

Koninklijke Landmacht



### Commcen Ops BLS

Van **COMCEN KABUL ISAF**  
 Datum **07-08-2002**  
 Onderwerp **FOTO'S EN...**  
 Aantal pagina's **3 (inclusief deze)**

Sectie G8 Commcen

+06 544752 P. 01/03



MPC 55L  
 Postbus 90004  
 3509 AA Utrecht

PTT MDTN  
 Telefoon +31 (0)30 271  
 Fax +31 (0)30 27  
 PFDX +31 (0)30 27  
 Centrale +31 (0)30 2  
 E-Mail [Commcen2@worldonline.nl](mailto:Commcen2@worldonline.nl)

Fort de Bilt  
 Biltsestraatweg 225  
 3584 BE Utrecht

[www.landmacht.nl](http://www.landmacht.nl)

## Routeringsblad



AAN:	TVZ	AAN:	<del>VBDNR: 219/92</del>	TVZ
DCBC, MAJ			FAX	
			AFGELEVERD AAN:	
OPS BLS CS, KOL				
			ws	inb
			coll	
<input checked="" type="checkbox"/> Sltop <input type="checkbox"/> Dops <input checked="" type="checkbox"/> CS <input type="checkbox"/> LSO-KL <input type="checkbox"/> G1 hfd <input type="checkbox"/> G1 pz <input type="checkbox"/> G2 <input type="checkbox"/> G3 hfd	<input checked="" type="checkbox"/> G3 pro <input type="checkbox"/> G4 <input type="checkbox"/> G6 <input type="checkbox"/> G8 <input type="checkbox"/> G9 <input type="checkbox"/> HCOM <input type="checkbox"/> HV <input type="checkbox"/> SSOGD	<input type="checkbox"/> SSOJZ <input type="checkbox"/> SSOCOP <input type="checkbox"/> (P)BLS <input type="checkbox"/> Les. Leerd <input type="checkbox"/> CAI <input type="checkbox"/> MID <input type="checkbox"/> SWB <input checked="" type="checkbox"/> BDI/OST		

VBDNR:	219	92	TVO:	1907	Z
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Koninklijke Landmacht



T- 049  
KB-UT- 455

2/3

COMMCEN KABUL AFGHANISTAN  
I (NL) INFCIE ISAF / SNR-DET

Faxvoorblad

Van : LKOL	Funcitie: SNR-ISAF 3
Aan : COMMCEN BLS	
Betrent : foto's-Suicidincident en KCT	
Datum : 07 AUGUSTUS 2002	
Aantal pagina s: 2	
(wel deze)	

Switchboard 00870-  
Switchboard 00870

HYPER 00870  
Uncluss-fax 00870-  
Crypto-fax DUS / G  
E-mail FMISSEI

AAN: (VIA COMMCEN BLS)	TVZ	AAN: (VIA COMMCEN BLS)	TVZ
AAN : DCBC NR :		AAN : NR :	
AAN : OPS/BLS NR : 070 316 8679		AAN : NR :	
AAN : NR :		AAN : NR :	
AAN : NR :		AAN : NR :	



SPOED

TVA	07 23 19
TVZ	
E.PNUK	P.p.

TVO	19 07 Z
PNUK	R 31

	COMMCEN BLS Vbdr. 219 1 012
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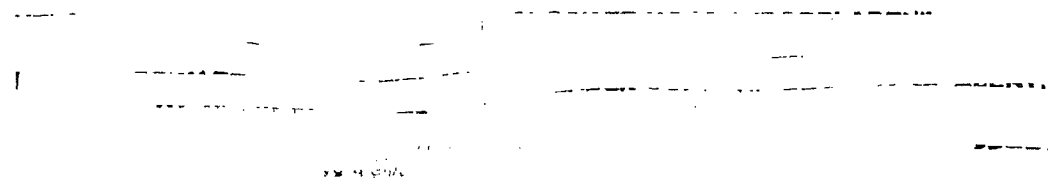
1/2

3/3

AAN : DCBC

INFO : OPS/BLS

ONDERSTAAND EEN TWEETAL PUNTEN, DIE IK U SEPARAAT, NAAST DE RAPPORTAGE DOE TOEKOMEN:

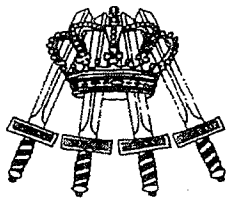


DE FOTO'S, DIE BEKEND ZIJN BIJ ONS EN GEMAAKT DOOR NEDERLANDSE MILITAIRES, OVER HET SCHIETINCIDENT ZIJN TOT NADER ORDER IN BEWARING GENOMEN. OP EEN AANTAL FOTO'S STAAN NEDERLANDSE MILITAIRES BIJ DE LICHAMEN VAN DODE AFGHANEN. HET STAAN VAN EEN NEDERLANDSE MILITAIRE BIJ EEN AFGDAANS LIJK KAN AL LEIDEN TOT VRAGEN. BETROKKENE STAAN, NAAR MIJN MENING, IN EEN GUSDANIG HOUDING, DAT MOGELIJK DOOR DERDEN EEN VERKEERDE UITLEG KAN WORDEN GEGEVEN AAN DEZE HOUDING EN GEZICHTSUITDRUKKING. DE VRAAG: HOE TE HANDELEN MET DE FOTO'S?

JNR-ISAF-3

COMM CEN BLS  
Vbdar.  
219 1 98

2/2



1(NL) INFCIE (+) ISAF 3

SPOED

1(NL) Infcie (+) ISAF 3  
Commandant  
NAPO 57  
3509 VP Utrecht

Aan: DCBC (via COMCEN BLS)

Info: OPS BLS (via COMCEN BLS)  
 OPS KMAR (via COMCEN BLS)  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)

Winfax: 008736  
 Satcom: 008737  
 PNVX fax: 008736

Van: Maj  
 Datum: 8 August 2002  
 Faxregnr.:  
 Onderwerp: SITREP B nr. 0708  
 Aantal pagina's: 5

SITREP B: ISAF

Majoor der Jagers

BIJLAGE: SCHIETINCIDENT

DTG 070700 LT AUG 02: CC / PC AT / 2 MB ONDERWEG VAN COMPOUND NAAR PD CHAHAR ASIAB VOOR "MALIK OVERLEG".

DTG 070737 LT AUG 02: CC / PC AT / 2 MB WORDEN OMGEVING REFERENTIEPUNT I 2 COORD WD 198163 OP DE WEG AANGEHOUDEN DOOR GROEP BURGERS DIE (MET GEVAAR VOOR EIGEN LEVEN) ZICH VOOR DE MB WERPEN. WE STAPPEN MET DE TOLK UIT WAARNA EEN CHAOTISCHE SITUATIE ONTSTAAT VAN 25 - 35 PERSONEN DIE HET LIEFST ALLEMAAL TEGELIJKERTIJD HUN VERHAAL KWIJT WILLEN. ER HAD ZICH OM 06.00 UUR EEN VUURGEVECHT PLAATSGEVONDEN TUSSEN, EEN (OP DAT MOMENT VOOR MIJ ONBEKENDE GROEP) (NOEM IK VANAF NU TERRORISTEN) EN DE PLAATSELIJKE BEVOLKING. IN HET VUURGEVECHT IN HET DORP ZIJN TWEE POLITIEAGENTEN ZIJN GEDOOD, EEN POLITIEAGENT GEWOND EN EEN "TERRORIST" IS GEDOOD. ELF ANDERE TERRORISTEN HEBBEN EEN VRACHTAUTO GECONFISCIEERD EN ZIJN SAMEN MET TWEE GEGIJZELDEN VERTROKKEN IN ZUIDELIJKE RICHTING. (ROUTE INDIGO) OMGEVING REFERENTIEPUNT I 4 WERDEN ZIJN DOOR EEN BLOCKING POSITION (VAN POLITIE EHDN DIE UIT HET ZUIDEN KWAM) GEDWONGEN MET DE VRACHTAUTO DE BERGEN (W RG) IN TE RIJDEN. DOOR HET BERGACHTIG TERREIN ZIJN ZE GEDWONGEN UIT TE STAPPEN EN TE VOET VERDER TE GAAN. EEN GEGIJZELDE IS KUNNEN ONTVLUCHTEN. DE TWEEDE IS MISHANDELD ACHTERGELATEN DOOR DE TERRORISTEN. DE POLITIE ZAT HUN TOEN AL KORT ACHTERNA.

DTG 070745 LT AUG 02: CC / OPDRACHT CIES QRF BIJTREKKEN I 2 (CIES QRF IS IN HET GEBIED VOOR OST ANDERE PATROUILLES)

DTG 070805 LT AUG 02: CC / PC AT ((3R) HOREN KKW VUUR EN HOREN EN ZIEN DRIE RPG 7 INSLAGEN OP RUIM 2 KM AFSTAND IN ZZW RICHTING. DOOR HET VIZIER VAN DE C7A1 WORDEN TWEE CONCENTRATIES VAN POLITIEAGENTEN WAARGENOMEN. EEN GROEP MET EEN BINDENDE ROL, EEN GROEP MET EEN OMTREKKENDE ROL ZIJN IN GEVECHT.

DTG 070823 LT AUG 02: RV CC / CIES QRF. ASSESSMENT: VOLGENS DE ROE MAG IK NIETS DOEN. ER ZIJN GEEN EIGEN TROEPEN BIJ BETROKKEN. EIGEN TROEPEN LOPEN GEEN INDIRECT GEVAAR. DE SITUATIE IN HET DORP IS DIFUUS. IK HEB GEEN VERBINDING MET POLITIE WAAR OP AFSTAND WORDT GEVOCHTEN. IK BESLUIT OP TE RIJDEN NAAR REFERENTIEPUNT I 4. HIERVANUIT BEN IK IN STAAT OM SNELLER INZICHT TE KRIJGEN IN DE SITUATIE EN KAN SNELLER GENEESKUNDIGE AFVOER VERZORGEN. OP I 4 (WD 192132) WORD IK AANGEHOUDEN DOOR DE POLITIE DIE MIJ VERTELLEN DAT IK ZE MOET VOLGEN WANT ZE HEBBEN AL QUADA UITGESCHAKELD. IK RIJ ACHTER DE POLITIE AAN EEN BERGDORPJE IN. DE POLITIE STAPT UIT EN ZEGT DAT IK ZE TE VOET MOET VOLGEN. VIJF MB'S BLIJVEN MET BEVEILIGING ACHTER, EEN PARTY VAN ZES (R / 3R / H / DRIE BEVEILIGERS) GAAT IN HET SPOOR VAN DE POLITIE (MINE AWARENESS) HET GEBIED IN.

DTG 070905 LT AUG 02: DE GROEP STUIT OP EEN GROTE GROEP LOCALS DIE DOOR 45 POLITIEAGENTEN OP AFSTAND VAN DE PLEK DES ONHEILS WORDT GEHOUDEN. WE KOMEN DE GEGIJZELDE TEGEN DIE BEHOORLIJKE KLAPPEN HEEFT GEHAD MET DE KOLF VAN EEN AK 47.

[REDACTED]

DTG 070914 LT AUG 02: IK STUIT OP HET EERSTE LIJK (WD 18551382 / VENT OP DE RUG SCHOTEN IN ARMEN EN BENEN / SCHOTWOND IN HOOFD / HERSENEN OPEN / HERSENEN ALL OVER)

DTG 070915 LT AUG 02: IK STUIT OP HET TWEEDE LIJK (WD 18511381 / VENT OP DE RUG SCHOTEN IN ARMEN EN BENEN / SCHOTWOND IN HOOFD)

DTG 070920 LT AUG 02: IK STUIT OP GROEP VAN NEGEN LIJKEN (WD 18421380) EEN LIJK COMPLEET VERMORZELD DOOR EEN RPG 7 INSLAG. ACHT LIJKEN OP EEN RIJ NAAST ELKAAR MET ALLEN ZUIVERE SCHOTWONDEN IN HOOFD. ER WAREN GEEN WAPENS, SCHOENEN EN UITRUSTING OP DE PERSONEN. ALLES WAS NAAR ZEGGEN VAN DE POLITIE AL AFGEVOERD.

DTG 070925 LT AUG 02: IK MELD ME BIJ DE COMMANDANT VAN DE POLITIE, STEL ME VOOR EN VRAAG WAT ER IS GEBEURD. ER HEEFT EEN VUURGEVECHT PLAATSGEVONDEN WAARBIJ DE POLITIE DE AL QUADA ARABIEN (ZE SPRAKEN IN HET DORP NIET "AFGHAANS") HEEFT GEDOOD.

DTG 070930 LT AUG 02: IK HOOR 3R ROEPEN: "ER LEEFT ER NOG EEN, HIJ LIGT HIER TE KREPEREN". DE SGT. EN EEN KPL CLS BEGINNEN (NAAR LATER ZEGGEN IN EEN ROES) DIRECT MET EERSTE HULP. (INFUUS ETC) IK ZEG DAT IK WIL AFVOEREN, KRIJG EERST GEEN TOESTEMMING (HIJ IS DOOD EN WACHT OP KABUL MEDIA) IK ZEG: "IK GA AFVOEREN" EN GEEF OPDRACHT AAN DE ZAU OM BIJ TE TREKKEN. HEVIG BLOEDEND UIT ZIJN HOOFDWOND WORDT DE TERRORIST IN DE ZAU GELEGD DIE AANSLUITEND VERTREKT NAAR DE COMPOUND "WAREHOUSE".

DTG 071035 LT AUG 02: IK GEEF EEN SITREP AAN NL OPS EN OPS GE BG.

DTG 071037 LT AUG 02: IK HOOR OVER DE RADIO DAT DE TERRORIST IN DE ZAU IK OVERLEDEN. HET LIJK WODRT AFGEVOERD NAAR EEN CIVIELE MILITAIR ZIEKENHUIS (WD 173218) WAAR HET LIJK NAAR TWEE KEER AANDRINGEN WORDT GEACCEPTTEERD.

