 1997. We have two daughters: Sejma, born in 1997, and Sara, born in 1999; both are citizens of BiH.
2. My husband Belkacem Bensayah was born on September 10, 1962, in Algeria. He is a citizen of Algeria. In Algeria, he lived with his mother. My husband's father died when he was young. He graduated from secondary school, and later undertook administrative work in a municipality office in Algeria.
3. Before I married Belkacem, I lived with my parents and younger sister and brother in Zenica, where I graduated from secondary school.
4. My husband was granted BiH citizenship on January 4, 1995. I met him in October 1996. We lived from the support from our respective families.
5. On October 8, 2001 at 11:30 am, two plain-clothes policemen came to our apartment; they remained in front of our apartment, prohibiting any entrance or exit from the house. At 1:30 pm approximately 40 policemen, including the International Police Task Forces (IPTF), besieged our house and showed us a search warrant; I was not allowed to leave the house with my daughters. The warrant stated, that the search was ordered for

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gathering necessary information related to commission of the criminal act of falsifying documents. The same day, my husband was arrested on suspicion of residing in BiH under false names and was held in pre-trial detention in the Municipal Prison in Zenica according to orders given by the Municipal Court in Zenica.

6. In October, criminal proceedings were initiated in Sarajevo against my husband in connection with suspected terrorism activity and on October 25, 2001 the Supreme Court in Sarajevo ordered my husband's detention for the period of one month to run from the day of the termination of his detention in Zenica. On January 16, 2002, the Municipal Court in Zenica ended my husband's detention. Therefore, on January 16, 2002, my husband was transferred to the central prison in Sarajevo. The next day, the Bosnian Supreme Court ordered my husband's release because there were no further reasons upon which pre-trial detention could be ordered. Disregarding this decision, the Federation Police transferred my husband to United States custody at 6:00 a.m. on January 18, 2002.
7. On November 16, 2001, my husband's BiH citizenship was revoked based only on the fact that criminal charges had been brought against him. The criminal proceedings in BiH against him are still suspended. On January 10, 2002, the Federal Ministry of Interior issued a decision to refuse entry to my husband, and ordered him to leave the territory of BiH. This decision was delivered to my husband only on January 18, 2002, so he had no opportunity to appeal the Ministry's decision ordering his expulsion.
8. After his expulsion, my husband's lawyer lodged an application on his behalf with the Human Rights Chamber for BiH ("Chamber"). In its decision of April 4, 2003, the Chamber stated that the respondent parties, BiH and the Federation of Bosnia and Herzegovina, failed to act in accordance with the law, among other things, because the respondent parties did not follow the proper procedure for expulsion and did not seek any assurances that the death penalty would not be imposed upon my husband by the United States. The Chamber ordered the respondent parties to take all necessary action to protect my husband's rights while in United States custody and to compensate him for non-pecuniary damages.
9. Since my husband was taken into custody, I have worked very hard on his behalf. My activities for my husband's release include regular contacts with BiH government and international organizations, especially human rights organizations.
10. Presently, my husband is held in the custody of the United States military at Guantanamo Bay, Cuba. After his deportation, I received some letters from my husband, but now it has been more than twenty months since I have received any correspondence from him. In the last letter that I received from him, in September 2002, he wrote that the investigations have been completed, and that there is no evidence against him. I am very worried because I have not heard from him since then -- nearly two years ago. The International Committee of the Red Cross told me that my husband does not want to receive my letters and pictures of our children. I cannot believe this, because he always loved his daughters and is an affectionate and caring father who took care of them. However, if it is true, it only shows me to what extent my husband is distressed and has lost all hope.

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11. Both our daughters are suffering a lot due to their father's absence. Our oldest girl became very introverted after the disappearance of her father, asking again and again why her father left. Our youngest girl has problems with her heart, and a physician told me that her illness is psychosomatic. Our physician has recommended psychiatric treatment for both girls. Our older daughter will be enrolled in elementary school in September; I already informed the teacher of our situation because I don't want my daughters to hear rumors from other people or feel ashamed of their father.
12. We now live in a rented apartment in Zenica, in the vicinity of my parents' apartment. I am unemployed and we receive financial support from my parents.
13. It is my belief, based on the messages my family received, and from everything I know about my husband, that he is seeking my assistance and support and would want me to take appropriate legal action on his behalf as his next friend. In this capacity, I have retained and hereby request Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to act on my own and Belkacem Bensayah's behalf and to take whatever legal steps they consider to be in our best interests, in connection with my husband's detention at Guantanamo.

I know the facts deposed herein to be true to the best of my knowledge.

Sworn to by the deponent on this tenth day of August, 2004.

Anela Kobilica  
Anela Kobilica

Liliana Scasascia Kleiser  
Witness: Liliana Scasascia Kleiser

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

Petitioners,

vs.

04-1166 (RJD)

GEORGE WALKER BUSH, President  
of the United States of America;  
DONALD RUMSFELD, Secretary of  
Defense; GENERAL JAY HOOD,  
Commander, Joint Task Force;  
COLONEL NELSON J. CANNON,  
Commander, Camp Delta; in their  
individual and official capacities,

Respondents.

AFFIDAVIT OF ANELA KOBILICA AUTHORIZING REPRESENTATION

I, Anela Kobilica, hereby depose and say:

1. I am Anela Kobilica, of Zmaja od Bosne 44/a, Zenica, Bosnia and Herzegovina.
2. I am acting as the next friend of my husband Belkacem Bensayah, who is in the custody of the United States at Guantanamo Bay Naval Base, Cuba.
3. I hereby authorize Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to represent me in all proceedings relating to my husband's detention by the United States, and any and all proceedings related to my husband's status under custody of the United States.

Signed: ---

Anela Kobilica

Date:

10 August 2004

Witnessed:

Liliana Scasascia Kleiser

Liliana Scasascia Kleiser

Date:

10 August, 2004

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# Exhibit F(f). Exhibit R-4

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the promise of a borderless world and then perverted globalization to such an evil end.

### YOUNG AND RUTHLESS

AFTER SEVEN WEEKS OF INVESTIGATIONS THERE IS NO HARD evidence that links the Hamburg cell to any other. There are fragments of a puzzle—Atta made a 10-day trip to Spain from Miami in July that continues to bother investigators, while French sources still think that Moussaoui may be connected to the Hamburg cell—but many pieces are missing.

For example: Was Mohammed Bensakhria, an Algerian arrested in June by Spanish police, bin Laden's key European lieutenant? If so, is there an American equivalent—and has he been picked up in the dragnet after the attacks? Did al-Qaeda's reputed training-camp chief Abu Zubaydah leave Afghanistan before Sept. 11, as European officials believe, and if so, where is he and what is he doing?

On one matter, however, European investigators are clear: there is something truly ruthless about the suspected terrorists they are finding. After six Algerians were picked up in Spain in September, police found videotapes in the apartment of one of the men. One tape showed four Algerian soldiers, with their throats cut, dying in a burning jeep.

For experts in terrorism, such incidents are suggestive. In Egypt in the 1960s, the Islamic ideology Takfir wal Hijra began to win adherents among extremist groups. One of them, the Society of Muslims, was led by Shukri Mustafa, an agricultural engineer. Mustafa denounced other Muslims as unbelievers and preached a "withdrawal" into a purity of the kind practiced by the Prophet Muhammad when he withdrew from Mecca to Medina. The ideology is particularly dangerous because it provides a religious justification for slaughtering not just unbelievers but also those who think of themselves as Muslim. Intensely undemocratic—for to accept the authority of anyone but God would be a blasphemy—Takfir wal Hijra is a sort of Islamic fascism.

European analysts now believe that Takfir thinking has won converts among terrorist groups. Beghal is Takfiri, and Daoudi is thought to be. Roland Jacquard, one of the world's leading scholars on Islamic terrorism, says flatly, "Atta was Takfiri." It is not just soldiers of al-Qaeda who may be following the Takfir line. Mustafa was executed in 1978, but his ideas lived on; the beliefs of al-Zawahiri's Al Jihad were dominated by Takfiri themes. Azzam Tamimi, director of the Institute of Islamic Political Thought in London, says of Zawahiri, "He is their ideologue now... His ideas negate the existence of common ground with others."

Bin Laden and al-Qaeda may have learned, by violent experience, to preempt and harness the new fanaticism. In late 1995, bin Laden's compound in Khartoum was attacked by gunmen believed to be Takfiri. A Sudanese

## The Suspects: a Bosnian Subplot

The conversation was in code, but to trained ears it was easily understood. Picked up by U.S. listening devices on Oct. 16 in Sarajevo, it ranged in topics from the bombing in Afghanistan to "what the response should be here," a senior Bosnian official told TIME. U.S. and British targets in Bosnia were mentioned. But it was the sign-off that got listeners' attention: "Tomorrow we will start." Both countries shut down their embassies and branch offices overnight. Using mobile-phone-card registration numbers, Bosnian police tracked down and arrested both callers—Algerian nationals with Bosnian citizenship. Within 72 hours three others, also Algerian born, were in custody in a Sarajevo prison, bringing the number of terror suspects apprehended in Bosnia in the past month to at least 10. In the process, NATO uncovered a separate plot to attack Eagle Base, the airfield used by some 3,000 U.S. peacekeepers in the country. "We are confirming the presence of the al-Qaeda network in Bosnia," said a spokesman for NATO-led peacekeepers. The arrests, he added, had "disrupted" the network, but "it has not been destroyed. Investigations are continuing."

### Belkacem made 70 calls to Afghanistan between the day of the U.S. attacks and his arrest

Direct links to bin Laden focus on just one man, the apparent leader of the Algerian cell, Bensayah Belkacem, 41, alias Mejd, lived with his Bosnian wife and two children in the central town of Zenica until his arrest last month. Combing through his dingy ground-floor apartment, investigators found two sets of identity papers (Algerian and Yemeni), blank passports and on a small piece of paper, the number of a senior bin Laden aide, Abu Zubaydah, himself a veteran of the Bosnian war. Investigators say he is now in charge of screening recruits for al-Qaeda training camps in Afghanistan. According to phone transcripts, Zubaydah and Belkacem discussed procuring passports. There was more: Belkacem made 70 calls to Afghanistan between Sept. 11 and his arrest. U.S. officials are particularly interested in the fact that he repeatedly sought a visa to leave Bosnia for Germany just before the terrorist attacks, according to a source close to the investigation.

The other suspects are mostly foreign-born nationals and belong to a community of about 200 ex-mujahedin who came to Bosnia to fight alongside fellow Muslims during the war and later settled in the interior, often marrying Bosnian women and working at humanitarian agencies. Saber Lahmar, the Algerian who allegedly placed the incriminating phone call on Oct. 16, served time in Bosnia for auto theft before being pardoned in 2000. He worked at the Saudi High Commission for Relief, an agency that has given \$500 million to Bosnia. Others, according to local reports, worked at the Red Crescent society, Taibah International—a Saudi group—and Human Appeal. Bosnian authorities say that they are stepping up surveillance of aid agencies and their staffs.

After the latest arrests, the U.S. reopened its embassy, released a statement saying that the specific threat "appears to have passed," and thanked Bosnian authorities for their swift action. But officials tell TIME that there are five more alleged terrorists whom police and peacekeepers are seeking in the rugged hills of central Bosnia. And so, as elsewhere in the world, the hunt continues.

—By Andrew Purvis/Sarajevo

# HATE CLUB

An in-depth look at al-Qaeda, the sprawling terror network through which Osama bin Laden exploits the borderless globe with a secret army driven by a ruthless new brand of extremism

By MICHAEL ELLIOTT

*"You know that al-Qaeda exists from Algeria to the Philippines... it's everywhere."*

—from a conversation secretly taped by the Italian police on March 22; the speaker was Essid Sami ben Khemals, a Tunisian arrested the next month for alleged terrorist offenses

It was the worst crime in American history, and it has triggered the greatest dragnet ever known. The investigation into the atrocities of Sept. 11 has involved police forces across the U.S. and around the world. From Michigan to Malaysia, from San Diego to Ciudad del Este, Paraguay, law-enforcement agencies have been trying to figure out how the terrorists carried out their attacks, who helped them—and what they might do next. Along the way, the American public has been introduced to a confusing mass of names and faces and has learned of more links between them than any but the most nimble fingered could ever untangle. After nearly two months, there is much that we know about the global terrorist network that goes by the name of al-Qaeda—but an awful lot that is still hunch. Still, an international investigation by TIME into al-Qaeda's structure reveals that it is more global in its range, and more ruthless in its ideology, than all but its most dedicated students could have ever imagined.

The essential story of Sept. 11 is straightforward. A group of 19 men spent months in the U.S. preparing for the hijackings. The cell had earlier been headquartered in Hamburg, Germany, where its alleged ringleader, an Egyptian named Mohamed Atta, 33, had lived off and on for eight years. Atta is thought to have piloted Flight 11, the first to make impact; two of the other suspected pilots,

Marwan Al-Shehhi and Ziad Samir Jarrah, were also residents of the Hamburg region. The Hamburg cell, in turn, is thought to have been an operating unit of a worldwide network of terrorists called al-Qaeda, the name of whose reclusive leader is now known all over the world: Osama bin Laden.

Al-Qaeda had its origins in the long war against the Soviet occupation of Afghanistan. After Soviet troops invaded the country in 1979, Muslims flocked to join the local *mujahedin* in fighting them. In Peshawar, Pakistan, which acted as the effective headquarters of the resistance, a group whose spiritual leader was a Palestinian academic called Abdallah Azzam established a service organization to provide logistics and religious instruction to the fighters. The operation came to be known as al-Qaeda al-Sulbah—the "solid base." Much of its financing came from bin Laden, an acolyte of Azzam's who was one of the many heirs to a huge Saudi fortune derived from a family construction business. Also in Peshawar was Ayman Al-Zawahiri, an Egyptian doctor who had been a constant figure on the bewildering mosaic of radical Islamic groups since the late 1970s. Al-Zawahiri, who acted primarily as a physician in Peshawar, led a group usually called Al Jihad; by 1998, his organization was effectively merged into al-Qaeda.

In 1989, while on his way with his two sons to Friday prayers in Peshawar, Azzam was killed by a massive explosion. His killers have never been identified; Azzam had many enemies. But by the time of his death, the group around al-Qaeda were debating what to do with the skills and resources that they had acquired. The decision was taken to keep the organization intact and use it



# WORLDWIDE WEB

**COUNTRIES WITH KNOWN OR SUSPECTED AL-QAEDA CELLS IN LIGHT GRAY**  
**ACTIVITIES WITH POSSIBLE ISLAMIC TERRORIST LINKS:**

- ★ ARRESTS/DETENTIONS
- TERRORIST ATTACK
- ⊙ TOILED TERRORIST ATTACK
- ⊙ FINANCIAL BACKING

**UNITED STATES**

- ★ Of a total 1,347 arrests, fewer than 20 may be of people with information about the hijackers or the Sept. 11 attacks
- World Trade Center in 2002 and 2001; Pentagon and Pennsylvania in 2001
- ⊙ Plans to blow up various bridges and tunnels around New York City and L.A. airport on New Year's Eve 2000

**CANADA**

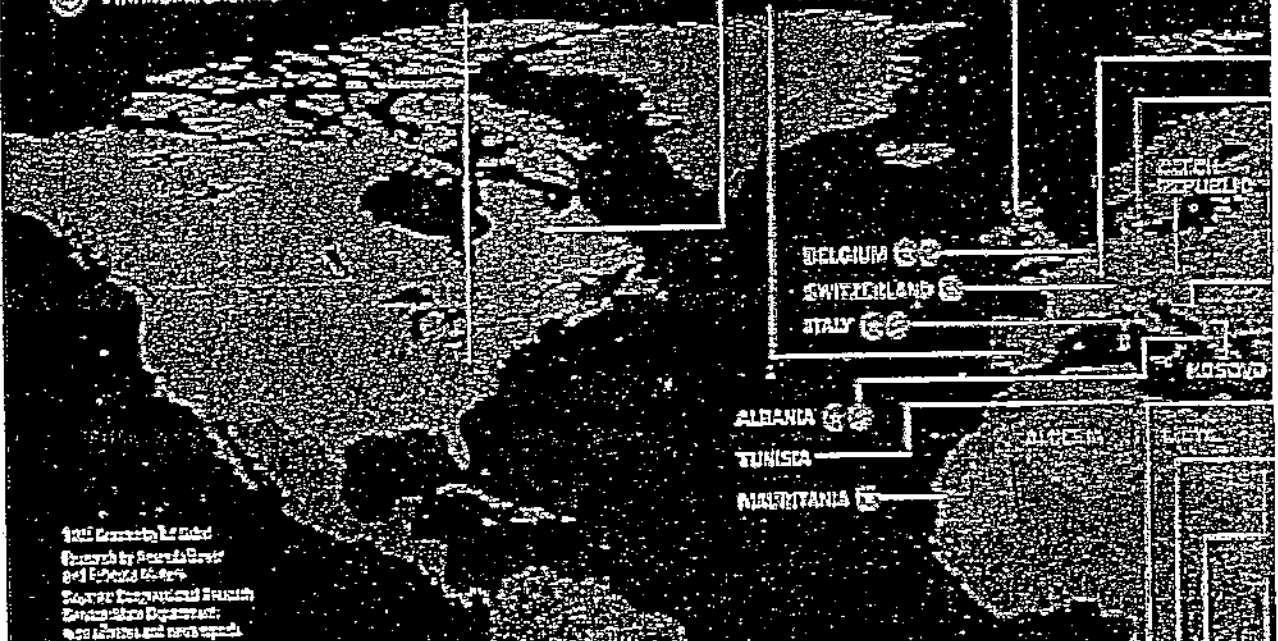
- ★ As many as 20 people have been taken into custody in possible connection with the Sept. 11 attacks, and can faces extradition to the U.S.

**BRITAIN**

- London in particular is seen by many as a terrorist recruiting zone
- ★ Key arrests include Lotfi Raissi, who allegedly helped teach the hijackers how to fly; Hamed Daoudi, a computer whiz suspected in the Paris plot; and Yasser al-Sadi, who was charged last week in connection with the assassination of Afghan rebel leader Ahmad Shah Massoud

**SPAIN**

- ★ Six members of an alleged sleeper cell picked up across the country since Sept. 21



Wall Street Journal  
 Research by Scott Stovall  
 and Patrick M. Ryan  
 Editor: International Security  
 Department  
 and James L. ...

**ARGENTINA, BRAZIL, PARAGUAY**

- The area where all three countries meet is thought to be a terrorist financing center; banks are investigating dozens of accounts for links
- ★ Nineteen people in this "contraband capital" have been arrested, mostly on false-documentation charges, and Paraguay has charged officials in 11 of its consulates with selling illegal passports and documents
- Last November a Palestinian embassy planned to bomb the U.S. and Israeli embassies in Asunción

**UGANDA**

- ★ Al-Said Hassan Mohammed, an Egyptian wanted for his alleged role in a 1997 attack on tourists in Luxor, Egypt, was arrested leaving Beirut through Uganda in 1999. He is said to have traveled in an al-Qaeda camp in Afghanistan
- Last April U.S. embassies in Uruguay, Paraguay and Ecuador shut down for three days after receiving "credible threat" of attacks

**ISRAEL**

- ★ Israel says it has arrested two groups of suspected al-Qaeda operatives in Gaza and the West Bank

**SAUDI ARABIA**

- ★ At least half of the 19 hijackers are thought to have been Saudis
- Saudi security services have carried out a great number of arrests of suspected supporters of the Saudi-born bin Laden
- Five Americans were killed when a car bomb exploded outside a military building in Riyadh in 1995; 19 died in a truck-bomb attack the next year

**EGYPT**

- ★ Authorities plan to put on trial 259 alleged members of three Islamist groups linked to al-Qaeda. All were arrested before Sept. 11

**SUDAN**

- ★ Khartoum was bin Laden's base from 1992 to '95. The U.S. responded to the 1998 embassy bombings with a missile assault on a suspected chemical weapons plant in the capital
- The government has rounded up 30 "Islamic extremists" since Sept. 11

TIME GRAPHIC BY ED GABEL

RESEARCH BY AMANDA BOWER AND REBECCA WINTERS

SOURCES: CONGRESSIONAL RESEARCH SERVICE; STATE DEPARTMENT; WIRE SERVICES AND NEWS REPORTS

# Osama bin Laden's network of influence reaches across five continents, creating a complex tangle of men, money and murder

## FRANCE

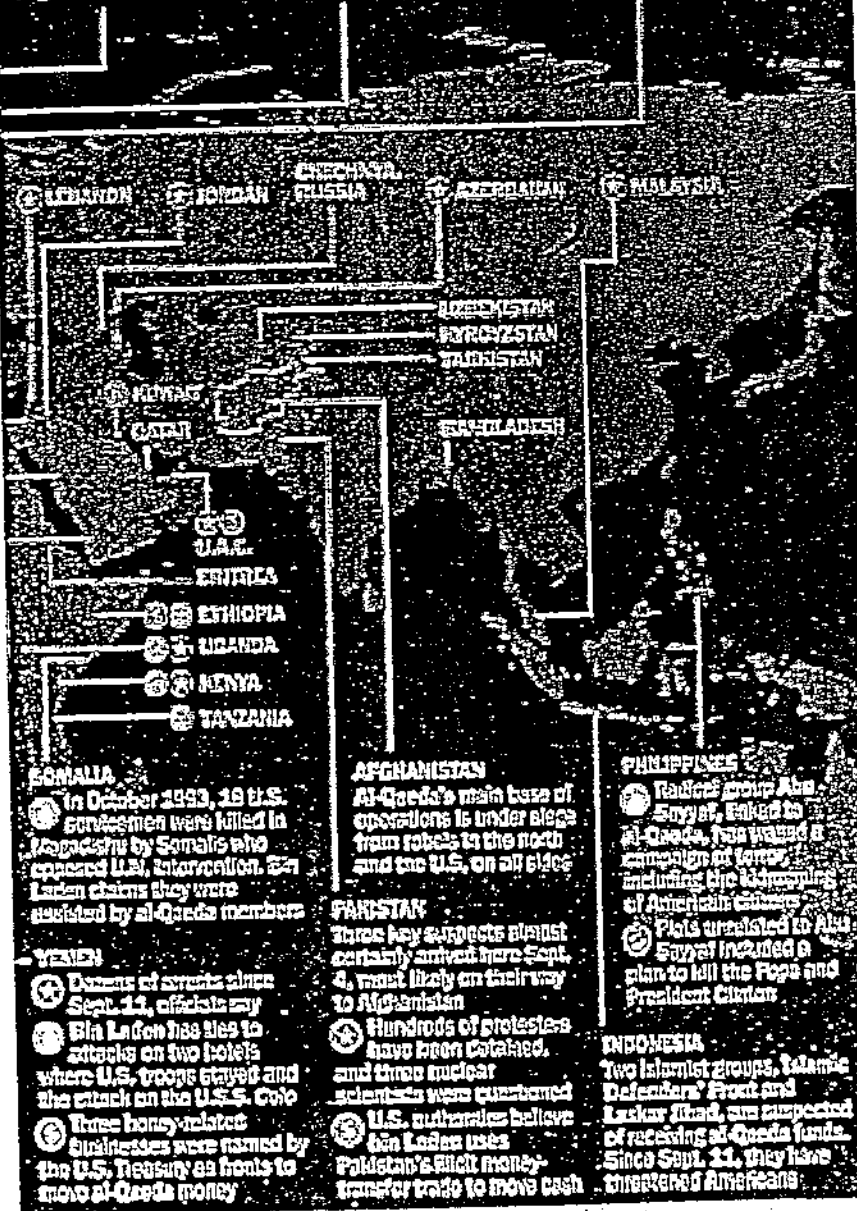
- Eight people are still in custody as part of the so-called Khatib network.
- Othman Daghfal, first picked up in Dubai, has said he received his orders from bin Laden lieutenant Abu Zubaydah.
- Weghal described a plan to blow up the U.S. embassy in Paris. An earlier plot, uncovered last December, targeted Strasbourg cathedral.

## GERMANY

- Alleged terrorist cells have been busted in Munich, Hamburg and Frankfurt.
- Officials are most interested in the Hamburg operation, which included hijackers Mohamed Atta and Marwan al-Shehhi. These others thought to have helped in the planning of the Sept. 11 attacks are the subject of international arrest warrants.

