

C09003816-WLN

Your Reference:

Our Reference:

FROM: Wellington (MEA)

TO: Tehran

CC: Wellington, Washington, The Hague, Canberra, Ottawa, Defence, EAB, New York, Brussels, Berlin, Geneva, Stockholm, Madrid, Riyadh

MFAT: MEA, ISED, LGL, AMER, AUS, DSP1, DSP3, DSP4, CEO

AGENCIES: SEEMail: Defence MOD (Sec Def, TI
Manual: Defence HQNZDF (VCDF, Defence, PMC [FPA DESC

ATTACHMENTS: 2217727-v1-Afghanistan_ATD_with_new_op7_and_preambl
2217728-v1-Afghanistan_ATD_with_new_op7_(

Special Delivery Instructions: RIYADH: PLEASE PASS TO DA

AFGHANISTAN: MILITARY TECHNICAL ARRANGEMENT

Summary

We provide alternative language for the Arrangement covering the Treatment of Detainees (ATD).

Message

Action

Tehran : Sanders to pass a copy of New Zealand's proposed alternative language for the ATD to the Afghan Government and to register the message in paragraph 3.

Report

Thanks for your C09000060-TEH **PSR(R)1**

2 We have drafted and confirmed with NZDF DLS an alternative to paragraph 7 of the Arrangement covering the Treatment of Detainees (ATD) and an additional paragraph for the preamble, referring to New Zealand's obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights. The language, while not explicitly referring to the death penalty, has the same force as our original draft and would require any detainees handed to Afghan authorities by New Zealand forces to be

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treated in accordance with New Zealand's obligations under international humanitarian and human rights law – i.e. including the non-use of the death penalty.

3 Grateful PSR(IC)3 pass the attached copy of the arrangement (with both the alternative paragraph 7 and preambular reference) to the Afghan Government. During discussions on the revision Sanders should make clear that New Zealand's stance on the death penalty, to which all political parties subscribe, means that there is a domestic debate about our military deployments that will make it very difficult for our government should there be future actions contrary to Afghanistan's assurances which affect any person detained by New Zealand forces and handed over to Afghan authorities.

4 If necessary, we would be able to conclude the arrangement without the preambular paragraph. (A clean copy of the arrangement with alternate wording for paragraph 7 only is also attached). We are happy with Afghanistan's edit to paragraph 4 of the ATD.

5 If the Afghan government agrees to the alternative language Sanders should take the opportunity to conclude the ATD while in Kabul. Ferguson could then conclude the updated Afghanistan / New Zealand Military Technical Arrangement (MTA) in Washington

Arrangement
between
the Ministry of Foreign Affairs of the Islamic Republic of Afghanistan
and
the New Zealand Defence Force
concerning
the Transfer of Persons between the New Zealand Defence Force and the
Afghan Authorities

The Ministry of Foreign Affairs of the Islamic Republic of Afghanistan and the New Zealand Defence Force (hereinafter referred to as 'the Participants'),

Recalling all relevant United Nations Security Council resolutions, in particular resolutions 1386 (2001), 1510 (2003), and 1833 (2008) and future resolutions extending the authorisation of the International Security Assistance Force (ISAF), which authorise the Member States of ISAF to take all necessary measures to fulfil its mandate, which includes the support of the Government of the Islamic Republic of Afghanistan in the maintenance of security,

Noting the importance of establishing all necessary contacts with the relevant respective national authorities with a view to fulfilling this Arrangement, and *bearing in mind* the obligation to respect human rights and humanitarian law standards,

have reached the following arrangements:

Paragraph 1

The purpose of this Arrangement is to establish principles and procedures concerning the transfer of persons in Afghanistan from the New Zealand Defence Force (NZDF) to the Afghan authorities and to affirm the Participants' obligation to observe applicable international law pertaining to the treatment and transfer of such persons.

Paragraph 2

The NZDF is responsible for maintaining and safeguarding persons apprehended by it and will treat these persons in accordance with applicable domestic law and international law.

Paragraph 3

The Afghan authorities will accept the transfer of persons apprehended by the NZDF for investigation and possible legal proceedings. The Afghan authorities are responsible for maintaining and safeguarding all persons in accordance with applicable domestic law and international law.

Paragraph 4

Representatives from the Afghan Independent Human Rights Commission, the NZDF, the International Committee of the Red Cross (ICRC) and other representatives as mutually determined by the Participants will have full access to persons transferred by the NZDF to the Afghan authorities and to the facilities where such persons are held. Such access is to take place in close cooperation and collaboration with relevant Afghan authorities. The NZDF will notify the Afghan Independent Human Rights Commission, the ICRC and others as mutually determined between the Participants when a person has been transferred to Afghan authorities.

Paragraph 5

The Afghan authorities will be responsible for the accurate accountability of all persons transferred to them by the NZDF. Records will be kept and made available to the NZDF on request.

Paragraph 6

The Afghan authorities will notify the NZDF prior to the initiation of any legal proceedings involving persons transferred from the NZDF to the Afghan authorities and prior to the transfer of such persons to third parties or the release of such persons. Transfers of persons transferred from the NZDF to the Afghan authorities to a third party will only take place when such a third party has affirmed its commitment to comply with applicable international law. The NZDF will also be notified of any other significant changes concerning persons transferred from the NZDF to the Afghan authorities.