DTG 071045 LT AUG 02: OPDRACHT CC AAN QRF: TERUGKEREN NAAR BASE, WISSELEN ZAU (BINNENKANT ZAT HELEMAAL ONDER HET BLOED)

DTG 071130 LT AUG 02: CC TERUG OP BASE / INFO GE BG, J2 KMNB EN J3 KMNB

DTG 071600 LT AUG 02: CC MET KOL NAAR GARNIZOEN KABUL / POLITIE IS BEZIG MET ONDERZOEK

DTG 072030 LT AUG 02: DEBRIEF PERSONEEL AANWEZIG TIJDENS HET INCIDENT MET AALMOEZENIER EN ARTS.

ASSESSMENT SCHIETINCIDENT (COORD WD 18421380)

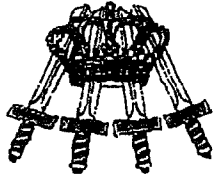
ER HEEFT EEN KKW VUURGEVECHT PLAATSGEVONDEN TUSSEN DE GROEP OMSINGELDE TERRORISTEN EN DE POLITIE. DE POLITIE JAAGT DRIE RPG 7 RAKETTEN DE GROEP IN WAARBIJ EEN TERRORIST WORDT GEDOODT. 10 TERRORISTEN GEVEN ZICH OVER. DE GROEP WORDT OPGELIJND. DE EXECUTIE BEGINT OP LINKS, TWEE TERRORISTEN ZETTEN HET OP EEN LOPEN, WORDEN IN NEERGESCHOTEN EN VERVOLGENS OOK IN HET HOOFD GESCHOTEN.

NB:

ER ZIJN VAN HET INCIDENT DOOR DE CIES QRF 8 DIGITALE FOTO'S GEMAAKT MET MILITAIRE APPARATUUR. TEVENS HEB IK TWEE MILITAIEREN OPDRACHT GEGEVEN OM MET HUN PRIVE FOTOTOESTELLEN FOTO'S TE MAKEN. WAT MOET IK MET DE FOTOROLLETJES EN (SCHOKKENDE) FOTO'S VAN DIE KERELS DOEN? INNEMEN / TERUGGEVEN. IK HEB TIJDENS DE DEBRIEF AAN DE MANNEN GEVRAAGD MIJ WAT "TERUGKOPPELTijd" MET DE DCBC TE GUNNEN. DAT WAS GEEN PROBLEEM.

[REDACTED]

(4)



**C-CONTCO ISAF**

**SPOED**

**T-214**

**KB-UT-156**

052.

**CONTCO ISAF  
Commandant  
NAPO 57  
3509 VP Utrecht**

<b>Aan:</b>	DCBC	(via COMCEN BLS)
<b>Info:</b>	OPS BLS	(via COMCEN BLS)
	OPS KMAR	(via COMCEN BLS)
	C-11LMB	(via COMCEN BLS)
	C-11 INFBAT LMB	(via COMCEN BLS)
	C-12 INFBAT LMB	(via COMCEN BLS)
	C-13 INFBAT LMB	(via COMCEN BLS)
	C-KCT	(via COMCEN BLS)

Winfax: 00873  
 Satcom: 00873  
 PNVX fax: 00873

**Van:** Lkal.

**Faxregnr.:** 080802

**Onderwerp:** SITREP a nr: 0808

**Aantal pagina's:** 3

**SITREP A: ISAF**

Handwritten scribble at bottom left

Handwritten box containing "HYP-1A 60"



NAAR IK BEGRIJP VAN DE NIC-CEL IS DE SCHIETPARTIJ OP 7 AUGUSTUS 2002 VEROORZAAKT DOOR 12 ONTSNAPTE GEVANGENEN.

DDD

EEE

FFF

GGG



COMMCEN BLS  
Vbdr.  
22.0 1 104






IK BEGRIP DAT ER FOTO'S IN DEN HAAG CIRCULEREN OVER HET  
SCHETINGIDENT VAN 07 AUGUSTUS 2002. NAAR INFORMATIE VAN DE NIC-  
CEL ZIJN DIT VERMOEDELIJK DE FOTO'S DIE DOOR HQ-ISAF ZIJN  
VRIJGEGEVEN.  
HOE HQ-ISAF AAN DEZE FOTO'S ZOU ZIJN GEKOMEN IS MIJ ONBEKEND.

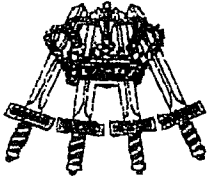
JJJ

SNR-1(NL) Detachement ISAF

Luitenant-kolonel der Artillerie



 COMMENBLS  
Vbdr.  
2.20.1109



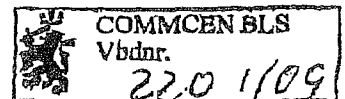
1(NL) INFCIE (+) ISAF 3

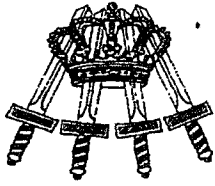
SPOED

1(NL) Infcie (+) ISAF 3  
 Commandant  
 NAPO 57  
 3509 VP Utrecht

**Aan:** DCBC (via COMCEN BLS) Winfax: 00873600155867  
**Info:** OPS BLS (via COMCEN BLS) Satcom: 00873762459015  
 OPS KMAR (via COMCEN BLS) PNVX fax: 00873600155868  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)  
**Van:** Maj  
**Datum:** 8 August 2002  
**Faxregnr.:**  
**Onderwerp:** SITREP B nr: 0808  
**Aantal pagina's:** 4  
**SITREP B: ISAF**

- SITREP SCHIETINCIDENT 07 AUG 02: (SNR) EN OWI  
 " (C - KMARDET) HEBBEN MIJ OP DTG 082000 LT AUG 02  
 GEINFORMEERD DAT ER GEEN HUISHOUDELIJK ONDERZOEK  
 PLAATSVINDT OMTRENT HET SCHIETINCIDENT MAAR DAT OP 08 AUG 02  
 DOOR DE KMAR EEN ONDERZOEK NAAR BEVINDINGEN WORDT GESTART.  
 MEER INFO VOLGT.





**C-CONTCO ISAF**

**SPOED**

**T-067**

**KB-UT-062**

**CONTCO ISAF**  
**Commandant**  
NAPO 57  
3509 VP Utrecht

**Aan:** DCBC (via COMCEN BLS) Winfax: 0087  
**Info:** OPS BLS (via COMCEN BLS) Satcom: 0087  
OPS KMAR (via COMCEN BLS) PNVX fax: 0087  
C-11LMB (via COMCEN BLS)  
C-11 INFBAT LMB (via COMCEN BLS)  
C-12 INFBAT LMB (via COMCEN BLS)  
C-13 INFBAT LMB (via COMCEN BLS)  
C-KCT (via COMCEN BLS)

**Van:** Lkol J

**Faxregnr.:** 090802

**Onderwerp:** SITREP a nr: 0908

**Aantal pagina's:** 2

**SITREP A: ISAF**

[REDACTED]

HET SCHIETINCIDENT VAN 7 AUGUSTUS JL ZAL DOOR COMISAF WORDEN  
INGEBRACHT IN DE JOINT COORDINATION BODY.  
KARZAI HEEFT MEDE ZITTING IN DIT ORGAAN.

DDD

EEE

FFF

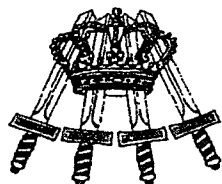
GGG

HHH

JJJ

Luitenant-kolonel der Artillerie

[REDACTED]



1(NL) INFCIE (+) ISAF 3

SPOED

1(NL) Infcie (+) ISAF 3  
Commandant  
NAPO 57  
3509 VP Utrecht

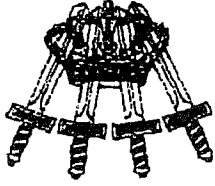
**Aan:** DCBC (via COMCEN BLS) Winfax: 008736  
**Info:** OPS BLS (via COMCEN BLS) Satcom: 008737  
OPS KMAR (via COMCEN BLS) PNVX fax: 008736  
C-11LMB (via COMCEN BLS)  
C-11 INFBAT LMB (via COMCEN BLS)  
C-12 INFBAT LMB (via COMCEN BLS)  
C-13 INFBAT LMB (via COMCEN BLS)  
C-KCT (via COMCEN BLS)  
**Van:** Maj /  
**Datum:** 9 August 2002  
**Faxregnr.:**  
**Onderwerp:** SITREP B nr: 0908  
**Aantal pagina's:** 3

N

- SITREP SCHIETINCIDENT 07 AUG 02:  
DE KMAR IS GESTART MET HET ONDERZOEK NAAR BEVINDINGEN NAAR  
AANLEIDING VAN HET SCHIETINCIDENT. DE VERWACHTING IS DAT ZE HET  
ONDERZOEK ZONDAG 11 AUG 02 ZULLEN AFRONDEN.



LD 344.02 7.12  
7



**C-CONTCO ISAF**

**SPOED T-076 KB-UT-070**

**CONTCO ISAF  
Commandant  
NAPO 57  
3509 VP Utrecht**

**Aan:** DCBC (via COMCEN BLS)

**Info:** OPS BLS (via COMCEN BLS)  
 OPS KMAR (via COMCEN BLS)  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)

**Winfax: 0087360  
Satcom: 008737  
PNVX fax: 008736**

**Van:** Lkol

**Faxregnr.:** 100802

**Onderwerp:** SITREP a nr. 1008



PMUX R 43 Z

COMMEN BLS  
Vbdir.  
222 147

3/7



EEE

FFF

GGG

HHH OVERIG

VANMIDDAG HEB IK MET DE TWEE VERTEGENWOORDIGERS VAN DE KMAR EEN GESPREK GEHAD MET C-KMNB OVER HET SCHIETINGIDENT. KMNB STELT MEDE EEN ONDERZOEK IN EN HET RAPPORT ZOU NEDERLAND OOK ONTVANGEN. C-KMNB HAD EEN AANTAL KRITISCHE VRAGEN WAAROP VOORSHANDS NOG GEEN BEVREDIGEND ANTWOORD WAS ONTVANGEN.

DIT BETREFT O.A.:

- WAAROM WAREN DE PERSONEN DOOR HET HOOPD GESCHOTEN.  
- HOE KONDENN 12 MAN ONTSNAPPEN UIT EEN GOED BEVEILIGDE GEVANGENIS.

DE COMPAGNIE, INCL DE COMMANDANT, VIEL NIET TE VERWIJTEN ZO STELDE C-KMNB.

JJJ

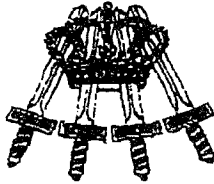
SNR-1(NL) Detachement ISAF

Luitenant-kolonel der Artillerie



COMMEN BLS  
Vgdr.  
222 147

4/7



1(NL) INFCIE (+) ISAF 3

SPOED

1(NL) Infcie (+) ISAF 3  
Commandant  
NAPO 57  
3509 VP Utrecht

Aan: DCBC (via COMCEN BLS)  
Info: OPS BLS (via COMCEN BLS)  
OPS KMAR (via COMCEN BLS)  
C-11LMB (via COMCEN BLS)  
C-11 INFBAT LMB (via COMCEN BLS)  
C-12 INFBAT LMB (via COMCEN BLS)  
C-13 INFBAT LMB (via COMCEN BLS)  
C-KCT (via COMCEN BLS)

Winfax: 0087  
Satcom: 0087  
PNVX fax: 0087

Van: Maj.  
Datum: 10 August 2002  
Faxregnr.:  
Onderwerp: SITREP B nr: 1008  
Aantal pagina's:

SITREP B: ISAF

AAA  
BBB  
CCC

SITREP SCHIETINCIDENT 07 AUG 02:  
DE KMAR IS GESTART MET HET ONDERZOEK NAAR BEVINDINGEN NAAR  
AANLEIDING VAN HET SCHIETINCIDENT. DE VERWACHTING IS DAT ZE HET  
ONDERZOEK MAANDAG 12 AUG 02 ZULLEN AFRONDEN.

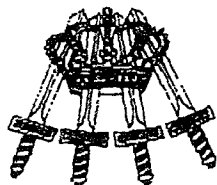
1.



COMMCEN BLS  
Vbchr.  
227 147



10



C-CONTCO ISAF

SPOED T-083 KB-UT-077

CONTCO ISAF  
Commandant  
NAPO 57  
3509 VP Utrecht

Aan: DCBC (via COMCEN BLS)

Info: OPS BLS (via COMCEN BLS)  
 OPS KMAR (via COMCEN BLS)  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)

Van: Lkol.

Wifax: 0087360  
Satcom: 00873  
PNVX fax: 0087360

Faxregnr.: 110802

Onderwerp: SITREP a nr: 1108

TVO	1900Z
Hyper R	11

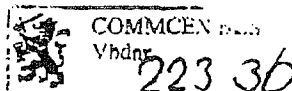


	COMMCEN BLS Vhdnr 223136
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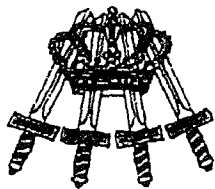
**SCHIETINCIDENT 07 AUGUSTUS**

**OVER HET SCHIETINCIDENT HET NAVOLGENDE:**

**- C-KMNB, BGEN SCHLENKER, HEEFT EEN ONDERZOEK LATEN HOUDEN ALS  
C-KMNB. HET ONDERZOEK IS AFGEROND EN WORDT OP DIT MOMENT  
VERTAALD VAN HET DUIJS IN HET ENGELS. MIJ. DCOM, IS EEN AFSCHRIFT  
IN HET ENGELS TOEGEZEGD, WELKE IK ONMIDDELIJK AAN U TER  
BESCHIKKING ZAL WORDEN GESTELD.**



6/8



1(NL) INFCIE (+) ISAF 3

SPOED

1(NL) Infcie (+) ISAF 3  
 Commandant  
 NAPO 57  
 3509 VP Utrecht

Aan: DCBC (via COMCEN BLS) Winfax: 00873f  
 Info: OPS BLS (via COMCEN BLS) Satcom: 00873f  
 OPS KMAR (via COMCEN BLS) PNVX fax: 00873f  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)  
 Van: Maj  
 Datum: 11 August 2002  
 Faxregnr.:  
 Onderwerp: SITREP B nr: 1108  
 Aantal pagina's: 3

SITREP B: ISAF

AAA

BBB

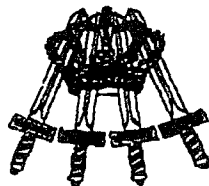
CCC

SITREP SCHIETINCIDENT 07 AUG 02: HET ONDERZOEK VERLOOPT VOLGENS PLAN EN WORDT MAANDAG 12 AUG 02 AFGEROND.