## BOENIA

- NATO says it has disrupted a terror cell. The alleged ringleader is linked to al-Qaeda, investigators say.
- The arrests uncovered a comprehensive plot to attack Eagle Base, used by some 3,000 U.S. paratroopers, as well as the U.S. and U.K. embassies in Sarajevo.



## SOMALIA

- In October 1999, 18 U.S. servicemen were killed in Mogadishu by Somalis who opposed U.S. intervention. Bin Laden claims they were assisted by al-Qaeda members.

## YEMEN

- Dozens of arrests since Sept. 11, officials say.
- Bin Laden has ties to attacks on two hotels where U.S. troops stayed and the attack on the U.S.S. Cole.
- Three honey-related businesses were named by the U.S. Treasury as fronts to move al-Qaeda money.

## AFGHANISTAN

Al-Qaeda's main base of operations is under siege from rebels to the north and the U.S. on all sides.

## PAKISTAN

- Three key suspects against Sept. 11, most likely on their way to Afghanistan.
- Hundreds of protesters have been detained, and three nuclear scientists were questioned.
- U.S. authorities believe bin Laden uses Pakistan's illicit money-transfer trade to move cash.

## PHILIPPINES

- Radical group Abu Sayyaf, linked to al-Qaeda, has waged a campaign of terror, including the kidnapping of American citizens.
- Plot unraveled to Abu Sayyaf included a plan to kill the Pope and President Clinton.

## INDONESIA

Two Islamist groups, Islamic Defenders' Front and Laskar Jihad, are suspected of receiving al-Qaeda funds. Since Sept. 11, they have threatened Americans.

## Who's Who in the Enemy Alliance

The top brass of al-Qaeda has wide-ranging ties to the shadowy world of international terror. A look at Osama bin Laden's lieutenants, their friends and alleged associates

### AYMAN AL-ZAWAHIRI EGYPTIAN

A physician whose group, al-Jihad, has effectively merged with al-Qaeda, al-Zawahiri, 50, is said to be the transforming mentor to bin Laden as well as his No. 2 man. Charged in connection with the 1981 assassination of President Anwar Sadat, he was convicted only of weapons possession.

### ABU ZUBAYDAH SAUDI PALESTINIAN

The only Palestinian in bin Laden's inner-circle, the man reportedly nicknamed "the Mailman" coordinates international operations and helps select recruits for training in al-Qaeda camps.

### TOHIR YULDASHEV UZBEK

Condemned to death in absentia by the government of Uzbekistan, Yuldashev helps lead the Islamic Movement of Uzbekistan. The movement's armed wing, which trains in Afghan camps, has an estimated 6,000 fighters. The I.M.U. was part of an assassination attempt on Uzbek President Islam Karimov in February 1999, which left at least 15 dead and 100 wounded.

### AMIR KHATTAB SAUDI

Khattab, who commands rebels in Chechnya, trained in Afghanistan and was reportedly sent by bin Laden to support the breakaway movement. Khattab is said to receive millions every month to finance camps that spend three months training (and, critics say, brainwashing) volunteers from all over the Muslim world.

**KHADAFFY JANJALANI  
FILIPINO**

Janjalani is believed to have taken over as head of Abu Sayyaf, a radical separatist group terrorizing the southern Philippines in its quest to establish an independent Islamic state. Officials say the group was partly funded by bin Laden, and many of its members are trained in the Middle East. It is currently holding two Americans and at least 16 Filipinos hostage.

**MOHAMMED ATEF  
EGYPTIAN**

Atef is bin Laden's military chief, and helped set up al-Qaeda networks in East Africa. He was indicted by the U.S. for the 1998 embassy bombings in Tanzania and Kenya.

**HASSAN HATTAB  
ALGERIAN**

Head of the Salafist Preaching and Combat Group, a three-year-old offshoot of Algeria's Armed Islamic Group. Many experts say the Salafists have been absorbed by al-Qaeda. Religious exerts believe the document found in hijacker Mohamed Atta's luggage bears signs of a Salafist tract.

**DJAMEL BEGHAL  
FRENCH ALGERIAN**

Arrested in Dubai in July for traveling on a false passport, Beghal later confessed to playing a prominent role in al-Qaeda's European operations, acting on orders from Abu Zubaydah. On the basis of Beghal's information, some of which he later retracted, authorities uncovered a plot to bomb the U.S. embassy in Paris.

**SAID BAHAJI  
MOROCCAN GERMAN**

Germany has issued an arrest warrant for Bahaji and fellow alleged Hamburg operatives Zakariya Essabar and Ramzi Bin alshibh, who almost certainly traveled back to Afghanistan, through Pakistan, before Sept. 11. All three are suspected of playing a significant role in planning the U.S. attacks.

**ZACARIAS MOUSSAOUI  
FRENCH MOROCCAN**

Moussaoui is a tantalizing suspect for U.S. authorities, but he isn't talking. Arrested in August on immigration violations, Moussaoui drew attention at a flight school because of his apparent lack of enthusiasm in learning how to take off or land. French authorities have long suspected him of involvement in terrorist activities. What does he know about Sept. 11?

to fight for a purer form of Islam. The initial target was not the U.S. but the governments of Saudi Arabia and Egypt, which al-Qaeda claimed were corrupt and too beholden to the U.S. It was only after the Gulf War, by which time bin Laden had moved his operations to Sudan (he would later be forced to shift back to Afghanistan), that he started to target Americans. To all but insiders, he first became notorious in 1998, when al-Qaeda operatives exploded truck bombs at the American embassies in Kenya and Tanzania, killing 12 Americans and hundreds of locals. Since then there has been a steady drumbeat of

attacks linked to al-Qaeda—some successful, some not—on American targets and those of U.S. allies around the world.

Al-Qaeda has its headquarters in training camps in Afghanistan. In addition to directing its own attacks, it acts as an umbrella group, financing and subcontracting operations to local networks like Algeria's Armed Islamic Group (GIA), a terrorist organization active throughout Europe. The camps in Afghanistan play a vital role. Whatever network they may originally have been aligned with, visitors to the camps meet men from other groups, forge relationships and acquire the stature of soldiers in a holy war. The high command of the group includes bin Laden, al-Zawahiri and Abu Zubaydah, a Saudi-born Palestinian who was identified in an American court case in July as the organizer of the camps and who investigators believe may be al-Qaeda's director of international operations.

Some of the best leads on al-Qaeda's directorate now seem to be coming from Djamel Beghal, a French-Algerian who is suspected of being an al-Qaeda ringleader and who was arrested in Dubai in July on his way from Pakistan to Europe. After being convinced by Islamic scholars in Dubai of the evils of terrorism, Beghal started talking. (He is now back in France and has attempted to retract his confession.) Beghal has said that while in Afghanistan in March, he received instructions from Abu Zubaydah on a bombing campaign against American interests in Europe, including the Paris embassy. "He's talking about very important figures in the al-Qaeda structure, right up to bin Laden's inner circle," a European official told TIME. "He's mentioned names, responsibilities and functions—people we weren't even aware of before. This is important stuff."

Though al-Qaeda has its roots in Afghanistan, investigators now think that the "Afghan" nature of the group is subtly changing. The war against the Soviets ended in 1991. Increasingly, al-Qaeda's captains in the field are too young ever to have fought in Afghanistan, though some may have joined Islamic brigades in Chechnya—or in Bosnia, as Abu Zubaydah did. Many of the new fighters were born and raised not in the Arab lands but in the Muslim communities of Europe, around which they travel with ease. And there is a growing sense that a number of them are "Takfiris," followers of an extremist Islamic ideology called Takfir wal Hijra (Anathema and Exile). That's bad news: by blending into host communities, Takfiris attempt to avoid suspicion. A French official says they come across as "regular, fun-loving guys—but they'd slit your throat or bomb your building in a second."

In addition to the ruthless nature of al-Qaeda's soldiers, investigators now also appreciate just how extensive are its tentacles. In mid-October, for example, NATO forces in Bosnia foiled a plot to attack U.S. and British targets there. Bensayah Belkacem, an Algerian thought to be at the center of a Bosnia-based terror group, had the number of Abu Zubaydah on a chit of paper in his apartment.

## When Terror Hides Online

Did you hear the one about Osama bin Laden hiding messages in porn websites? It sounds like one of those crazy Sept. 11 rumors, but it's actually a law-enforcement theory about how the al-Qaeda network disseminates instructions to operatives in the field.

It's no secret that bin Laden's terrorist army is Internet savvy: Hijacking ringleader Mohamed Atta made his reservations on Americanairlines.com. Some of his confederates seem to have communicated through Yahoo e-mail. And cell members went online to research the chemical-dispersing powers of crop dusters.

### How Secrets Are Concealed

#### DEVIL IN DETAIL

Hypothetically, a photo of a site to be attacked can be embedded in an innocuous image that is then posted on an existing website for terrorists to access for instructions

But secret Internet messages, known as steganography, may be the most insidious way bin Laden has taken his terrorist movement on line. Steganography, Greek for "hidden writing," allows messages to be slipped into innocuous picture and music files. The trick is that the insertions are so small they're impossible to detect with the naked eye, but easily retrieved through special software tools.

A terrorist mastermind could insert plans for blowing up a nuclear reactor in, say, the nose of a puppy on a pet-adoption website. Operatives in the field, told which nose to look at, could then check for their marching orders. Steganography is a fast, cheap, safe way of delivering murderous instructions. "It avoids the

operational security issues that exist anytime conspirators have a physical meeting," says Matthew Devost of the Terrorism Research Center. Terrorist watchers suspect al-Qaeda may be hiding its plans on online porn sites because there are so many of them, and they're the last place fundamentalist Muslims would be expected to go.

Even for netheads, steganography is a bit obscure. But bin-Laden's followers may have learned about it when it burst on the pop-culture scene in recent movies like *Along Came a Spider*. The FBI has been close-mouthed on whether it has found any steganographic images from al-Qaeda. But a former government official in France has said that suspects who were arrested in September for an alleged plan to blow up the U.S. embassy in Paris were waiting to get their orders through an online photo.

Law enforcement is increasingly targeting terrorists' technology. After the Sept. 11 attacks, the FBI reportedly installed additional Carnivores devices it has been using to surreptitiously read e-mail on Internet service providers. The National Security Agency uses Echelon, a top-secret wiretapping device, to monitor e-mail, cell phones and faxes worldwide. And the antiterrorism law passed last month broadened law enforcement's powers to grab Internet communications.

Steganographic images can be detected through "steg analysis," a process of hunting for small deviations in expected patterns in a file. The hard part is knowing where to look in the vast expanse of the online world. Toughest of all to catch: so-called low-tech steganography, in which the message is conveyed overtly. A photo on a website with arms crossed could mean attack an East Coast nuclear power plant; a blue bandanna could mean West Coast bridges. "Sometimes," says Ben Venzke, a terrorism specialist at the security analyst firm IntelCenter, "the best technologies are the simplest ones."

—By Adam Cohen

On Oct. 28, Abu Sayyaf, a terrorist group in the Philippines that authorities believe has been supported in the past by al-Qaeda, bombed a food market, killing six people. And the Ugandan government announced that it had detained eight men on suspicion of belonging to al-Qaeda. How did one organization with an extremist ideology manage to acquire a reach that trembles governments from Bosnia to the Philippines to Uganda?

### THE BORDERLESS WORLD

"GLOBLIZATION MEANS INTERDEPENDENCE," SAYS EDmund Hull, U.S. ambassador to Yemen and former State Department counterterrorism chief. "We have previously seen the benefits of this interdependence. Now we are seeing its risks." That goes to the heart of any attempt to understand al-Qaeda. For the past decade, globalization

## Is He Osama's Best Friend?

How dangerous can an Afro comb and a plastic bottle of hot sauce be? When Officer Louis Pepe came by cell No. 6 at the Metropolitan Correctional Center in lower Manhattan on Nov. 1, 2000, he was distracted by a squirt in the face from the bottle before the sharpened comb was plunged like a bayonet through his eye and 2½ in. into his brain. The man in the cell, Mamdouh Mahmud Salim, then allegedly took the keys from the paralyzed Pepe and began to wander down the hall. Guards stopped Salim, and he didn't get away. Or did he?

Arrested and extradited from Germany in December 1998, Salim was a prize prisoner for the U.S. government, which originally planned to put him on trial with four others charged with the Aug. 7, 1998, bombing of the U.S. embassies in Africa. Salim had complained that he should not be tried with the others in the trial scheduled for February 2000 because he had not been charged with directly carrying out the bombings. The judge had refused to sever the charges, but the assault on Pepe gave the court no choice but to postpone his conspiracy trial. Salim, 43, will first be tried for the attempted murder of Pepe. Three weeks ago, on Oct. 18, all defendants in the embassy-bombing trial were found guilty and sentenced to prison for the rest of their lives.

Salim has made himself out to be small fry in the search for bin Laden associates. But could he be something bigger? The portrait painted of Salim in the embassy-bombing trial is of a powerful and malignant personality. Prosecutors described Salim (whose alias was Abu Hajer al Iraqi) not only

as one of Osama bin Laden's council of advisers, the Shura, but also as a key member of the fatwa committee, which helped formulate the theological justification for al-Qaeda's actions. Salim derived his prestige from being a religious scholar who has memorized the Koran, and he would alternate with bin Laden in delivering regular sermons to the al-Qaeda faithful. The government's star witness, a former top al-Qaeda operative, described Salim as bin Laden's "best friend." It was Salim, the prosecutors said, who provided al-Qaeda with a rationale for "collateral damage," citing an ancient fatwa calling for all-out war against pagan invaders, one that was likely to bring about the death of Muslim traders and civilians in the cross-fire. If the civilian dead were indeed innocent, the argument went, they would be headed for heaven anyway.

The prosecutors provided evidence in the recent trial that Salim contributed more than theology. He was on the committee that helped al-Qaeda decide to relocate to Sudan in 1990 after the Afghan war. While Salim had told the Germans he handled finances for bin Laden's agriculture business, Themara Mubarak, the prosecution's witness claimed that a significant part of one large farm owned by the company was used for training courses in explosives. The witness also said that Salim, who allegedly received a monthly salary of \$1,500, helped run bin Laden's Al Hijra Construction company, which ostensibly built roads and bridges but also had a permit to import explosives for construction use. The same witness said that Salim took him on a trip to a chemical-warfare training facility in Sudan and was a critical link in the negotiations for an attempted \$1.5 million purchase of South African uranium in 1993.

*(continued on next page)*

has been understood as an economic process, rooted in the trade of goods and services. But the defining characteristic of our new world is not the movement of products or money but of people. Cheap air transport, the effects of decolonization and a population explosion in the poorer parts of the world have combined to create an unprecedented movement of humanity from one nation to another. Travel and emigration have broadened the mind and brought unparalleled opportunities to countless families. But they have also helped create havens for those seduced by the romance of terrorism.

French investigators believe Kamel Daoudi is one such recruit; his tale illuminates both the nature of modern terrorist cells and their global reach. Daoudi was the kind of child that immigrant parents dream of having. The son of Algerians who had immigrated to France, he took the tough post-high school exams a year early and started to study computer sciences at a university in Paris. But he

found the courses difficult, and according to reports, a family row exploded in 1999 when Daoudi's father found evidence of his son's appointments with psychiatrists. Daoudi left for Britain, his pockets bulging with the \$11,000 his family had saved for his education.

On Sept. 21, he made the same trip; this time, running not from his family but from the law. Daoudi slipped away from his apartment on the Boulevard John F. Kennedy after police across Europe started to round up the network that Beghal had assembled for his operations. (French investigators think Daoudi was the computer-and-communications whiz kid of the group.) Daoudi knew Britain well. He and Beghal had hung out there with Jerome Courtailler, one of two French brothers who had converted to Islam. For a while, Courtailler lived in south London with Zacarias Moussaoui, another French child of disappointed immigrant parents. Moussaoui grew up in the southern French town of Narbonne

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Salim admitted to German interrogators that he worked for bin Laden's business enterprises in Sudan, including Themar. But according to a transcript of his interrogation, he insisted that "my relationship with [bin Laden] was as an employee with a contract and monthly pay." When recruited to run the businesses, Salim said, he told bin Laden that "I was an electrical engineer, not a finance specialist. He said that was not important because he knew me to be an honest man and that I would manage."

Allan Haber, Salim's lawyer in the conspiracy case, says the prosecution's portrayal of Salim as a key bin Laden operative all comes down to the credibility of the government witness Jamal Ahmed al-Fadl and "whether or not you can believe a man who says he is a devout Muslim but steals money from his boss and tries to sell information to the government of Israel." (Al-Fadl sought protection with U.S. investigators after he embezzled \$100,000 from bin Laden.) The government says al-Fadl's testimony is accurate and can be corroborated.

When Salim was arrested in Munich, he said he had arrived in Germany for the first time in 1995, to buy electronics to set up an Arabic-language radio station in Sudan. The U.S. says the real goal was to get radio equipment that could be used by al-Qaeda to communicate with its operatives. The following year, however, found al-Qaeda in confusion. Sudan expelled bin Laden, and the group's members were scattered until their high command returned to Afghanistan. Salim was living in Dubai and by 1998 had made four more visits to Germany, ostensibly to look for a new wife and a car. "My wife had three operations on her uterus," he told interrogators. "I talked with my wife about this, and she agreed I should look for a second wife." (German police note that Salim's airfare from Dubai cost more than the car he hoped to purchase, a used Mercedes-Benz 230 station wagon.)

More important, Salim acknowledged to his German interrogators that he had opened an account at Deutsche Bank and that he gave signature power over the account to Mamoun Darkazanli, a Syrian businessman

who had settled in Hamburg in the 1980s and who has told reporters that he knew some of the Sept. 11 hijackers. Darkazanli attended the wedding of Said Bahaji, an alleged member of the cell that included suspects Mohamed Atta and Marwan Al-Shehhi. Bahaji's wedding album includes pictures of Atta and Al-Shehhi. Darkazanli's name is now on a list of 39 terrorists and organizations whose assets have been blocked by the U.S. Treasury Department. He remains, however, free to roam about Hamburg.

If Salim had been on trial for conspiracy in the embassy bombings, the U.S. would potentially have been able to establish his intimacy with the highest levels of al-Qaeda. In that case, the Darkazanli connection might be more than a tantalizing possibility: a clear link between a "best friend" of bin Laden's and someone in contact with the Sept. 11 hijackers.

In the past five years, al-Qaeda officials have shown deep concern over the secrets held by its high-ranking members. When their finance chief was nabbed by the Saudis in 1997, there were discussions about assassinating him before he could turn information over to Riyadh and the U.S. When the head of the military committee drowned in a ferry accident in Lake Victoria in Kenya in the spring of 1996, al-Qaeda agents were sent to verify that he was indeed dead and that no secrets had filtered out. But if Salim is a big shot who knows too much, al-Qaeda doesn't have to worry about him for a while. His trial for the attempted murder of Pepe was scheduled to begin the week of Sept. 17 and has been put off until early next year because of the logistical and bureaucratic chaos in lower Manhattan where the court system is located. His conspiracy trial has not even been scheduled. The planes that devastated lower Manhattan have made sure that whatever secrets he holds will take their time coming to light.

—By Howard Chua-Eoan  
With reporting by Charles P. Wallace/Berlin

but left for Britain in 1992 and took a degree at London's South Bank University. Earlier this year, he enrolled in an Oklahoma flight school that had been visited by two of the Sept. 11 hijackers, and German authorities say he had called the house in Hamburg used by Atta. In August, after suspicious behavior at another flight school in Minnesota, Moussaoui was arrested on immigration charges. Today he is incarcerated in the Metropolitan Correctional Center in Manhattan, refusing to speak to investigators.

Daoudi, who was picked up in the British town of Leicester, sits silent in a French jail. "He isn't giving an inch," says a French official. His lawyer denies that Daoudi has ever been involved in plotting terrorist attacks.

Children of immigrants, Muslims in Europe, highly skilled, Daoudi and Moussaoui epitomize the kind of person investigators now think provides some of al-Qaeda's key recruits. Above all, both men were true global citizens; Moussaoui, a child of the warm south, ended up in

## TERRORIST HITS AND MISSES

### A CHRONOLOGY OF MAYHEM

#### ATTACK

DEC. 29, 1992 ADEN, YEMEN

One hundred U.S. servicemen had just left the Gold Mohur Hotel, on their way to duty in Somalia, when the bomb hit. It killed two people in the hotel and seriously wounded four tourists. Two suspects reportedly had 23 bombs, two antitank mines, dynamite and machine guns.

#### ATTACK

FEB. 26, 1993 WORLD TRADE CENTER, NEW YORK CITY

The first attempt to bring down the Twin Towers resulted in six deaths and more than 1,000 injuries. The al-Qaeda organization was never mentioned at the trial of convicted mastermind Ramzi Yousef, but he was later convicted of other foiled plots that authorities suspect had al-Qaeda links.

#### ATTACK

OCT. 3, 1993 MOGADISHU, SOMALIA

Bin Laden claims he supplied weapons and fighters to Somalis involved in a fierce battle that left 18 U.S. servicemen dead.

#### FOILED

LATE 1994, EARLY 1995 MANILA, PHILIPPINES

Then-fugitive Ramzi Yousef had already slipped out of the U.S. and the Philippines when officials investigated an explosion in a Manila apartment occupied by two people linked to him. Investigators discovered plots to assassinate the Pope and President Clinton during visits to the Philippines and to explode a dozen commercial jets over the Pacific.

#### FOILED

JUNE 26, 1995 ADDIS ABABA, ETHIOPIA

An assassination attempt on the motorcade of Egyptian President Hosni Mubarak was unsuccessful.

#### ATTACK

NOV. 13, 1995 RIYADH, SAUDI ARABIA

A car bomb at a U.S.-run training facility for the Saudi National Guard killed five Americans and two Indians. Four Saudis confessed on national television (they were later beheaded) and said they were "inspired" by bin Laden.

#### ATTACK

JUNE 25, 1996 DHAHRAN, SAUDI ARABIA

A massive truck bomb at the Khobar Towers apartment compound, where hundreds of U.S. Air Force personnel were stationed, killed 19 U.S. airmen and wounded hundreds more.

#### ATTACK

AUG. 7, 1998 DAR-ES-SALAAM, TANZANIA & NAIROBI, KENYA

Truck bombs hit U.S. embassies in both cities, killing 224, including 12 Americans. Bin Laden and 20 others were later indicted; four received life sentences.

#### FOILED

DEC. 14, 1999 PORT ANGELES, WASH.

Alert U.S. Customs agents noticed that Ahmed Ressay was sweating—in winter—while waiting to cross from Canada into the U.S. In his trunk, they found explosives. Ressay later confessed to a plot to blow up LAX airport.

#### FOILED

DECEMBER 1999 AMMAN, JORDAN

A tip to local intelligence officials revealed a plot to kill U.S. and Israeli millennium revelers by bombing a fully booked hotel and prominent Christian sites.

#### ATTACK

OCT. 12, 2000 ADEN, YEMEN

A boat laden with explosives rammed the U.S.S. *Colé*, killing 17 sailors and wounding more than 30. Bin Laden, at his son's wedding, wrote an ode to his supporters who carried out the attack: "The pieces of the bodies of the Infidels were flying like dust particles."

#### FOILED

DEC. 25-26, 2000 STRASBOURG, FRANCE

German investigators picked up four men across the Rhine River in Frankfurt on the eve of what they said was a planned bomb assault on Strasbourg's cathedral and market.

#### ATTACK

SEPT. 11, 2001 NEW YORK CITY, WASHINGTON, PENNSYLVANIA

Four hijacked passenger airliners crashed into New York City's two tallest buildings, the Pentagon and a field in rural Pennsylvania. Thousands were killed.

#### FOILED

SEPT. 13, 2001 PARIS AND BRUSSELS

Evidence of plots to bomb the U.S. embassy in Paris, and possibly also NATO headquarters in Brussels, was uncovered after the earlier confession of Djamel Beghal. The information, despite being partially retracted, led to arrests.

#### FOILED

OCT. 8, 2001 SARAJEVO, BOSNIA

NATO officials say they disrupted an al-Qaeda cell that was planning to attack the U.S. embassy and Eagle Base airfield, used by some 3,000 U.S. peacekeepers.

—By Amanda Bower

the state where ice fishing is a favorite sport. As they dig deeper, law-enforcement agencies are beginning to understand just how effectively globalization has spread terrorism around the planet.

