

DEPARTMENT OF DEFENSE JOINT TASK FORCE 435 APO AE 09356

IN REPLY REFER TO: JTF-435-LO

JUL 1 5 2010

MEMORANDUM FOR Commander, Task Force Protector, Bagram Airfield, Afghanistan Director, Legal Operations, Bagram Airfield, Afghanistan

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation to transfer ISN 3845 to Afghan Authorities for Consideration to Participate in a Reconciliation or a Reintegration Program

- 1. I reviewed the findings and recommendations of the DRB that convened on 5 June 2010 concerning the internment of Detainee ISN 3845. By a vote of 3 to 0, the board members recommended that ISN 3845 be transferred to Afghan authorities for their consideration of a reconciliation or reintegration program. After consideration, the board's recommendation to transfer ISN 3845 to Afghan authorities for participation in a reconciliation or reintegration program is disapproved. I direct that ISN 3845 be released from the Detention Facility in Parwan.
- 2. The DRB's recommendation that ISN 3845 not be assessed as an Enduring Security Threat is approved.
- 3. The point of contact for this memorandum is $CAPT^{(b)(3), 10 \text{ USC } 130b; (b)(6)}$, Director of Legal Operations, JTF 435, at DSN(b)(2)

ROBERT S. HARWARD Vice Admiral, U.S. Navy

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DEPARTMENT OF DEFENSE

JOINT TASK FORCE 435 APO AE 09354



JTF-435-LO

5 June 2010

MEMORANDUM FOR Deputy Commander, Joint Task Force 435, Kabul, Afghanistan, APO AE 09356

SUBJECT: 5 June 2010 Detainee Review Board Recommendation for the Transfer to Afghan Authorities for Participation in Reconciliation/Reintegration of Sher Agha (ISN 3845)

- 1. The Detainee Review Board (DRB) met on 5 June 2010 and made the following findings and recommendations concerning the internment of Sher Agha (ISN 3845):
 - a. Sher Agha (ISN 3845) meets the criteria for internment.
- b. The continued internment of Sher Agha (ISN 3845) is not necessary to mitigate the threat he poses and he should be transferred to Afghan authorities for participation in a reconciliation or reintegration program.
- c. Sher Agha (ISN 3845) should be considered for Reintegration programs within the Detention Facility in Parwan.
 - d. Sher Agha (ISN 3845) is not an Enduring Security Threat.
- 2. In arriving at its recommendation, the DRB found(b)(1); (b)(2); (b)(5)

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(b)(1); (b)(2); (b)(5)

3. (b)(1); (b)(2); (b)(5); (b)(6)

4. (b)(1); (b)(2); (b)(5)

5, (b)(1); (b)(2); (b)(5)

6. In making its recommendation the DRB considered the Recorder's unclassified and classified exhibits -- including(b)(1); (b)(2); (b)(5)

- the 29 April 2010 Detainee Criminal Investigation Detachment Report of Investigation, and the Theater Internment Facility Progress Report. The Personal Representative submitted copies of Sher Agha's (ISN 3845) Initial Interview Checklist and

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Notification Worksheet. The DRB considered also Sher Agha's (ISN 3845) testimony, as well as his responses to questions posed to him by all parties to the DRB.