COMMCEN BLS  
 Vbdnr  
 223,36

11

2/6



G-CONTCO ISAF

SPOED T-92 KB-UT-085

CONTCO ISAF  
Commandant  
NAPO 57  
3509 VP Utrecht

Aan:	DCBC	(via COMCEN BLS)	Wifax: 00873
Info:	OPS BLS	(via COMCEN BLS)	Satcom: 00873
	OPS KMAR	(via COMCEN BLS)	PNVX fax: 00873
	C-11 LMB	(via COMCEN BLS)	
	C-11 INFBAT LMB	(via COMCEN BLS)	
	C-12 INFBAT LMB	(via COMCEN BLS)	
	C-13 INFBAT LMB	(via COMCEN BLS)	
	C-KCT	(via COMCEN BLS)	

Van: Lkol

Faxregnr.: 120802

Onderwerp: SITREP a nr: 1208

Aantal pagina's: 2

SITREP A: ISAF

AAA

BBB

CCC

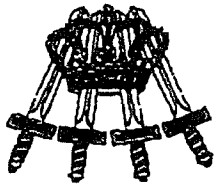
KARZAI HEEFT NAAR AANLEIDING VAN HET SCHIETINCIDENT OP 7 AUGUSTUS 2002 DE MINISTER VAN JUSTITIE OPDRACHT GEGEVEN OM EEN ONDERZOEK IN TE STELLEN.

DOOR

TVO	1905
Hyper	R 31

IN BLS  
1/100

4/6



1(NL) INFCIE (+) ISAF 3

SPOED

1(NL) Infclie (+) ISAF 3  
Commandant  
NAPO 57  
3509 VP Utrecht

Aan: DCBC (via COMCEN BLS)

Info: OPS BLS (via COMCEN BLS)  
 OPS KMAR (via COMCEN BLS)  
 C-11LMB (via COMCEN BLS)  
 C-11 INFBAT LMB (via COMCEN BLS)  
 C-12 INFBAT LMB (via COMCEN BLS)  
 C-13 INFBAT LMB (via COMCEN BLS)  
 C-KCT (via COMCEN BLS)

Van: Maj

Datum: 12 August 2002

Faxregnr.:  
 Onderwerp: SITREP B nr: 1208  
 Aantal pagina's: 3

Winfax: 008736  
 Satcom: 008737  
 PNVX fax: 008736

SITREP B: ISAF

AAA

BBB

CCC

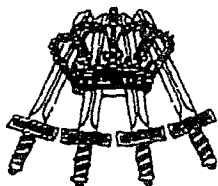
SITREP SCHIETINCIDENT 07 AUG 02: HET ONDERZOEK VAN BEVINDINGEN IS WAT VERTRAAGD, WORDT UITERLIJK 14 AUG 02 AFGEROND.



COMMCEN BLS
Vbdr. 224 1/00



12



**C-CONTCO ISAF**

**SPOED T-107 KB-UT-098**

**CONTCO ISAF  
Commandant  
NAPO 57  
3509 VP Utrecht**

<b>Aan:</b>	DCBC	(via COMCEN BLS)	<b>Winfax:</b> 00873600
<b>Info:</b>	OPS BLS	(via COMCEN BLS)	<b>Satcom:</b> 00873762
	OPS KMAR	(via COMCEN BLS)	<b>PNVX fax:</b> 00873600
	C-11LMB	(via COMCEN BLS)	
	C-11 INFBAT LMB	(via COMCEN BLS)	
	C-12 INFBAT LMB	(via COMCEN BLS)	
	C-13 INFBAT LMB	(via COMCEN BLS)	
	C-KCT	(via COMCEN BLS)	

<b>Van:</b>	Lkol J		Tvz 13:30
			Tvz
			Hyper gtl

**Faxregnr.:** 130802

**Onderwerp:** SITREP a nr: 1308

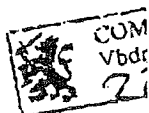
**Aantal pagina's:** 4

**SITREP A: ISAF**

**AAA**

**BBB**

**CCC**



HHH

OVERIG

RAPPORT VAN BEVINDINGEN NAAR AANLEIDING VAN HET SCHIETINCIDENT  
DOOR KMAR IS AFGEROND OP CA 131300 AUG 2002.  
VAN C-KMNB HEB IK HET RAPPORT VAN KMNB ONTVANGEN EN DE ACTIES  
VAN COMISAF. HET RAPPORT KMNB WORDT MET HET RAPPORT VAN  
BEVINDINGEN KMAR MEEGEGEVEN AAN MAJ

JJJ

PTT	MDTN	IVSN
Telefoon 070-318 7139	501	245
Fax 070-318 8555	501	245
E-mail dcbc@mindef.nl		

Defensie

VOORRANG : SPOED

RUBRICERING : 1

AANT. PAGINA'S : 01 (incl. voorblad)

ONS NUMMER : DCBC/ 1362 /2002

OPSTELLER :

RANG : LKOL

FUNCTIE : HSOPN-A

DATUM TIJD GROEP : 21300 Z OKT 02

REF : Uw fax van 17 oktober 2002

ONDERWERP : fotorolletjes schietincident 7 augustus 2002

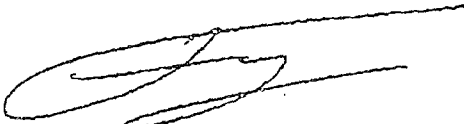
DCBC

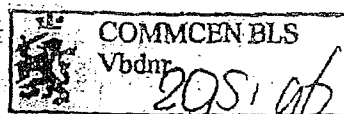
Keyfile distributie : ISAF Hardcopy: HAOPN

BESTEMD VOOR : SNR ISAF; FAX : PNVX

TER INFO : PCDS in gulfstream FAX : 00 8745

1. Naar aanleiding van referte bericht ik u dat de filmrolletjes die voor nader onderzoek vrijwillig in bewaring zijn gegeven aan de Kmar, bij het DCBC in bewaring zijn genomen in afwachting van de terugkeer naar Nederland van de twee militairen aan wie ze toebehoren. Na terugkeer van de twee militairen in Nederland zullen de filmrolletjes aan hen persoonlijk worden terugggegeven.
2. Gezien het feit dat het ISAF-contingent waartoe de twee militairen behoren begin november zal roteren, acht ik het niet opportuun om de filmrolletjes per post naar Kabul te verzenden, ook al vanwege de mogelijkheid dat ze kwijtraken.
3. Om dit laatste aspect ook na terugkeer in Nederland uit te sluiten verzoek ik de twee militairen contact op te laten nemen met de sectie operaties A van het DCBC, waarmee een afspraak gemaakt kan worden voor het overhandigen van de filmrolletjes.
4. Contactpersonen bij DCBC is | Afdeling Operatiën, tel. 070-31
5. Ik verzoek u de door mij geschetste procedure en de gegevens van de DCBC-contactpersoon aan de twee militairen bekend te stellen, alsmede mijn dank over te brengen voor het ter beschikking stellen van de filmrolletjes ten bate van het voornoemde onderzoek.

  
 Drs. A.G.D. van Osch  
 BRIGADE GENERAAL





Aan Minister van Defensie  
(zonder slides)  
Staatssecretaris (zonder slides)  
d.t.v. SG (zonder slides)

Afschrift aan Chef Defensiestaf  
DAB  
Min. Alg Zaken  
Perm. Vertw. NAVO  
(dzv CIU via )

Datum 7 augustus 2002  
Oms kenmerk DIS2002014151  
Onderwerp Dagelijkse Briefing MIVD

Bezoekadres:  
Frederikkazerne, Gebou  
van der Burchlaan 31  
Postadres:  
Postbus 20701  
2500 ES Den Haag  
www.defensie.nl

Steller:  
Dkab04  
Telefoon  
Fax

1. Hierbij doe ik u toekomen de stand van zaken omtrent de situatie in : Afghanistan.
2. Zonder bijlage is deze brief ongerubriceerd

~~IV~~ Directeur Militaire Inlichtingen en Veiligheidsdienst

b/a

F.H. Meulman  
Commodore



**MINISTERIE VAN DEFENSIE**  
**Militaire Inlichtingen en Veiligheidsdienst**  
**Current Intelligence Unit**

Telefoon:  
Telefax: t  
PNVX:  
Spendex:

**DCBC briefing woensdag 07 augustus 2002**

Afgesloten op: 070600Z AUG 2002

AFGHANISTAN

**( ) Schietincident NL AOR**

Vanochtend heeft in Kabul een schietincident plaatsgevonden tussen lokale politie en vermeende terroristen. Daarbij zijn 11 doden gevallen. Er zou geschoten zijn met klein kaliber wapens (KKW) en RPG's. Het incident vond plaats in het Bagrami District in de Nederlandse AOR. Dit is hetzelfde gebied waar onlangs nog een Nederlands voertuig op een AP mijn reed. Over de resultaten van het onderzoek dat momenteel naar aanleiding van het incident door (Nederlandse) ISAF militairen wordt uitgevoerd is vooralsnog niets bekend. De eerste indicaties lijken in de richting van een executie te wijzen.

0255g

Ministerie van Defensie

Defensie staf  
Defensie Crisis Beheersings  
Centrum  
Afdeling Operatiën

Postbus 20701  
2500 ES Den Haag  
www.mindef.nl

Defensie

## Nota

Aan De Minister  
De Staatssecretaris

Door tussenkomst De SG

Afschrift aan De BLS  
De BDM  
De DJZ  
De DAB  
De DV

Datum 9 augustus 2002

Ons kenmerk S 2002005562

Onderwerp Nederlandse waarneming van mogelijke schending humanitair oorlogsrecht o.q. mensenrechten.

1. In de media zijn op 7 en 8 augustus 2002 berichten gepubliceerd over een gewapend treffen nabij Kabul. Hieronder volgt een eerste korte weergave van de rapportage van het Nederlandse ISAF-detachement en de tot heden genomen acties.
2. In de ochtend van 7 augustus jl. heeft zich een gewapend treffen voorgedaan op (de rand van) het Nederlandse gebied van verantwoordelijkheid in Kabul. Bij dit incident waren zoals nu bekend rechtstreeks betrokken enige eenheden van de Afghaanse politie, andere Afghaanse gewapende eenheden en een groep ongeïdentificeerde personen, mogelijkwijze "Al Qaida" terroristen. Bij dit schietincident zijn ten minste twee Afghaanse politieagenten en 12 anderen omgekomen. In de ochtend van 8 augustus jl. is een melding van de Nederlandse Senior National Representative (SNR) over het gebeuren ontvangen.
3. De Nederlandse compagniescommandant was ten tijde van het gebeuren toevalligerwijze in de buurt van het incident. De compagniescommandant werd door de lokale bevolking staande gehouden en is vervolgens door de omstanders en de lokale politie nadrukkelijk verzocht de plaats van de schietpartij te bezoeken. Dat heeft hij met enige van zijn personeelsleden gedaan. Naar aanleiding van hetgeen hij daar heeft aangetroffen, komt de compagniescommandant tot de conclusie dat hier mogelijk een executie van een 9-tal personen heeft plaatsgevonden. Eén van de negen bleek nog in leven te zijn. Nederlands personeel heeft eerste hulp verleend en betrokkene afgevoerd in een Nederlandse ambulance. Betrokkene is tijdens het transport overleden. Nederlands militair personeel heeft foto's gemaakt van de situatie die werd aangetroffen.
4. Mogelijk hebben de Nederlandse militairen een schending geconstateerd van het humanitaire oorlogsrecht c.q. een schending van de mensenrechten. In CDS-Aanwijzingen A-20 en A-21 worden richtlijnen gegeven voor het behandelen van dergelijke meldingen. Conform deze aanwijzingen zijn op 8 augustus jl. de volgende acties genomen.

Bij beantwoording datum, ons kenmerk, en onderwerp vermelden.

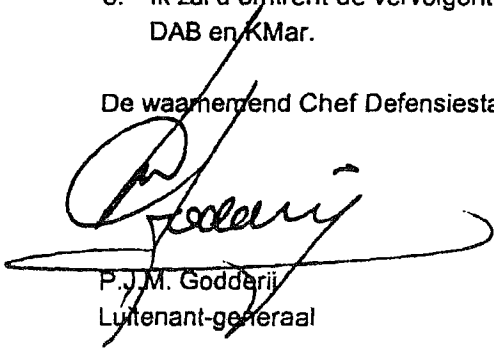
Defensie

Datum  
Ons kenmerk

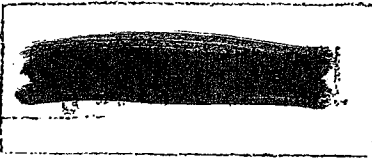
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- a. De SNR heeft opdracht gekregen het voorval te melden in de internationale commandantenlijn d.w.z. aan de Commandant Multinational Brigade Kabul.
- b. De in Kabul aanwezige KMar-personeelsleden zullen in Kabul een "rapport van bevindingen" opmaken. Dit rapport zal (door tussenkomst van de BDM) zo spoedig mogelijk worden aangeboden. Het de compagniescommandant vergezellende Nederlandse personeel dat foto's heeft gemaakt van hetgeen zij aantreffen, is verzocht dat fotomateriaal vrijwillig bij de KMar in bewaring te geven, hetgeen inmiddels is geschied.
5. De genomen acties zijn gecoördineerd tussen waarnemend SG, Defensiestaf, DV, DAB, DJZ, vertegenwoordigers KL, KMar, MIVD en OM Arnhem.
6. DJZ zal in overleg met de Ministeries van Buitenlandse Zaken en Justitie bezien of en op welke wijze melding aan de betreffende internationale fora ware te doen.
7. Een betrokkenheid van ISAF respectievelijk Nederland is in de berichten in de media tot heden niet ter sprake gekomen. DV stelt daarom voor vooralsnog een passieve woordvoeringslijn te hanteren.
8. Ik zal u omtrent de vervolgontwikkelingen nader informeren. Deze nota is afgestemd met DJZ, DAB en KMar.