Consider two countries half a world apart and far from the Islamic heartlands: the Philippines and Britain. It was in Manila, that most Catholic of cities, that Mohammed Sadeek Odeh found his vocation. Sentenced to life imprisonment on Oct. 18 for his part in the 1998 bombings of the American embassies in Kenya and Tanzania, Odeh seemed to have lived the predictable life of an al-Qaeda operative—he was born to exiled Palestinians in Saudi Arabia and grew up in Jordan. Yet he turned to radical Islam while studying engineering in the Philippines. It was there that Odeh first saw and heard videos and taped messages from Abdallah Azzam. In 1990 Odeh moved to Pakistan, and from there to the camps in Afghanistan and a new life as a soldier in al-Qaeda.

Other Muslims who had studied in the Philippines maintained links there. It was from Manila that Ramzi Yousef, the convicted mastermind behind the first World Trade Center bombing, hatched a plan to blow up 12 American airliners as they flew over the Pacific. In the mid-1990s, Mohammed Jamal Khalifa, married to one of bin Laden's sisters, allegedly funded Islamic schools in the south of the country, where Muslim insurgents have been fighting for years. The Filipino government has long claimed that Abu Sayyaf, the most bloodthirsty of the groups—its specialty is beheadings—has been supported by al-Qaeda. Abdurajak Janjalani, the group's late founder, fought in Afghanistan, reportedly with bin Laden and Yousef. The links may be a thing of the past; these days Abu Sayyaf's style runs more to kidnapping and ransom than to jihad. Still, Philippine President Gloria Macapagal Arroyo recently said Khalifa had offered to secure the release by Abu Sayyaf of 18 hostages, including an American missionary couple.

About the only thing that Manila has in common with London is damp—that and a reputation for giving succor to terrorist supporters. Britain has always had a habit of providing safe haven to political refugees; that's why Karl Marx is buried in Highgate cemetery. But in the past 20 years, says Neil Patrick, a Middle East analyst at the Royal United Services Institute, London has become "the capital of the Arab world." As they used to say in Britain: Whoever lost the Lebanese civil war, London won it. With Beirut in ruins, banks relocated from Lebanon; they were followed by Arabs from Saudi Arabia and the gulf who summered in Kensington Gardens, journalists, members of opposition groups—and radical Islamic clerics.

One such preacher, Abu Hamza al-Masri, arrived in 1981, having left one eye and both hands in Afghanistan. He was granted British citizenship in 1985, and his mosque in Finsbury Park, tucked among Victorian row houses one tube stop from Arsenal's soccer stadium, has become famous worldwide for preaching jihad. Mous-

saoui, the Courtailler brothers and Beghal all attended prayers there. Beghal is said also to be a follower of Abu Qatada, a radical who preached jihad from a community center on Baker Street and whose bank account, allegedly with \$270,000 in it, was frozen by the Bank of England in mid-October.

London's dirty secret is that it has long been a recruiting ground for terrorists. French authorities moan with frustration at the lack of British cooperation. For years the French were unable to get London to extradite suspected members of the Algeria-based GIA, responsible for a wave of bombings in Paris in the mid-1990s. The U.S. hasn't always had better luck; Americans have been trying to get their hands on Khalid al-Fawwaz, a London-based Saudi alleged to have set up an office for bin Laden in 1994 and now wanted for trial in relation to the African embassy bombings. (Al-Fawwaz's legal maneuverings have just reached Britain's highest court.)

The gears of British justice are starting to grind more quickly. London has detained and questioned a number of Sept. 11 suspects, including Lotfi Raissi, an Algerian alleged to have helped train the suicide pilots in the attacks. And last week Yasser al-Siri, whose bookstore and website are well known in London, was charged with conspiracy to murder Ahmed Shah Massoud, the leader of the anti-Taliban Afghan Northern Alliance. Massoud died after assassins bombed his headquarters on Sept. 9.

But al-Siri's case demonstrates the oddities of the international legal system. He is in Britain on asylum from Egypt, where he was sentenced to death for the attempted murder of the Prime Minister in 1993, a charge he denies. "That was a military court," he told TIME before his arrest. "I'm a civilian." Governments across Western Europe, their feet held to the fire by strong civil-liberties groups, have been protective of the rights of refugees and asylum seekers. And while the European Union has demolished barriers to the movement of goods and people, its 15 nations have been slow to develop common institutions of criminal justice and investigation. For Atta and his cell of alleged conspirators in Hamburg, the characteristics of modern European life were a godsend. In addition to the hijackers known to have lived there, other men alleged to be part of the Hamburg cell have had arrest warrants issued for them: Said Bahaji, Zakariya Essabar and Ramzi Binalshibh. German officials believe that last spring both Essabar and Binalshibh tried to get to the U.S. to take flying lessons. The three almost certainly arrived in Pakistan from Germany on Sept. 4 and have since gone to ground—possibly in Afghanistan.

Hamburg was an ideal long-term base; 1 in 7 of the city's population is foreign, as is 1 in 5 of the students at Atta's college. (Foreign students pay no tuition in Germany.) Atta and his friends could have stayed as long as they liked—Germany invented the perpetual student—since they had legal residence, could travel freely around the E.U. or leave it for a period, without arousing suspicion. It is hard to think of a way of life that so epitomized



the promise of a borderless world and then perverted globalization to such an evil end.

## YOUNG AND RUTHLESS

AFTER SEVEN WEEKS OF INVESTIGATIONS THERE IS NO HARD evidence that links the Hamburg cell to any other. There are fragments of a puzzle—Atta made a 10-day trip to Spain from Miami in July that continues to bother investigators, while French sources still think that Moussaoui may be connected to the Hamburg cell—but many pieces are missing.

For example: Was Mohammed Bensakhria, an Algerian arrested in June by Spanish police, bin Laden's key European lieutenant? If so, is there an American equivalent—and has he been picked up in the dragnet after the attacks? Did al-Qaeda's reputed training-camp chief Abu Zubaydah leave Afghanistan before Sept. 11, as European officials believe, and if so, where is he and what is he doing?

On one matter, however, European investigators are clear: there is something truly ruthless about the suspected terrorists they are finding. After six Algerians were picked up in Spain in September, police found videotapes in the apartment of one of the men. One tape showed four Algerian soldiers, with their throats cut, dying in a burning jeep.

For experts in terrorism, such incidents are suggestive. In Egypt in the 1960s, the Islamic ideology Takfir wal Hijra began to win adherents among extremist groups. One of them, the Society of Muslims, was led by Shukri Mustafa, an agricultural engineer. Mustafa denounced other Muslims as unbelievers and preached a "withdrawal" into a purity of the kind practiced by the Prophet Muhammad when he withdrew from Mecca to Medina. The ideology is particularly dangerous because it provides a religious justification for slaughtering not just unbelievers but also those who think of themselves as Muslim. Intensely undemocratic—for to accept the authority of anyone but God would be a blasphemy—Takfir wal Hijra is a sort of Islamic fascism.

European analysts now believe that Takfir thinking has won converts among terrorist groups. Beghal is Takfiri, and Daoudi is thought to be. Roland Jacquard, one of the world's leading scholars on Islamic terrorism, says flatly, "Atta was Takfiri." It is not just soldiers of al-Qaeda who may be following the Takfir line. Mustafa was executed in 1978, but his ideas lived on; the beliefs of al-Zawahiri's Al Jihad were dominated by Takfiri themes. Azzam Tamimi, director of the Institute of Islamic Political Thought in London, says of Zawahiri, "He is their ideologue now... His ideas negate the existence of common ground with others."

Bin Laden and al-Qaeda may have learned, by violent experience, to preempt and harness the new fanaticism. In late 1995, bin Laden's compound in Khartoum was attacked by gunmen believed to be Takfiri. A Sudanese

## The Suspects: a Bosnian Subplot

The conversation was in code, but to trained ears it was easily understood. Picked up by U.S. listening devices on Oct. 16 in Sarajevo, it ranged in topics from the bombing in Afghanistan to "what the response should be here," a senior Bosnian official told TIME. U.S. and British targets in Bosnia were mentioned. But it was the sign-off that got listeners' attention: "Tomorrow we will start." Both countries shut down their embassies and branch offices overnight. Using mobile-phone-card registration numbers, Bosnian police tracked down and arrested both callers—Algerian nationals with Bosnian citizenship. Within 72 hours three others, also Algerian born, were in custody in a Sarajevo prison, bringing the number of terror suspects apprehended in Bosnia in the past month to at least 10. In the process, NATO uncovered a separate plot to attack Eagle Base, the airfield used by some 3,000 U.S. peacekeepers in the country. "We are confirming the presence of the al-Qaeda network in Bosnia," said a spokesman for NATO-led peacekeepers. The arrests, he added, had "disrupted" the network, but "it has not been destroyed. Investigations are continuing."

## Belkacem made 70 calls to Afghanistan between the day of the U.S. attacks and his arrest

Direct links to bin Laden focus on just one man, the apparent leader of the Algerian cell, Bensayah Belkacem, 41, alias Mejd, lived with his Bosnian wife and two children in the central town of Zenica until his arrest last month. Combing through his dingy ground-floor apartment, investigators found two sets of identity papers (Algerian and Yemeni), blank passports and on a small piece of paper the number of a senior bin Laden aide, Abu Zubaydah, himself a veteran of the Bosnian war. Investigators say he is now in charge of screening recruits for al-Qaeda training camps in Afghanistan. According to phone transcripts, Zubaydah and Belkacem discussed procuring passports. There was more: Belkacem made 70 calls to Afghanistan between Sept. 11 and his arrest. U.S. officials are particularly interested in the fact that he repeatedly sought a visa to leave Bosnia for Germany just before the terrorist attacks, according to a source close to the investigation.

The other suspects are mostly foreign-born nationals and belong to a community of about 200 ex-mujahedin who came to Bosnia to fight alongside fellow Muslims during the war and later settled in the interior, often marrying Bosnian women and working at humanitarian agencies. Saber Lahmar, the Algerian who allegedly placed the incriminating phone call on Oct. 16, served time in Bosnia for auto theft before being pardoned in 2000. He worked at the Saudi High Commission for Relief, an agency that has given \$500 million to Bosnia. Others, according to local reports, worked at the Red Crescent society, Taibah International—a Saudi group—and Human Appeal. Bosnian authorities say that they are stepping up surveillance of aid agencies and their staffs.

After the latest arrests, the U.S. reopened its embassy, released a statement saying that the specific threat "appears to have passed," and thanked Bosnian authorities for their swift action. But officials tell TIME that there are five more alleged terrorists whom police and peacekeepers are seeking in the rugged hills of central Bosnia. And so, as elsewhere in the world, the hunt continues.

—By Andrew Purvis/Sarajevo

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friend of bin Laden's who questioned the surviving attacker said, "He was like a maniac, more or less like the students in the U.S.A. who shoot other students. They don't have very clear objectives." By the time al-Qaeda had resettled in Afghanistan, ideological training was an integral part of the curriculum, according to a former recruit who went on to bomb the U.S. embassy in Nairobi. Students were asked to learn all about demolition, artillery and light-weapon use, but they were also expected to be familiar with the fatwas of al-Qaeda, including those that called for violence against Muslim rulers who contradicted Islam—a basic Takfiri tenet. French terrorism expert Jacquard describes Takfiri indoctrination this way: "Takfir is like a sect: once you're in, you never get out. The Takfir rely on brainwashing and an extreme regime of discipline to weed out the weak links and ensure loyalty and obedience from those taken as members."

The results of the boot camps are diehard but undetectable soldiers of the movement. "The Takfir," says Jacquard, "are the hard core of the hard core; they are the ones who will be called upon to organize and execute the really big attacks." French officials think that Takfiri beliefs have bred a distinct form of terrorism. "The goal of Takfir," says one, "is to blend into corrupt societies in order to plot attacks against them better. Members live together, will drink alcohol, eat during Ramadan, become smart dressers and ladies' men to show just how integrated they are."

For law-enforcement officials, the Takfiri connection is terrible news. By assimilating into host societies—some won't even worship with other Muslims—it's easy for Takfiris to escape detection. Those stories of the Sept. 11

## What Makes Youths Volunteer?

To British lawyer Anjem Choudary, 40, a British passport means very little. For a true Muslim, he says, "a British passport is no more than a travel document." Abu Yahya, 26, a Londoner and veteran of military training camps in Kashmir and Afghanistan, agrees: "Our allegiance is solely to Allah and his messenger, not to the Queen and country. Nationality means nothing."

Choudary and Yahya belong to the extremist Islamic group al-Muhajiroun, and though they speak for only a tiny fraction of Britain's 2 million Muslims, their views received grim publicity last week with the news that three British-born Muslims had been killed in Kabul—allegedly in a U.S. bombing raid on a Taliban compound—after volunteering for the jihad.

The deaths of the three young men shocked their families. In Crawley, an industrial town 33 miles south of London, the mother of Yasir Khan, 28, insisted her son had gone to Pakistan for humanitarian work. In Luton, 34 miles north of London, the parents of computer-engineering student Afzal Munir and taxi driver Aftab Manzoor, both 25, weren't aware the two had joined up. Both lived with their parents in modest suburban houses in this quiet town that is home to 22,000 Muslims.

Many Muslims in Britain, however, are loudly anti-American and highly critical of the bombing in Afghanistan. Al-Muhajiroun is capitalizing on this anger. The group had been saying for weeks that Britons were flocking to the bin Laden cause, much as Jewish youths went to Tel Aviv in 1967 to fight in the Arab-Israeli war. In Lahore, Pakistan, last week a spokesman—British university graduate Abu Ibrahim—put the numbers at between 600 and 700. British authorities, however, speculated that volunteers probably amounted to a few dozen. Conservative peer Norman Tebbit suggested that it would be treason for British citizens to take up arms against Anglo-American forces. Defense Secretary Geoff Hoon warned that those who did fight for the Taliban might face prosecution should they return.

The jihad volunteers are mostly from first-generation British families and feel oppressed by the stresses of biculturalism, suggests Mounir Daymi, executive director of Britain's Muslim Students Society. This alienation is felt most deeply in the poorer communities. That's where you will find "some people who want the clash of civilizations to happen," Daymi says. Adam Armstrong, 35, a Luton teacher who converted to Islam in 1989 because he felt "something was missing" in his life, endorses that view. The volunteers, however few, are "devout Muslims, often university students," he says, the sort of idealists who used to go to Chechnya and now go to Afghanistan. Asked why mostly Britons seem to have volunteered so far, he said that Muslims are better organized in Britain, often have families in Pakistan or Kashmir and enjoy greater freedom of movement. There are no national identity cards, giving authorities less knowledge of their whereabouts.

Most British Muslims reject al-Muhajiroun's militant campaigning; fellow Muslims in Luton have been giving the hard-liners a rough time. Al-Muhajiroun leaflets have been banned from Luton's Central Mosque, and last week the local al-Muhajiroun leader, known simply as Shahed, was attacked in the street after he staged a noisy demonstration in support of the Taliban. Although Daymi of the Muslim Students Society rejects al-Muhajiroun's message, he does believe that now is the time for jihad—but not the kind others are pursuing. "In these days of war, our jihad is to show the peaceful face of Islam," he says. "Retaliation and revenge will just lead to more retaliation and revenge. You can defend your religion peacefully." That may be the kind of jihad worth joining.

—By Helen Gibson. With reporting by Jeff Chu/Birmingham and Ghulam Hasnain/Karachi

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hijackers drinking in bars and carousing in Las Vegas may now have an explanation. Jarrah's cousin Salim, who lives in the German town of Greifswald, claims that they "used to go to church more than to the mosque." Jarrah, says Salim, loved discos—"We didn't need veiled woman and all that"—and sneaked shots of whiskey during a family wedding. He makes Jarrah sound like a normal guy, and normal guys aren't easy to catch.

## BOLTING THE DOOR

THOSE CHARGED WITH CATCHING TERRORISTS WON'T STOP trying. And governments are reassessing their policies on immigration, asylum and open borders. New legislation is promised in Canada, Britain and Germany; the talks this year when Mexican and American officials seriously considered not tightening, but liberalizing, their immigration policies now bear the sad echo of a lost world.

The American refugee program, which had been responsible for bringing about 80,000 people into the U.S., is barely alive; President Bush hasn't signed its annual authorization. Last week Bush announced further measures to bolt the nation's door, including the formation of a Foreign Terrorist Tracking Task Force to coordinate federal efforts to keep terrorists out and hunt them down if they slip in. Authorities will now check to see that those who enter the U.S. on student visas actually attend school. But there is an air of desperation to the proposals. "This was not an immigration failure; it was an intelligence failure," says Charles Keely, professor of international migration at Georgetown University.

In Washington, the Immigration and Naturalization Service is regarded as a mess; even its spokesman, Russ Bergeron, says it has "languished for decades." In 1996 Congress told the INS to set up a computer system to track those who come into the U.S. on student visas; but with some 600,000 such people in a country with more than 22,000 educational institutions, the system is not yet up

and running. Only one of the 19 hijackers entered on a student visa. Can screenings in foreign countries be tightened? Maybe, but all 19 were run through a computerized "watch list" of suspected terrorists when they applied for visas (at least six were interviewed personally). Nothing turned up. In any event, as Kathleen Newland, co-director of the Migration Policy Institute in Washington, says, "The facts remain the same." Globalization will continue to spin people around the world. The U.S. will continue to have two enormous land borders with peaceful neighbors; we're never going to see watch towers along the 49th parallel. Each year, says Newland, there are 489 million border crossings into the U.S., involving 127 million passenger vehicles; each year, 820,000 planes and 250,000 ships enter U.S. airspace or waters. However terrorism is beaten, it won't be by American border controls.

Will it be by war? In the immediate aftermath of Sept. 11, there was a hope that police work might be able to rid the world of al-Qaeda and its associates. But the more we know of bin Laden's group, the less that seems likely, and not just because its operatives are ruthlessly fanatic.

Perhaps the single most important truth learned in seven weeks is the existence of a creepy camaraderie, an international bond among terrorists. Those ties are forged in Afghanistan. "The one thing that absolutely everyone involved in terrorist groups has in common," says a European official, "is passage through the al-Qaeda camps. When leaders are sent from Afghanistan to start organizing people, there are no questions asked; the camp experience allows everyone to recognize the bona fides or jihad." The B-52s pounding away from 40,000 ft. may not look like sleuths and cops. But if al-Qaeda's sinister appeal and global reach are ever to be broken, the bombers too must play their part.

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—Reported by Bruce Crumley/Paris, Helen Gibson and James L. Graff/London, Scott MacLeod/Cairo and Viveca Novak/Washington, with other bureaus

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From *Time*, November 12, 2001, pp. 58-68. © 2001 by Time, Inc. Magazine Company. Reprinted by permission.

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**Exhibit F(g). Exhibit R-5**

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~~FOUO~~

Footnote

BOSNIA AND HERZEGOVINA  
FEDERATION OF BOSNIA AND HERZEGOVINA  
FEDERAL MINISTRY OF INTERNAL AFFAIRS  
SARAJEVO  
POLICE ADMINISTRATION

Number: 09-12/5-277  
Date: 13-Feb-2002

BIH MINISTRY OF CIVIL AFFAIRS AND COMMUNICATION  
Sector for relations with Interpol

SARAJEVO

SUBJECT: ~~REDACTED~~ additional information is being sought -

Reference: Our sus number 09-12/5-277 from 09-Sept-2001, 25-Oct-2001 and 12-Nov-2001 -

We are informing you that in front of the Federation BiH Supreme Court, there are investigations being carried out against 8 individuals and one of which is Bensayah Belkacem, due to criminal acts from article 168. Paragraph 1. Criminal Laws Federation BiH (~~REDACTED~~) in relation with article 20. Paragraph 1. Criminal Laws Federation BiH (~~REDACTED~~)

In our report numbers and reference dates, you were informed that after the individuals arrest, based on orders by the Zenica municipality court, there was a search carried out at the individuals apartment on Gorazdanska 184 in Zenica.

During the search, there was a money transfer document found that is believed to be from BENALLO NABIL, remaining information is unknown. On 24-Sept-2001, he sent money in the amount of \$747.96 from Frankfurt, Germany to Raiffeisen Bank in Sarajevo. Bensayah Belkacem picked the money up the following day. The money was sent by Western Union from Frankfurt and the transfer number is 5271863795.

We are asking you to request from the Interpol General Secretary and German Interpol the following for Benallo Nabil:

- confirmed information on the individuals identity;
- confirm if the individual is being sought after or investigated in Germany or beyond;
- confirm if the German Interpol has any information if the mentioned can be related with any criminal activities or terrorism.

We would also like to ask you, through German Interpol, to confirm, based on the mentioned information, if the transfer of money can be connected with any type of connection for financing terrorism.

With respects!

AK/FB

Temporarily carrying out duties as Director

Dragan Lukac

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# **Exhibit F(h). Exhibit R-6**

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\* The officials said that shortly after Sept. 11, American intelligence agencies, working closely with the government of neighboring Croatia, listened in as Mr. Belkacem and others discussed plans for attacks. The Bosnian police were alerted and quickly arrested Mr. Belkacem and the others.

An American official said a search of Mr. Belkacem's home yielded a copy of Mr. Zupavdan's cell phone number in Sarajevo, where he was later reported to be working with Mr. Bin Laden, and several other passports.

It was also said that the phone number was transferred with Zupavdan and others. The official said the Bosnian government was not involved.

The transfer of Mr. Belkacem and the other prisoners to American custody prompted street protests in Sarajevo last week by hundreds of supporters of the six captives, including several family members who tried to block American military vehicles transporting the men from jail.

A senior United Nations official in Sarajevo said today that the United States and Bosnia had both acted illegally.

"The rule of law was clearly circumvented in this process," the official, Madeleine Rees, the representative in Bosnia of the United Nations high commissioner for human rights, said at a news conference. There was "no legal basis" for the Bosnian government's decision to hand over the men, she said, calling it an "extrajudicial removal from sovereign territory."

Asked whether the United States had pressured the Bosnian government to hand over the six, she said, "The simple answer is, Yes."

THE SCOTSMAN  
Sat 19 Jan 2002

printer friendly email article

### Search for Bin Laden's network widens

NEW details were emerging last night of a plot to bomb targets in Singapore, including the British High Commission, by extremists linked to the al-Qaeda network.

A ton of explosives dug up in the Philippines, apparently on a tip from the Singaporean authorities, underlined that the plotters were planning in earnest to blow up western embassies.

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Exhibits F(i) to F(v) are withheld in full under 5 U.S.C. § 552(b)(1) and (b)(7) as they contain classified and law enforcement sensitive material.



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**Exhibit F(w).**  
Supplemental Information  
Requested by CSRT

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22 Nov 04

MEMORANDUM

From: Legal Advisor  
To: Director, Combatant Status Review Tribunal

Subj: ADDENDUM LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW  
TRIBUNAL FOR DETAINEE ISN # 10001

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004  
(b) Secretary of the Navy Implementation Directive of 29 July 2004

Encl: (1) DA WASHINGTON DC 050016Z Mar 02  
(2) My E-mail ltr of 15 Oct 04  
(3) Col. ~~EE~~ Wilson-Burke memo of 11 Nov 04

1. During a search of the files of another government agency, Combatant Status Review Tribunal personnel discovered new information related to the detention of Detainee ISN 10001. *See enclosure (1).* This information was forwarded to the Tribunal, which was reconvened to review the information. *See enclosure (2).* The Tribunal reconvened, reviewed the information, and found it unpersuasive. Therefore, their prior finding remained unchanged. *See enclosure (3).*
2. In my opinion the supplementary proceedings of the Tribunal are legally sufficient and no corrective action is required.
3. I recommend that the supplementary proceedings of the Tribunal be approved.

  
CDR, JAGC, USN

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Remainder of exhibit withheld in full  
under 5 U.S.C. § 552(b)(1) as it contains  
classified material.

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**Exhibit G.**  
**Boumediene CSRT Decision**  
**Report:**

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**Exhibit G(a).**  
Unclassified Summary of  
Basis for Tribunal Decision,  
Enclosure (1)

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UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL:         #6          
ISN #:         10005        

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The initial session of this Tribunal was held on 27 September 2004. The Recorder presented Exhibits R-1 and R-2 during the unclassified portion of the Tribunal. The Unclassified Summary of Evidence (Exhibit R-1) indicates, among other things, that the detainee is a supporter of Al Qaida and has on multiple occasions provided subsistence to Bensayah Belkacem, a known Al Qaida operative. The Unclassified Summary of Evidence also indicates the detainee admitted retaining and financing legal representation for a known Al Qaida operative after that operative's arrest for terrorist activities. The Recorder called no witnesses.