- 7. The Personal Representative called (b)(6) as a witness who testified in person in the presence of Sher Agha (ISN 3845) during the open session of the DRB. (b)(6) identified himself as a farmer and a tribal elder of Khalati village. (b)(6) claimed that he knew Sher Agha (ISN 3845) as "Dil-Awar" since he was a baby. (b)(6) stated that prior to his capture "Dil-Awar" worked for a motorcycle dealership. (b)(6) also indicated that although "Dil-Awar" lived in Khalati, his wife's family lived in Espandi. (b)(6) stated that "Dil-Awar" has never been involved in anti-CF attacks and that "Dil-Awar" was not involved with the Taliban. (b)(6) also said that if he knew that "Dil-Awar" was involved in those types of activities, he would not testify on his behalf.
- 8. (b)(6) , Sher Agha's (ISN 3845) father, provided a brief oral statement to the DRB for its consideration, although Sher Agha's (ISN 3845) father did not testify as a witness. (b)(6) stated that his son was just visiting his wife's family for dinner on the day that he was captured. He stated that he is a very old man and pled for the release of his son because his family misses him. (b)(6) said that he could not support his grandchildren, as he has sold nearly all of their property.
- 9. The Recorder called the following witnesses who testified in the closed session and outside the presence of Sher Agha (ISN 3845):
- a. (b)(3), 10 USC 130b; (b)(6), aka '(b)(6)," who is a linguist at the DRB who speaks Farsi, Pashtu, English, and Spanish. "(b)(6)" indicated that during the unclassified proceedings that an Afghan witness said that the detainee was from Khalati village.
- b. (b)(3), 10 USC 130b; (b)(6), analyst, Detainee Review Board, spoke regarding the (b)(1); (b)(2); (b)(5)
- 10. In determining whether continued internment is necessary to mitigate the threat Sher Agha (ISN 3845) may pose, the DRB assessed his level of threat and weighed, among other things, his potential for rehabilitation, reconciliation, and eventual reintegration into society. The DRB considered also(b)(1); (b)(2); (b)(5)

In sum, based upon the evidence and testimony presented during his 5 June 2010 DRB, Sher Agha (ISN 3845) meets the criteria for internment, but the continued internment of Sher Agha (ISN 3845) is not necessary to

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SUBJECT: 5 June 2010 Detainee Review Board Recommendation for the Transfer to Afghan Authorities for Participation in Reconciliation/Reintegration of Sher Agha (ISN 3845)

mitigate the threat he poses and he should be transferred to Afghan authorities for reconciliation or reintegration.

11. The point of contact for this review is $CPT^{(b)(3), 10\,USC\,130b;\,(b)(6)}$, Joint Task Force 435 at DSN (b)(3), 10 USC 130b; (b)(6), or (b)(2); (b)(3), 10 USC 130b; (b)(6).

(b)(3), 10 USC 130b; (b)(6)

2 Encls.

1. DRB Voting Packet

MAJ, IN

2. Summarized Testimony with Exhibits

President, Detainee Review Board

Date of	Board	Detainee Name	· ·	MILE Management of the Mile India of the Management of the Mile India of the Mile In	Detaince ISN		William Ages and the second and the	
SJun	10	STOR CLAGH	A)		(b)(2)	-003	845	
STEP 1 (FINDINGS):	By a preponderance of the	e information presented,	as a member of the I	etamee merien i	Joard (DRI	B), I find that:	
The detained DOES NOT MEET THE CRITERIA for internment and will be released. Stop here and sign at the bottom.								
OR.								
The detainee listed above MEETS CRITERIA FOR INTERNMENT because he is a person who planned, authorized, committed, or aided								
the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks; (Continue to Step 2) OR								
The detainee listed above MEETS CRITERIA FOR INTERNMENT because he is a person who was part of, or substantially supported,								
Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces. (Continue to Step 2)								
				, , , , , , , , , , , , , , , , , , , ,	Caral			
detainee	's potential fo	SSESSMENT RECOMME r rehabilitation, reconciliat f the information, I find tha	tion, and eventual reinter	gration into society,	(b)(1);	(b)(5)	
IS NOT NECESSARY to mitigate the threat the detainee poses; (Go to Step 3A)								
OR IS NECESSARY to mitigate the threat the detainee poses (* the detainee will remain								
at the Detention Facility in Parwan (DFIP) to ensure detention required to mitigate his threat) (Go to Step 3B;								
Explain the facts presented at the DRB which led to your recommendation/								
(Mandatory regardless of which threat assessment is made):								
se wtacked DCB report of fraugus 4								
- recombination U								
		commendation in STEP 2 following recommendation						
	Released without conditions; or							
	Transferred to Afghan authorities for their consideration of criminal prosecution.							
X_{-}	Transferred t	ferred to Afghan authorities for participation in a reconciliation or reintegration program.						
National Confederation of Confederation	(For non-Afghan and non-U.S. third-country national): <u>Transferred to a third-country</u> for: criminal prosecution // participation in a reconciliation program // or release. (circle one)							
STEP 3B: If your Recommendation in STEP 2 is that continued internment is necessary to mitigate the threat the Detainee poses, make the following further recommendation, and then Go to Step 4.								
	While the Detainee remains interned at the DFIP, he SHOULD SHOULD NOT (circle one) be considered for Reintegration programs within the DFIP.							
STEP 4: The Detainee IS or IS NOT an Enduring Security Threat (circle one).								
(b)(3), 10 USC 130b; (b)(6)								
			•	, , ,				
	(b)(3), 10 USC 130b; (b)(6)							

