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Sekretariatet for
Det Udenrigspolitiske Nævn

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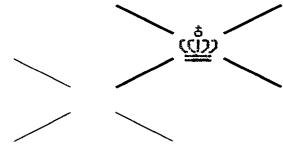
Folketingsåret 2007-2008

Med henblik på fordeling til samtlige medlemmer af Det Udenrigspolitiske Nævn samt disses stedfortrædere fremsendes vedlagt til underretning:

Brev fra forsvarsministeren af d. 26. november 2007 vedr. indgåelse af overdragelsesaftale med Afghanistan 8. juni 2007.

Med venlig hilsen

Torsten Kjølby Nielsen
Nævnssekretær



Det Udenrigspolitiske Nævn
Christiansborg

26 NOV 2007

Jeg har ved brev af 8. juni 2005 orienteret nævnet om Danmarks indgåelse af overdragelsesaftale med Afghanistan af 8. juni 2005. Forsvarsministeriet har nu valgt at offentliggøre aftalen, hvorfor den hermed oversendes til orientering sammen med den præciserende tillægsaftale, som Danmark indgik med Afghanistan den 1. maj 2007.

I lyset af den hjemlige debat om tilbageholdte i Afghanistan og den vigtighed regeringen tillægger emnet, vil jeg endvidere kort orientere om, at der i Canada verserer en sag ved domstolene om, hvorvidt canadiske ISAF-styrkers overdragelse af tilbageholdte til de afghanske myndigheder er i strid med "Canadian Charter of Rights and Freedoms".

Jeg kan i den forbindelse endvidere oplyse, at Canada ikke – som det ellers er fremgået af flere danske medier – har indført et moratorium vedrørende overdragelse af tilbageholdte til afghanske myndigheder.

Med venlig hilsen

Søren Gæde

/Peter C. Alexa

**Memorandum of the Understanding between the Ministry of Defense of the
Islamic Republic of Afghanistan
and
the Ministry of Defense of the Kingdom of Denmark concerning the transfer of
persons between the Danish Contingent of the International Security Assistance
force and Afghan authorities**

The Ministry of Defense of the Islamic Republic of Afghanistan and the Ministry of Defense of the Kingdom of Denmark, hereinafter referred to as the Parties, hereby establish the following procedures in the event of the transfer from the military forces of Denmark to Afghan authorities of persons apprehended in Afghanistan, presently pursuant to United Nation Security Council Resolution 1563 of 17 September 2004 authorizing the Member States participating in the International Security Assistance Force to take all necessary measures to fulfill its mandate, which with reference to United Nations Security Council Resolutions 1386 and 1510 includes the support of the Afghan Transitional Administration and its successors in the maintenance of security.

The Parties undertake to establish all necessary contacts with the relevant respective national authorities with a view to fulfilling this Memorandum of Understanding, bearing in mind the need to respect basic international humanitarian standards such as the right to life, to a fair trial and the protection against torture.

The Parties have reached the following understanding:

Article 1

The purpose of the MoU is to ensure that the Parties will continue to observe applicable national law of the Islamic Republic of Afghanistan and international law pertaining to the treatment and transfer of persons from the military forces of Denmark to Afghan authorities.

Article 2

The Danish military forces will be responsible for maintaining and safeguarding persons detained by them and will treat these persons in accordance with the relevant provisions of international law, including providing humane treatment.

Article 3

The Afghan authorities will accept the transfer of persons detained by the Danish military forces for investigation and possible legal proceedings. The Afghan authorities will be responsible for maintaining and safeguarding all such individuals in accordance with the relevant provisions of international law, including providing humane treatment.

Article 4

Representatives of the Afghan Independent Human Rights Commission, the Danish military forces and others as agreed between the Participants will have full access to any persons transferred from the Danish military forces to Afghan authorities while such persons are in custody. The International Committee of the Red Cross and Red Crescent (ICRC) will be allowed to visit such persons. The military forces of

Denmark will notify the ICRC and the Afghan Independent Human Rights Commission when a person has been transferred to Afghan authorities.

Article 5

The Afghan authorities will be responsible for the accurate accountability of all persons transferred to them by the Danish military forces. Records kept will be available upon request.

Article 6

Danish military forces will be notified prior to the initiation of legal proceedings involving persons transferred from the Danish military forces and prior to the transfer to third parties or release of such persons. Danish military forces will also be notified if other significant changes concerning such persons occur.

Article 7

No person transferred from the Danish military forces to Afghan authorities will be subject to the execution of the death penalty.

Article 8

Any dispute about the interpretation or application of this MoU will be resolved exclusively by negotiation between the Parties.

Article 9

This MoU may be amended at any time by mutual written consent of the Parties.