De waarnemend Chef Defensiestaf,

  
P.J.M. Goddardij  
Luitenant-generaal

**Nota**



Defensie

Ministerie van Defensie

Defensie staf  
Defensie Crisis Beheersings  
Centrum  
Afdeling Operatiën

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2500 ES 's-Gravenhage  
www.mindef.nl

Steller:  
H.P. Boom  
Telefoon 070-3188768  
Fax 070-3188555

Aan De Minister  
De Staatssecretaris

d.t.v. SG

i.a.a. BUZA/DGPZ

BLS

✓BDM

DJZ

DAB

MIVD

HAEVAL

Datum 13 augustus 2002

Ons kenmerk S2002005742

Onderwerp Schietincident ISAF, d.d. 7 augustus 2002

1. Hierbij zend ik u een afschrift van het 'Incident Report' van ISAF betreffende het schietincident in het Bagram district te Kabul op 7 augustus 2002. Bij het incident zelf waren géén Nederlandse noch andere ISAF-militairen daadwerkelijk betrokken.
2. Uit het gestelde in paragraaf 2 en 3 van het rapport blijkt dat naar oordeel van Headquarters ISAF de op locatie aanwezige commandant van de Nederlandse eenheid de situatie juist heeft beoordeeld en binnen het geldende mandaat de juiste actie heeft ondernomen.

De Waarnemend Chef Defensiestaf

P.J.M. Godderij  
Luitenant-Generaal

	Koninklijke marechaussee Staf
d.d.	26 AUG 2002
Nr:	DOP / 2002 / 5938
Code nr:	


Bij beantwoording datum, ons kenmerk, en onderwerp vermelden.

207

Openbaar Ministerie  
Arrondissementsparket Arnhem

Team Bijzondere Wetten  
Postadres Postbus 9032, 6800 EP Arnhem

Bezoekadres  
Gerechtsgebouw  
Walburgstraat 2-4  
6811 CD Arnhem  
Tel. (026) 3592000  
Fax (026) 3593752

 Koninklijke marechaussee Staf
d.d. 22 AUG 2002
Nr. <u>AdP/2002/58919</u>
Code nr.

Aan Bevelhebber der Koninklijke Marechaussee  
Gmaj. C.N.J. Neisingh  
Van Alkemadelaan 85  
2597 AC 's-Gravenhage

Contactpersoon	
Doorkiesnummer	026 - 359
Datum	20 augustus 2002
Uw kenmerk	--
Ons kenmerk	Ah.6400.00 20351/02
Onderwerp	Schietincident Kabul op 7 augustus 2002

Bij beantwoording  
de datum en ons  
kenmerk vermelden.

Wilt u slechts één  
zaak in uw brief  
behandelen.

Geachte heer Neisingh,

Op vrijdag 16 augustus te 09.00 uur ontving ik uit handen van de Elt. van uw korps het originele rapport van bevindingen van de Koninklijke Marechaussee over de waarnemingen en activiteiten na een schietincident op 7 augustus 2002 in het politiedistrict 8 te Kabul in Afghanistan. Bij dit incident vielen een aantal dodelijke slachtoffers. Via uw stafofficier - de - verzocht u mij het in uw opdracht opgemaakte rapport te willen bezien op eventuele (internationale) strafrechtelijke implicaties.

Mede ter bevestiging van mijn telefoongesprek met de op vrijdag 16 augustus 2002 te circa 17.00 uur deel ik u hierbij het volgende mede:

1. Het rapport is ter visie aan de hoofdofficier, de WOS\*-afdeling en mij — als officier militaire zaken — voorgelegd en besproken.
2. Hierbij kwamen wij tot de volgende bevindingen:
  - (1) In het rapport hebben wij geen enkele aanwijzing kunnen vinden dat Nederlandse militairen zich schuldig hebben gemaakt aan enig strafbaar feit naar Nederlands militair- of commuun recht, noch aan enige overtreding van het humanitair- en/of oorlogsrecht.
  - (2) Voor wat betreft schending van de Wet Oorlogsstrafrecht en de daarmee samenhangende regels van het internationale humanitaire recht door de lokale strijdende partijen ligt de zaak gecompliceerder; zie hiervoor de als bijlage bij deze brief gevoegde notitie van collega van onze WOS-afdeling.

In dit verband staat op dit moment in ieder geval vast dat wij geen rechtsmacht kunnen uitoefenen, omdat geen van de eventuele lokale verdachten zich in Nederland bevindt.

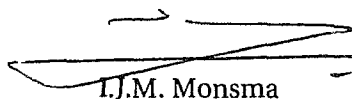
\* Wet Oorlogsstrafrecht

15

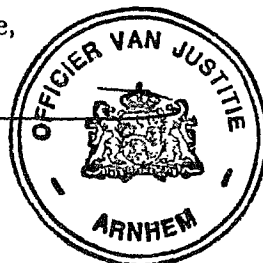
14/2

Gelet op het bovenstaande ziet het openbaar ministerie Arnhem geen  
aanleiding om nadere stappen te ondernemen en heb ik het originele dossier  
op maandag 19 augustus 2002 te 15.00 uur in persoon ter hand gesteld van de  
wachtmeesters . s en } van uw korps.

De officier van justitie,



I.J.M. Monsma





Aan:

Van: -----

CC:

Naar aanleiding van uw verzoek inzake het schietincident op 7 augustus jl. bij Kabul, kan ik u de volgende mededelen:

Ter voldoening aan de verplichtingen voortvloeiende uit de vier Rode Kruis Conventies van Genève uit 1949 heeft Nederland *universele rechtsmacht* gevestigd ten aanzien van bepaalde misdrijven. Onder universele rechtsmacht wordt begrepen de rechtsmacht die uitsluitend gebaseerd is op de aard en ernst van het misdrijf, ongeacht de plaats waar het misdrijf is gepleegd, da nationaliteit van de verdachte of de nationaliteit van het slachtoffer.

Universele rechtsmacht van Nederland strekt zich uit tot oorlogsmisdrijven en foltering.

Artikel 3, aanhef en onder 1 van de Wet Oorlogsstrafrecht (Iwtr. 05-08-1952) vestigt universele jurisdictie ter zake van misdrijven omschreven in art. 8 en 9 (schending van de wetten en gebruiken van de oorlog en het opzettelijk toelaten dat een ondergeschikte dergelijke feiten pleegt). Met de term "wetten en gebruiken van de oorlog" worden de regels van het internationaal humanitaire recht bedoeld waaraan strijdende partijen zich moeten houden bij de oorlogvoering. Deze regels bevinden zich in o.a. de vier Conventies van Genève van 1949 en zijn naar algemene opvatting bindend ook ten aanzien van staten die de conventies niet hebben geratificeerd.

Universele jurisdictie van Nederland ten aanzien van de oorlogsmisdrijven werd ook bevestigd door de Hoge Raad in de zgn. Knesevic-beschikking van 11 november 1997 (NJ 1998, 463). De Hoge Raad overwoog dat de militaire rechter bevoegd is te oordelen over delicten welke gekwalificeerd kunnen worden *als schending van de wetten en gebruiken van de oorlog en welke begaan zijn gedurende (burger)oorlogen en tijdens gewapende conflicten die niet als oorlog kunnen worden aangemerkt*, ongeacht de nationaliteit van de dader en de plaats van het misdrijf.

Universele rechtsmacht houdt *niet* in dat Nederland verplicht is een vervolging in te stellen voor ieder misdrijf omschreven in de Wet oorlogsstrafrecht. Op grond van het tweede lid van Artikel 146 van het Verdrag van Genève betreffende de bescherming van burgers in oorlogstijd, van 12 augustus 1949, is Nederland daartoe slecht verplicht indien de verdachte wordt aangetroffen op Nederlands grondgebied. In dat geval is Nederland gehouden om de vervolging in te stellen, tenzij de verdachte wordt overgedragen aan een andere staat met een direct aanknopingspunt met de zaak (“aut dedere aut iudicare”).

De Uitvoeringswet folteringgedrag gaat ook uit van universele rechtsmacht (artikel 5), doch alleen ten aanzien van foltering begaan *na* inwerkingtreding van de wet, d.w.z. vanaf 20 januari 1989. Voor de toepassing van artikel 5 van de Uitvoeringswet is het niet vereist dat feiten gepleegd zijn in oorlogssituaties.

Mits betrekking tot het schietincident in Kabul, heeft Nederland mijn inziens universele jurisdictie.

Uit het Rapport van Bevindingen van de Koninklijke Marechaussee blijkt dat er sprake was van een vuurgevecht tussen twee partijen, enerzijds een onbekende groep personen aangeduid als Taliban en Al Qaida strijders en anderzijds Afghaanse politie, militairen en burgers. Bij hun aankomst op de plek waar het gevechten werd, hebben de Nederlandse militairen een aantal lichamen en een gewonde aangetroffen, allemaal mogelijke Taliban en al Qaida strijders. De Nederlandse militairen hebben de gewonde eerste hulp verleend en daarna aangedrongen bij Afghaanse politie en militairen om hem naar een ziekenhuis in Kabul te vervoeren. Onderweg is de gewonde overleden.

De Nederlandse militairen hebben vervolgens gezien dat twee lichamen naast elkaar lagen en dat ze een schotwond door het hoofd hadden. Er is ook een lijk aangetroffen met zowel schoten in de rug, armen en benen als een schotwond in het hoofd. Bij geen van de lichamen werden wapens, uitrusting of schoenen aangetroffen.

De identiteit van de doden is onbekend.

In het rapport wordt ervan uitgegaan dat de doden krijgsgevangen waren die na hun overgave geëxecuteerd werden.

Er zijn echter enige onduidelijkheden.

Ten eerste is het onduidelijk of er ten tijde van het incident sprake was van een gewapend conflict. Sporadisch voorkomende daden van geweld vormen geen

gewapend conflict. Het Joegoslavië Tribunaal heeft geoordeeld dat van een gewapend conflict sprake is "*whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State*". Op dit moment beschikken wij over onvoldoende informatie om te kunnen beoordelen of er inderdaad destijds sprake was van een gewapend conflict in Afghanistan in de zin van de aangehaalde beslissing van het Joegoslavië Tribunaal.

In het geval dat er wordt uitgegaan van een gewapend conflict in Afghanistan, dient de vraag beantwoord te worden of de gepleegde moord gerelateerd is aan het gewapend conflict. Wederom is de beschikbare informatie over het incident onvoldoende om het motief van de moord te achterhalen (bijvoorbeeld, was er geen sprake van een persoonlijke vete of een wraakactie die ook buiten het kader van een gewapend conflict gepleegd kunnen worden)

Mocht het antwoord op beide vragen bevestigend zijn, dan is er mogelijk sprake van schendingen van Artikel 3 van de Conventies van Genève. Ingevolge artikel 3, zijn strijdende partijen verplicht om personen die niet rechtstreeks aan de vijandelijkheden deelnemen, met inbegrip van personeel van *strijdkrachten dat de wapens heeft neergelegd en zij die buiten gevecht zijn gesteld door ziekte, verwonding, gevangenschap of enige andere oorzaak*, "menslievend te behandelen". Het doden van krijgsgevangenen is expliciet verboden in lid 1 sub a van genoemde artikel. Lid 2 verplicht verder de strijdende partijen om de gewonden en zieken te verzamelen en verzorgen.

Het niet naleven van art. 3 door Afghaanse politiemensen en militairen - de vermeende daders - houdt echter nog niet in dat Nederland universele rechtsmacht zou hebben. Zoals eerder aangegeven *moet* de verdachte zich in Nederland bevinden en dat is hier niet het geval.

Kortom, het antwoord op uw eerste vraag is dat Nederland *geen* rechtsmacht heeft in deze zaak.

Te aanzien van de tweede vraag bericht ik u dat er zich in het rapport geen enkele aanwijzing bevindt dat Nederlandse militairen zich schuldig hebben gemaakt aan overtreding van het humanitaire en/of oorlogsrecht.



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(16)

**NOTA bestemd voor: CDS**  
Luitenant-admiraal L. Kroon

Datum : 20 augustus 2002  
Afdeling : DOKMar  
Nummer : DOKMar/2002/58090  
Bijlagen :  
Onderwerp : Rapport schietincident Kabul 070802

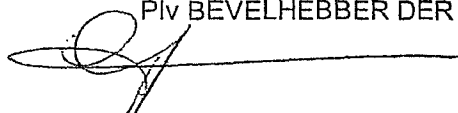
Ministerie van Defensie  
Onderafdeling  
Brigade-Generaal  
Archiever

Bijgaand bied ik, in mijn hoedanigheid van korpsschef, u het rapport aan dat in mijn opdracht is opgesteld naar aanleiding van het schietincident dat plaatsvond op 7 augustus j.l. in Kabul, Afghanistan, waarbij Nederlandse militairen zijdelings betrokken raakten.

Direct nadat ik het rapport vanuit Kabul ontving heb ik dit aan het Openbaar Ministerie in Arnhem ter beschikking gesteld. De Hoofdofficier heeft mij laten weten in het betrokken rapport geen aanleiding te vinden tot enig strafrechtelijk vervolg.

Het rapport ontvangt u als compleet dossier met 18 bijlagen, inclusief het beeldmateriaal op 2 diskettes en twee aps-cassettes. Voor de goede orde merk ik op dat de militairen, die met hun eigen aps-camera foto's hebben gemaakt en die hun materiaal vrijwillig voor dit onderzoek hebben afgestaan, in hun proces-verbaal van verhoor verklaren dat zij de negatieven graag terug ontvangen. Ik ga ervan uit dat uwerzijds voor de terugbezorging zal worden zorggedragen.