The detainee chose not to attend the Tribunal as reflected in the Detainee Election Form (Exhibit D-A), and the Personal Representative presented no evidence and called no witnesses.

During the classified session of the Tribunal, the Recorder presented Exhibits R-3 through R-14. The Personal Representative presented no classified evidence, and neither the Recorder nor the Personal Representative commented on the classified exhibits. After the Tribunal read all of the classified exhibits, the Tribunal requested additional information and recessed until the Recorder could obtain it.

The Tribunal reconvened on 1 October 2004. In response to the Tribunal's request, the Recorder offered into evidence additional classified Exhibits R-15 through R-24 after giving the Personal Representative an opportunity to review the documents. Neither the Recorder nor the Personal Representative had any comments on the additional

documents. After considering the unclassified and the classified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

### 3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-24 and D-A.
- b. Testimony of the following persons: None.
- c. Statement of the detainee: None.

### 4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

### 5. Discussion of Unclassified Evidence

The Recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, the FBI redaction certification, provided no usable evidence. Accordingly, the Tribunal had to look to the classified exhibits for support of the Unclassified Summary of Evidence. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

### 6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT Legal Advisor.

### 7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.

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b. The Personal Representative informed the Tribunal that the detainee understood the Tribunal process, but chose not to participate, as indicated in Exhibit D-A.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army  
Tribunal President

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ISN #10005  
Enclosure (1)  
Page 3 of 3



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**Exhibit G(b).**  
Classified Summary of Basis  
for Tribunal Decision,  
Enclosure (2)

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

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# Exhibit G(c). Exhibit R-1

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Combatant Status Review Board

TO: Tribunal Member

FROM: OIC, CSRT (21 September 04)

Subject: Summary of Evidence for Combatant Status Review Tribunal BOUMEDIENE, Lakhdar.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is an al Qaida supporter.
  - a. The detainee is a supporter of al Qaida:
    1. The detainee is a native of Algeria who, since 1990, has repeatedly traveled to hotspots of regional conflict throughout the Middle East and Eastern Europe.
    2. The detainee has on multiple occasions provided subsistence to Bensayah Belkacem.
    3. Bensayah Belkacem is a known al Qaida operative.
    4. The detainee has given conflicting statements as to the nature of his association with Belkacem.
    5. The detainee admitted retaining and financing legal representation for a known al Qaida operative after that operative's arrest for terrorist activities.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Exhibit RI

UNCLASSIFIED

# Exhibit G(d). Exhibit R-2

UNCLASSIFIED

Memorandum

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To : Department of Defense  
Office of Administrative Review  
for Detained Enemy Combatants,  
Col. [REDACTED] OIC, CSRT  
Date 09/17/2004

From : FBI GTMO  
Counterterrorism Division,  
Office of General Counsel,  
Asst. Gen. Counsel [REDACTED]

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
ISN US9AG-010005DP

Pursuant to the Secretary of the Navy Order of 29  
JULY 2004, IMPLEMENTATION OF COMBATANT REVIEW TRIBUNAL  
Procedures for Enemy-Combatants Detained at Guantanamo Bay  
Naval Base, Cuba, Section D, paragraph 2, the FBI requests  
redaction of the information herein marked<sup>1</sup>. The FBI makes  
this request on the basis that said information relates to the  
national security of the United States<sup>2</sup>. Inappropriate  
dissemination of said information could damage the national  
security of the United States and compromise ongoing FBI  
investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A  
DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction  
contains no information that would support a determination  
that the detainee is not an enemy combatant.

The following documents relative to ISN 10005 have  
been redacted by the FBI and provided to the OARDEC, GTMO:

FD-302 dated 02/18/2002  
FD-302 dated 03/07/2002  
FD-302 dated 05/03/2002

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI  
document.

<sup>2</sup>See Executive Order 12958

pg 1 of 2

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Memorandum from [REDACTED]  
Re: REQUEST FOR REDACTION, 09/17/2004

If you need additional assistance, please contact Assistant  
General Counsel [REDACTED]  
[REDACTED]

pg 2 of 2

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Exhibits G(e) to G(z) are withheld in full under 5 U.S.C. § 552(b)(1) and (b)(7) as they contain classified and law enforcement sensitive material.



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**Exhibit H.**  
**Nechla CSRT Decision**  
**Report:**

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**Exhibit H(a).**  
**Unclassified Summary of**  
**Basis for Tribunal Decision,**  
**Enclosure (1)**

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL:           #13            
ISN #:           10003          

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this Detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee is associated with al Qaida. The Detainee is a suspected terrorist with ties to the Algerian Armed Islamic Group (GIA) and is suspected of having links to al Qaida. The Detainee is a former employee of the Red Crescent Society and attended meetings in Sarajevo for Algerians working for non-government organizations in Bosnia. The Detainee is an associate of a known al Qaida operative in Bosnia. The Detainee is also known as Sharfuldin or Sharuldin. The Detainee chose to participate in the Tribunal process. He called four witnesses, one of whom was found to be not reasonably available. The Detainee did not request any documents be produced, and made a sworn verbal statement. The Tribunal President found 3 of the requested witnesses reasonably available. With regard to the witness found not reasonably available, the Tribunal President also found that alternative means of producing the witness's testimony were also not reasonably available, in that the requested witness could not be located by the U.S. Department of State in time for the Tribunal. The Detainee, in his verbal statement, denied being a terrorist, associated with al Qaida and a member of GIA. The witnesses called by the Detainee testified that the Detainee was not a terrorist, but rather was an upright man who worked with orphans in Bosnia through the Red Crescent organization. The Tribunal President's evidentiary and witness rulings are explained below.

**3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-33.

## b. Testimony of the following persons:

1. Mustafa Ait Idr (ISN 10004)
2. Lakhdar Boumediene (ISN 10005)
3. Boudella al Hajj (ISN 10006)

## c. Sworn statement of the Detainee.

## 4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested the following witnesses be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Mustafa Ait Idr	reasonably available	yes
Lakhdar Boumediene	reasonably available	yes
Boudella al Hajj	reasonably available	yes
Mohmoud Sayed Yousef	not reasonably available	no

Mohmoud Sayed Yousef was proffered by the Detainee as the Detainee's supervisor in the Red Crescent in Bosnia who would testify, if called, to the Detainee's work with the Red Crescent, the Detainee's good character and that he had no knowledge of any association by the Detainee with any terrorist organizations. While determined to be relevant, the Tribunal President found that the witness was not reasonably available in that after a period of reasonable diligence the Department of State could not locate the witness in Bosnia or in any other location based on the limited information and identifiers provided by the Detainee to locate the witness.

The Detainee requested no additional evidence be produced.

## 5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The recorder offered Exhibits R-1, R-2 and R-3 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 contains an affidavit of the Detainee's wife, Badra Baouche, submitted in the habeas corpus proceedings pending in the United States District Court for the District of Columbia seeking the release of the Detainee and Lakhdar Boumediene (ISN 10005). Badra Baouche averred that the Detainee was an employee of the Red Crescent in Bosnia, was wrongly accused but

released by Bosnian authorities and then abducted by American agents, and is not a terrorist. Exhibit R-3 purports to be a Petition for a Writ of Habeas Corpus seeking the release of the Detainee and Lakdar Boumediene. The copy presented to the Tribunal does not bear a docket number and is unsigned, but is dated 08 July 2004. Exhibit R-3 appears to be based on the affidavit of the Detainee's wife and other sources and sets forth legal arguments supporting the issuance of the writ. The Tribunal noted the allegations contained in the Petition but did not find them persuasive to the question of the Detainee's status as an enemy combatant. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence and to provide further light on the allegations contained in the writ pleadings.

b. The Tribunal also considered the Detainee's sworn testimony and the sworn testimony provided by the three detainee witnesses. A summarized transcript of the Detainee's sworn testimony and the sworn testimony of the witnesses is attached as CSRT Decision Report Enclosure (3). In sum, the Detainee and the witnesses testified as follows:

(1) The Detainee: The Detainee appreciated the opportunity to address the allegations and the freedom to speak to the Tribunal and defend himself. The Detainee stated the reason he is being held in Cuba is because of charges brought against him in Bosnia related to an intent to plan an attack on the US Embassy. He was in prison in Bosnia for 3 months; that he was the victim of a political game without any intention to carry out an attack on the US Embassy; that if there were any truth to these allegations he would not have been taken by the Bosnians but would have been taken directly by the Americans and that this is proof of a political game. After 3 months in prison, Bosnia TV aired the fact that he was found innocent in the Bosnian court and to live free without conditions. The Detainee claimed that the acquittal was in his pocket when he was arrested; that he was surprised to be taken by the Americans; that his hands and feet were bound and he received the worst treatment of his life being without food, water and sleep for 36 hours. Since he's been in Cuba for 3 years, no one has ever asked him about the US Embassy. The Detainee maintains that he has cooperated with interrogators and has discussed the charity organizations but now finds himself faced with the strange accusation that he is al Qaida. He states that he only knows about al Qaida through the media and that it is an organization that kills innocent people. The Detainee believes that Islam is innocent of such acts and that he has lived his life as a good person as he was brought up by his father and that his heart doesn't allow for hatred; that his business was taking care of orphans. He stated that since over 70% of al Qaida has been caught, why can't any of them identify him. He believes that GIA is a terrorist group and if he were a member of that group, the Algerian government would know it and that the Algerian government told the Bosnia government that Algeria did not have him as a terrorist in Algeria. The Detainee stated that he worked for the Red Crescent; that it is not an NGO; that he worked outside of Sarajevo; that he met many people who worked in Red Crescent who can say what he did; that Sharfuldin is his other name and it is normal to have other names. Finally, the Detainee asserted his innocence in terrorism and that he has been wrongly accused.

The Tribunal President inquired about the alleged mistreatment of the Detainee after he came into US custody. The Detainee stated that it was harsh but that he wanted to just let it go; that his treatment and the conditions have become better in the last year and that he was ill when he first arrived in Cuba and received some treatment but that his condition was untreated for some time after he arrived. The Tribunal President noted these statements for the record and caused a report of these allegations to be made through the chain of command.

(2) Mustafa Ait Idir: This witness stated that he would speak for the Detainee if the Detainee wanted him to, but that his lawyer said he should not speak to a tribunal. The Detainee asked the witness to testify for him and the witness agreed. The witness testified that he knows the Detainee like he knows his own pocket; that he knows his wife and children and that if the Detainee has anything to do with terrorists then the witness is a terrorist himself; and that if the Detainee were sentenced for terrorism then the witness would stay with him. The witness stated that he never knew the Detainee to be a member of GIA or involved in terrorism in any way; that he has know the Detainee since 1995 or 1996 and that he knows him as well as he knows his own wife and kids.

(3) Lakhdar Boumediene: This witness testified that the allegations that the Detainee is associated with al Qaida, the GIA and terrorists are all lies; that he has known the Detainee since they were in Albania and has never known him to be a terrorist; that he and the Detainee worked together in the Red Crescent in Bosnia; that he has known him since 1994.

(4) Boudella al Hajj: This witness testified that he would tell the truth about the Detainee and stated that all the accusations were false; that the Detainee is not a terrorist and is not part of GIA; that all he has ever know about the Detainee were good things since he met the Detainee in 1997; that the Detainee is concerned about his family and work and never broke the law; that if the Detainee is a terrorist then the witness is a terrorist too.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

#### 6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

#### 7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

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a. The Detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.

b. The Detainee understood the Tribunal proceedings. He actively participated in the proceedings, provided his own testimony and examined the witnesses called by him.

c. The Detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida and was part of or supporting al Qaida.

**8. Dissenting Tribunal Member's report**

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army  
Tribunal President

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ISN #10003  
Enclosure (1)  
Page 5 of 5

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**Exhibit H(b).**  
Classified Summary of Basis  
for Tribunal Decision,  
Enclosure (2)

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Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

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# **Exhibit H(c). Exhibit R-1**

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**Combatant Status Review Board**

TO: Personal Representative

FROM: OIC, CSRT (23 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – NECHLE, Mohammed.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida.
 

The detainee is associated with al Qaida:

  1. Detainee is a suspected terrorist with ties to the Algerian armed Islamic group (GIA) and is suspected of having links to al Qaida.
  2. Detainee is a former employee of the Red Crescent Society and attended meetings in Sarajevo for Algerians working for non-government organizations in Bosnia.
  3. The detainee is an associate of a known al Qaida operative in Bosnia.
  4. The detainee is also known as Sharfuldin or Sharuldin.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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# **Exhibit H(d). Exhibit R-2**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, )  
    Detainee, Camp Delta; )  
 )  
ABASSIA BOUADJMI, )  
    as Next Friend of )  
    Lakhdar Boumediene; )  
 )  
MOHAMMED NECHLA, )  
    Detainee, Camp Delta; )  
 )  
BADRA BAUCHE, )  
    as Next Friend of Mohammed Nechla, )  
 )  
 )  
                            *Petitioners,* )

v. )

GEORGE WALKER BUSH, )  
    President of the United States )  
    The White House )  
    1600 Pennsylvania Ave., N.W. )  
    Washington, D.C. 20500 )

AFFIDAVIT OF  
STEPHEN H. OLESKEY

DONALD RUMSFELD, )  
    Secretary, United States )  
    Department of Defense )  
    1000 Defense Pentagon )  
    Washington, D.C. 20301-1000 )

ARMY BRIG. GEN. JAY HOOD, )  
    Commander, Joint Task Force - GTMO )  
    Guantánamo Bay Naval Base, Cuba )  
    c/o United States Army, )  
    Army Pentagon )  
    Washington, DC 20310-0200 )

ARMY COL. NELSON J. CANNON, )  
    Commander, Camp Delta, )  
    Guantánamo Bay Naval Base, Cuba )  
    c/o United States Army, )  
    Army Pentagon )  
    Washington, DC 20310-0200 )

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## AFFIDAVIT OF ABASSIA BOUADJMI

I, ABASSIA BOUADJMI, resident of 100 Logement Bloc/5, Portc/67, Mascara 29200, Algeria, being duly sworn, depose and state as follows:

1. I am the wife of Lakhdar Boumediene. He is being held in Guantanamo Bay.
2. My husband is an Algerian citizen.
3. I married my husband in October 1995, in Albania, where he was working with the Red Cross (Red Crescent) of the Emirate of Abu-Dhabi.
4. I have two children. My children and I have had to live with my parents for the past while, because my husband is not there to help take care of the family. This has been very difficult on the whole family.
5. After we spent two years in Albania, he was moved to Bosnia-Herzegovina to work there instead, with the same organization. He worked continually in that job for the next four years until his arrest and subsequent abduction.
6. My husband was arrested in Bosnia on October 20, 2001. He spent three months in prison. At that point, the Bosnian court ordered his release.
7. However, even though he had been declared innocent, and ordered freed, my husband was simply abducted -illegally- by American agents.
8. Since that time, apparently my husband has been held in Guantanamo Bay.
9. I have not been able to find out why he is being held. I know that my husband is innocent of any terrorism. My husband is opposed to violent acts of all kinds, and is a peaceful person. He never showed any kind of hatred towards the Americans.
10. I know that my husband would want me to take all steps possible to help secure his release and I therefore wish that *Justice in Exile* and the *Center for Constitutional Rights* take all legal steps possible in my interest and the interest of my husband.

Sworn to by the deponent on this \_\_\_ day of June, 2004.

  
ABASSIA BOUADJMI

06-29-04P03:36 RCVD

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page 2 of 5

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Miss boumediene abassia  
Cite 100 LOGEMENT  
BLOC/5, PORTE/67  
MASCARA 29200 ALGERIA

*Guantanamo*  
**FILE COPY**  
7/2/03  
*Stewart*

SIR CLIVE STAFFORD SMITHE  
24/06/2004  
DEAR SIR.

MY HUSBAND,S CASE JAILED IN GUANTANAM

I WOULD LIKE TO EXPOSE MY CASE TO YOU AFTER MY HUSBAND HAD BEEN ARRESTED

HE IS NOW IN GUANTANAMO, HE IS NAMED BOUMEDIENE LAKHIDAR LET ME INFORM YOU THAT WE GOT MARRIED ON OCTOBER 1995 IN ALBANIA WHERE HE WAS DEVELLING AYEAR BEFORE . HE WAS WORKING FOR THE RED CROSS FOR THE EMIRAT OF ABU-DHABI AFTER WE HAD SPENT 2YEARS IN ALBANIA WE WENT TO BOSNIA HERZEGOVINA. HE HAD THE SAME JOB AS IN ALBANIA I MEAN HE WAS WORKING FOR THE RED CROSS FROM 1997 TELL THE DATE OF HIS ARREST BY AMERICANE AGENTS 2 0/10/2001 AFTER HE SPENT 03 MONTHS IN PRISON IN BCSNIA. THE COURT OF JUSTICE OF BOSNIA SENTENCED HIM INNOCENT. AFTER BEING ARRESTES BY THE AMERICAN AGENTS HE WAS TRANSFERED TO GUANTANAMO IN SPITE OF THE JUSTICEDECISION ROHICH DECLARED HIM INNOCENT OF THE ACCUSAL OF BELOUGING TO A TERRORIST GROUP PREPARRING ATTKAS AGAINST THE AMERICAN EMBASSY IN BOSNIA SINCE THEN, HE IS TREATED AS ALL PRISONNENS WITHANT BEING ABLE TO HAVE A LAW YER NEITHER RIGHT OF BEING JUDGED. EVEN THE MAIL STOPPED SINCE AUGUST 2003.

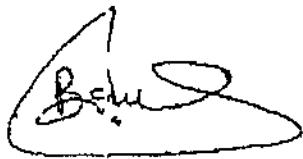
WITH MY TWO DAUGHTERS WE HAVE BEEN AT MY PARENTS HOME WITHANT ANY RESOURCES TO SATISFY THE NEED OF MY CHILDREN.

I WOULD BE GREATLY GRATEFUL TO YOU IF YOU COULD PROWDE ME WITH AHE EPEING HAND. TO FREE MY HUSBAND WHO NEVER COMMITED A TERRORREST ACT AND WHO HATES THAT A PERSON KILLED ANOTHER PERSON FOR ANY REASON. MY HUSBAND IS APLACEFUL PERESON WHO NEVER SHOWED ANY KIND OF HATE OR DISISE AGAINST THE AMEFICAN.

I AMVERY CONDIENT AND I TRUST YOU COULD BE ABLE TO FIND SOLUTION TO MY SITUATIOPN.

AWAITING FOR AN ANSWER FROM YOU RECEIVE MY BEST REGARDS.

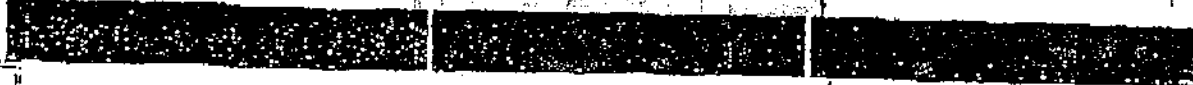
ABASSIA BOUMEDIENE



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page 3 of 5

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AFFIDAVIT OF RADRA BAUCHE

I, RADRA BAUCHE, being duly sworn, depose and state as follows:

1. I am the wife of Mohammed Nechla. He is being held in Guantanamo Bay.
2. My husband was born on the 2<sup>nd</sup> of April, 1968. He is an Algerian citizen.
3. My husband is a tall man with black hair, and black eyes. He has blond marks on his cheeks.
4. My husband is originally from Lighouat, Algeria.
5. My husband worked for the Red Crescent (the equivalent of the Red Cross) of the United Arab Emirates. He worked for three years in Albania, and five years in Bosnia. His job was to help orphans.
6. We lived in Bihartch, which is about 600 km from Sarajevo, for five years. He would only go to Sarajevo when asked to do so professionally by his boss, and he would stay about three months there when he would go.
7. We were in Bihartch on October 19, 2001, at approximately 6 p.m. The police came and took my husband. They did not tell us what they were looking for. They held him, interrogating him, for 24 hours.
8. There was an inquiry that lasted three months, they were judged innocent of any wrongdoing by the High Court in Bosnia Herzegovina. My husband was ordered released.
9. However, at the time he was to be freed, my husband was simply abducted all entirely illegally all by American agents. This happened when I, along with others, was waiting for him to be freed, along with others who had apparently been falsely accused.
10. Since that time, apparently my husband has been held in Guantanamo Bay. Despite our efforts, we have not been able to find out why he is being held. I know that my husband is innocent of any terrorism.
11. I know that my husband would want me to take all steps possible to help secure his release.

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Dear Sir,

Husband's name is : NECHLA Mohammed  
Date of birth : April, 2nd, 1968  
Place of birth : Laghouat, Algeria

He worked for: The Red Crescent of the United Arab Emirates (U.A.E).  
He worked for five years in Bosnia and three years in Albania.  
He was a responsible of the orphans.

We lived in a city named Bihartch which is 600 km far from Sarajevo:  
My husband went to Sarajevo only when his boss asked him and just for professional purposes. Each time he stayed three months there. We lived in Bihartch for five years till October 19<sup>th</sup> 2001 at 6: PM. The police came home to look for I don not know what my husband had been taken into another room alone he was asked many questions I don't know about what. The investigations lasted til. 24 h. My husband had been taken by the police that night without knowing the real reasons for his arrest, two others Algerians were accused of committing acts against the U.S.A. embassy and Great Britain Embassy in Bosnia.

They were judged by the High Court of Bosnia Herzegovina. After an inquiry they were debarred innocent and were released after three months of jail.  
After they had been released from prison they were kidnapped by Americans agents thought the court of justice had declared them innocent. The kidnapping happened next to the prison where we were waiting welcome my husband and other prisoners.

My husband is a tall man with black hair and black eyes. He has blond points (marks) on his cheek and a full stop.  
He is now imprisoned in Guant Anamo.  
We don't know why. My husband is innocent of committing terrorist acts against any country of the world  
We got married on May 20<sup>th</sup> in Laghouat, Algeria.

BAUCHE BADRA  
AB

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# Exhibit H(e). Exhibit R-3

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE,  
Detainee, Camp Delta;

ABASSIA BOUADJMI,  
as Next Friend of  
Lakhdar Boumediene;

MOHAMMED NECHLA,  
Detainee, Camp Delta;

BADRA BAUCHE,  
as Next Friend of Mohammed Nechla,

Petitioners,

v.

GEORGE WALKER BUSH,  
President of the United States  
The White House  
1600 Pennsylvania Ave., N.W.  
Washington, D.C. 20500

DONALD RUMSFELD,  
Secretary, United States  
Department of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

ARMY BRIG. GEN. JAY HOOD,  
Commander, Joint Task Force - GTMO  
Guantánamo Bay Naval Base, Cuba  
c/o United States Army,  
Army Pentagon  
Washington, DC 20310-0200

ARMY COL. NELSON J. CANNON,  
Commander, Camp Delta,  
Guantánamo Bay Naval Base, Cuba,  
c/o United States Army,  
Army Pentagon  
Washington, DC 20310-0200

PETITION FOR A WRIT  
OF HABEAS CORPUS

No. \_\_\_\_\_

(continued on next page)

*Respondents,* )  
)  
*All sued in their official* )  
*and individual capacities.* )

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioners Lakhdar Boumediene and Mohammed Nechla seek the Writ of Habeas Corpus. Mr. Boumediene acts on his own behalf and through his Next Friend, Ms. Abassia Bouadjmi, his wife. Mr. Nechla acts on his own behalf and through his Next Friend, Ms. Badra Baouche, his wife. Petitioners Boumediene and Nechla (the "Detained Petitioners") are citizens of Algeria being held *incommunicado* in Respondents' unlawful custody in Delta Camp, Guantánamo Bay Naval Station, Cuba ("Guantánamo Bay").

I. JURISDICTION

2. Petitioners bring this action pursuant to 28 U.S.C. §§ 2241 and 2242. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1651, 2201, and 2202; 5 U.S.C. § 702; as well as the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, and customary international law. Insofar as they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

3. This Court has authority under 28 U.S.C. § 2241 to grant the Writ of Habeas Corpus. This Court has authority under 28 U.S.C. § 2242 to entertain the petition filed on Mr. Boumediene's behalf by Ms. Bouadjmi as his Next Friend, and on Mr. Nechla's behalf by Ms. Baouche, as his Next Friend. Pursuant to 28 U.S.C. § 2201 this Court has authority to declare the rights and other legal relations of the parties herein, and under 28 U.S.C. § 2202 to effectuate and enforce declaratory relief by all necessary and proper means, as this case involves an actual controversy within the Court's jurisdiction.

