

**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

UNCLASSIFIED//~~FOUO~~

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.

UNCLASSIFIED//~~FOUO~~

**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

UNCLASSIFIED//~~FOUO~~

ISN #10004  
Enclosure (1)  
Page 5 of 5

UNCLASSIFIED

**Exhibit C(b).**  
Classified Summary of  
Basis for Tribunal Decision,  
Enclosure (2)

UNCLASSIFIED

Exhibit withheld in full under  
5 U.S.C. § 552(b)(1) as it contains  
classified material.

UNCLASSIFIED

# Exhibit C(c). Exhibit R-1

UNCLASSIFIED



UNCLASSIFIED

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.

UNCLASSIFIED

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

UNCLASSIFIED

# **Exhibit C(d). Exhibit R-2**

Memorandum

UNCLASSIFIED



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]  
or  
Intelligence Analyst [REDACTED]  
[REDACTED]