PIV BEVELHEBBER DER KONINKLIJKE MARECHAUSSEE

  
J.A. de Jong  
Brigade-generaal

V6 wraet

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Fifty-ninth session  
Item 11 (b) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION  
OF DISAPPEARANCES AND SUMMARY EXECUTIONS**

**Extrajudicial, summary or arbitrary executions**

**Report of the Special Rapporteur, Ms. Asma Jahangir, submitted  
pursuant to Commission on Human Rights resolution 2002/36**

**Addendum**

**MISSION TO AFGHANISTAN  
(13 to 23 October 2002)\***

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\* The executive summary of this report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

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### Executive summary

From 13 to 23 October 2002 the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, undertook a mission to Afghanistan.

The main objective of the visit was to examine the situation on the ground within the framework of her mandate. How do past and present violations of human rights affect the present situation and the future of the peace process? More importantly, the purpose was to search for actions, approaches or policies which would support the peace process so that the lives of civilians are protected.

Afghanistan has suffered under more than 23 years of conflict and grave violations of human rights, including extrajudicial, summary and arbitrary executions. The peace process initiated in the Bonn Agreement presents a crucial opportunity to address issues of accountability and transitional justice.

The efforts of the Transitional Administration of Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA) and the International Security Assistance Force (ISAF) are truly admirable. However, the peace process has so far not sufficiently addressed the question of how to deal with the past and of how to ensure justice and reconciliation. The current national institutions do not have a sufficient capacity to ensure justice. In the opinion of the Special Rapporteur, if these issues are not addressed there is a risk of a reversal of the peace process, a relapse into renewed violence and fresh refugee outflows. In this regard, ensuring security throughout the country is of paramount importance.

In view of this situation the Special Rapporteur recommends the following:

**The Special Rapporteur recommends that an international and independent Commission of Inquiry be constituted, backed by the United Nations, as a first step towards accountability. The mandate of the Commission should be limited to undertake an initial mapping-out and stocktaking of grave human rights violations of the past, which could well constitute a catalogue of crimes against humanity. The period should begin from the "Saur Revolution" (1978) and end with the establishment of the Interim Authority.**

**Parallel to this, the Independent Human Rights Commission should be encouraged and supported to debate and solicit wider opinion on possible mechanisms for transitional justice.**

**In addition, the national legal system needs to be buttressed and equipped to deal effectively with the issue of impunity. The Judicial Commission and the Constitutional Commission should be firmly supported by the international community.**

**The next step in the transitional justice process should be taken after extensive consultations between the International Commission of Inquiry and the Independent Human Rights Commission.**

**The human rights monitoring capacity of UNAMA should be strengthened until sufficient national capacities are available.**

**The international community should further explore options for supporting the security situation in Afghanistan, including options for expanding ISAF's role outside Kabul.**

**Disarmament, demobilization and reintegration of militias and commanders must be carried out firmly. All concerned Governments should lend political support to the Transitional Administration and UNAMA in this endeavour.**

**The reconstruction of Afghanistan must include the building of institutions and structures on a sound foundation. The law enforcement agencies should be comprised of individuals who are not suspected of having carried out serious human rights violations. An effective screening methodology should be adopted and a reliable database maintained. Law enforcement and security forces should be trained in international standards and prepared for protecting and promoting human rights. A section of the police should be exclusively trained to carry out investigations and given skills to assure liaison with the office of the public prosecutor. The forensic expertise of the police should be enhanced.**

**Serious consideration should be given to the selection of judges and their further training. The nature of training for the judiciary and public prosecutors should be carried out during the course of their work and in close contact with individual judges and prosecutors. In addition a fully functional judicial academy should be made operative. Security for judges should be ensured.**

**Until the legal and judicial system in Afghanistan can guarantee compliance with United Nations safeguards and restrictions relating to the imposition of capital punishment, imposition of the death sentence should be suspended and a moratorium on executions should be implemented.**

**Annex**

**REPORT BY MS. ASMA JAHANGIR, SPECIAL RAPPORTEUR ON  
EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS  
ON HER MISSION TO AFGHANISTAN (13 TO 23 OCTOBER 2002)**

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### **Introduction**

1. From 13 to 23 October 2002 the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, undertook a mission to Afghanistan with the general aim of assessing the current as well as the past situation with regard to extrajudicial, summary or arbitrary executions, and to provide recommendations to relevant actors for future action relevant to her mandate. The mission took place following consultations with the Afghan Interim Authority and then the Afghan Transitional Administration and the Special Representative of the Secretary-General for Afghanistan, Mr. Lakhdar Brahimi.

2. The Special Rapporteur wishes to thank the Islamic Transitional Administration of Afghanistan for the cooperation and support extended to her and for its openness exhibited throughout the mission. During the entire mission the Special Rapporteur was able to travel freely throughout the country, except where security concerns did not allow it, and to meet with a wide range of individuals and gather information from a variety of sources without any impediment or obstruction.

3. The Special Rapporteur also wishes to express her appreciation to the United Nations Assistance Mission to Afghanistan (UNAMA), the Special Representative of the Secretary-General for Afghanistan, Mr. Brahimi, who assisted in the facilitation and logistical support of the mission. In particular she wishes to thank staff of the Human Rights Unit of UNAMA for facilitating the mission despite the very limited resources at their disposal.

#### **1. Programme of the visit**

4. During the visit, apart from various meetings in Kabul, the Special Rapporteur undertook a series of daily missions to the following areas and regions: on 17 October to Herat; 18 October to Kandahar; 20 October to Mazar-e-Sharif and 21 October to Paghman, outside Kabul.

5. In Kabul the Special Rapporteur met President Hamid Karzai; the Minister of Justice, Mr. Abdul Raheem Karimi; the Minister of the Interior, Mr. Taj Mohammad Wardak; the Attorney-General, Mr. Abdoul Mahmood Daqqiq; the Chief Justice of the Supreme Court, Mr. Fazil Hadi Shinwari, and his deputy Mr. Fazel Hamad Manawi; and the Commander of Kabul Police, General Bashir Salangi. She also met with members of the Afghan Independent Human Rights Commission, including its chairperson, Dr. Sima Samar. She met with a number of representatives of civil society, including national and international human rights non-governmental organizations, local lawyers, as well as representatives of political parties. She also met with a number of representatives of the diplomatic corps in Kabul, including the Ambassador of the United States of America, Mr. Robert Patrick John Finn, and the Representative of the European Union in Afghanistan, Mr. Francesc Vendrell. She had a separate meeting with General Karl Eikenberry of the United States military forces in Afghanistan. She held meetings with various staff of UNAMA, UNHCR and the heads of the United Nations agencies in Afghanistan, as well as the legal adviser of the United Nations-mandated peacekeeping force in Kabul, ISAF. She also met with the head of the delegation of the International Committee of the Red Cross (ICRC), Mr. Pierre Wettach. In

addition, she met with various individuals who had specific information relevant to her mandate, including families of victims and eyewitnesses to a number of incidents of some alleged summary executions. During her stay the Special Rapporteur also had the opportunity to visit a local prison in Kabul and observe the retrial on 15 October 2002 of Mr. Abdullah Shah, an individual accused of several murders.

6. In Herat the Special Rapporteur met with the provincial governor, Mr. Ismael Khan; the provincial chief justice, Mr. Maulawi Khudaydad, the local chief State prosecutor, local lawyers and prosecutors, as well as with a local association of professionals. In addition the Special Rapporteur held talks with various United Nations officials based in the region.

7. As the visit to Kandahar took place on Friday, 18 October 2002 (Friday being a non-working day in Afghanistan), it was difficult to arrange meetings with local officials. The Special Rapporteur, however, did have a meeting with the provincial Chief Justice, Mr. Mullawi Hadji Rahmat Ullah and some of his colleagues. In addition, the Special Rapporteur had meetings with various United Nations officials and also visited a local camp of internally displaced persons from the north of Afghanistan who had been displaced recently.

8. In Mazar-e-Sharif the Special Rapporteur met with representatives of the five regional leaders - Mr. Zalmay Yunusi (Jamiat-i Islami), Mr. Fayzallaf Zaki (Junbish-i Milli-yi Islami), Mr. Sardar Saidi (Hizb-i Wahdat-Khalili), Mr. Safai (Hizb-i Wahdat-Akbari) and Mr. Najib (Harakat-i Inqilab) as well as a number of NGOs. She also visited a site in the outskirts of Mazar-e-Sharif, which allegedly contained the remains of thousands of ethnic Hazaras summarily executed by the Taliban, and she met with families of some of the victims.

9. In Paghman the Special Rapporteur met with a local leader as well as officials in the regional police office and other private individuals.

## **2. The purpose of the visit**

10. The Special Rapporteur has keenly followed the developments in Afghanistan and undertook the mission after consulting with the Special Rapporteur on the situation of human rights in Afghanistan, Mr. Kamal Hossain.

11. The new turn of events in Afghanistan, after 11 September 2001, brought relief and a ray of hope for peace for the ordinary citizen, but it also brought fresh challenges for the Afghans as well as their well-wishers around the world. The main challenge now is to establish security and respect for the rule of law in order to sustain the peace process. Security remains notional in the absence of the rule of law. At the same time, rule of law can only be properly enforced in a secure atmosphere. The Special Rapporteur is of the view that mere absence of conflict will not protect the lives of people and the respect for the rule of law is central to the peace process and in providing security. She is concerned that the grave human rights violations committed in the past impinge upon the present situation and future developments in Afghanistan. Reports of extrajudicial and summary executions (though nowhere near the scale of the past) continue to be received. A number of such extrajudicial or summary executions are being carried out by local or regional commanders or militias under their control.<sup>1</sup> Reports of reprisal killings by the commanders have also been brought to the attention of the Special Rapporteur. According to the

information received, the cycle of violence has not ended and impunity remains fully entrenched in the "new" system. Simultaneous steps will have to be taken to address both security concerns and to build institutions for redress so that a sense of justice begins to prevail.

12. The main objective of the visit was, therefore, to examine the situation on the ground within the framework of the present mandate. How do past and present violations of human rights affect the present situation and impact on the future of the peace process? More importantly, the purpose was to search for actions, approaches or policies, which would support the peace process so that the lives of civilians are protected. It should be noted that the Special Rapporteur is conscious of the fact that a comprehensive assessment of the past and present violations is a tremendous task, and this report can in no way claim to be comprehensive with regard to the issue. Rather, the Special Rapporteur believes that she can best carry out her mandate by pinpointing issues which need to be addressed and to indicate various options for future action.

### **3. History of Afghanistan**

13. Afghanistan gained complete independence in 1919 under the reign of King Amanullah, who brought about a number of social and political reforms. In particular he discouraged the seclusion of women and abolished slavery and forced labour. The first Constitution (in 1923) was introduced, which included political rights. His reforms were resented by religious leaders, local tribal chiefs and members of the armed forces. Following a revolt, he abdicated in favour of his older brother, who ruled for three days and was succeeded by Habibullah Khan, more popularly known as Bacha-I-Saqqo (son of the water carrier). After his nine-month rule he was overthrown by Nadir Khan. Bacha-I-Saqqo was captured and executed on 3 November 1929. Nadir Shah reversed the reforms of Amanullah and promulgated a new Constitution in 1931. He was able to reunite the fragmented multi-ethnic society of Afghanistan, but could only hold on to power for four years, at the end of which period he was assassinated in 1933.

14. King Zahir Shah, the son of Nadir Shah, succeeded his father and ruled Afghanistan for 40 years - from 1933 to 1973 - mostly under the influence of his uncles. During his rule, Afghanistan joined the League of Nations (1934) and proclaimed neutrality at the beginning of World War II. By 1963, a political process was set in motion whereby elections were held and the country moved towards a constitutional monarchy with a parliamentary system. A new Constitution was debated by the Loya Jirga<sup>2</sup> and adopted in 1964, but was only partly enforced. The transition towards democracy, however, remained slow as political parties could organize but the law allowing them to contest elections was never signed by the King. Nevertheless, political movements were organized on university campuses and in other sections of civil society. These later emerged in a polarized atmosphere. The Communist/Marxist movements and the Islamists were the two main rivals. The Government under Zahir Shah was also reported to persecute political rivals and members of political movements.

15. King Zahir Shah was deposed in a bloodless coup whilst abroad. His cousin and former Prime Minister, Muhammad Daoud, seized power in July 1973 as President and introduced a new Constitution in 1977, thereby ending the monarchy. Daoud's allies in his coup included Marxists from the People's Democratic Party of Afghanistan (PDPA). The regime faced armed opposition from the Islamist parties, including a reported coup attempt in December 1973 and

attempted uprisings in Kounar, Laghman and Pansheer, in July 1975. The regime lost no time in settling scores with the Islamists and up to 600 Islamic activists were arrested and many were later executed. A ruthless secret police was introduced. The Daoud regime also pushed the Pakhtoon issue with bordering Pakistan, which renewed tensions between the neighbours. But the alliance that had mounted the coup against Zahir Shah fell apart and the PDPA staged a bloody coup in April 1978 killing the incumbent President, his family members and the palace guards.

16. The 1978 "Saur Revolution" (otherwise known as the "Saur coup d'état"), as it was labelled, was a turning point for Afghanistan. The low-intensity rebellion turned into a war of national destruction with regional and international dimensions. Nur Mohammad Taraki assumed the Presidency but was progressively stripped of power by his dominant Prime Minister, Hafizullah Amin. The Government was supported and protected by the Soviets, who are reported to have poured weapons and sent a number of "advisers" to Afghanistan. During this period it is estimated that thousands of tribal and religious leaders, intellectuals and non-Pashtun prominent persons were executed.

17. On 14 September 1979, Amin ousted Taraki and had him murdered. On 24 December 1979 Soviet troops landed at Kabul airport and took control of all strategic positions in the capital, accompanied by anti-Amin figures in the PDPA. The Presidential palace was attacked and Amin was killed. He was replaced by Babrak Karmal, who presided over the PDPA regime, with the backing of the Soviet military, until May 1986. At this point Karmal was replaced by Mr. Mohammad Najibullah, former chief of the secret police (KhAD). Disappearances and summary executions peaked during the period 1978 to 1979. The Taraki-Amin regime undertook mass arrests of suspected political opponents and in 1989 the Najibullah regime published a list of 11,000 political prisoners who it said had been summarily executed in this period.<sup>3</sup> Karmal and Najib presided over counter-insurgency operations throughout their period, 1980 to 1992, and there were persistent reports of use of excessive force and breaches of international humanitarian law in operations against the civilian population and armed opposition.