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(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(U//FOUO) [ISN (b)(2)-003845DP, Sher Agha, entered the boardroom, took his seat i nt of the board members, and the unclassified hearing was called to order at 1323, 5 June 2010.]

(U) Persons Present:

- (U) MAJOR (b)(3); 10 USC 130b; (b)(6) , PRESIDENT OF THE BOARD;
- (U) MAJOR (b)(3); 10 USC 130b; (b)(6) , MEMBER ONE;
- (U) MAJOR (b)(3); 10 USC 130b; (b)(6) MEMBER TWO;
- (U) CAPTAIN (b)(3); 10 USC 130b; (b)(6), DETAINEE REVIEW BOARD RECORDER T
- (U) LIEUTENANT COLONEL (b)(3); 10 USC 130b; (b)(6), PERSONAL REPRESENTATIVE TWO;
- (U) CAPTAIN (b)(3); 10 USC 130b; (b)(6), LEGAL REPRESENTATIVE; and
- (U) SENIOR AIRMAN (b)(3); 10 USC 130b; (b)(6), PARALEGAL.
- (U) [The recorder was sworn.]
- (U) The detainee was advised by the president of how this board was not a criminal trial and how this board was to determine whether or not he met the criteria for further internment.
- (U) The president also notified the detainee that he may be present at all open sessions of the board permitting that he acted appropriately. ISN 3845 was also advised that he could testify under oath or unsworn if he wished to do so, that he had a personal representative which was present at the hearing, that he may present information at the hearing including the testimony of witnesses, and that he can examine documents presented to the board all of which the detainee understood.
- (U) Further, ISN 3845 was instructed that, at the conclusion of the board after the legal review, the board would determine whether he met the criteria for further internment at the Detention Facility in Parwan. The detainee understood the fact

that if he does not meet the criteria, then he would be released as soon as possible. However, if he did meet the criteria, then he would be recommended for further internment, transferred to Afghan authorities, or released without conditions.

(U) CAPTAIN $^{(b)(3); 10 \text{ USC } 130b; (b)(6)}$ presented the following unclassified information to the poard:

(U//FOUO) (b)(1); (b)(2); (b)(5)

 (U/\overline{FOUO}) He was found with an SD card, which contained propaganda videos and images. A computer was found at the compound where Sher Agha was captured.

(U//FOUO) The Detainee meets the internment criteria if this board determines he was part of, or substantially supported the Taliban or associated forces that are engaged in hostilities against the US or its coalition partners, or if he has committed a belligerent act, or has directly supported hostilities in aid of such enemy armed forces.

(U) The detainee, ISN 3845, made the following statement to the board:

(U//FOUO) I am not Sher Agha. My name is Dil Awar. (b)(1); (b)(2); (b)(5)

The SD card was mine. The video does not belong to me, and the house it was found at was not mine either.

(U) DETAINEE TESTIMONY

(U//FOUO) Sher Agha, (b)(2)-003845DP, was called for the board and testified, in sub e, as follows:

(U) DIRECT EXAMINATION

(U) Detainee Review Board Recorder 3 asked, in substance, the following questions:

- (U//FOUO) I do not have any other alias.
- (U//FOUO) I am from Waldi province.
- (U//FOUO) I work on motorcycles at the motorcycle shop.
- (U//FOUO) I was invited to $^{^{(b)(1);\,(b)(2);\,(b)(6)}}$ and that's why I was at the house.
 - (U//FOUO) (b)(1); (b)(2); (b)(5)
 - (U//FOUO) (b)(1); (b)(2); (b)(5); (b)(6)
 - (U//FOUO) Yes, I have owned a cell phone.
- (U/ \not FOUO) I have never owned an ICOM radio. I know what they are because I've seen them with the guards.
 - (U//FOUG) I've never owned any type of weapon.
 - (U//FOUO) I have never traveled to Pakistan.
- (U/ \neq FOUO) (Recorder showed detainee unclassified exhibit 4) The picture is mine, the weapon is not.
 - (U//FOUO) The weapon belongs to (b)(6), and (b)(6) is dead.