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## II. VENUE

4. Venue is proper in the United States District Court for the District of Columbia, since at least one Respondent resides in the district, a substantial part of the events or omissions giving rise to the claim occurred in the district, at least one Respondent may be found in the district, and all Respondents are either officers or employees of the United States or any agency thereof acting in their official capacities. See 28 U.S.C. §§ 1391(b); 1391(e).

## III. THE PARTIES

### A. Lakhdar Boumediene

5. Petitioner Lakhdar Boumediene is an Algerian citizen incarcerated and held in Respondents' unlawful custody at Camp Delta, Guantánamo Bay. See Exhibit A, Affidavit of Abassia Bouadjmi, incorporated by reference herein, attached to Affidavit of Stephen H. Oleskey, Esq. ("Bouadjmi Aff.").
6. Petitioner Abassia Bouadjmi is the wife of Petitioner Boumediene. (Bouadjmi Aff. ¶¶ 1-2.) They were married in Albania in October, 1995. (*Id.* ¶ 3.) They have two children together. (*Id.* ¶ 4.) Since Mr. Boumediene has been detained, Ms. Bouadjmi and the children have faced many difficulties. (*Id.*) She seeks to act as his Next Friend by bringing this Petition.

### B. Mohammed Nechla

7. Petitioner Mohammed Nechla is an Algerian citizen presently incarcerated and held in respondents' unlawful custody at Camp Delta, Guantánamo Bay. See Exhibit B, Affidavit of Badra Bouche and attachments thereto, incorporated by reference herein, and attached to Affidavit of Stephen H. Oleskey, Esq. ("Bouche Aff.").
8. Petitioner Badra Bouche is the wife of petitioner Mohammed Nechla. (Bouche Aff ¶ 1.) She seeks to act as his Next Friend by bringing this Petition.

### C. Respondents

9. Respondent George W. Bush is the President of the United States and Commander in Chief of the Armed Forces of the United States. Mr. Boumediene and Mr. Nechla are being detained

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pursuant to the Executive Order promulgated by him on November 13, 2001, *see Exhibit C*, Order on Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, November 13, 2001, attached to Affidavit of Stephen H. Oleskey ("Detention Order"), or alternatively, under his authority as Commander in Chief and under the laws and usages of war. Accordingly, Respondent Bush is responsible for Petitioners' unlawful detention. He is sued in both his official and personal capacities.

10. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to either the Detention Order or the President's authority as Commander in Chief and under the laws and usages of war, Respondent Rumsfeld has been charged with maintaining the custody and control of the Detained Petitioners. He is sued in both his official and personal capacities.
11. Respondent Hood is the Commander of Joint Task Force-GTMO, which operates the detention facilities at Guantánamo Bay. He has supervisory responsibility for the Detained Petitioners and is sued in both his official and personal capacities.
12. Respondent Cannon is the Commander of Camp Delta at Guantánamo Bay. He is the custodian immediately responsible for their detention, and is sued in both his official and personal capacities.

#### IV. STATEMENT OF FACTS

##### A. Petitioners' Detention

13. The Detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants in any context involving the citizens, government or armed forces of the United States.
14. The Detained Petitioners are not, nor have they ever been, "enemy combatants," who were "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there," *see Hamdi et al. v. Rumsfeld, Secretary of Defense, et al.*, No. 03-6696, slip op. at 8-9 (June 28, 2004) (internal quotations omitted), or anywhere.
15. Petitioners seek a judicial determination of the adequacy of the Respondents' determination

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that the Detained Petitioners are "enemy combatants."

16. Until shortly before Respondents unlawfully detained him, Petitioner Boumediene had worked for the Red Crescent of the Emirate of Abu-Dhabi since at least 1995. (Bouadjmi Aff. ¶ 3.) The Red Crescent is the arm of the International Federation of Red Cross and Red Crescent Societies, which operates in Islamic countries. See International Federation of Red Cross and Crescent Societies available at <http://www.ifrc.org/who/movement.asp>. In October 2001, at the time of his arrest and detention in Bosnia and Herzegovina ("Bosnia"), Mr. Boumediene had been living and working there for four years. (Bouadjmi Aff. at ¶¶ 5, 6.)
17. Following his arrest, Mr. Boumediene was held in pre-trial detention in Bosnia for three months, but was then ordered released from confinement on January 17, 2002, by the investigating judge of the Supreme Court of Bosnia and Herzegovina, who had determined there were no further reasons or circumstances upon which pre-trial detention could be ordered. See *Boudellaa, et al. v. Bosnia and Herzegovina, et al.*, Nos. CH/02/8679; CH/02/8689; CH/02/8690; CH/02/8691, H.R. Chamber for Bosnia and Herzegovina, at ¶ 53 (Oct. 11, 2002). See Exhibit D to Affidavit of Stephen Oleskey, Esq. [hereinafter "H.R. Chamber Decision"].
18. Contrary to the judge's Order, however, Mr. Boumediene was not released, and instead was immediately taken into custody by the Federation Police of Bosnia and Herzegovina under the authority of the Federal Ministry of Interior. *Id.* at ¶ 55. These forces, and forces of the Ministry of the Interior of Sarajevo Canton, then handed over Mr. Boumediene to U.S. forces at 6:00 a.m. on January 18, 2002. *Id.* United States forces then flew Mr. Boumediene out of Bosnia and delivered him to what was then called Camp X-Ray at Guantánamo Bay. *Id.* Ms. Bouadjmi has not been able to learn since that time why her husband is being held. (Bouadjmi Aff. at ¶ 9.)
19. When he originally was detained, Petitioner Nechla, like Petitioner Boumediene, worked for the United Arab Emirates' Society of the Red Crescent. (Baouche Aff. ¶ 5.) He worked as an aid worker, helping orphans. (*Id.*) Mr. Nechla and Ms. Baouche had lived in Bihartch, Bosnia, for approximately five years. (*Id.* at ¶ 6.)

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20. On October 19, 2001, Mr. Nechla was arrested by police in Bihartch, Bosnia. (Baouche Aff. ¶ 7.) He was held and interrogated for approximately twenty-four hours. (*Id.*) Mr. Nechla was then held in pre-trial confinement for three months, but then ordered released on January 17, 2002 by the investigative judge of the Supreme Court of Bosnia and Herzegovina, also on the ground that there were no further reasons or circumstances upon which pre-trial detention could be ordered. *See* H.R. Chamber Decision at ¶ 53. Like Petitioner Boumediene and in the same fashion, Mr. Nechla was delivered on January 18, 2002 to U.S. forces in Bosnia who transported him to Guantánamo Bay. (*Id.* ¶57.)

21. In the wake of the September 11, 2001 terrorist attacks, the United States, at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized Respondent Bush to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001).

22. On November 13, 2001, Respondent Bush issued an Executive Order authorizing indefinite detention without due process of law (the "Detention Order" referenced top of page 4). The Detention Order authorizes Respondent Rumsfeld to detain anyone Respondent Bush has "reason to believe":

- i. is or was a member of the organization known as al Qaeda;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

*See Exhibit D to Oleskey Affidavit.* Respondent Bush must make this determination in writing. The Detention Order was neither authorized nor directed by Congress, and is beyond the scope

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of the Joint Resolution of September 18, 2001.

23. On information and belief, at the time of their detention, Mr. Boumediene and Mr. Nechla were (i) not members of the al Qaeda terrorist network; (ii) had not caused any harm to American personnel or property; and (iii) had no involvement in either the terrorist attacks of September 11, 2001, or any act of international terrorism attributed by the United States to al Qaeda or any terrorist group. They are not properly subject to the Detention Order issued by Respondent Bush. As they did not participate in any armed conflict involving the United States or its coalition allies, they are not properly subject to the Executive's authority as Commander in Chief and under the laws and usages of war.
24. Neither Mr. Boumediene nor Mr. Nechla was in or near Afghanistan, or any other theater of war, at the time of their unlawful detention on January 18, 2002.
25. Because of the circumstances surrounding their seizure and detention, it is not possible to state whether the Detained Petitioners promptly identified themselves by their correct names and nationality to the forces of the United States, or whether they requested that the United States provide them with access to their families and to legal counsel. On information and belief, Mr. Boumediene and Mr. Nechla were both kept blindfolded against their wills for lengthy periods while being taken involuntarily to Guantánamo Bay; have been or will be interrogated repeatedly there by agents of the United States Departments of Defense and Justice, though they have not been charged with any offense or been notified of any pending or contemplated charges; have made no appearance before either a military or civilian tribunal of any sort, or been provided counsel or the means to contact counsel; and have not been informed of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, or customary international law. Indeed, press reports indicate Respondents have publicly taken the position that Guantánamo detainees should not be told of such rights. As a result, absent action by this Court, the Detained Petitioners are completely unable either to protect, or to vindicate their rights under domestic

UNCLASSIFIED

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and international law.

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## B. The Detention Order

26. The Detention Order seeks to vest Respondent Bush with unfettered discretion to identify the individuals that fall within its scope. It establishes no standards governing his discretion. The Detention Order contains no provision requiring notice to a person detained of the charges he may face. On the contrary, the Detention Order purports to authorize that detainees be held without charges. It contains no provision requiring that detainees receive notice of their rights under domestic and international law, and provides neither the right to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and does not provide for appeal to an Article III court. In fact, the Detention Order seeks expressly to bar review by any court. The Detention Order purports to authorize indefinite and unreviewable detention, based on nothing more than Respondent Bush's written determination that an individual is subject to its terms.
27. The Detention Order was promulgated in this judicial district, the decision to detain Petitioners was made by Respondents in this judicial district, the decision to detain the Petitioners at Guantánamo Bay was made in this judicial district, and the decision to continue detaining the Petitioners was, and is, being made by Respondents and in this judicial district.
28. On information and belief, Respondent Bush has never certified or determined, in writing or otherwise, that the Detained Petitioners are subject to this Detention Order.
29. The Detained Petitioners are not properly subject to the Detention Order.
30. In a related case, Respondents have contended that the Petitioners in that case are being detained not pursuant to the Detention Order but rather under the authority of Respondent Bush as Commander in Chief and under the laws and usages of war. *See Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002). However, unlike the petitioner in *Rasul*, the Detained Petitioners in this matter were not arrested or detained by the United States in the course of an armed conflict.

## C. Guantánamo Bay Naval Base

31. On or about January 11, 2002, the United States military began transporting prisoners captured

UNCLASSIFIED

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in Afghanistan to Camp X-Ray, at Guantánamo Bay. In April 2002, all prisoners, including the Detained Petitioners, were transferred to a more permanent prison facility at Camp Delta. Guantánamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the complete jurisdiction and control of the United States. Guantánamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. Offenses committed by both civilians and foreign nationals living at Guantánamo Bay are brought before federal courts on the mainland, where Respondents enjoy the full panoply of Constitutional rights. In *Rasul v. Bush*, decided on June 28, 2004, the U.S. Supreme Court held that the habeas statute §§ 2241-2243, App. 19, confers a right to judicial review of the legality of an indefinite Executive detention of aliens such as these Petitioners at Guantánamo Bay, a territory over which the United States exercises plenary and exclusive jurisdiction but not "ultimate sovereignty." *Rasul v. Bush*, Nos. 03-334, 03-343, slip op. at 15-16 (June 28, 2004).

## V. CAUSES OF ACTION

### FIRST CLAIM FOR RELIEF (DUE PROCESS - FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION)

32. Petitioners incorporate paragraphs 1-31 by reference as if fully set forth herein.
33. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of the Detained Petitioners, without Due Process of Law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of the Fifth Amendment, since they act at the direction of Respondent Bush. The Detention Order violates the Fifth Amendment.

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SECOND CLAIM FOR RELIEF  
(DUE PROCESS - FIFTH AMENDMENT  
TO THE UNITED STATES CONSTITUTION)

34. Petitioners incorporate paragraphs 1 - 33 by reference as if fully set forth herein.
35. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the Detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. The Detention Order, as applied to Petitioners, violates the Fifth Amendment.

THIRD CLAIM FOR RELIEF  
(DUE PROCESS - INTERNATIONAL LAW)

36. Petitioners incorporate paragraphs 1 - 35 by reference as if fully set forth herein.
37. By the actions described above, Respondents, acting under color of law, have violated and continue to violate customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of the Detained Petitioners, without legal process, in violation of binding obligations of the United States under international law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of international law, since they act at the President's direction. On its face, the Detention Order violates international law.

FOURTH CLAIM FOR RELIEF  
(DUE PROCESS - INTERNATIONAL LAW)

38. Petitioners incorporate paragraphs 1 - 37 by reference as if fully set forth herein.
39. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the Detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the

UNCLASSIFIED

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American Declaration on the Rights and Duties of Man. The Detention Order, as applied to the Detained Petitioners, violates these and other binding obligations of the United States under International Law.

FIFTH CLAIM FOR RELIEF  
(DUE PROCESS - FAILURE TO COMPLY  
WITH U.S. MILITARY REGULATIONS AND  
INTERNATIONAL HUMANITARIAN LAW)

40. Petitioners incorporate paragraphs 1 - 39 by reference as if fully set forth herein.
41. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the rights accorded to persons such as the Detained Petitioners seized by the United States Military in times of armed conflict, as established by, *inter alia*, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law.

SIXTH CLAIM FOR RELIEF  
(WAR POWERS CLAUSE)

42. Petitioners incorporate paragraphs 1 - 41 by reference as if fully set forth herein.
43. By the actions described above, Respondents, acting under color of law, have exceeded the constitutional authority of the Executive and have violated and continue to violate the War Powers Clause by ordering the prolonged and indefinite detention of the Detained Petitioners without Congressional authorization.

SEVENTH CLAIM FOR RELIEF  
(SUSPENSION OF THE WRIT)

44. Petitioners incorporate paragraphs 1 - 43 by reference as if fully set forth herein.
45. To the extent the Detention Order of November 13, 2001, seeks to shield determination of Respondent Bush against any challenge to the legality of the Petitioners' detention by way of habeas corpus, the Detention Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

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VI. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Grant Petitioner Abassia Bouadjmi Next Friend status, as Next Friend of Lakhdar Boumediene;
2. Grant Petitioner Badra Bouche Next Friend status, as Next Friend of Mohammed Nechla;
3. Order the Detained Petitioners released from Respondents' unlawful custody;
4. Order Respondents to allow counsel to meet and confer with the Detained Petitioners, in private and unmonitored attorney-client conversations;
5. Order Respondents to cease all interrogations of the Detained Petitioners, direct or indirect, while this litigation is pending;
6. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth Amendment to the United States Constitution;
7. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Administrative Procedures Act, 5 U.S.C. § 702;
8. Order and declare that the Detained Petitioners are being held in violation of the Fifth Amendment to the United States Constitution;
9. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;
10. Order and declare that the Detained Petitioners are being held in violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;
11. Order and declare that the Detained Petitioners are being held in violation of the regulations of the United States Military, the Geneva Conventions, and international humanitarian law;
12. Order and declare that the Executive Order of November 13, 2001, violates the War Powers Clause;
13. Order and declare that the provision of the Executive Order that bars the Detained Petitioners from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I

UNCLASSIFIED

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of the United States Constitution;

14. To the extent Respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations; and
15. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the United States Constitution and international law.

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Dated: New York, New York  
July 8, 2004

Respectfully submitted,

WILMER CUTLER PICKERING  
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\* Mr. Herrling appears as local counsel for all attorneys.

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VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 8th day of July, 2004.

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Exhibits H(f) to H(ii) are withheld in full under 5 U.S.C. § 552(b)(1) and (b)(7) as they contain classified and law enforcement sensitive material.

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**Exhibit H(jj).**  
**Statement by Mr. Nechla to**  
**the Tribunal, Enclosure (3)**

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DETAINEE ELECTION FORM

Date: 19 Oct 2004

Start Time: 1300 hrs

End Time: 1400 hrs

ISN#: 10003

Personal Representative:   
(Name/Rank)

Translator Required? YES Language? MODERN ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? READ TO HIM

**Detainee Election:**

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

**Personal Representative Comments:**

The Detainee will participate in the Tribunal and he will orally address the Tribunal. He will take the Muslim oath and he will answer questions. He will also call three detainee witnesses to testify on his behalf. All three will take the Muslim oath and answer questions, they are: 1) ISN# 10004, Mustafa Ait Idr 2) ISN# 10005, Lakhdar Boumediene 3) ISN# 10006, Boudella Al Haij.

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Personal Representative 

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Exhibit D-a

Summarized Unsworn Detainee Statement

*The Tribunal President read the Hearing Instructions to the Detainee. The Detainee confirmed that he understood the process.*

*The Recorder presented the Unclassified Summary of Evidence (Exhibit R-1) to the Tribunal and gave a brief description of its contents. A closed session was requested at a later time to present classified evidence to the Tribunal.*

*The Detainee requested to take the oath before making his statement. The Recorder administered the oath.*

Before I would like to address the accusations I would like to take a moment to thank the members of the Tribunal for giving me the chance to come and speak on my behalf. And this shows freedom of speech and the right to defend yourself.

In the beginning I would like to talk about the reasons for my presence in Cuba before I talk about the accusations. Maybe you saw in my file that I was accused in Bosnia of terrorist activities. Planning to attack the U.S. Embassy in Sarajevo. The accusation was the intent to plan to attack the U.S. Embassy. As if they went into a person's heart and tried to find out what they were thinking and then came up with this accusation. We were detained in a prison in Bosnia and we were interrogated there for three months. We were the victims of a political game. This political game has no proof that we had intended to carry out an attack against the U.S. Embassy. I would like to make clear that if this was a real accusation, if it were true that this was a matter regarding national security of the United States; from the first day they would have taken me from my home to America. Five percent proof, that I had anything against the United States, they would have taken me from my house to the United States, so that I could be tried in America because this is a matter regarding the American Embassy. Which is proof that this is a political game first of all. The second thing is that I stayed in a Bosnian prison for three months. And they were waiting for an American to come and interrogate us. No one came to the prison and no one interrogated us. This is proof that this is a political game between the Bosnian government and the American government. In the end, after three months, after the interrogations, and after they asked us everything, Bosnian television aired the fact that they we found innocent by the court. So we were in prison and acquitted in prison. These people are to be released immediately without any conditions and to live in Bosnia as free people. Unfortunately, when we were released (inaudible), and maybe you have a copy of it here. You must have it, because it was in my packet when I came here. So when we came out of prison we were surprised that we were handed over to the American forces that are present in Bosnia. We were bound by our hands and our feet and we were treated the worst treatment. For 36 hours without food, sleep, water or anything and we were treated the worst treatment. We came to this place so they could interrogate us. Now I have been here for three years. Unfortunately I thought the case was about an American embassy and up until now no one has directed one question towards me regarding this case. In spite of the fact they told us this case was about the

ISN# 10003  
Enclosure (3)  
Page 1 of 15

American Embassy, we were surprised by the fact that this is not about the American Embassy. I asked my interrogators, then why am I here. He said forget about the fact that you were here because of the American Embassy or because you're from al Qaida or because you are a terrorist. I said, "You told the world that you had proof against that we were involved in an attack against the American Embassy." He said to forget this because in Bosnia nothing happens, we know this. You came here to give us information about relief and rescue operations in Bosnia. So we were surprised and in spite of this we cooperated with the interrogators. We talked about these charity organizations and we cooperated to the fullest extent with these interrogators. In the end we were faced with strange accusations that are not backed with any proof. We were from al Qaida (referring to paragraph 3 of the Unclassified Summary). We were members of al Qaida in Bosnia. We're part of the Armed Islamic Forces (referring to paragraph 3.1). This al Qaida, I only knew it through the media, that's it. This al Qaida is a terrorist organization that kills innocent people and we are against the killing of innocent people. We were very, very upset at the events that happened in America before. I imagine that the people in these buildings (*the World Trade Center*) could be my brother or my father or my sister or my son. Islam is innocent of these actions. It is innocent of the actions that these individuals carried out without any reason. My father taught me how to do good and how to treat people right. I was brought up in my house with good principles and how not to harm anyone or do anyone any harm. In my whole life I never did harm to anyone with my tongue by talking so how could I harm anyone with my hands. This is how I was raised in my house: helping people and loving people. So my heart does not allow any evil to be in it. To say you are part of al Qaida or you're terrorist, my heart does not allow for this. My father when he used slaughter or kill chickens I used to cry. I used beg him please don't kill these chickens so how can I be a part of this terrorist activity or organization. Even my work that I do in Bosnia and Herzegovina is with orphans and taking care of orphans. I took care of these orphans, and I gave them compassion and care and I'm there in place of their father or their brother. I used to hold the orphans in my hands and give them food or nutrition until they reached a certain age. So how can my heart hear any evil or wrongdoing? So I am innocent of these of accusations that do not have any relation or anything to do with me. I asked one of the interrogators one day. "Did you say that have captured 70% of the members of al Qaida?" He said yes yes we have captured 70% of the members of al Qaida. I told him, "Good. That's excellent! Take my picture and my information and take them to these people and ask them am I from al Qaida or am I not from al Qaida. You will feel better and I will feel better." That's it, he told he would try he will ask and so on. Al Qaida kills even the Muslims themselves. In the studies it said that the buildings had 700 Muslims in them and they all died. Are they not Muslims? So al Qaida kills even Muslims. Islam is innocent of these things. People think wrongly of Islam. Islam should be presented to people on a plate of gold not a plate of fire. Islam has taught me to respect my neighbor even if he was Christian and to visit him if he were sick. If he died, I'd go to his funeral. Because he is human, the same race as me. That is what I was taught and that is what my father taught me in our house. Also, regarding this Armed Islamic Group (paragraph 3.1 of the Unclassified Summary), this is also a terrorist group. I thought that one day I would go to Algeria to visit my family. The Algerian

ISN# 10003  
Enclosure (3)  
Page 2 of 15

government knows about all the members and knows everything about the Armed Islamic Group. How could I be part of the Armed Islamic Group and be able to travel to Algeria? I would have gone there and been executed. I would have been afraid to go to Algeria if I was a member. So this matter is not true. The Bosnian government said to the Algerian government, these people are part of the Armed Islamic Group come take them from us. The Algerian government said no these are not terrorists and they're not part of the Algerian Armed Islamic Group. Try them if you have anything against them with you. If you don't have anything on them, release them as innocent people. Is that not proof? This is important proof that the government itself knows that we are not part of the Armed Islamic Group. You have been interrogating me now for three years. You have asked everything about me even the stones and the trees (an expression). You have asked everything of me and thank God you know that I'm not from al Qaida. You say I have classified evidence. I would say yes you do have classified evidence, but it shows that I am innocent of this accusation. I don't have any relationship with these things at all. That is what regarding this matter about terrorism. I don't have anything to do with this and I am innocent completely of these accusations.

*Paragraph 3.2. Detainee is a former employee of the Red Crescent Society and attended meetings in Sarajevo for Algerians working for non-government organizations in Bosnia.*

Regarding the third accusation where it says that you met with the Algerians in the Red Crescent Society. Met with Algerians working for non-government organizations. Regarding this matter, the Red Crescent is a known government organization. It does not have any relationship with non-government organizations. These non-government organizations they work together and they have coordination between them and they just work together. So we don't have anything to do with at all. If they needed anything, they could confer with our management who would not attend as a member of this government organization because that's not allowed. I used to work outside Sarajevo in a city called Dehugé. I never met with any Algerians in any non-government organization. I used to have meetings with members of the office. The manager, Macmuseth (ph) and he's an Egyptian, Imin Faghe (ph) he's an accountant. (inaudible) he is the manager of the office in Tuzla which is another city. Nocfmid (ph), he is present here and he is responsible for the office in Sarajevo. He is the only Algerian that was working with me in the Red Crescent. I did not meet with anyone besides these four. We used to meet once a month and discuss matters regarding the orphans. Everything is recorded at the office. The meeting, when it was, the members that attended the meeting, and what was said during the meeting, everything was recorded. You can get in contact with Sarajevo and talk to the manager there. Government organizations also they have their own specific meetings. Non-government organizations have their own meetings and I did not attend any of those. I never attended any of their meetings. You can ask the manager. You can ask Sarajevo. That is my answer to the third accusation.