18. The armed Islamist opposition, that had commenced operations in 1973, expanded rapidly after the PDPA takeover in 1978. During this period, the Mujahideen were armed, trained and supported in Pakistan. It is reported that Pakistan's Inter Services Intelligence (ISI) and the United States administration supported the Mujahideen, who waged guerrilla warfare in Afghanistan. The extreme repression of the Taraki-Amin period, and then the deployment of Soviet troops throughout the country, were accompanied by widespread armed resistance and revolts. The first documented massacre of the Afghan war occurred in March 1979, in Kerala village, on the outskirts of Asadabad, Kounar. An Afghan army unit fired indiscriminately on a gathering of men and boys, resulting in the deaths of over 1,000. Subsequently, for the duration of the conflict, armed factions, affiliated to Government and opposition, were accused of undertaking numerous mass or indiscriminate killings of civilians and combatants "hors de combat".

19. By 1987, the growing Soviet-American rapprochement increased pressure for a settlement on Afghanistan. The Geneva Agreement was signed on 14 April 1988, calling for a phased Soviet withdrawal, which was carried out by February 1989, but the civil war continued now amongst the Mujahideen themselves and between them and the government forces. This was a moment of lost opportunity to forge peace.

20. In early 1992, the United Nations produced a peace plan, on the basis of which Mr. Najibullah agreed to step aside to allow a multiparty Government to function. In return he was offered a safe passage out of the country under the protection of the United Nations. This failed, as northern militias were already moving into Kabul and he was returned from the airport to the safety of the United Nations compound. By April 1992, the Mujahideen entered Kabul and on the basis of the Peshawer Accord, Sibghatullah Mojaddidi headed a 10-party government. After two months he peacefully handed over power to Burhanuddin Rabbani, the leader of Jamiat-I-Islami. Rival armed factions struggled for control of Kabul throughout the period 1992-1996. Some estimates say that around 50,000 people were killed in Kabul between April 1992 and September 1996. The factional fighting was brought to a conclusion when the Taliban captured the city. However, the Taliban's first act upon arrival in Kabul was to forcibly remove former president Najibullah and his brother from the United Nations compound and to summarily execute them in public. It has been widely reported that this operation was supervised by Mulla Abdul Razak Akhund, subsequently appointed interior minister of the Islamic Emirate.

21. The Taliban movement emerged in Kandahar province in 1994. During 1994 to 1996 the movement spread rapidly through south-western Afghanistan, to the point where it was able to lay siege to Kabul. The movement captured Kabul and the east in September 1996. It staged an abortive attempt to take over north-western Afghanistan in 1997, and was then successful in capturing north-west and central Afghanistan in 1998. In the course of their military campaigns, the Taliban established a new pattern of human rights abuses, including several massacres of civilians, mass arbitrary arrests and deliberate destruction of housing and livelihoods in the Shomali plain, Bamyan, Khwaja Ghar and Darra Souf. By 1996, the groups opposed to the Taliban formed an alliance called the United National Islamic Front for the Salvation of Afghanistan, or the United Front, representing the ousted Rabbani government. The real power behind the United Front was their military leader, Commander Ahmed Shah Massoud. He was assassinated days before 11 September 2001. By then, the Taliban were in control of well over 80 per cent of the country. However, diplomatic recognition was withheld by all United Nations Member States with the exception of Pakistan, Saudi Arabia and the United Arab Emirates. It is reported that the ISI soon made contacts with the Taliban and are widely accused of supporting them right to the end. All Governments in Pakistan have denied any support to the Taliban but accounts indicate otherwise.

22. By early 1997, Osama bin Laden, a Saudi millionaire, had taken refuge in Afghanistan and a network of Islamist militants from across the world entered the war. A number of Pakistani and Afghan refugees studying in Madrassas (religious schools), run by hard-line religious leaders in Pakistan, joined the networks in Afghanistan.

23. Alarmed at reports that the Taliban were providing “sanctuary and training for international terrorists and their organizations”, in October 1999 the Security Council froze funds and financial resources claimed by the Taliban. The Council demanded that Osama bin Laden (already indicted by the United States for involvement in the 1998 bombing of American embassies in Kenya and Tanzania) be handed over to the “appropriate authorities”. In December 2000, the Security Council judged that the Taliban had failed to respond to its demands and that this constituted a threat to international peace and security. The Council decided to impose further sanctions that constituted an arms embargo and prohibition on all military assistance to the Taliban. The Taliban reacted by closing down the offices of the United Nations Special Mission in Afghanistan.

24. Following the tragic terrorist attacks in the United States on 11 September 2001, it launched an attack against the Taliban and al-Qa’idah forces in Afghanistan in November 2001. A few weeks later, the Taliban withdrew or surrendered and Afghan opposition groups met in Bonn to negotiate a transitional settlement.

#### **4. The Bonn Agreement, transition to peace and better governance**

25. After nine days of intensive negotiations, on 5 December 2001 the United Nations-sponsored talks in Bonn, Germany, culminated in the signing of an agreement on a provisional arrangement in Afghanistan pending the re-establishment of permanent government institutions. The Bonn Agreement was backed by Security Council resolution 1386 (2001).

26. The Bonn Agreement contains a number of strong and specific human rights clauses, including the provisions binding the authorities to international human rights standards during the transitional period, securing political participation for women, providing for the establishment of an independent human rights commission, granting the right to the United Nations to conduct human rights monitoring and investigations and to recommend corrective action, and calling for a national programme of human rights education in Afghanistan.

27. Following the establishment of the Afghan Interim Authority, the Bonn Agreement sets out specific time-bound steps towards establishing a full-fledged Government:

- A Special Independent Commission to convene an Emergency Loya Jirga to be opened by King Zahir Shah within six months of the transfer of power to the Interim Authority. A Transitional Administration was agreed upon headed by Mr. Hamid Karzai (Loya Jirga held on 18 June 2002);
- A Constitutional Loya Jirga to be convened within 18 months of the establishment of the Transitional Authority, in order to adopt a new Constitution<sup>4</sup> (around end of 2003); and
- A Government to be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga (around June 2004).

28. In terms of the specific human rights activities, an Independent Human Rights Commission is to be the first component, and is to then serve as the centre-point of the entire programme, which will include activities in the following areas:

- Establishment of the independent human rights commission, and the building of its capacities;
- A programme for the advancement of the human rights of women;
- A national programme of human rights education; and
- A national process of consultations on transitional justice.

29. With regard to the legal framework and judicial system, the Bonn Agreement stipulated that until the adoption of a new constitution, the Constitution of 1964, to the extent that its provisions are not inconsistent with those contained in the Bonn Agreement, would be the valid constitution of Afghanistan. Furthermore, the Bonn Agreement also notes the exception of those provisions of the Constitution "relating to the monarchy and to the executive and legislative bodies provided in the Constitution; and existing laws and regulations, to the extent that they are not inconsistent with the Bonn Agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations".

30. The Bonn Agreement further stipulates that the judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration. The agreement also provides for the Interim Administration to establish, with the assistance of the United Nations, a judicial commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.

31. Following the Bonn Agreement, the Security Council on 28 March 2002 adopted resolution 1401 (2002), which established the United Nations Assistance Mission in Afghanistan (UNAMA) as proposed in the report of the Secretary-General of 18 March 2002 (S/2002/278). UNAMA is intended to ensure that all United Nations assistance efforts are channelled towards supporting the implementation of the peace process by the Afghan people. Its size and structure is relatively lean. Human rights were conceptualized as a cross-cutting issue in both pillars of UNAMA.<sup>5</sup> During her mission, the Special Rapporteur was greatly impressed by the work of UNAMA, whose staff is working under very stressful conditions and pressing deadlines.

#### **5. International human rights instruments to which Afghanistan is a State party**

32. Afghanistan is a State party to most of the key international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the

Child. Afghanistan is also a signatory of the Convention on the Elimination of All Forms of Discrimination against Women. Given the many years of conflict, it will be no surprise that Afghanistan has not been in a position to submit reports to the treaty bodies for many years. As an example, the last submission of a report under the ICCPR was in October 1991. Afghanistan's obligations under international law were also recognized in the Bonn Agreement. It said that the legal framework will not be inconsistent with the international legal obligations to which Afghanistan is a party.

33. During the visit of the Special Rapporteur to Afghanistan, President Hamid Karzai indicated that Afghanistan would shortly accede to the Rome Statute of the International Criminal Court. In January 2003 it was reported that the Government had in fact completed the accession procedure. If these reports are accurate, the Special Rapporteur welcomes this development.

#### **6. A glimpse of grave human rights violations of the past**

34. The history of violence throughout the years of conflict has been reported by various authors, journalists, NGOs and United Nations reports. But there is no official independent and comprehensive account of it. Some courageous local groups and other individuals have documented major incidents of grave human rights violations and are continuing to do so. Mass graves have been identified and it was pointed out to the Special Rapporteur that a number of suspected perpetrators of grave human rights violations continue to live comfortably in Afghanistan. Some also hold important positions or authority in the new set-up. While practically everyone supports the Transitional Administration led by President Hamid Karzai, who has earned respect amongst the people, they fear elements within the new set-up, who continue to threaten their lives, particularly of those living outside of Kabul.

35. It was the clear impression of the Special Rapporteur that amongst the people there is a strong desire for justice and a craving for peace. Most people realize that the Transitional Administration is facing a delicate situation. Any wrong step towards transitional justice or demobilization and disarmament could face a revolt from within the Transitional Administration itself and by local or regional commanders.

36. At the same time, a deadly silence on the question of impunity will open up all opportunities for serious human rights violators to entrench themselves into the system. This could, by itself, lead to a reversal to the peace process, a relapse into renewed violence and fresh refugee outflows. The decision for any action or inaction must be based on the realities on the ground and the seriousness of the crimes committed. According to the overwhelming information of killings committed in the past,<sup>6</sup> the Special Rapporteur is inclined to believe that some human rights abuses would constitute crimes against humanity. She can only share limited information because of space constraints and security risks for those who provided her with this information. The narrative above has already noted the pattern of arbitrary detentions, summary executions, massacres of civilians and use of unjustified, excessive force, during counter-insurgency operations and armed resistance, 1978-1992. In addition, specific incidents also reported to the Special Rapporteur clearly illustrate the magnitude of the issue:



- In 1980, troops shot at protesters who were distributing pamphlets against the regime. They were shot at with live ammunition, and rockets were fired on them from helicopters. Some 800 people are reported dead. The same year a student procession ended in a hail of bullets. Over 100 students were allegedly executed;
- A schoolteacher arrested in 1981 described her detention centre, where fingers, noses, ears, legs, hands, breasts, and hair of women were piled. In one corner there was a decayed corpse;
- Soviet forces carpet-bombed the western city of Herat in 1984, resulting in hundreds of civilian casualties;
- Under the Soviet period, the intelligence agency KhAD engaged in widespread torture and killing of political opponents. According to information received by Amnesty International, more than 8,000 people were executed after summary trials by special courts between 1980 and 1988;
- In 1992, Junbish forces killed a number of women in Kate Now, North Kabul. They were raped, mutilated and then killed. Corpses of five women were later identified;
- In 1993 the sustained rocket attacks on Kabul carried out by armed factions, most notoriously by Hizb-I-Islami forces, reportedly raped women and caused tens of thousands of civilian deaths;
- In February, 1993 Jamait and Ittihad-i-Islami forces went on a rampage in the civilian neighbourhoods of West Kabul, mostly inhabited by Hazara population. They are reported to have raped a number of women and killed over 100 civilians;
- A number of incidents have been reported between 1992 and 1997, where forces of various Mujahideen groups hijacked vehicles (800 documented) and in a number of cases their drivers and passengers were shot dead;
- Hindu and Sikh communities were targeted in 1994, with around 40 people hunted down and killed;
- On 29 July 1994 the BBC correspondent, Mir Wais Jalil, was killed reportedly by militants of Hizb-i-Islami;
- In May 1997, following a revolt in Mazar-e-Sharif after the Taliban captured the city, hundreds of Taliban were killed. It is reported that hundreds were taken into custody and executed in batches. Some bodies were bound together and hundreds thrown down the wells, possibly after being shot;
- In September and December 1997, the Taliban again attempted to take control of Mazar-e-Sharif, but were repulsed. During their retreat they reportedly carried out massacres in a number of villages in Qizilabad and around Qaiser, Faryab Province. It is reported that at least 600 people were massacred in Qaiser city alone;

- In August 1998, the Taliban took control of Mazar-e-Sharif, massacring mostly Hazara civilians. Reports claim that 2,000 people, mostly Hazaras were systematically hunted down and killed. Some were boiled or asphyxiated to death. There are reports of foreign elements leading the massacre. The Special Rapporteur met some victim families of this tragedy. She also visited one mass grave, where bare human bones were vividly visible. Women family members of those executed were keen to see justice. One of them said that she had buried her husband and son by herself in her courtyard and was sitting on their graves waiting for justice to be done. The Special Rapporteur reported the massacre in her report to the Commission on Human Rights (E/CN.4/1999/39);
- In May 2000, the Taliban tortured and killed 31 ethnic Hazara prisoners in an area known as Hazara Mazari, on the border between Baghlan and Samangan Province;
- The Taliban are reported to have used detainees for clearing mines in Shamali, Dara-i-Suf, killing a number of people;
- Between January and April 2000, mass arrests were made by the Taliban in district Sangcharak. Two days later bodies of 26 people, from amongst those arrested, were found at a place called Lalli Khandand. Seventeen elders were summarily executed in the village Khassar in Gosfandi province;
- A series of massacres took place in Yakawlang between January and June 2001. At least 176 people were brutally killed. In one village all adult males were killed. Old men and women survivors were allowed to bury their dead ones after a couple of days. Footage and photographs taken after the incident suggest that there were foreign fighters amongst the Taliban forces. Some wrote warnings on the walls of buildings in Urdu. This report has also been previously reported on by the Special Rapporteur (E/CN.4/2002/74);
- In 2001, the Taliban advanced towards Khwajaghar into an area under the control of the United Front (UF). The UF forces retreated but took back the area after 10 days. During the 10 days of Taliban control 15 civilians, including a 15-year-old boy, were bound and then shot in the head and neck. The victims were all farmers. In Takhmali six villagers were shot while trying to escape;
- Several reports were received of summary trials of homosexuals, who were convicted and buried alive in the ground during the period of the Taliban;
- In May 2001 the Taliban took over the district of Zari in Balkh province from forces loyal to Commander Dostum, summary executions of unarmed civilians was carried out;
- In September-October 2001, while retreating, the Taliban killed 80 civilians, mainly Hazaras, in Kand-i-pusht, while they were fleeing for Pakistan. Other people belonging to ethnic and religious minority groups were shot dead near the airport in Shindand;

- After 11 September 2001 and before the Interim Authority assumed office, a number of summary executions have been reported which were allegedly carried out by the retreating Taliban and their foreign allies; and
- In November 2001, thousands of Taliban, including their foreign allies, surrendered or were captured in Kunduz, after United States bombings from the air and the Northern Alliance on the ground overpowered them. Several hundred prisoners of war were put in containers for transportation by road. On the way to Sheberghan Jawzjan province, most of them reportedly died of suffocation. The Northern Alliance commanders allegedly buried them in a mass grave in Dasht-e-Layli. The Office of the United Nations High Commissioner for Human Rights initiated a preliminary forensic investigation, which was carried out under the auspices of UNAMA. The Special Rapporteur met an eyewitness to the incident, who confirmed that heavy machinery was used to prepare the gravesite. According to the information received further forensic investigation on a few gravesites is planned for the spring of 2003.