- (U//FOUO) (b)(6) was killed a month before I was detained.
- (U//FOUO) (b)(6) is a Talib.
- (U//FOUO) I knew (b)(6) very well; he was the son of (b)(6), (b)(1); (b)(2); (b)(5)
- (U/ \neq FOUO) (Recorder showed detainee unclassified exhibit 5) Those are my pictures too. The ICOM and AK belong to (b)(6), but it is me in the photo. I just took the picture with the weapons and radio.
- (U//FOUO) (Recorder showed detainee unclassified exhibit 6) The one who is one the left and alive is (b)(6) , and the dead one is (b)(6).
- (U//FOUO) (b)(6) is not involved with the Taliban, he's a teacher.
 - (U//FOUO) I've never been involved with the Taliban.
- (U/ $\frac{\text{FOUO}}{\text{FOUO}}$) (Recorder showed detained unclassified exhibit 7) This is not my computer.
- (U//F0U0) (Recorder showed detainee unclassified exhibit 8) This is where I was captured and the one motorcycle belongs to me and the other one belongs to (b)(6)
- $(U/\overline{\text{FOUO}})$ I had Pakistan money because in Waldi province the currency is run by Pakistan.
- (U/\overline{FOUO}) I am happy with coalition forces; they are all right. The Taliban are not so good. I don't know if there are Taliban in the area I'm from.
- (U//FOUO) No, I am not from Espandi village. (b)(6) is from Espandi village and I was captured there.
 - (U/ $\frac{1}{1}$ FOUO) They respect me here and treat me well.

(U//FOUO) (Recorder showed detainee unclassified exhibit 4 and 5) I got the SD card/memory chip from a bizarre. I put these pictures on the SD card. I don't know where the propaganda videos of exploding coalition forces vehicles on my SD card came from. I bought the memory card used and didn't know what was on the card before when I bought it.

(U/ \not FOUO) If I were released I'm not sure what I would do, but definitely get a job somewhere maybe farming and some kind of labor.

(U//FOUC) I know Mullah (b)(6) wife's uncle.

because he is my

CROSS-EXAMINATION

- (U) Personal Representative 2 asked, in substance, the following questions:
 - (U//FOUG) I live in Khalati. It's my home town.
 - (U//FOUO) I have 9 people total in my family.
- (U/ $\overline{\text{FOUO}}$) I worked at a motorcycle dealership for 19 years before I was detained.
 - (U//FOUO) I don't know if there are Taliban in my village.
 - (U//FOUO) Coalition Forces cruise through sometimes.
- (U//FOUO) I have had the SD card for 1 $\frac{1}{2}$ years and had two phones that I switched it out from.
- (U//FOUO) I visited my family occasionally every 6 months to a year.
 - (U//FOUO) (b)(1); (b)(2); (b)(5)
 - (U//FOUO) I have never supported the Taliban with anything.

Plus, I don't make that much money to help anybody, only enough to help my family.

 $(\mathrm{U}/\overline{\mathrm{FOUO}})$ I have not planned or executed any attacks against the coalition forces.

(U//FOUO) I didn't take any other pictures with my camera relating to the pictures with me holding a weapon.

EXAMINATION BY THE BOARD

(U) Member 2 asked, in substance, the following questions:

 (U/\overline{FOUO}) I do not have enemies, but some people may be trying to make money.

$$(U//FOUO)$$
 (b)(1); (b)(2); (b)(5)

(U) Member 1 asked, in substance, the following questions:

(U//FOUO) I took the pictures because I wanted a picture of me with the weapon. People take pictures with lots of different things, so what is so wrong with me taking a picture with a weapon?