*Paragraph 3.4. The detainee is also known as Sharfuldin or Sharuldin.*

Regarding the accusation that says your name is Sharfuldin. Not Sharuldin, it's a mistake. But, it's the first one Sharfuldin. In the Arab countries it's not a problem, it's not abnormal and it's very common for people to be called by names other than their names like Abdul something, which is the father of something. Or, to be called by another a name that you're known by. For example, my brother's name is Aganamni (ph). I call him Imin Adir (ph). My friends call him Imin Adir (ph). (inaudible). My name is Mohammed but they used to call me Sharfuldin. This is something very normal. It's not something that I hide and I'm not hiding anything regarding this matter. Even in Bosnia, when dealing with anyone, I always used my real name Mohammed Nechle and my cards say Mohammed Nechle. My papers and dealings with government are in my real name. Only when I went to Dehugue, when I was with the orphans in Dehugue. Dehugue is very far from Sarajevo and they have their own accent or dialect. It's close to Croatia. So that's why their accent or dialect is close to Croatian so when I went there I told them that my name Mohammed Nechle and some of the orphans laughed at this. I asked them why are you laughing? The word Nechle, what we know of the Nechle is that it means congestion, like when you have a cold and you're stuffed up. That's what it means. So they were laughing. I told them okay you call me Mohammed, Mohammed Sharfuldin so you can stop laughing. Call me that. Only the orphans used to call me that. No one else used to call that. Ask one of the orphans there at Sum Dehugue you can make sure of that fact. I don't have any aim or anything regarding an alias. I'm not hiding anything. That's what I have to say to about these accusations. I am innocent of these accusations. I don't have anything to do with terrorism or anything like that.

Believe me, I came to this place as a mistake and I think that I was wronged. It was unfair to me. I always used to wonder why am I here. Especially when the interrogator used to tell me that we want information from you about these organizations and you are innocent. And you present me with these accusations that have anything to do with anything. I have a clear conscience that I am not a part of these terrorist organizations. I am not afraid of anything because I am not a terrorist. If you interrogated me for 20 years you would find that I am Mohammed Nechle. God as my witness, as God as my witness, as God as my witness. I thank you.

*The Tribunal President confirmed that the Detainee's statement had concluded. The Personal Representative had no questions. The Recorder had questions for the Detainee. The Tribunal members had the following questions:*

Tribunal Members' questions

Q. Would you please tell me something about your education.

A. You mean when did I finish my education?

ISN# 10003  
Enclosure (3)  
Page 4 of 15

- Q. Yes and far along did you go?
- A. I got to high school. The last thing before college. Then I stopped with my studies. I freed myself for trade.
- Q. What kind of trade did you work in Algeria?
- A. Vegetables and fruits. When my father was sick I used to help him. That was my job.
- Q. Did you have any military service while in Algeria?
- A. No. I had an excuse from that duty.
- Q. Did you receive military training in any other country?
- A. No.
- Q. When did you join the Red Crescent?
- A. In Albania I worked with the Red Crescent. Until I was captured until Bosnia.
- Q. So at what time did leave Algeria to go to Albania what year?
- A. 1995.
- Q. When did you into Bosnia from Albania?
- A. I lived in Albania and then when the civil war occurred in Albania I asked to transfer from the Albanian office to the office in Bosnia, through the main office in Abu Dabi (ph), in the United Arab Emirates. The security situation was not very good in Albania. So they transferred us directly from Albania to Bosnia. That's it.
- Q. When you joined the Red Crescent, did you join it just for Albania or did you join it in the International Red Crescent?
- A. The United Arab Emirates Red Crescent. Before that it was called the Abu Dabi (ph) organization and then it became the Red Crescent. Just the Emirates. It's main office is in Abu Dabi.
- Q. Do you know where the main office is for the Red Crescent is? Not just in Abu Dabi?

- A. In the capital in Abu Dabi. The exact location I don't know. You can call and ask about it.
- Q. The point I'm trying to get to is, are they all under one main organization?
- A. The Red Crescent?
- Q. Yes, in Albania, in Bosnia...
- A. The main office is in Abu Dabi. Sheik Zaiat Ima Hil, is the president of that countries office. It has branches in the world. In Albania, in Bosnia, Khezikikistan (inaudible), Kosovo. Many countries
- Q. Throughout the Muslim world?
- A. Just about. Poorer countries like Albania.
- Q. When you told us that you worked with orphans, children without homes. What was your official title or duty with the Red Crescent?
- A. I was there for the aid of the orphans. I would give help. I visited orphans in their houses or distributing food to them. Teaching them computers in the English language. Complete help in all aspects. Social help mostly.
- Q. Did you receive a regular salary?
- A. Yes, about \$1, 000 a month. The cost of living in Bosnia is high so it really wasn't that much. I used to rent a house for \$200. I would end up saving about \$100 or \$50 a month. My work was more than that because I wanted to help people. It was more of a voluntary nature. If money was important to me I could have been making \$10, 000 but this was enough for me to live with my wife and my kids.
- Q. So your wife and family were with you in Bosnia and lived with you?
- A. Yes.
- Q. From 1995 to the present?
- A. Yes they were with me in Albania and then moved with me to Bosnia.
- Q. Did anyone else live in the house with you other than your family?
- A. No just my wife and my children.

- Q. The \$1,000 a month salary. You were saying \$200 for rent and you saved about a \$150. Not to be exact but where did the rest of the money go?
- A. \$200 for the rent for the house. Gas, electricity, and telephone about \$150. Gas for the car about \$100, it's expensive. And the rest was for the house like food and drinks and stuff like that. Like I said, it was a simple amount.

Tribunal President's questions

- Q. I just have one question. You talked about what happened to you in Bosnia when you were turned over to the Americans. And you talked a little bit abuse there. I understood you to say that it was at the hands of the Americans.
- A. The Americans were in kind of a war against terrorism. So anyone in that situation would have been treated badly. I excuse them for that treatment. I just told you that we were not treated in a humane manner. We were not caught in Afghanistan or any place like that, we were caught in Bosnia. We were taken from our houses. Now I have many illnesses that I never had before. It was difficult. We were treated in a harsh manner, but we were supposed to be treated better than that because we had been acquitted. We don't any relationship with terrorism or anything like that. So what I was saying is that I wish we would have been treated better on the way here and given food and water. Even the bathroom was forbidden from using it on the way here. The way was about three days and during the three days they just gave us some apples, that's all we ate. When I got here I was sick for about a month or a month and a half from exhaustion. I used to think that America had respect for human rights when it comes to prison. That's all I have.
- Q. Was there any physical abuse while you were in transit?
- A. It's not a problem. Just leave it. We weren't beaten for no reason, but our hands were bound like that (looking down at his handcuffed wrists). Even that used to stop you. You couldn't feel your hands. This part (referring to his wrists) is numb right now I can't feel anything. But it's not a problem it's passed.
- Q. I appreciate your excusing it, however it is a concern of ours.
- A. I excuse them because of the war that they were in and because of the events that happened in America. Anyone would have probably done the same thing if they were in their place. We were just victims to this.
- Q. How have you been treated since you have been here in Cuba?
- A. It's changed in the last year. It's better than before. There is improvement in the treatment.

Q. When you arrived here sick, did you receive treatment for your illnesses?

A. In the beginning they didn't treat me. I asked them to treat me and they left me for a long time without treatment. I had a hemorrhage, that's what I had and I talked to them about that. I used to tell them there was blood; I was bleeding. I used to tell them about it time after time and just left it. I had problem with it and they told me that they didn't have any doctors here. They said they to call America and have bring over specialists. So this comes here and now they have all these doctors. A person comes here...A person comes here healthy and then he leaves with all these illnesses. Besides the fact that your future, the way that came here; your image is tainted in the world because of the way that you brought here and the media how they depict it. I was a respectable person living in Bosnia. People used to respect me and had good relations with people. I had great respect. In the end the way that this happened, the way I was brought here and the accusations that brought against me, I feel that my future has been destroyed. A person does not even know what to say to their kids now. Your father, why is he in Cuba, because he has accused of terrorism. That's a really big thing. I just hope that you are fair in my case and that you take everything into consideration. I swear to that I am innocent. I have been wronged and I don't have anything to do with terrorism or anything like that. Thank you.

*The Tribunal President thanked the Detainee for participating in the Tribunal and confirmed that he had presented all the evidence that he intended to present. The procedure for the witnesses the Detainee requested to have make statements on his behalf were explained. The first witness was then brought into the Tribunal.*

*The first witness was brought into the Tribunal. He confirmed his name for the record and was then administered the oath.*

Detainee's questions to witness Mustafa Ait Idr (ISN 10004)

Detainee: When I got to Bosnia from the year 1997 until now did I ever any relationship or anything to do with terrorism or al Qaida or the Armed Islamic Forces? Or am I a terrorist or not? Please explain to the Tribunal.

Witness: I would like to tell them something first. I got a letter from an American lawyer last week and it said do not participate in this Tribunal and anything you say in this Tribunal will be used against you. Don't even speak with the Personal Representative. So I'm asking you. If you want me to talk I will talk. If you don't want me to talk I won't talk.

Detainee: I got the same message from the lawyer but I have chosen to participate in order to clarify these points and defend myself. So you can say your testimony.

ISN# 10003  
Enclosure (3)  
Page 8 of 15

Witness: From the day I knew Mohammed, I know him as well as I know my pocket. As well as know my wife and my kids. If Mohammed has anything to do with terrorism, so I must also have something to do with terrorism. If Mohammed is a terrorist then I am for sure a terrorist. If you were to sentence him to prison for terrorism then I would wish to stay with him. I've known Mohammed in my life to have any relationship with terrorism rather it's terrorism or rather it's this Armed Islamic Group, there is completely no relationship. Terrorism is on this side and Mohammed is on this side.

*The Detainee had no further questions for the witness. The Personal Representative had no questions. The Recorder had no questions for the witness.*

Tribunal Members' questions to the witness Mustafa Ait Idr (10004)

Q. How long have you known the Detainee?

A. Approximately '95 or '96 end of '95.

Q. Do you know him both personally and professionally or just through work?

A. I don't understand the question.

Q. Do you know him socially as well as through work?

A. We don't work together. When we met, he worked at the Red Crescent and I worked at another place.

Q. Where did you work? In 1995 to 1996?

A. You asking me?

Q. Yes I am.

A. Then I won't answer. This is Mohammed's Tribunal not Mustafa's Tribunal. When it's my Tribunal, I will answer.

Q. I seek to understand how well you know Mohammed Nechle.

A. I told you I know him as well as I know my wife and kids. I don't have an answer better than that.

Q. How many kids does Mohammed Nechle have?

A. Two.

Q. What hobbies does Mohammed Nechle have?

A. These are very strange questions.

Q. I am trying to establish how well you know Mohammed Nechle.

A. What I know about Mohammed. I know that he likes soccer, cars, bikes, things like that.

*The Tribunal members had no further questions for the witness. The Tribunal President thanked the witness and concluded the question and answer session. The next witness was brought in before the Tribunal. The Tribunal President asked the witness to state his name. The witness replied:*

You know my name. You have my name.

Tribunal President: We need to verify for the record

10005 (in English)

*The Tribunal President confirmed that the witness was there to testify on behalf of the Detainee. The oath was then administered to the witness. The Tribunal President explained the procedures for his testimony.*

Detainee's questions to the witness Lakhdar Boumediene (ISN 10005)

Detainee: I need your testimony because they have accused me of being a terrorist and of being a member of the Armed Islamic Group.

Witness: They are lying.

Detainee: From the time I was in Albania until now, was I ever related to terrorism or the Armed Islamic Group or anything like that?

Witness: Never. Never.

Detainee: They accuse me of meeting with Algerians in non-governmental organizations when I was working for the Red Crescent. Do I have any meetings with anybody besides the people in my office or anyone who was working for a non-government organization?

Witness: Never.

Detainee: That's it.

*The Tribunal President confirmed that the Detainee has concluded his questions for the witness. The Personal Representative had the following question:*

Personal Representative question to witness Lakhdar Boumediene (ISN 10005)

Personal Representative: Yes.

Witness: It that your Personal Representative (said to Detainee)? They are lying. Another person came to me and told me he was your Personal Representative.

Detainee: No. They changed Personal Representatives.

Personal Representative: Please explain your working relationship with Mohammed while you were in Sarajevo. You worked together. Please explain.

Witness: He worked with me I worked with him. He worked in the city. I worked in the Capital. He did not work in Sarajevo. He worked outside of Sarajevo. We did the same work with orphans. He worked with orphans in the place he was in and I worked with orphans in the place I was in. Do you have anything else to ask me (said to the Personal Representative)?

Personal Representative: No.

Witness: Next who (said to the room in general)?

*The Tribunal President asked if the Recorder had any questions for the witness.*

Recorder: No.

Witness: I am here to testify. Ask me (said to the Recorder). It's for my brother that's all.

*The Tribunal members had the following questions for the witness:*

Tribunal members' questions to the witness Lakhdar Boumediene (ISN 10005)

Q. In what year did you first meet Mohammed Nechle?

A. '94 in Albania.

Q. Was he working for the Red Crescent then?

A. Yes.

Q. Were you his supervisor or co-worker?

ISN# 10003  
Enclosure (3)  
Page 11 of 15



A. We had the same job.

Q. How many children does Mohammed Nechle have?

A. That is the question? This something regarding him? He has a boy and girl.

*The Tribunal President thanked the witness and concluding the question and answer session. The next witness was brought in before the Tribunal.*

*The Tribunal President confirmed that the witness was there to testify on behalf of the Detainee. The oath was then administered to the witness. The Tribunal President explained the procedures for his testimony.*

Detainee's questions to the witness Boudella al Haji (ISN 10006)

Detainee: They accused me of something. I would like you to testify. They accused me of being a member of al Qaida in Bosnia and that you were part of the Algerian Armed Force Group and that you were a terrorist. So I would like you to testify and tell the truth about what you know about me. I thank you.

Witness: Truthfully, all I know is good. Since I've known him in 1997 until the day we were imprisoned here, I don't know anything about him but good. He is a man who was very involved and concerned with his children and his family and in his work. The whole time I knew him, I never knew of him to break any law in the country that we were living in. I never knew of a terrorist act to be related to him. Rather it was in the country we were living in or any other country. I never knew that he had wronged anyone or had been unfair to anyone in any one of these days. We were all very surprised at the accusations that they place against when they handed us over to the Americans. Therefore, he is not related in any way to any of these things. I know him as well as I know myself. If he is a terrorist then I am a terrorist as well because I know him as well as I know myself. That's what I have.

*The Tribunal President confirmed that the Detainee had no further questions for the witness. The Personal Representative had the following question:*

Personal Representative question to the witness Boudella al Haji (ISN 10006)

Personal Representative: How did you come to meet Mohammed in Bosnia?

Witness: I knew him in '97. He was an Algerian like me so I met him and I got to know him. He was working with the Red Crescent. He's Algerian and I'm Algerian so we got to know each other and relationship continued. From that day until the day we were imprisoned we've known each other.

ISN# 10003  
Enclosure (3)  
Page 12 of 15

*The Tribunal President confirmed that the Recorder had no questions for the witness*

*The Tribunal members had the following questions for the witness (ISN 10006):*

Tribunal members' questions to the witness Boudella al Hajj (ISN 10006)

Q. Do you come from the same part of Algeria as Mohammed?

A. Yes.

Q. Did you know his family or his relations where you came from?

A. No I don't know his family but his family is known in the city as well as my family name is known around the city.

Q. Was there a large Algerian community in Bosnia?

A. What do you mean?

Q. How many other Algerians were there in Bosnia that you knew of and associated with?

A. I think there is but I'm not sure exactly how many but I'm sure that there is.

Q. Did Mohammed associate with the other Algerians in Bosnia?

A. From what I know of the people that he knew are the same people that I know and they are here; Mustafa and Lahkdar. It was very limited knowledge of other people.

Q. Mohammed has told us that he worked with the orphans under the Red Crescent and tried to help the orphans. Do you know what Mohammed did with his free time with his spare time?

A. He lives far away from Sarajevo. I live in the capital of Sarajevo and he lives in a city far away from Sarajevo, so I don't know exactly what he does. When he would come to Sarajevo every month maybe one or two days we would meet up. Say hi how are you, how are you doing. We would go to a café and drink coffee or go to a restaurant and eat. Things like that.

Tribunal President questions to the witness Boudella al Hajj (ISN 10006)

Q. You said that you were imprisoned in Bosnia with Mohammed.

A. Yes.

ISN# 10003  
Enclosure (3)  
Page 13 of 15

Q. What do you think led to your imprisonment? Why did they suspect you?

A. The matter is very simple. The events that happened in American on September 11<sup>th</sup> were very important and great events (great as in big). And any person who has a heart would have upset at this matter. Any person who helped or supported these events is a terrorist. Any person who has a humane heart would be upset at these events that led the death of many people, children, women, men, young people. So many countries wanted to help the United States in anyway that they could. Bosnia wanted to give help but it gave help in the wrong way. Bosnia didn't have anything to turn over so they found this group of Algerians. They said okay this is a group of Algerians living there and there is terrorism in Algeria so here we go. All these words that the government said is wrong or irrelevant because the High Court said that we were innocent and they acquitted us. That's the reason.

*The Tribunal President thanked the witness for participating in the Tribunal.*

Also I thank you for listening to me as well as my brother Mohammed.

*This concluded the witness phase of the Tribunal.*

*The Tribunal President asked if the Detainee had anything further to add before the Tribunal was concluded.*

I have a question and I have a suggestion at the same time. I asked a lot of people who have gone through Tribunals, a lot of them are in Camp 4, so I got the chance to ask to them and everyone who has gone a Tribunal, most have been Enemy Combatants. Even the others in Camp 1 and Camp 2 and they've all be Enemy Combatants. I haven't seen anyone who's been innocent in any of this. So just want to ask, have you found anyone innocent yet and if you haven't there's no need for these Tribunals just say that everyone is an Enemy Combatant. If it's possible to answer you can answer but if it's not it's no problem.

*Tribunal President's response:*

I would say that each case is judged on its own merits. I can't speak to the other Tribunals but we will look at your case as fairly as we can.

*The Detainee thanked the Tribunal President and posed the following suggestion:*

Maybe in the Tribunals there could be a clock on the wall. So that the Detainee can look at it and see how long he's been speaking, how long the Tribunal went on. Just a suggestion.

ISN# 10003  
Enclosure (3)  
Page 14 of 15

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Tribunal President: I can tell you that we probably don't look at a clock just because we are here to listen to what you have to say and however long it takes is fine.

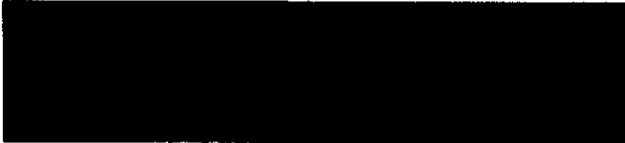
Detainee: It's not a problem. Just that I know how long I talk, like 15 minutes, half and hour just to know. But it's not a problem if the Tribunal is two, three hours it's no problem.

*The Tribunal President confirmed that the members of the Tribunal had no further questions.*

*The Tribunal President explained the remainder of the Tribunal process to the Detainee and adjourned the open session.*

**AUTHENTICATION**

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.

  
Colonel, United States Army  
Tribunal President

ISN# 10003  
Enclosure (3)  
Page 15 of 15

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**Exhibit I.**  
Red Crescent Society of the  
United Arab Emirates –  
background information

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# Red Crescent Society of the United Arab Emirates

Founded: 1983  
 Members/volunteers: 300 volunteers  
 Staff: 105  
 Expenditure: CHF 98 million (2000)

## 1. National context

Capital: Abu Dhabi  
 Population: 2.44 million (2000)  
 GNP per capita: US\$ 17,870 (1998)  
 Life expectancy: 75.4 years (1998)  
 Infant mortality rate: 9 per 1,000 live births (1998)  
 Adult literacy rate: 74.6 per cent (1998)

## 2. Foundation

### Mission

The main activities of the Red Crescent Society of the United Arab Emirates (UAERCS) are providing sponsorship for orphans, medical and educational assistance, and responding to internal and external aid appeals.

### Legal base

The UAERCS was established in 1983.

### Constituency

The society has six departments at its headquarters office in Abu Dhabi, countywide branches and ten international offices.

## 3. Capacity

### Human resources

The UAERCS has 105 employees and 300 registered, active volunteers.

## Financial resources

The society's budget for 2000 was CHF 98 million. This figure includes CHF 11 million for national costs and programmes, CHF 11 million for orphan sponsorships and CHF 70.7 million for international relief and development programmes.

The society's main source of domestic income are private organizations and donors.

## Partnerships

The society has contributed to over 30 international humanitarian operations, including those carried out in countries as diverse as Bolivia, Chechnya, Greece, Kosovo, Pakistan, Somalia and Zambia.

In addition, in 2000, UAERCS reported contributions in kind and in cash totalling CHF 33 million. Contributions included relief materials, medicine and food items, among others.

## 4. Performance

### Activities

The society's main services include first aid and rescue; health-care education; dissemination of Red Cross Red Crescent Fundamental Principles and humanitarian values; Ramadan and Eid campaigns; an Emirates Airline passenger donation campaign; assistance for orphans, the elderly, prisoners and other vulnerable people both within and outside the country; sewing centres for handicapped girls; development programmes; and building programmes for mosques, schools and clinics. ■

Middle East and North Africa

Français  
Español



International Federation  
of Red Cross and Red Crescent Societies

Search :

# Directory

Introduction

Directory

The Red Cross and Red Crescent Movement on the Internet

## Red Crescent Society of the United Arab Emirates

- Home
- About IFRC
- What We Do
- Member Societies
- News
- Public Affairs
- Publications
- Press Room
- Work
- Partners
- Support
- Help
- Contact Us
- Site Map

**Address** P.O. Box 3324  
Abu Dhabi

**Contact Information** Tel: (9) (712) 641 90 00  
Fax: (9) (712) 642 01 01  
Telex: 23582 RCS EM  
Telegram: HILAL AHMAR ABU DHABI  
E-Mail: [HILALRC@EMIRATES.NET.AE](mailto:HILALRC@EMIRATES.NET.AE)

**Language of correspondence** Arabic

**People** President: H.H. Sheikh Hamdan bin Zayed AL NAHYAN  
Deputy Chairman: Sheikh Khalifa bin Saif AL NAHYAN  
Chairman of the Board of Directors: Mr Khalifa Nasser AL SUWAIDI  
Deputy Chairman of the Board of Directors: Mr Obeld Salem AL ZA'ABI  
Secretary General: Mrs Sana Darwish AL KUTUBI  
Assistant Secretary General: Mr Salih Mohammed AL MULLA

**Last Updated** 15.10.2001

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**Exhibit J.**  
**Statement from the Red  
Crescent Society  
(February 1, 2005)**

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February 28, 2005

Stephen H. Oleskey

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*Subject: Mssrs Boumediene and Nechla*

Dear Sir:

I would like to thank you for your nice letter, good and noble feelings for our employees and your enormous efforts to help them. I wish you a successful life and brilliant future.

According to your letter on January 18, 2005., and your request for some information which could be useful in legal representation for your clients, I wrote to our people in the head office, and they asked me to write this letter to you.

1. Date on which they began to work

Mr. Nechla began to work in Bosnia in 01.04.1997, as a visor for orphans. He worked in the town of Bihac and donated a lot for the orphans and people in need who lived in very exceptional circumstances.

Mr. Boumediene began to work in Bosnia in 16.04.1997. also as a visor of orphans. He worked in the town of Sarajevo, and offered a lot to people in need for his help.

2. Their biographies

Since they had began to work, they were an example for the other workers; they executed their duties with all honesty and integrity. They had a very good relationship with many people who work in the Bosnian government in the social care area, and who are directly involved in humanitarian work.

All these people are witnesses that they were very moral and well behavior in their lives, and that they have never made any mistake during the time they were in our organization. Also their coworkers can witness for them.

I have to say that the orphans' families who are under our care from our organization miss them and always ask about them, when they will come, to complete what they began and to fill the emptiness they left.

G. Director  
Said Mahmoud

*Mahmoud Y. Said*

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**Exhibit K.**  
Curriculum Vitae of Dr.  
Daryl P. Matthews,  
Forensic Psychiatrist

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Curriculum Vitae

DARYL BRUCE MATTHEWS, M.D., Ph.D.

Office Address: 345 Queen Street, Suite 900  
 Honolulu, Hawaii 96813  
 Phone: 808-735-8920  
 Fax: 808-356-0739  
 email: dmatthews@jhu.edu

Date of Birth: September 26, 1947 (Cleveland, Ohio, U.S.A.)