37. The Special Rapporteur found that present situation in Afghanistan is unique as the Transitional Administration, the international community and, most importantly, the people of Afghanistan are collectively rebuilding a society and a country, which has suffered from more than 23 years of conflict and a series of grave human rights violations. The circumstances are bound to be complex, as the legacy of the past cannot be wiped away in a matter of months. At the same time, it is essential to initiate under the United Nations auspices a gradual process of accountability that will serve to strengthen the rule of law. The process must take place concurrently with political developments. As Afghanistan moves towards formalizing a constitutional structure, it is imperative that the process of formalization be accompanied by increasing levels of accountability and recourse to law. In the opinion of the Special Rapporteur, the lack of political developments with safeguards to protect the lives of the people, has led, and is likely to lead once again, to the marginalization of the Afghanistan population and strengthening of unconstitutional centres of power. If this is allowed to happen, the right to life is likely to remain under threat and to be frequently violated by those who have gained power on account of historical impunity for past violations. This could lead to a collapse of the peace process which has so painstakingly been put in place.

38. There is a general awareness of the atrocities committed by various groups, actors and authorities in Afghanistan but knowledge about the level of cruelty experienced by the Afghan people has not reached ordinary people elsewhere throughout the world. In particular, for lack of proper information, many Muslims look up to the Taliban rule as truly Islamic. This disinformation or misconception has to be corrected so that religious-based prejudices are contained and addressed. An accountability process, which is slow but sure, will be another opportunity to set the record straight and to shift public attention to the actual cause of some of the major and grave human rights violations.

39. There are fears of losing witnesses and evidence as time goes by. The Special Rapporteur was informed of intimidation of witnesses and some of them feared reprisals. The

process for accountability must therefore be initiated sooner rather than later. It must be even-handed and not seen to target any one ethnic or sectarian group. It is therefore imperative to take stock of excesses committed during the past many years of conflict.

40. At the same time there are also increasing calls for national reconciliation within the ongoing peace process. However, the lack of any process of accountability may actually impede this. For example, many are now calling for the political rehabilitation of people previously associated with the Taliban movement. The fact that there has been no progress towards accountability for the Taliban responsible for massacres or other violations makes it all the more difficult for the victims of the Taliban to accept that any Taliban should again be able to play a political role or participate in national reconciliation. The start of accountability is the basic guarantee to victims of grave abuses that national reconciliation is compatible with justice.

41. Consultations undertaken by the Special Rapporteur also indicate that the many Afghan combatants - on all sides - who have conducted themselves honourably are supportive of moves to hold to account those who have caused unnecessary suffering by breaching international humanitarian law. Successive international resolutions and agreements, most lately the Bonn Agreement itself, have affirmed the basic legitimacy of the Afghans' armed struggle. However, it is a principle of international law that both sides in a legitimate armed conflict must be held accountable for the conduct of their forces, in particular with regard to the treatment of civilians and those "hors de combat".

## 7. Reports of present violations of the right to life

42. The information collected during the mission indicates that incidents of extrajudicial and summary executions have dramatically decreased since the transition, but nevertheless are frequently taking place and the situation warrants concern. In many places an atmosphere of fear prevails, especially in areas outside of Kabul. For example, during preparations to the Emergency Loya Jirga and leading up to it, the situation was tense. More reports of threats and killings by local and regional commanders were recorded. Political patronage to these commanders is also a factor which emboldens them. The Special Rapporteur was told, without any cogent proof, that neighbouring countries were suspected of backing some of these commanders or officials of the administration. The United States-led coalition appears to have provided resources and arms to some key commanders until October 2002, which were, according to some reports used to maintain their militias. A full assessment of the situation can obviously not be rendered given the still very weak structures for monitoring violations of human rights, both in terms of national capacity as well as that of the international community. Some of the persons who met with the Special Rapporteur were able to slip written accounts to her. The accounts given below do not give the entire picture but only a few glimpses of the situation.

- In August 2002 approximately seven prisoners from a prison in Kabul were allegedly killed extrajudicially during an attempted escape. It is unclear how and by whom they were killed. It is reported that President Karzai ordered an investigation. The Special Rapporteur was not, however, able to retrieve any information regarding the result of the investigation.

- In June or July 2002 in Uruzghan Province an individual suspected of murder was allegedly apprehended by local police officers and subsequently summarily executed by the same police officers on their way back to the police station. No inquiry was conducted;
- Another reported case dates back to around August 2002 in Kandahar Province. A recent recruit of the army had allegedly fired shots at a patrol of United States troops driving by. The American forces left the area, and subsequently the local commander managed to convince the recruit to hand over his weapon. It is reported that the commander then shot and killed the recruit on the spot. It is further reported that the following day the body of the recruit was found hanging from a lamppost in Kandahar with a sign attached to his body with an inscription in Urdu reading "This is what happens to those who shoot at the Americans". It should also be noted that other conflicting reports claim that the individual was killed in a cross-fire which followed his initial shot at the US troops. However, no inquiry was held to ascertain the facts;
- The lives of women remain vulnerable and there are reports of killings of women by their family members in the name of morality. Despite interventions by local NGOs, the authorities have looked away, and have taken no action to investigate such murders. Such gender-based impunity by any State is a clear discrimination of the right to life of women;
- There were reports claiming that renewed forced recruitment was being carried out by various militia groups in provinces of the North of the country. Some reports indicated that local militias summarily executed persons who had refused the recruitment;
- The Special Rapporteur also received information about a bomb attack against a wedding party in Paghman which resulted in at least two deaths. It was alleged that sometime in September or October of 2002 a bomb had been thrown at a house in Paghman where a wedding party with music and dancing was taking place. According to local law enforcement officials the incident was under investigation but no suspects had been identified. Other sources claimed that one of the local leaders of Paghman had been behind this attack as he had banned dancing and music and warned of dire consequences if anyone violated his orders;
- During her visit to Kandahar, when the Special Rapporteur interviewed internally displaced persons from the North (mainly from Faryab Province), she was informed that these people - mainly ethnic Pashtoons - had allegedly left their area of origin as their local tribal leaders had been summarily executed by local militia. It was unclear to which extent these killings were currently under investigation;
- Another example concerns a man from a village in the North, who was killed by a local militia for intervening in a dispute over factional control of access to water sources. The leadership intervened and the militia leader apologized to the other

villagers by offering compensation for the crime. The villagers have refused and are requesting that the militia leader be arrested and charged - so far no action has been taken;

- There were reports of deliberate killing of over 20 civilians, including women and children in Borgh village of Chemtal district in January 2002. No investigation was made despite allegation of extrajudicial killings;
- Haji Ramat Khan was kidnapped from Nahri Toop District and killed in January 2002. His body was found two days later in the desert south of Mazar. It is suspected that he was kidnapped on the orders of a high official;
- In January 2002, 30 civilians have reportedly been massacred in Qala-I-Zal district of Kunduz during clashes between Junbish and Jamiat. Similarly in Sholgara and Khairabad during these clashes, 80 villages were looted and a large number of civilians were reportedly killed;
- In February 2002 a family of seven members was massacred in District 9 of Mazar City. The father and eldest son of the family were thrown alive in the shallow well of the house and the wife of the eldest son, two daughters, a small child and the mother of the family were killed in the house. The eldest daughter, who was 14 years old, and the wife of the eldest son of the family had no clothes on their bodies and had clear signs of sexual attack/rape. The locals alleged that the killings were carried out on the instructions of a local commander;
- In March 2002 a pickup of Haji Habib, Commander of Military Division 18 from Junbish, collided with a public minibus full of passengers on the road close to Shiberghan. Although it was the fault of the commander's driver, the commander and his men killed the driver and his 10-year-old son on the spot;
- In April 2002 a senior Professional staff member of FAO was killed in the evening at home by armed men. His case is still pending. The alleged killer is not detained or handed over to the police by Junbish, as he is closely associated with commander Lal from Junbish;
- The Chief Justice of Kandahar expressed fear of armed people, who he said intimidated the judiciary. He expressed his inability to deliver justice in such an atmosphere;
- In Herat, the Special Rapporteur heard and received several reports of threats by the provincial and local administration; and
- In Kandahar, a high official of the intelligence services of the provinces was to have ordered torture of prisoners, three of them died as a result. None can even speak about it.

43. On 1 July 2002, United States forces conducted an aerial attack on Mazar village, then on Syahsang village, followed by attacks on Shartoghay village. The region is extremely isolated and can be reached after nine hours of driving. In the Karaka village a wedding party was being hosted, while American aircraft were flying close to the ground. They reportedly used heavy machine guns and grenades. There are reports alleging that at the time United States/coalition ground forces were seen present on the ground prior and during the air attacks. The number of casualties could not be determined. The United States is reportedly admitting the deaths of approximately 40 people, while the locals claim a higher death toll. According to some reports the wedding party had been attacked by United States forces as some persons present at the party had fired rifle shots in the air in a celebratory manner. These shots had allegedly been perceived as hostile fire by American forces, which had subsequently returned fire. This was denied by local residents, who pointed out that the presence of ground forces indicate some advance planning. It was also reported to the Special Rapporteur that the United States/coalition force thoroughly searched the area after the incident. The hands of the surviving men and women were allegedly tied behind their backs and according to reports received, signs of combat, like bullets, shrapnel and blood stains, were removed by the United States/coalition forces.

44. The Special Rapporteur raised this issue with both the United States Ambassador as well as with American General Karl Eikenberry. It was confirmed that an investigation had been carried out by United States military forces. However, the findings of the investigations had not been released publicly. The Special Rapporteur requested a copy of the investigation report, but none has so far been received. Other official and preliminary investigations have also taken place, and it is regrettable that none of the investigation reports have been publicly released.

45. It should also be noted that the Special Rapporteur did not receive any information which claimed that the international peacekeeping force in Kabul, ISAF, had been involved in any extrajudicial killing. On the contrary, many sources reported that the Turkish-led peacekeeping force was conducting its work in an exemplary manner. All sources affirmed that, without the presence of the force in Kabul, it would be very likely that incidences of extrajudicial killings would be very high.

46. In general, the Special Rapporteur wishes to note that the human rights monitoring capacity of the United Nations as well as that of the Transitional Administration is thoroughly inadequate, which makes it impossible to have a clear picture of the human rights situation throughout the country.

#### **8. The case of Abdullah Shah**

47. During the mission, the Special Rapporteur had the opportunity to observe a trial of Abdullah Shah and his nephew Mohammad Arif. Shah was arrested in April 2002 on the complaint of his wife Makai. She expressed fear of being killed by him and alleged that he had already murdered three previous wives and tortured the fourth, who escaped. According to the Public Prosecutor, Shah poured scalding water on Makai and then doused her with petrol. While Shah was looking for a match Makai tried to escape upon which Shah shot at her and was arrested in this act.

48. After his arrest, over 30 witnesses complained of crimes committed by Shah from 1992 onwards. He was also accused of being responsible for the killings of around 200 people, who are allegedly buried in a mass grave in the garden of Zareef and Haider in a large irrigation well. These were conducted when Shah was a commander with Ittehad Islami.
49. A number of people concerned or connected to the trial provided the Special Rapporteur with further information about Shah. They described the condition of his wife who was disfigured from burns and her genital areas were also burnt. She had deep wounds from being bitten by Shah. He had a reputation of biting people and acquired a nickname, Sag-e-Zardad, the dog of his commander Zardad. He became a mujahid in 1980 but gained notoriety in the early 1990s during his posting at a checkpoint on the main road running from Jalalabad to Kabul. It is said that Abdullah Shah was affiliated to Hizb-I-Islami when he joined commander Zardad. He is alleged to have carried out a number of mass murders. He reportedly hijacked a bus load of 50 Hazaras during an operation in 1992 and killed all the passengers by dousing them with fuel and blowing them up with rocket-propelled grenades at his base. His co-accused was reported to have tortured people to death by shooting at different parts of their body and see them "dance to death".
50. Shah and Arif were originally tried in the Special Security Court (*Maqama Ikhtessasse Amaniyyat Milli*), Kabul in camera. The investigation was carried out and apparently evidence recorded at the site of the mass grave. Statements of local elders of his village were also heard. According to the information given to the Special Rapporteur by the law officers, the presiding judge was bribed by Shah. The trial court convicted him and sentenced him to 20 years' imprisonment. Arif was acquitted.
51. There was a great deal of public interest in the case and there was a demand that Shah be given the death penalty. There was a general disappointment and dissatisfaction expressed by those observing the trial. In their opinion, the sentence was disproportionately low in comparison to the crimes attributed to Shah. The witnesses and their families also expressed fears of reprisals by Shah's associates. They claimed that influential people like Shah could easily bribe their way out of prison and would "undoubtedly" kill them all. This was their justification for expecting nothing less than a death penalty. The emphasis was on their survival and on revenge rather than to see justice done in accordance with due process. The Special Rapporteur can understand their sentiments and anguish but believes that any form of accountability must be carried out on a stronger footing based upon reasonable standards of trial. In particular, the death penalty should only be awarded with due regard to the United Nations guidelines on safeguards and restrictions relating to the imposition of capital punishment.
52. On appeal, the case was remanded to the Public Security Court. Before the retrial was heard, the Chief Justice of the Supreme Court, probably moved by the pleas of the victims and their families, gave a public statement that the two accused should have been given nothing less than the death sentence.
53. On the first day of the retrial, the Special Rapporteur was present. It was an open trial, with over 200 people packed in the courtroom to hear the proceedings. There were a number of women and women lawyers observing the trial. The proceedings were held in an orderly manner



and the Special Rapporteur was impressed by the public prosecutor who said that he was seeking justice and was therefore not afraid of the accused. Three presiding judges also impressed the Special Rapporteur, as they sought to conduct the trial in a serious and dignified manner. A great number of witnesses had the courage to speak out in public, which in the present circumstances is commendable. The accused was given an opportunity to make a statement and he pleaded not guilty.