(U) The President of the Board asked, in substance, the following questions:

(U/ \neq FOUO) It is about 1 hour walking from Khalati to Espandi. I don't know how long it is on a motorcycle.

$$(U//FOUO)$$
 (b)(1); (b)(2); (b)(5)

(U) REDIRECT EXAMINATION

(U) Personal Representative 2 asked, in substance, the following questions:

 $(U//\overline{FOUO})$ I don't know who would say I was taking part in Taliban activities.

 $({\rm U}//{\rm FOUO})$ I am well liked in my village. I don't know of anyone who dislikes me.

(U) RECROSS-EXAMINATION

(U) Detainee Review Board Recorder 3 asked, in substance, the following questions:

(U//FOUO) I don't know who Sher Agha is and I've never heard of anyone called that.

(U) AFGHAN CIVLIAN WITNESS TESTIMONY

(U//FOUO) (b)(6)

, was called as a witness for the board, nd testified, in substance, as follows.

(U) DIRECT EXAMINATION

U) Personal Representative 2 asked, in substance, the following questions:

(U/ $\frac{\text{FOUO}}{\text{FOUO}}$) I am from Ghazni province, Khalati village, it's my hometown.

 (U/\sqrt{FOUO}) I am the lead elder of the village and I farm.

 (U/\overline{FOUO}) I know the detainee, he is my neighbor. I've never heard of him being called another name but Dil Awar. I've known him since he was a little baby.

(U//FOUC) He worked at the motorcycle dealer.

(U/ $\overline{\text{FOUO}}$) He was visiting some relatives for Laundy and then coalition forces arrested him. I don't know why he was arrested.

(U/ $\overline{\text{FOUO}}$) I've never seen or heard of him being involved in anti-coalition activities.

- (U/ $\overline{\text{FOUO}}$) He is not a member of any terrorist group that I've heard of.
- ($U/\overline{\text{FOUO}}$) If he was part of any of those terrorist groups I would never have come to testify on his behalf.
- $(U//\overline{FOUO})$ If you release him, then I will make sure he doesn't do anything wrong and I will keep an eye on him.

(U) CROSS-EXAMINATION

(U) Detainee Review Board Recorder 3 asked, in substance, the following questions:

- (U/ $\overline{\text{FOUO}}$) Before he was captured, I saw him once in a while like during prayer.
 - (U//FOUO) I do not know if he owns his own weapon.
- (U//FOUO) No, he's never lived in Espandi. He has a relative that lives in Espandi. If I knew he had a weapon, I would not be here and he wouldn't be working at the motorcycle shop.
- (U/\sqrt{FOUO}) I'm not sure if he's traveled to Pakistan. I've never heard about him going there. He has to work and support his family.
- (U//FOUO) Yes, I would report him if he was involved in anti-coalition forces. I would absolutely turn him in.
 - (U//FOUO) There are no active Taliban members in our area.

(U) EXAMINATION BY THE BOARD

(U) Member 2 asked, in substance, the following questions:

 (U/\overline{FOUO}) There is a coalition forces base near our village; it's about a 40 minute walk.

(U) The President of the Board asked, in substance, the following questions:

(U//FOUO) (President showed witness unclassified exhibit 6) I don't know the person on the left.

(U//FOUO) I don't know how long Dil Awar has been a Mullah.

(U//FOUO) Dil Awar has never had a home in Espandi; he just visit's his family there.

(U//FOUO)— If you release Dil Awar, please don't release him to the Afghan government because his father is poor and doesn't have enough money to bribe to get him released from the Afghan government.

[The witness withdrew from the boardroom.]

(U) The detainee's father made a statement to the board:

(U/ \not FOUO) I have one god and one son. A few minutes ago, I wasn't sure if he was my son or not. (b)(1); (b)(2); (b)(5) and has been here

tor about 19 months. I am very old, and I sold my property because I wasn't able to keep it up. Now I don't have any money and I am really old and will probably be dying soon. Please release my son because I want to be buried with his hands. My son's kids were crying for their father before I came here and want their father back. The Mullah here came here because he's going to vouch for Dil Awar. I'm not saying you guys are guilty for holding him here. I know someone must have said something about him and that's why he's being detained here. Please let me stay in place of my son here so he can go back and take care of his family. I can't support his family because I am poor and have no money. Thank you for letting me make a statement.