Citizenship: United States of America

FORMAL EDUCATION

1971-1977 The Johns Hopkins University  
Doctor of Philosophy (Sociology)

1969-1973 The Johns Hopkins University  
Doctor of Medicine

1967-1969 The Johns Hopkins University  
Bachelor of Arts (Human Biology)

1965-1967 Dartmouth College

POSTGRADUATE MEDICAL EDUCATION

1981-1982 Fellow in Forensic Psychiatry  
 Institute of Law, Psychiatry, and Public Policy  
 Schools of Law and Medicine  
 The University of Virginia

1973-1976 Resident in Psychiatry  
 The Johns Hopkins Hospital

1973-1976 Fellow in Psychiatry and Behavioral Sciences  
 The Johns Hopkins Hospital

MEDICAL QUALIFICATIONS

Licensure: Active: Hawaii, Arkansas, Tennessee  
 Inactive: Maryland, Massachusetts, Virginia

Certification: American Board of Psychiatry and Neurology  
 Psychiatry, 1984  
 Subspecialty of Forensic Psychiatry, 1994

UNCLASSIFIED

Daryl Bruce Matthews

Page 2

American Board of Forensic Psychiatry, 1986

CURRENT APPOINTMENTS

- 2002- Professor of Psychiatry and Director,  
Forensic Psychiatry Program  
John A. Burns School of Medicine  
University of Hawaii  
Honolulu, Hawaii
- 1995- Consultant, U.S. Army Medical Command, and  
Co-Director of Training in Forensic Psychiatry  
Tripler Army Medical Center  
Honolulu, Hawaii

PRIOR POSITIONS

- 1995-2001 Clinical Professor of Psychiatry  
John A. Burns School of Medicine  
University of Hawaii  
Honolulu, Hawaii
- 1990-1995 Professor and Director of Education  
Department of Psychiatry  
University of Arkansas for Medical Sciences  
Little Rock, Arkansas
- 1994-1995 Adjunct Faculty  
School of Law  
University of Arkansas at Little Rock  
Little Rock, Arkansas
- 1987-1990 Associate Professor of Psychiatry  
John A. Burns School of Medicine  
University of Hawaii
- 1982-1987 Associate Clinical Professor of Psychiatry  
John A. Burns School of Medicine  
University of Hawaii
- 1982-1984 Chief, Kauai Community Mental Health Center  
Lihue, Hawaii
- 1981-1982 Associate Professor of Behavioral Medicine  
and Psychiatry  
University of Virginia School of Medicine

UNCLASSIFIED

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Daryl Bruce Matthews

Page 3

- 1976-1981 Assistant Professor of Psychiatry and of  
Socio-Medical Sciences and Community Medicine  
Boston University School of Public Health
- 1973-1976 Lecturer in Behavioral Sciences  
The Johns Hopkins University  
School of Public Health

OTHER PROFESSIONAL ACTIVITIES

- 2004- Forensic Psychiatry Consultant  
Office of the Prosecutor  
International Criminal Tribunal for the Former Yugoslavia, The Hague
- 2004- Forensic Psychiatry Consultant  
Office of Military Commissions (Defense Counsel)  
United States Department of Defense, Arlington, Virginia
- 2004- Faculty Senate, John A. Burns School of Medicine  
University of Hawaii
- 2002- Director, Forensic Psychiatry Evaluation Service  
Department of Psychiatry, John A. Burns School of Medicine  
University of Hawaii
- 2001-2003 Training Director  
Forensic Examiner Certification Program  
State of Hawaii, Department of Health
- 2001- Forensic Psychiatry Consultant  
State of Hawaii, Department of Health
- 2001- Forensic Psychiatry Certification/Recertification Committee  
American Board of Psychiatry and Neurology
- 1999 Visiting Professor of Psychiatry  
University of Madrid, Spain
- 1998-2002 Admissions Interviewer  
John A Burns School of Medicine  
University of Hawaii
- 1998-2000 Education Co-Chair  
Scientific Program Committee  
World Psychiatric Association

UNCLASSIFIED

UNCLASSIFIED

Daryl Bruce Matthews

Page 4

Conference on Forensic Psychiatry  
Madrid, Spain

1996- Specialist Site Visitor in Forensic Psychiatry  
Residency Review Committee for Psychiatry  
Accreditation Council for Graduate Medical Education

1995-1998 Hawaii State Task Force on Individuals with Mental  
Illness in the Criminal Justice System

1995- Private Practice of Forensic Psychiatry

1993-1995 Arkansas Attorney General's Committee  
on Anti-Stalking Legislation

1993 Visiting Professor  
Department of Psychiatry  
John A. Burns School of Medicine  
University of Hawaii

1992-1995 Medical Ethics Faculty  
Division of Medical Humanities  
University of Arkansas for Medical Sciences

1992- Editorial Board  
Psychiatry Resident in Training Examination  
American College of Psychiatrists

1992- Article Referee  
Bulletin of the American Academy of  
Psychiatry and the Law; Journal of the American  
Academy of Psychiatry and the Law

1991 Visiting Professor  
Tripler Army Medical Center  
Honolulu, Hawaii

1990-1995 Medical Expert  
Department of Health and Human Services  
Social Security Administration

1989 Article Referee  
Journal of Forensic Sciences

1988-1990 Chairman  
Kauai Service Area Board for

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Daryl Bruce Matthews

Page 5

## Mental Health and Substance Abuse

- 1988-1990      Steering Committee  
Certification Program in Forensic Mental Health  
Department of Health, State of Hawaii
- 1988-          Examiner in Psychiatry  
American Board of Psychiatry and Neurology
- 1987-          Psychiatric Consultant  
Threat Assessment Group, Inc.  
Newport Beach, California
- 1985-1990      Medical Advisory Committee  
Department of Commerce and Consumer Affairs  
State of Hawaii  
(psychiatric consultant in matters affecting  
professional and vocational licensure)
- 1983-1985      Board of Editors  
Law, Medicine & Health Care
- 1982-1990      Private practice of general  
and forensic psychiatry
- 1981-1983      Associate Editor  
Law, Medicine & Health Care
- 1981-1982      Member  
Commissioner's Committee on Forensic Services  
Virginia Department of Mental Health
- 1981-1982      Certified Forensic Examiner  
State of Virginia
- 1980-1981      Member of the Council (Medicine)  
American Society of Law and Medicine
- 1980            Chair, Institutional Review Board  
Bridgewater State Hospital  
Bridgewater, Massachusetts
- 1979-1981      Associate Editor  
Medicolegal News
- 1979-1980      Chair, Admissions Committee

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Page 6

Boston University School of Public Health

1979-1980 Consulting Psychiatrist, Complaint Committee  
Massachusetts Board of Registration in Medicine

1976-1981 Associate Director of Undergraduate Education  
Division of Psychiatry  
Boston University School of Medicine

HOSPITAL STAFF APPOINTMENTS

2001- Academic Medical Staff  
Hawaii State Hospital  
Honolulu, Hawaii

1995-2001 Courtesy Medical Staff  
Hawaii State Hospital  
Honolulu, Hawaii

1990-1995 Medical Staff  
University Hospital  
Little Rock, Arkansas

1990-1992 Consulting Staff  
North Little Rock Veterans  
Administration Hospital  
North Little Rock, Arkansas

1983-1990 Courtesy Medical Staff  
G.N. Wilcox Memorial Hospital  
Lihue, Hawaii

1989-1990;  
1982-1986 Active Medical Staff  
Samuel Mahelona Memorial Hospital  
Kapaa, Hawaii

1981-1982 Visiting Physician  
University of Virginia Medical Center  
Charlottesville, Virginia

1981-1982 Psychiatric Consultant  
Forensic Evaluation Unit  
Western State Hospital  
Staunton, Virginia

1976-1981 Assistant Visiting Physician

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Page 7

University Hospital, Boston, Massachusetts

HONORS, AWARDS, & LISTINGS

Outstanding Teacher 2002-2003, University of Hawaii, Department of Psychiatry

Distinguished Fellow, American Psychiatric Association, 2003

Fellow, American Psychiatric Association, 1999

Emile Eckart Award for Excellence in Resident Education, University of Arkansas for Medical Sciences, 1995

Arkansas Institute of Continuing Legal Education: Best of CLE 1992

Who's Who of Emerging Leaders in America

West's Who's Who in Health & Medical Services

Who's Who Among Human Services Professionals

Who's Who in Medicine and Healthcare

Who's Who in Science and Engineering

Who's Who in the South and Southwest

Who's Who in the West

Sol. W. Ginsburg Fellow, Group for the Advancement of Psychiatry

Commonwealth Fund International Fellow in Medical Care

Haas Memorial Fund Scholar

PROFESSIONAL ORGANIZATIONS

American Academy of Forensic Sciences

American Academy of Psychiatry and the Law

Councilor, 1996-1999

Education Committee, 1991-1997; 1999-

Chair, 1994-1997

Ethics Committee, 1995-1999

Chair, 1995-1999

Nominating Committee 1997-1999

Learning Resource Committee, 1994-1996

Program Committee, 1994-1997

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Daryl Bruce Matthews

Page 8

Awards Committee, 1994-1997  
 Task Force on Practice Guidelines  
 for Forensic Evaluations, 1995-1999  
 Liaison to Spanish Society for Legal Psychiatry, 1999-  
 Committee on Computers and Forensic Psychiatry, 2003-

American Association of Directors of Residency Training in Psychiatry

American Association for Social Psychiatry

American College of Psychiatrists  
 Psychiatry Resident in Training Exam, Editorial Board, 1999-2005

American Psychiatric Association  
 Committee on Confidentiality, 1999-2000  
 Fellow, 2000-2003  
 Committee on Judicial Action 2002-2005  
 Distinguished Fellow 2003-

Arkansas Psychiatric Society 1990-1995  
 President, 1993-1994  
 President-elect, 1992-1993  
 Secretary, 1991-1992  
 Local Arrangements Chairman, 1991-1992  
 Program Committee, 1990-1992

Association of Directors of Forensic Psychiatry Fellowships

Hawaii Psychiatric Medical Association 1982-1990; 1995-  
 Legislative Committee 1999-  
 Task Force on Involuntary Medication 1999-2000  
 Chair, Forensic Committee 2001-

International Academy of Forensic Mental Health Services

International Academy of Law and Mental Health

Sociedad Española de Psiquiatría Legal

SELECTED (1990-) PRESENTATIONS AND ABSTRACTS

1990

"Psychotropic Medications and Malpractice," Defense Research Institute, San Francisco, California, March.

UNCLASSIFIED

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Daryl Bruce Matthews

Page 9

"Stalking Behavior," National Academy of Sciences, Institute of Medicine, Washington, DC, April.

"Cults that Kill," University of Hawaii, John A. Burns School of Medicine, Department of Psychology, grand rounds, Honolulu, Hawaii, April.

"Forensic Psychiatry and Mental Injury," Pulaski County Bar Association, Little Rock, Arkansas, October.

1991

"Current Liability Issues in Mental Health Care," Health Services Research Center, special conference series, Little Rock, Arkansas, February.

"Malpractice Issues for Community Mental Health Professionals," Mental Health Council of Arkansas, 19th Annual Mental Health Institute, Hot Springs, Arkansas, August.

"The Insanity Defense," Arkansas Institute for Continuing Legal Education, criminal law seminar, Little Rock, Arkansas, October.

"Mental Health Issues in Capital Sentencing," Arkansas Psychological Association, annual meeting, Little Rock, Arkansas, November.

"Patient-Therapist Sexual Relations and the Law," Arkansas Psychiatric Society, annual meeting, Little Rock, Arkansas, November.

1992

"The Tarasoff Case," Youth Home of Arkansas, Little Rock, Arkansas, January.

"The Role of Forensic Psychiatry in Civil Litigation," Arkansas Trial Lawyers' Association, midwinter conference, Little Rock, Arkansas, February.

"Current Issues in Forensic Mental Health Training in State Mental Health Systems and University Settings," American College of Forensic Psychiatry, annual meeting, San Francisco, California, April.

"The Insanity Defense," Arkansas Institute for Continuing Legal Education, Little Rock, Arkansas, June.

"The Defense of Mental Disorder," Arkansas Bar Association, annual meeting, Little Rock, Arkansas, June.

"Recent Developments in the Law of Insanity," Louisiana State University Medical Center, Shreveport, Louisiana, September.

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Daryl Bruce Matthews

Page 10

1993

"The Insanity Defense and the Role of the Forensic Psychiatrist," UALR School of Law, Little Rock, Arkansas, February.

"Something Special for Our Residents: Propranolol?," Association for Academic Psychiatry, annual meeting, Tucson, Arizona, March.

"Duty to Protect" Arkansas Psychological Association, annual meeting, Little Rock, Arkansas, April.

"Testifying in Court," St. Vincent Infirmiry Medical Center, Little Rock, Arkansas, April.

"Malpractice Issues in Managed Care," American Psychiatric Association, annual meeting, San Francisco, California, May.

"Malpractice Liability and Managed Care," Mental Health Council of Arkansas, 21st Annual Mental Health Institute, Hot Springs, Arkansas, August.

"Murder, Madness, & Medicine," BridgeWay Hospital, North Little Rock, Arkansas, August.

"Implications of DSM-IV for Forensic Psychiatry," American Academy of Psychiatry and the Law, 24th annual meeting, San Antonio, Texas, October.

1994

"The Videotaped Good-Bye of the Perpetrator of a Mass-Murder/ Suicide," University of Arkansas for Medical Sciences, Department of Psychiatry, grand rounds, Little Rock, Arkansas, January.

"A Cluster of Multiple Personality Disorder Cases in a State Forensic Hospital," American Academy of Forensic Sciences, 46th annual meeting, San Antonio, Texas, February.

"Developments in the Law of Sanity and DSM-IV," University of Arkansas at Little Rock School of Law, Criminal Law Association, program entitled Psychiatric Issues in Criminal Trials, Little Rock, Arkansas, March.

"Workplace Violence," Arkansas Division of Mental Health Services, First Annual Forensic Conference, Arkansas Department of Mental Health Services, North Little Rock, Arkansas, April.

"Workplace Violence," Violence in Today's Society, first annual forensic conference, North Little Rock, Arkansas, April.

"Update on Malpractice Issues in Managed Care," American Psychiatric Association, annual meeting, Philadelphia, Pennsylvania, May.

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Daryl Bruce Matthews

Page 11

"Impaired Drivers, HIV, and Abandonment," Arkansas Psychiatric Society and Arkansas Psychological Association (joint meeting), Little Rock, Arkansas, June.

1995

"Lecture Attendance and Performance on NBME Shelf Examination in Sophomore Behavioral Sciences Course," Association for Academic Psychiatry, annual meeting, San Antonio, Texas, March.

"Professional Ethics in Mental Health," Arkansas Psychological Association, spring conference, Little Rock, Arkansas, April.

"On-Line Database Searching in Forensic Psychiatry" in Course, "Computers in Forensic Psychiatry: An Introduction," American Academy of Psychiatry and Law, 26th Annual Meeting, Seattle, October.

1996

"Medicolegal Aspects of Inpatient Violence," Grand Rounds, Tripler Army Medical Center, Honolulu, February.

"Ethical Practice in Forensic Psychiatry: The AAPL Ethical Guidelines" American Academy of Psychiatry and Law, 27th Annual Meeting, San Juan, October.

"Medicolegal Issues in Inpatient Psychiatry," Grand Rounds, Tripler Army Medical Center, Honolulu, November.

1997

"Social Policy Issues in Severe Mental Illness," University of Hawaii School of Social Work, Honolulu, February.

"Current Issues in Psychiatry and Criminal Law," Annual Symposium, State of Hawaii, Office of the Public Defender, Honolulu, May.

"The Use and Misuse of Psychiatrists in Criminal Cases," Annual Meeting, Association of Government Attorneys in Capital Litigation, San Antonio, July.

"Physician Sexual Misconduct," Physicians Insurance Company, Defense Counsel Seminar, Seattle, October.

"Multiple Homicide," VIIth National Congress, Sociedad Española de Psiquiatría Legal, Avila, Spain, October.

"Ethics and Pre-Arrestment Psychiatric Evaluations," American Academy of Psychiatry and Law, 28th Annual Meeting, Denver, October.

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Page 12

"Psychiatric Issues in Sex Offenses," Kauai Community Mental Health Center, Lihue, December.

1998

"Evaluation of Mental State at the time of Alleged Offense,"  
University of Hawaii, School of Social Work, Honolulu, February

"Psychiatric Illness and Occupational Stress," State of Hawaii, Department of Education,  
Honolulu, July.

"Murder Followed by Suicide," G.M. Wilcox Memorial Hospital, Lihue, Hawaii, August.

"Murder Followed by Suicide," Department of Psychiatry and Psychological Medicine,  
University of Madrid, Spain, September.

"The Analysis and Presentation of Forensic Data," VIIIth National Congress, Sociedad Española  
de Psiquiatría Legal, San Sebastian, Spain, October.

1999

"Multiple Homicide," University of Hawaii School of Social Work, Honolulu, March.

"Malpractice Liability for Suicide," Department of Psychiatry and Psychological Medicine,  
University of Madrid, Spain, July.

2000

"Stalking and Murder/Suicide," University of Hawaii School of Social Work, March.

"Competency for Execution," Psychiatric Grand Rounds, Tripler Army Medical Center, May.

"The Forensic Evaluation of the >False Memory Syndrome=" World Psychiatric Association  
Conference on Forensic Psychiatry, Madrid, Spain, June.

"The Weed Becomes a Rose: The Development of Forensic Training and Practice in the United  
States of America," World Psychiatric Association Conference on Forensic Psychiatry, Madrid,  
Spain, June.

"Psychiatric Issues in Capital Litigation," Capital Litigation Symposium, Office of Legal  
Education, Executive Office for United States Attorneys, U.S. Department of Justice, National  
Advocacy Center, Columbia, South Carolina, October.

2001

UNCLASSIFIED

22496

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Daryl Bruce Matthews

Page 13

Psychiatric Evaluations in Workplace Homicides: The Honolulu Xerox Shooting, University of Hawaii, School of Social Work, Honolulu, February.

Forensic Issues in Psychiatric Social Work, Department of Social Work, Hawaii State Hospital, Kaneohe, May.

Assessing Competency to Stand Trial, Psychiatric Grand Rounds, Hawaii State Hospital, Kaneohe, June.

2002

Psychiatry and the Death Penalty, Department of Psychology, Reed College, Portland Oregon, April.

Assessing the Risk of Violence in Psychiatric Patients; Hawaii State Department of Health, Kauai and Maui, Hawaii, May.

Criminal and Civil Litigation Involving Selective Serotonin Reuptake Inhibitors, Sociedad Española de Psiquiatría Legal, Oviedo, October.

2003

Barriers to Culturally Competent Forensic Exams for Guantánamo Detainees, American Academy of Psychiatry and the Law, October.

Forensic Psychiatry in the Evaluation of Clergy Sexual Misconduct, Sociedad Española de Psiquiatría Legal, Almagro, November.

Ethical and Cultural Issues in the Forensic Evaluation of the Guantánamo Detainees, Sociedad Española de Psiquiatría Legal, Almagro, November.

Absence of U. S. Criminal Law Protections in the Trials of the Guantánamo Detainees: Implications for Professional Ethics, New College, Oxford University, UK, November.

Mental Defenses: Origins And Evaluation, Indiana Prosecutors Association, Indianapolis, December.

2004

Mental Health Aspects of the Guantánamo Detentions, Boston University, Health and Human Rights Symposium, Boston, April.

Toward an Evidence-Based Practice Model for Competency Restoration Programming, American Psychological Association Annual Convention, Honolulu, July.

Assessing Violence Risk in Psychiatric Patients, Sociedad Española de Psiquiatría Legal, Malaga, October.

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Daryl Bruce Matthews

Page 14

The Case of Pavle Strugar: Alleged Incompetency to Stand Trial at the International Criminal Tribunal for the Former Yugoslavia, Sociedad Española de Psiquiatría Legal, Malaga, October.

2005

Forensic Psychiatry and International Human Rights Law, Grand Rounds, Department of Psychiatry, John A. Burns School of Medicine, Honolulu, January.

Ethical Issues in the Forensic Evaluation of Guantanamo Bay Detainees, Annual Residential Meeting, Faculty of Forensic Psychiatry, Royal College of Psychiatrists, Belfast, February.

## PUBLICATIONS

## Books

D. Matthews, *Disposable Patients: Situational Factors in Emergency Psychiatric Decisions*, Lexington Books, 1980.

N. Scotch, J. Swazey, and J. Sorenson, with D. Matthews and C. Kavanagh, *Reproductive Pasts, Reproductive Futures: Genetic Counseling and Its Effectiveness*, Alan R. Liss, 1981.

W. Tseng, D. Matthews and T. Elwyn, *Cultural Competency in Forensic Psychiatry*, Brunner/Routledge, 2004.

## Chapters

R. Hingson, D. Matthews, and N. Scotch, "The Use and Abuse of Psychoactive Substances," in H. Freeman, S. Levine, and L. Reeder (eds.) *Handbook of Medical Sociology (Third Edition)*, Prentice-Hall, 1978.

P. Dietz, S. Platman, and D. Matthews, "The Organization and Delivery of Mental Health Services," in G. Balis et al. (eds.) *The Psychiatric Foundations of Medicine*, Butterworth, 1978.

D. Matthews and W. Tseng, "Forensic Psychiatry" in W. Tseng and J. Streltzer (eds.) *Cultural Competency in Psychiatry*, American Psychiatric Press, Inc., 2004.

## Articles

D. Matthews, "The Noncompliant Patient," *Primary Care*, Vol. 2, No. 2 (June, 1975).

D. Matthews and R. Hingson, "Improving Patient Compliance: A Guide for Physicians," *Medical Clinics of North America*, Vol. 61, No. 4 (July, 1977).

D. Matthews and P. Dietz, "Labeling Theory and the Family Dynamics of Schizophrenia," *Child Psychiatry Quarterly*, Vol. 11, No. 4 (October, 1978).

D. Matthews, "Where There's Smoke There's Ire," *Medicolegal News*, Vol. 7, No. 4 (Winter, 1979).

22498

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UNCLASSIFIED

Daryl Bruce Matthews

Page 15

C. Kavanagh, D. Matthews, J. Sorenson, and J. Swazey, "Multi-Institutional Review of a Genetic Counseling Study," *I.R.B.: A Review of Human Subjects Research*, Vol. 1, No. 2 (April, 1979).

D. Matthews, "The Right to Refuse Psychiatric Medication," *Medicolegal News*, Vol. 8, No. 2 (April, 1980).

D. Matthews and P. Coyne, "Arbeit Macht Frei: Vocational Rehabilitation and Virginia's Criminally Insane," *University of Richmond Law Review*, Vol. XVI, No. 3 (Spring, 1982).

P. Dietz, D. Matthews, J. Warren, C. Van Duyne, T. Stewart, J. Crowder, and D. Martell, "Threatening and Other Inappropriate Letters to Hollywood Celebrities," *Journal of Forensic Sciences*, Vol. 36, No. 1 (January 1991).

P. Dietz, D. Matthews, D. Martell, T. Stewart, D. Hrouda, and J. Warren, "Threatening and Other Inappropriate Letters to Members of Congress," *Journal of Forensic Sciences*, Vol. 36, No. 5 (September 1991).

K. Rost, G. R. Smith, D. Matthews, and B. Guise, "The Deliberate Misdiagnosis of Major Depression in Primary Care," *Archives of Family Medicine*, Vol. 3 (April 1994).

S. Tisza, J. Mottl, D. Matthews, "Current trends in workers' compensation stress claims," *Current Opinion in Psychiatry*, Vol. 16, 571, 2003.