Paragraph 7

Persons transferred from the NZDF to the Afghan authorities will be treated in accordance with the international obligations of both Participants, including under the International Covenant on Civil and Political Rights and its Protocols thereto.

Paragraph 8

This arrangement is complementary to the New Zealand Military Technical Arrangements (NZMTA) and does not affect the implementation of the NZMTA. Any differences arising over the interpretation or application of this Arrangement will be resolved by consultation between the Participants.

Paragraph 9

This Arrangement may be amended at any time by the mutual written consent of the Participants.

Paragraph 10

This Arrangement will come into effect on the date of the last signature by the Participants and will remain in effect until terminated by either of the Participants by giving thirty days written notice to the other Participant.

Signed in two original copies in the English language.

For the Ministry of Foreign Affairs of
the Islamic Republic of Afghanistan:

For the New Zealand Defence Force:

[name]

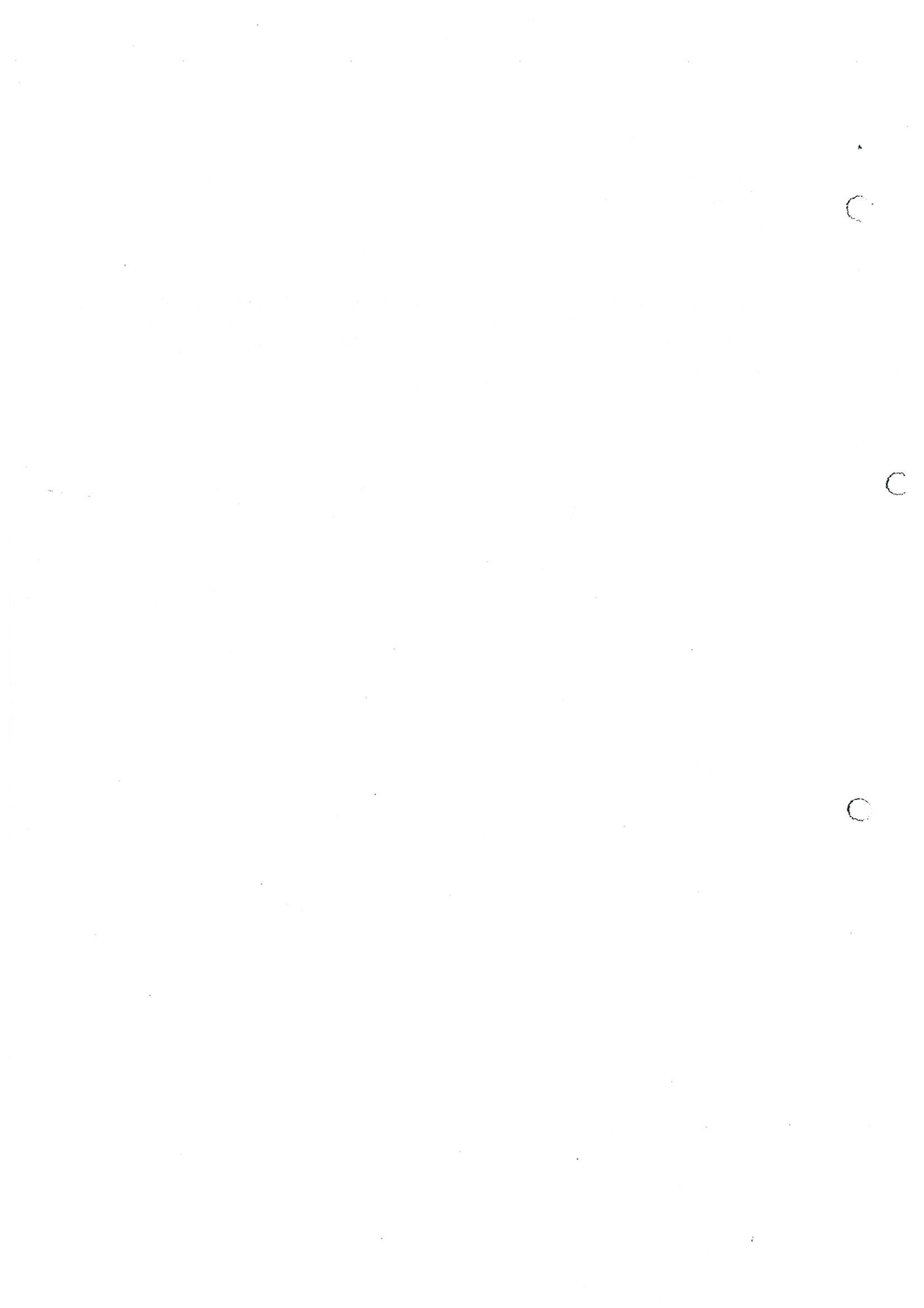
[name]

[title]

[title]

Signed at _____ this _____
day of _____ 2009

Signed at _____ this _____
day of _____ 2009



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Noting the importance of establishing all necessary contacts with the relevant respective national authorities with a view to fulfilling this Arrangement, and *bearing in mind* the obligation to respect human rights and humanitarian law standards,

Noting in this regard New Zealand's obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights

have reached the following arrangements:

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Paragraph 10

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Signed in two original copies in the English language.

For the Ministry of Foreign Affairs of
the Islamic Republic of Afghanistan:

For the New Zealand Defence Force:

[name]

[name]

[title]

[title]

Signed at _____ this _____
day of _____ 2009

Signed at _____ this _____
day of _____ 2009

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