[The detainee's father withdrew from the boardroom.]

(U) REDIRECT EXAMINATION

(U) Personal Representative 2 asked the detainee, in substance, the following question:

 (U/\overline{FCUO}) I am well liked in my village. I don't know of anyone who dislikes me.

- (U) The recorder had no further unclassified information to offer the board and, per the recorders request, the president granted a closed hearing at the culmination of the unclassified hearing.
- (U) The president announced the conclusion of the unclassified hearing.
- (U) The president of the board instructed the detainee that he would be notified of the board's decision within a couple of weeks and that he would be released if the decision is made that further internment would not be required. However, if the board decided that further internment is required, he would be retained at the Detention Facility in Parwan, transferred to Afghan authorities for participation in a reconciliation program, or released transferred to his national country for participation in a reconciliation program. Furthermore, if continued internment was recommended, then an additional Detainee Review Board would be reconvened in 6 months.
- (U) The detainee made the following statement:

(U//FOUO) I don't have anything else to say, and I don't know where the name Sher Agha came from and why you guys keep calling me that.

- (U) [The unclassified hearing adjourned at 1426, 5 June 2010.]
- (U) [The detainee withdrew from the boardroom.]
- (U) [The classified hearing was called to order at 1435, 5 June 2010.]

(U) EXPERT CIVLIAN WITNESS TESTIMONY

(U//FOUO) (b)(3); 10 USC 130b; (b)(6), DRB Linguist, was called as a witness he boardroom, and testified, in substance, as follows:

(U) DIRECT EXAMINATION

(U) The President of the Board asked, in substance, the following questions:

$$(5)/NF$$
 (b)(1); (b)(2); (b)(5)

(U) [The witness withdrew from the boardroom.]

(U) EXPERT WITNESS TESTIMONY

(U//FOUO) (b)(3); 10 USC 130b; (b)(6), civilian DRB analyst, was called as d, entered the boardroom, and testified, in substance, as follows:

(U) DIRECT EXAMINATION

(U) Detainee Review Board Recorder 3 asked, in substance, the following questions:

 $\frac{(S//NF)}{(DRB)}$ I've been an analyst for 11 years now. I am the DRB analyst for detainee 3845. (b)(1); (b)(2); (b)(5)

(U) EXAMINATION BY THE BOARD

(U) The President of the Board asked, in substance, the following questions:

$$(s//NF)$$
 (b)(1); (b)(2); (b)(5); (b)(6)

$$\frac{(s/NE)}{(b)(1)}$$
; (b)(2); (b)(5)

$$\frac{(s//NF)}{(b)(1)}$$
; (b)(2); (b)(5)

(U) Member 1 asked, in substance, the following questions:

$$\frac{(s//NF)}{(b)(1)}$$
; (b)(2); (b)(5)

(U) CROSS-EXAMINATION

(U) Personal Representative 2 asked, in substance, the following questions:

$$(s/NF)$$
 (b)(1); (b)(2); (b)(5)

$$\frac{(s/NF)}{(b)(1)}$$
; (b)(2); (b)(5)

$$(s/NF)$$
 (b)(1); (b)(2); (b)(5)

(U) REDIRECT EXAMINATION

(U) Detainee Review Board Recorder 3 asked, in substance, the following questions:

$$(s)/(NE)$$
 (b)(1); (b)(2); (b)(5)

$$\frac{(s//NF)}{(b)(1)}$$
; (b)(2); (b)(5)

RECROSS-EXAMINATION

(U) The President of the Board asked, in substance, the following questions:

$$(s//NF)$$
 (b)(1); (b)(2); (b)(5)

$$\frac{(s//NF)}{(b)(1)}$$
 (b)(1); (b)(2); (b)(5)

- (U) [The witness withdrew from the boardroom.]
- (U) The recorder did offer classified exhibits.
- (U) The personal representative did not offer classified exhibits.
- (U) The president and members of the board voted on ISN 3845. The votes were then collected and handed to the legal representative.
- (U) [The classified session adjourned at 1521, 5 June 2010.]

[END OF PAGE]