54. Despite these positive efforts to address the issue of impunity, the Special Rapporteur was seriously concerned about a number of issues with regard to the trial. The trial, which resulted in convicting the accused to death, lasted for a total of not more than three hours. Thus the prosecution presented only a brief summary of its case against the accused, the witnesses (more than 10) were asked by the court to provide only a brief summary statement, and no cross-examination of the witnesses took place. Most testimonies were based on hearsay and not direct witnessing of crimes allegedly committed by the accused. No documents were examined or presented. Minutes after the trial concluded the death sentence was pronounced by the court. The accused has an opportunity to appeal against the conviction.

55. Given these circumstances, it is understandable that the Special Rapporteur subsequently expressed her concern with regard to the trial and the death sentence. The trial was clearly not in conformity with the United Nations safeguards and restrictions relating to the imposition of capital punishment (for a more detailed account regarding the minimum standards, see E/CN.4/2002/74).

56. The Abdullah Shah case has encouraged others to follow their lead. A couple of members of victims' families interviewed by the Special Rapporteur also expressed their intention of instituting criminal proceedings against perpetrators of extrajudicial, summary or arbitrary executions carried out in the past. The dilemma is that local capacity to deal with such trials is limited but at the same time the demand for justice cannot be shut out. As long as there is a legal and judicial system - efficient or deficient - trials will be held. Local capacities must therefore be assessed and supported at every level for melting down the culture of impunity.

## 9. Security

57. Eighteen countries have contributed to the International Security Assistance Force (ISAF), the peacekeeping mission in Afghanistan, which was sanctioned by the Security Council in resolution 1386 of 20 December 2001. Some 1,200 troops will work closely with the United Nations and the Transitional Administration in aiding the Transitional Authority in developing national security structures, assist the country's reconstruction as well as to assist in developing and training future Afghan security forces. The mission of ISAF is currently limited to Kabul and its environs. Recently, the one-year mandate of ISAF was extended by another year by the Security Council in resolution 1444 of 27 November 2002, but there was no change in the size and geographical area of its operation.

58. There are constant calls for the expansion of ISAF by the Afghan people and those in authority. President Karzai has also stressed upon it on a number of occasions. There are a few security concerns in Kabul but insecurity prevails in areas outside of the capital. But even in

Kabul security remains superficial and dependent on the presence of ISAF. Its representative who met the Special Rapporteur also pointed out that security can only take root if the rule of law begins to be instilled.

59. The estimates regarding the number of armed men with combat experience range from 200,000 to 300,000. They will aspire to be inducted in the army if an effective demobilization effort begins. The Defence Minister hopes to form a national army of 250,000 soldiers. Other sources put the figure to 50,000 to 60,000 as being more realistic. Intensive training of some men has started. They are being trained by troops from Britain, Turkey, France, Italy and Germany. It is a promising beginning but preparing an organized national army will take time and will serve its nation well if methods of screening and disarming are efficient enough to exclude suspected criminals. An information database and a more systematic approach for screening criteria has to be maintained. Demobilization of militias is paramount. National armies perform best if they are for external combat, rather than to be used to counter national militias.

60. With regard to the police force, the Special Rapporteur was told by the Minister of the Interior that human rights will be integrated in the training for the police and the national army. Germany has taken the lead in training the police force, and initial training of a few officers has taken place. It appears, however, that the process will be long and difficult, and will continue to be in need of sustained international financial and political support.

#### **10. Justice in relation to crimes against humanity and violations of the right to life**

61. The Bonn Agreement stated that the "judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration". Under the 1964 Constitution the Supreme Court is accorded a high degree of supervisory jurisdiction. All judges, other than the judges of the Supreme Court, are appointed by the King on the recommendation of the Chief Justice. The strength of the Supreme Court, according to the 1964 Constitution, is nine judges. At the moment appointment of judges is being made by provincial governors, the central administration and the Chief Justice. No particular merit-based criteria are being followed. The Supreme Court has been expanded beyond the constitutional requirement and there are 137 judges. In the 32 provinces of Afghanistan 244 District Courts are operative. According to the Ministry of Justice and the office of the Attorney-General there are approximately 4,000 judges and 3,000 prosecutors are currently employed in the country.

62. Afghanistan's judicial system does not seem to follow any uniform criminal legal system. The Law Ministry and the Attorney-General's offices have recently distributed law books to the judiciary and public prosecutors in the entire country. It appears some courts are following traditional or customary law, while others follow different interpretations of Shariah law, without any form of consistency. There is uncertainty pertaining to a number of laws, including penal laws. The Chief Justice, a pious man of 72 years, had his own set ideas of justice. He did, however, clearly state that he was familiar with international human rights law and norms, and the Special Rapporteur was pleased to hear that, in his opinion, he found no inconsistencies between international human rights norms and Shariah.

63. Italy is the lead donor State for work on the judicial system. This judicial reform process was partly hampered by the fact that a Judicial Commission, was formed, dissolved and then constituted afresh. The Commission has a wide mandate, but so far it has not prioritized its work. The Special Rapporteur was told that it intends to build on the present structures, thereby accommodating all the judges so far appointed - even if they do not qualify. The recommendations of the Judicial Commission regarding the judiciary must be made in time to be incorporated in the drafts prepared by the Constitutional Commission for which the deadline is the end of year. The time frame for the Constitutional Commission to present a draft to the Constitutional Loya Jirga is also end of 2003. The Special Rapporteur was told that so far the progress is slow and the two Commissions have not held a single consultation amongst each other.

64. The Independent Human Rights Commission established by the Bonn process is the key institution to start work on transitional justice. During the visit of the Special Rapporteur, the members of the Commission told her that, for the time being, they would confine their work to awareness-raising and education on human rights issues. Security concerns did not allow them to launch any meaningful project or debate on transitional justice. The Special Rapporteur admired the openness with which they discussed their limitations. The members of the Commission are well respected and prominent individuals and therefore the civil society has many expectations from them. The Commission has to be encouraged and their security concerns addressed because their mandate for transitional justice is crucial.

65. From the reports provided to the Special Rapporteur, there appear to be no forensic expertise or tools available in Afghanistan. Three laboratories in Kabul, which are in serious need of technical equipment and training, serve the national need.

66. At the time of the Special Rapporteur's visit, reports were received of disappearances of witnesses to serious human rights violations. She met one such witness who was living under cover. Local groups working informally assist such witnesses under threat. UNAMA's presence and good offices are also used as a form of protection. In general, the Special Rapporteur was very conscious of the lack of adequate witness-protection programmes in Afghanistan. UNAMA is aware of the crucial need for strengthening the witness-protection capacity of Afghanistan in the context of further progress with regard to accountability.

67. The Special Rapporteur was encouraged that national initiatives are being taken and local human rights groups are being organized. She was particularly impressed with the Association of Professionals in Herat and a number of women organizations. So far their monitoring capacities are limited but some of them are undertaking risks in documenting ongoing and past violations of human rights. The Special Rapporteur would like to acknowledge the work being carried out by a few nameless or faceless NGOs and journalists who provided her with important information and contacts. They are fearlessly searching for evidence with a view to ending impunity for crimes against humanity and war crimes, regardless of the nationality, religion, gender or ethnicity of the victims or the offenders.

## CONCLUDING REMARKS AND RECOMMENDATIONS

### A. Concluding remarks

68. It is clear that at the present moment, the Afghan Administration is simply not equipped to successfully negotiate the demands of both assessing the violations of rights of the past and ensuring that those violations are not recurring in the present. The Special Rapporteur has reasonable cause to believe that grave human rights violations, and possibly extensive crimes against humanity have been perpetuated in the past. If such crimes against humanity have in fact taken place, it is the obligation of the international community to take the lead in bringing them on the record with a view to move towards setting up mechanisms for transitional justice. The Special Rapporteur is aware of the fact that such an undertaking would be challenging for both the international community as well as the Transitional Administration. However, inaction on this issue is only likely to entrench a culture of impunity and promote the recurrence of grave human rights violations in Afghanistan and elsewhere in the world.

69. The Special Rapporteur stresses that the approach must be gradual and systematic, taking into account the realities on the ground at each step. Further these steps must incorporate wide levels of consultation with the Afghan civil society and authorities. This process should also be able to identify and distinguish between the legitimate violence of resistance and human rights abuses.

70. Afghanistan's institutions and structures are in their infancy. They will remain fragile unless more resources are put at their disposal. The Special Rapporteur feels encouraged by the progress made but is apprehensive that, if these institutions do not receive long-term support, they may become dysfunctional.

71. The security concerns in Afghanistan are worrying, especially outside of Kabul. Threats and extrajudicial, summary or arbitrary executions continue to be carried out by agents of the parties in power, by authorities in the provinces as well as by regional and local commanders.

72. Impunity remains entrenched in the system. There are hardly any investigations or inquiries made on allegations of extrajudicial, summary or arbitrary executions. The support to institutions of governance in Afghanistan has not focused enough on ending impunity.

73. The rebuilding of national security forces is being undertaken, but the screening process of its members is not being carried out in an effective manner.

74. Demobilization and disarming of militias is vital as it is a major stumbling block to political, economic and social progress in Afghanistan.

75. There is a climate of fear and those who leak information on violations of human rights are threatened. National and local civil society groups lack the capacity to monitor the situation. The monitoring capacity of UNAMA is also weak.

76. With regard to the death penalty, the legal and judicial system is not yet strong enough to ensure that all the internationally recognized safeguards and restrictions can be applied.

#### **B. Recommendations**

77. The Special Rapporteur recommends that an international and independent Commission of Inquiry be constituted, backed by the United Nations, as a first step towards accountability. The mandate of the Commission should be limited to undertake an initial mapping out and stock-taking of grave human rights violations of the past, which could well constitute a catalogue of crimes against humanity. The period should begin from the "Saur Revolution" (1978) and end with the establishment of the Afghan Interim Authority.

78. Parallel to this, the Independent Human Rights Commission should be encouraged and supported to debate and solicit wider opinion on possible mechanisms for transitional justice.

79. In addition, the national legal system needs to be buttressed and equipped to deal effectively with the issue of impunity. The Judicial Commission and the Constitutional Commission should be firmly supported by the international community.

80. The next step in the transitional justice process should be taken after extensive consultations between the International Commission of Inquiry and the Independent Human Rights Commission.

81. The human rights monitoring capacity of UNAMA should be strengthened until sufficient national capacities are available.

82. The international community should further explore options for supporting the security situation in Afghanistan, including options for expanding ISAF's role outside Kabul.

83. Disarmament, demobilization and reintegration of militias and commanders must be carried out firmly. All concerned Governments should lend political support to the Transitional Administration and UNAMA in this endeavour.

84. The reconstruction of Afghanistan must include the building of institutions and structures on a sound foundation. The law enforcement agencies should be comprised of individuals who are not suspected of having carried out serious human rights violations. An effective screening methodology should be adopted and a reliable database maintained. Law enforcement and security forces should be trained in international standards and prepared for protecting and promoting human rights. A section of the police should be exclusively trained to carry out investigations and given skills to assure liaison with the office of the public prosecutor. The forensic expertise of the police should be enhanced.

**85. Serious consideration should be given to the selection of judges and their further training. The nature of training for the judiciary and public prosecutors should be carried out during the course of their work and in close contact with individual judges and prosecutors. In addition a fully functional judicial academy should be made operative. Security for judges should be ensured.**

**86. Until the legal and judicial system in Afghanistan can guarantee compliance with United Nations safeguards and restrictions relating to the imposition of capital punishment, imposition of the death sentence should be suspended and a moratorium on executions should be implemented.**

#### Notes

<sup>1</sup> Many of these commanders have an official position, while others control areas outside of Kabul, like little fiefdoms.

<sup>2</sup> The Loya Jirga is a consultative body comprising of tribal chiefs, village elders and influential people from across the country. All ethnic, linguistic and religious groups were meant to be represented. It was also sometimes used to rubber-stamp the will of the ruler but retained informal political recognition. To begin with all members were men but gradually women were included. The institution of the Loya Jirga or the Great Council was recognized in the 1964 Constitution. It comprised of the members of the Parliament and the Chairman of the Provincial Councils. In 1976 it expanded its composition including, amongst others, members of the Supreme Court and armed forces. Subsequent Constitutions also recognize similar versions of the Loya Jirga (1987 and 1990).

<sup>3</sup> Henry S. Bradsher, *Afghan Communism and Soviet Intervention*, Oxford University Press, 1999, p. 121.

<sup>4</sup> After two months of the formation of the Transitional Administration, a Constitutional Commission was to be established by the Administration with the assistance of the United Nations to assist the Constitutional Loya Jirga. It was established in November 2002.

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<sup>5</sup> Political affairs; and relief, recovery and reconstruction.

<sup>6</sup> The conflict between 1978 and 22 December 2001, is referred to as "the past" or "during the period of conflict".

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