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**Exhibit L.**  
Sample Proxy Psychiatric  
Exam and Mental Status  
Examination

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Proxy Psychiatric Assessment

- 29. Forced to participate in the torture of others^  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 30. Brainwashing^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 31. Beating to the body^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 32. Beating to the head yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 33. Rape^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 34. Other types of sexual abuse or sexual humiliation^  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 35. Other kinds of torture (physical and mental)^  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- If yes, ask if:
- a. Suffocation^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- b. Near drowning^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- c. Painful positions or suspension, yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- d. Electrical shocks or burns yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- e. Threats of attacks by animals or insects yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- f. Deprivation of light/ sleep/ food or water yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- g. Torture in the last week yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- h. Torture in the last month yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 36. Violation of taboos (religious practices that are very important to you)  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 37. Enforced isolation from others^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 38. Witness (see or hear) torture^ yes\_\_\_ no\_\_\_ cannot answer\_\_\_

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Proxy Psychiatric Assessment

- 39. Witness (see or hear) killing or murder^  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 40. Witness (see or hear) rape or sexual abuse^  
yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 41. Threatened with torture yes\_\_\_ no\_\_\_ cannot answer\_\_\_
- 42. Threatened with execution yes\_\_\_ no\_\_\_ cannot answer\_\_\_

Part 4

"The following are symptoms that people sometimes have after experiencing certain types of events in their lives. Please listen carefully and tell me if you have experienced the symptom by answering 'yes' or 'no'. Do you understand the directions?"

- 42. Recurrent thoughts or memories of the most hurtful or terrifying events^  
yes\_\_\_ no\_\_\_
- 43. Feeling as though an event is happening again^ yes\_\_\_ no\_\_\_
- 44. Recurrent nightmares^ yes\_\_\_ no\_\_\_
- 45. Feeling detached or withdrawn from people^ yes\_\_\_ no\_\_\_
- 46. Unable to feel emotions^ yes\_\_\_ no\_\_\_
- 47. Feeling jumpy, easily startled^ yes\_\_\_ no\_\_\_
- 48. Difficulty concentrating^ yes\_\_\_ no\_\_\_
- 49. Feeling irritable or having outbursts of anger^ yes\_\_\_ no\_\_\_
- 50. Avoiding thoughts or feelings associated with the traumatic or hurtful events^  
yes\_\_\_ no\_\_\_
- 51. Inability to remember parts of the most hurtful or painful events^  
yes\_\_\_ no\_\_\_
- 52. Sudden emotional or physical reaction when reminded of the most hurtful or  
traumatic events^ yes\_\_\_ no\_\_\_
- 53. Having pains in your head or body ^ yes\_\_\_ no\_\_\_
- 54. Troubled by other physical problems^ yes\_\_\_ no\_\_\_
- 55. Having poor memory^ yes\_\_\_ no\_\_\_

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Proxy Psychiatric Assessment

56. Feeling ashamed of the hurtful or traumatic events that have happened to you^  
yes\_\_\_ no\_\_\_

Items adapted from the Hopkins Symptom Checklist 25 (\*) and Harvard Trauma Questionnaire (^), R. F. Mollica, 1987.

Name and background of translator:

I certify that I translated accurately the words and meanings of the questions and answers in the questionnaire.

\_\_\_\_\_ Date \_\_\_\_\_

Conditions of interview environment:

Other:

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Detainee Name \_\_\_\_\_

Date of Administration \_\_\_\_\_

Mental Status Examination**Appearance:** Check the box that best describes your observations

Dress:	Appropriate	Inappropriate		Scars?
Grooming:	Excellent	Adequate	Poor	
Hygiene:	Excellent	Adequate	Poor	
Nutrition:	Normal	Overweight	Underweight	Malnourished
Eye Contact:	Stares	Good	Avoids	None

Obvious evidence of injuries and other observations (scars) and other descriptions of appearance::

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Activity Level:** Check all of the boxes that describe your observations

Attitude:	Cooperative	Guarded	Suspicious	Uncooperative
	Defiant	Hostile	Belligerent	Frightened
Demeanor:	Calm	Sleepy	Preoccupied	Distracted
	Alert	Lethargic	Vigilant	Bored
Motor:	Slow	Hyperactive	Restless	Agitated
	Combative	Sluggish	Calm	Twitches
Posture:	Normal	Hunched	Stooped	Twisted
Gait:	Normal	Unsteady	Limp	Asymmetrical

Description \_\_\_\_\_

\_\_\_\_\_

**Speech:**

Volume:	Normal	Soft	Loud	
Amount:	Normal	Paucity	Excessive	
Pronunciation*:	Normal	Stuttering	Slurred	Garbled
Pace*:	Normal	Rapid	Slowed	
Spontaneity*:	Spontaneous	Inhibited	Long pauses	Abrupt stops in speech
Coherence*:	Coherent	Vague	Rambling	Derailment
Other*:	Echoes interviewer	Makes up words		

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\*Please ask translator to comment on these and any other unusual aspects of speech and language

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**Thought Process:**

Thinking*:	Linear	Logical	Organized	Loose
	Goal Directed	Cause/effect	Flight of Ideas	

\*Please ask translator to comment on these

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**Themes:**

Torture	Bizarre	Grandiose
Violence	Paranoid	Destructive
Grief	Religious	Sexual

Any evidence based on observation of bizarre thoughts or unusual habits? Is there any evidence of responding to internal stimuli such as hallucinations (visions/ voices)?

---



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**Mood and Affect:**

Mood:	Flat/ No expression	Somewhat happy	Somewhat unhappy	Euphoric
	Scared	Angry	Very Unhappy	Tearful
Irritability:	Normal	High		
Anger:	Normal	High		

Describe any unusual expression of emotion:

---



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**Exhibit M.**  
**Letter from Ali Hamad to**



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Ali Hamad  
 Sarajevska 36  
 KPZ (Prison) Zenica  
 72000 Zenica

For Mr: General [REDACTED]

Via my lawyer and General Secretary of the First Children's Embassy

Mr. Dusko Tomic

Respected Mr. Commander of SFOR [REDACTED]

I know that you do not trust to what I have publicly stated about Al Qaeda and its engagement in Federation of BiH, and to my allegations that are known to the half of the world and to the US President George Bush. I spoke about that with investigators from the FBI on several occasions and we are still in touch.

Since you think that I do not talk the truth, I decided to address you directly with this explanation to which I do not expect the response from you. This will be my last correspondence to you since it is pointless to contact people who do not believe me.

With all due respect, I would like to ask you can I be a liar if I had spoken to domestic and international investigators about the detailed data on several crimes against Serb and Croat people committed by mujahedeens in this area in period 1992 - 1995. Those detailed data were totally in accordance with results of earlier investigations by domestic investigators who proved that my allegations are correct and that there are some other witnesses who will confirm with honesty all that I had said.

How can you and on basis of what can you suspect in the honesty of my allegations that Al Qaeda was connected with many Islamic humanitarian organizations, which were engaged in Bosnia during and after the war, under the lead of the High Saudi Committee for Relief. I can personally prove that many workers and bosses of these humanitarian organizations for help in BiH were in Afghanistan, together with Osama Bin Laden, and fought during the war in Bosnia alongside with mujahedeens. I was working with High Saudi Committee for Relief in Bosnia, which is another proof for that.

You are mistaken if you think that with my letters to domestic and international authorities I am trying to gain the release from serving the rest of my prison term or to be pardoned. I am talking about very dangerous things - such is my claim that I was an officer of Al Qaeda and that I know a lot about their governing cadres. With such claims and statements I can secure myself another court proceedings, and not be released or pardoned. I believe that you are aware that American law emphasizes that it can use statements by witnesses as evidence against those same witnesses, and I am publicly, before the whole world, saying that I was an officer with Al Qaeda. That means that I can expect to be tried before any court in US.

I have also told the FBI investigators about the murder of an American in Bosnia in 1995, and gave them solid arguments and evidence that can lead them to the perpetrators of that crime. I have also accepted to be a prosecution witness before the US court against the murderers. What they could not

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reveal and prove themselves concerning this murder, I revealed and proved in only three or four hours of talking with them. The FBI did not know that I had information about this murder. I voluntarily sent a letter to the US ambassador on the day of 21 October 2002 where I offered information and testimony. If it were not for me, the FBI would never come to the perpetrators of this murder.

You are not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this. You should be fair even when you think or suspect something. You have to have something on which to base your belief in something. However, you have no reason to suspect the honesty of my allegations and accusations.

I think that it is not a problem for you to find out that I fought in Afghanistan, alongside with Osama Bin Laden, as regular soldier. I was also fighting in Bosnia throughout the war, and I was an officer of the Special Unit of the El Mujahid detachment.

I was talking with the FBI during their visit here on 16 June 2003 on one of the most dangerous and most active leaders and brain of Al Qaeda – Khalid Al Saikh. Afterwards, they have arrested him and confirmed that my statements on him were right. And you are suspicious in honesty of my statements and of my intention. Excuse me, but I think that it is not fair from you.

I repeat once again so that you know now if you did not know earlier that I had suffered the injustices and terror of Al Qaeda on my own skin when I was a minor. Because of that I have decided, and that is my real goal, to fight against Al Qaeda and talk only the truth even when I was implicated only to protect the humankind, innocent mine and anyone's else children. To protect them from Al Qaeda and its evils acts.

It is not important whether I will be liquidated by Al Qaeda or be again accused for terrorism by Your side. For me it is most important that my wife and minor kids – Ajsa and Lejla – are good, that they are under high protection and that they not need anything. I will talk only the truth even if I get another 10 years prison term. Even if, because of that, I lose my life.

You Sir will find nowhere in this world anyone who will be helping you in revealing the committed crimes during the war against Serb and Croat people but Ali Hamad. I do not need to get out of the prison, I do not need to get the pardon or other privileges, I do not need to get Your response, I do not need to co-operate with anybody. All I want is that you be conscious that you will never have the meetings with an honest penitent such is Ali Hamad, who wants to be punished again (if that is fair) only for the truth to come out on the light of day.

I thank you in advance and send you kind regards. I am sorry if you will consider this letter not cordial.

With respect,

Ali Hamad

(signature)

Zenica, 26 July 2004

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FROM : ICG

STR 1

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PHONE NO: 7307 33 668 714

Mar. 25 2005 03:54PM P02

ALI HANAD  
SARAJEVSKA 36  
KPZ 27 ZENICA  
72000 ZENICA

ZA GOSPODINA:  
GENERAL [REDACTED]  
PUTEM MOGA ODVJETNIKA  
I GENERALNOG SEKRETARA  
DJEČICE AMBASADE  
GOSPODINA DUŠKA TOMIĆA.

POŠTOVANI GOSPODINE ZAPOVEDNIKA SFOR-A GENERAL

[REDACTED]

ZNAM DA VI NEVJERUJETE SVE ŠTO SAM IZJAVIO O  
AL-QAIDA I NJENI DJELOVANJA U FBiH. TE MOJE  
TVRDNJE SA KOJIM SAM OBAVJESTIO POLA SVIDJETA  
MEĐU KOJIMA I PREOSJEDNIKA SAD GEORGE BUSH.  
TE SAM GOVORIO O TOME SA STRAŽITELJIMA FBI  
KOJI SU ME POSJETILI VIŠE PUTA I JOŠ UVDJEK SU  
U KONTAKTU. POŠTO VI MISLITE DA JA NE GOVORIM  
ISTINU ODLUČIO SAM DA VAM SE OBRATIM SA SLJEDEĆIM  
OBRAZLOŽENJEM NA KOJEM NE OČEKUJEM ODGOVOR; TE  
DA ĆE BITI OVA MOJA ZAVJANJA VAMA POSLJEDNA JER  
JE UZALUD KONTAKTIRATI SA LJUDIMA KOJI ME  
NEVJERUJU. UZ DUŽNO POŠTOVANJE BI VAS PITAO DA LI  
MOGU BITI LAŽOV, A UČE SAM GOVORIO SA DOMAĆIM I  
STRANIM INSPEKTORIMA O DETALJNIM PODACIMA O  
NEKOLIKO ZLOČINA KOJI SU POČINILI MUĐŽANEDINI NA  
OVIM PROSTORIMA 1992-1995 GODINE NAD SRPSKOM I  
HRVATSKOM NARODU, DETALJNI PODATCI KOJI SU SE  
POTPUNO SKLAPALI SA RAZULTATIMA RANIJIH ISTRAŽIVANJA  
DOMAĆI INSPEKTORA KOJI SU DOKAZALI DA SU MOJE  
IZJAVE TOČNE I DA POSTOJI JOŠ SVJEDOKA KOJI ĆE  
POTVRDITI ISKRENOSTI SVE ŠTO SAM IZJAVIO.  
KAKO VI I NA ODNOSU ČEBA MOŽETE SUMNATI U  
UNCLASSIFIED AL-QAIDA JE BILA

FROM : ICG

POVEZANA SA MNOGIM ISLAMSKIM HUMANITARNIM ORGANIZACIJAMA KOJI SU BILI U IFRANJIM TIJEKOM I POSLEDJE RATA POD VODSTVOM (UNHCR) ZA POMOĆ BIH, A ZA LIČNO MOGU KAO ŠTO I VI POKAZATI DA SU MNOGI RADNICI I ŠEFOVA SPOMENUTI HUMANITARNI ORGANIZACIJA ZA POMOĆ BIH BILI U AFGANISTANU SA OSAMA BIN LADENOM I BORILI SE U BOSNI SA MUĐŽAHEDINCIMA, ŠTO POTVRĐUJE DA SAM I DA BICU RADNIK U VISOKOM SAUDIJSKOM KOMITETU ZA POMOĆ BIH? VI BRIBEŠITE AKO MISLITE DA SAM DA ZA MOJIM UPOČENJA PISAMA ZA DOMAĆI ULAŠTI I ČITAV SVIJET POKUŠAVAM DA ZAKADIM OSLOBODANJE IZ DALJNEG IZORČAVANJA ZATVORSKE KAZNE ILI DA BUDEM POMILOVAN. DA GOVORIM O VEOMA OPASNIM STVARIMA KAO ŠTO JE MOJA TVRDNJA DA SAM BICU OFICIR U AL-QAYDA I DA SU ME POZNATE MNOGO NDEZINI RUKOVODIČI KADROVA. DA S TAKVIM IZJAVAMA I TVRDNJAMA MOGU SEBE NAĆI PORED POKRENUTIM SUDSKIM POSTUPKOM, A NE BITI OSLOBODEN IZ DALJNEG IZORČAVANJA ZATVORSKE KAZNE ILI BITI POMILOVAN. DA VDERUDEM DA JE VAMA POENATO DA JE AMERIČNI ZAKON NAGLASIO DA MOŽE KORISTITI IZJAVE SVJEDOKA KAO DOKAZ PROTIV ISTI SVJEDOKA, A DA GOVORIM DAVNO PRED ČITAVIM SVIJETOM DA SAM BICU OFICIR U AL-QAYDA, ŠTO ZNAĆI DA MOGU SEBE NAĆI PRED POKRENUTIM SUDSKIM POSTUPKOM U SUDOVIMA SAG. DA SAM TAKOĐER GOVORIO SA ISTRAŽITELJIMA FBI O OBISTVU JEDNOG AMERIKANCA U BOSNI 1995 GODINE, TO SAM IM DAO DOBRG ARGUMENTE

22512

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FROM : ICE  
STK 3

I DOKAZI KOJI ĆE Njih Dovesiti do počinitelja  
 taj zločin i prinvatio sam svjedočenje protiv  
 ubica pred američkim sudovima, ono što nisu mogli  
 sami otkriti i dokazati bodinama u vezi sa  
 spomenutim ubištvom, da sam njima otkrio i  
 dokazao za samo tri ili četiri sata razgovaranja  
 FBI nije znao da ja imam informacije o navedenoj  
 ubištvu nego da sam dobrovoljno uputio pismo  
 američkom ambasadoru dana 21. oktobra 2002 godine  
 u kojem sam ponudio informacije i svjedočenje  
 da nije mene nikad nebi mogao FBI doći do  
 počinitelja tog ubištva. Vi niste u pravu kad  
 mislite da ja samo lažem, da negovorim istinu  
 i da pokušavam s tim da izvučem sebe iz zatvora  
 vi trebate biti poštenji čak i kad mislite.  
 drugčije rečeno kad sumnjate u nešto, vi  
 morate imati nešto na osnovu čega sumnjate  
 kao što morate imati na osnovu čega kada  
 vjerujete u nešto. međutim, vi nemate na  
 osnovu čega da sumnjate u iskrenosti mojih  
 tvrdnji i optužbe. mislim da vam nije problem  
 saznati da sam borio u afganistanu da osam  
 bin ladena kao početni vojnika, da sam se borio  
 u f.b.i.h. tijekom rata i da sam bio oficir  
 specijalne jedinica u odred el-hudrahedin.  
 da sam govorio sa fbi tijekom njegove  
 22513 JGTC DANA 16. JUNI 2003 GODINE U DEDAN OD  
 UNCLASSIFIED MOZAK AL-QAID

FROM: ICE

UNCLASSIFIED

KHALID AL-SADKAN ZATIM SU GA UHITILI TE I  
 POTVRDILI DA SU SVE MOJE IZJAVE O NJEMU  
 TOČNE. A VI SADA SUMNJATE U ISKRENOSTI MOJIM  
 IZJAVAMA U MOJOM NAMJERU. OPROSTITI, ALI  
 SMATRAM DA TO NIJE POŠTENO OD VAS.  
 PONAVLJAM JOŠ JEDNOM DA ZNATE AKO DO SADA  
 NISTE ZNALI, DA SAM OSJETIO NEPRAVDE I TEROR  
 AL-QAIDA NA SVOJU VLASTITU KOŽU JOŠ KAD SAM  
 BIO MALOLJETNA OSOBA. ZBOG TOGA ODLUČIO SAM,  
 I TO JE MOJ PRAVI CILJ, DA SE BORIM PROTIV  
 AL-QAIDA I DA GOVORIM SAMO ISTINU U KOJOOJ SAM  
 I DA UMJEŠAN SAMO DA BIH ZAŠTITIO ČITAVO  
 ČOVJEČANSTVO, NEĐUŽNE MOJE I SVAČIJE DRUGE  
 DRUGE DJECE OD AL-QAIDA I NJENIH ZLI AKTOVA.  
 NIJE VAŽNO ZA MENE MOĆU LI BITI LIKVIDIRAN OD  
 STRANE AL-QAIDA ILI BITI PONOVO OPTUŽEN ZA  
 TERORIZAM OD VAŠE STRANE. MENI JE NAJ VAŽNIJE  
 DA SE MOJA SUPRUGA I MALODOBNE DJECE ADŽA  
 I LEDJA DOBRE I DA NJIMA NIŠTA NE FALI I DA  
 SU POD VELIKOM ZAŠTITU. DA ČU GOVORITI SAMO  
 ISTINU MAKAR DOBIO JOŠ 10 GODINA KAŽNE ZATVORA,  
 MAKAR IZGUBIO SVOJU SOPOTVENU GLAVU.  
 VI GOSPODINE NEĆETE NIGDJE NA OVOM SVIJETU NAĆI TKO  
 ĆE VAM POMAGATI O OTKRIVANJU POČINJENOG ZLOČINA  
 NA OVIM PROSTORIMA TIJEKOM RATA NAJ SRPSKOM  
 I HRVATSKOM NARODU OSIM ALI HAMADI DA NEMORAM  
 IZĆI IZ ZATVORA, MENI NIJE POTREBNO DOBITI  
 POMILOVANJE NI VAN ZAVODSKE POGODNOST, MENI NIJE

22514

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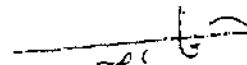


POTREBNO DOBITI VAŠ ODGOVOR NITI MI JE POTREBNO  
SURADIVATI SA VAMA NITI BILO S KIM. SAMO ŽELIM DA  
BUDETE SVJESNI TOGA DA VI NIKAD NEĆETE IMATI  
SUSRETE SA ISKRENIM POKAJNIKOM KAO ALI HAMAD  
KOJI ŽELI BITI PONOVO KAŽNJEVAN (AKO TO PRAVEDNO)  
SAMO DA ISTINE IZABE NA VIDILO I SVIJETLO DANA.  
U NAPRED VAM SE ZAHVALJUJEM I SRDAČNO VAS  
POZDRAVLJAM. OPROSTITI AKO ĆE TE SMATRATI OVO MOJE  
PISMO NELJUBAZNIM.

ZENICA 26.07.2004. GOD.

S POŠTOVANJEM,

ALI HAMAD



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**Exhibit N.**

*In re Guantanamo Detainee  
Cases* Memorandum Opinion  
Denying in Part and Granting  
in Part Respondents' Motion  
to Dismiss or for Judgment as  
a Matter of Law (D.D.C. Jan.  
31, 2005)(Classified)  
(Green, J.)

UNCLASSIFIED

Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

UNCLASSIFIED

**Exhibit O.**  
*Hamdi v. Rumsfeld*, 542 U.S.  
\_\_\_, slip op. at 13 (2004)

[This exhibit was  
intentionally left blank]

UNCLASSIFIED

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**Exhibit P.**  
**NATO: Possibility of  
Terrorist Threat in BiH Very  
Low, Fena (March 22, 2005)**

UNCLASSIFIED



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DESK Sarajevo

Cemaluša 1, 71000 Sarajevo

Telefon: ++387 33 445336, 663-772; e-mail: desk.sarajevo@fena.ba

22.03.2005 (14:09)

**NATO: POSSIBILITY OF TERRORIST THREAT IN BiH VERY LOW**

SARAJEVO, March 22 (FENA) – NATO has no information on the current terrorist threat in BiH and judging on information it has available the possibility of terrorist threat in BiH is very low.

Spokesperson for the NATO HQ in Sarajevo Derek Chappell made this statement on Tuesday commenting on recent alleged threats of attack against the OHR, as well as allegations of a possible attack on the UNDP office, the evacuation of OSCE staff and the closing of the British consulate.

Chappell said that fighting terrorism is one of the three priorities of the NATO HQ in BiH, which assists local authorities in antiterrorism activities, and stressed that NATO does not have a single piece of information indicating the possibility of a terrorist attack in BiH.

(Fena) jc

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**Exhibit Q.**  
Declaration of the House of  
Representatives of the  
Parliament of Federation of  
Bosnia and Herzegovina  
(March 30, 2005)

UNCLASSIFIED

Bosnia and Herzegovina  
Federation of Bosnia and Herzegovina  
Parliament of the Federation  
House of Representatives

UNCLASSIFIED

The Office of the Chairman

Number: 01-02-224/05  
Sarajevo, 30 March 2005

Council of Ministers  
In hands of the Prime Minister  
Ministry of Justice  
In hands of Minister

On basis of article 183 of the Rules of Proceedings of the House of Representatives of Parliament of Federation of BiH, I hereby inform you that the House of Representatives on its extraordinary session held on 29 March 2005 adopted following

DECLARATION

The House of Representatives of the Parliament of Federation of Bosnia and Herzegovina requests from the Council of Ministers of BiH and from the Justice Ministry of BiH to take urgent measures for the release of the six men from the so-called Algerian group from the camp Delta at Guantanamo Bay.

Respectfully,

Chairman

Muhamed Ibrahimovic

(Signature)

Seal stamp of the House of Representatives

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BOSNA I HERCEGOVINA  
FEDERACIJA BOSNE I HERCEGOVINE



PARLAMENTI FEDERACIJI  
PREDSTAVNIKI-ZASTUPNIKI DOM

Kabinet predsjedavajućeg

Broj: 01-02-224/05  
Sarajevo, 30.03.2005.

VJEĆE MINISTARA  
n/r premijera

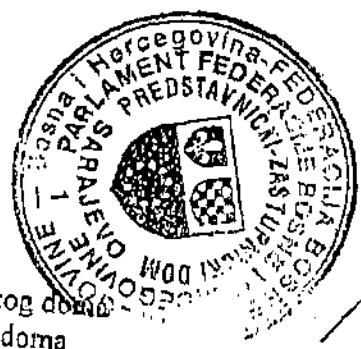
MINISTARSTVO PRAVDE BIH  
n/r ministra

Na osnovu člana 183. Poslovnika Predstavničkog doma Parlamenta FBiH, obavještavam Vas da Predstavnički dom Parlamenta FBiH, na vanrednoj sjednici održanoj 29.03.2005., usvojio slijedeću

DEKLARACIJU

Predstavnički dom Parlamenta Federacije BiH zahtijeva od Vijeća ministara BiH i Ministarstva pravde BiH da preduzme hitne mjere za oslobađanje šest ljudi iz talozvane Alžirske grupe iz logora kamp Delta na Gvantanamu.

S poštovanjem,



PREDJEDAVAJUĆI  
*M. Ibrahimović*  
Mhamed Ibrahimović

Dostaviti:

- naslovu
- sekretaru Predstavničkog doma
- službi Predstavničkog doma
- a.a

Tel. (033) 47 30 32 Fax: (033) 20 32 32, Hamdije Kroševića 3 Sarajevo

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