Article 10

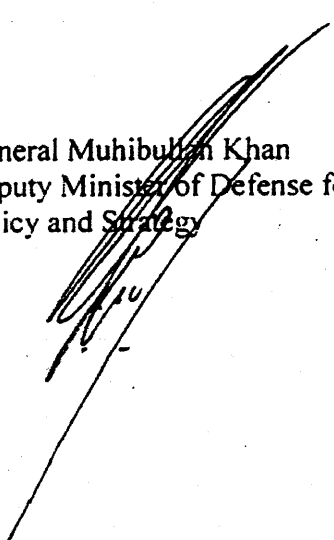
This MoU will come into force on the date of the last signature and will remain in effect until terminated by any of the Parties giving thirty days written notice to the other Party.

Article 11

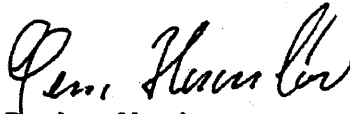
This MoU was signed in Kabul on 3/6/06, in two original copies in Dari and English, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

**For the Ministry of Defense
of the Islamic Republic of Afghanistan**

General Muhibullah Khan
Deputy Minister of Defense for
Policy and Strategy



**For the Ministry of Defense
of the Kingdom of Denmark**


Dr. Jens Haarlov
Charge d'Affaires e.p.
For Denmark

Amendment to the Memorandum of Understanding

Amendments to section 4 and section 6 of the Memorandum of Understanding between the Minister of Defence of the Kingdom of Denmark and the Minister of Defence of the Islamic Republic of Afghanistan concerning the transfer of persons between the Danish Contingent of the International Security Assistance force and Afghan authorities, signed in Kabul on the 8th of June 2005.

Having regard to article 9 of the Memorandum of Understanding, the parties have agreed to the following:

Section 4 is replaced by the following wording:

“Representatives of The Afghan Independent Human Rights Commission, the Danish military forces and others empowered to represent the Kingdom of Denmark, will have full access to any persons transferred from the Danish military forces to Afghan authorities while such persons are in custody. The International Committee of the Red Cross and Red Crescent (ICRC) will be allowed to visit such persons. The military forces of Denmark will notify the ICRC and the Afghan Independent Human Rights Commission when a person has been transferred to Afghan authorities”.

Section 6 is replaced by the following wording:

“Danish military forces will be notified prior to the initiation of legal proceedings involving persons transferred by the Danish military forces and prior to the release of such persons.

The Afghan authorities will ensure that any detainee transferred to them by the Danish military forces will not be transferred to the authority of another state, including detention in another state, without the prior written agreement of the Danish military forces.

Danish military forces will also be notified if other relevant changes occur concerning persons transferred by the Danish military forces. “

For the Ministry of Defence of the Islamic Republic of Afghanistan

.....

DATED 1.05.07

For the Ministry of Defence of the Kingdom of Denmark

..... *Gen. Hans Løv*



DATED [Signature]

[Signature]



اصلاحات در تفاهمنامه

اصلاحات در ماده چهارم و ششم تفاهمنامه که میان وزارت دفاع کشور شاهی دنمارک و وزارت دفاع جمهوری اسلامی افغانستان در مورد تسلیم دهی اشخاص میان قوای بین المللی حافظ صلح دنمارک و مقامات ذیربط افغانستان در هشتم جون سال 2005 میلادی به امضا رسید.

با در نظر داشت ماده نهم تفاهمنامه هردو جانب به این موافقه رسیدند.

ماده چهارم تفاهمنامه به متن ذیل تعویض میشود.

"نماینده های کمیسیون مستقل حقوق بشر افغانستان، قوای نظامی دنمارک و کسانی دیگر که صلاحیت برایشان داده میشود تا از کشور دنمارک نمایندگی بکنند دسترسی کامل به آن عده اشخاص دارند که از طرف قوای نظامی دنمارک به مقامات افغانی تسلیم داده شده و در توقیف بسر میبرند. به کمیته بین المللی صلیب سرخ و هلال احمر اجازه داده میشود تا با همچنین اشخاص ملاقات نمایند. هر زمانیکه یک شخص به مقامات افغان تسلیم داده میشود قوای نظامی دنمارک به کمیته بین المللی صلیب سرخ و کمیسیون مستقل حقوق بشر افغانستان خبر میدهد."

ماده ششم تفاهمنامه به متن ذیل تعویض میشود.

" زمانیکه کدام اقدام قانونی در مورد اشخاصیکه از طرف قوای نظامی دنمارک به مقامات افغانی تسلیم داده شده صورت میگیرد و یا اینکه اشخاص مذکور رها میشود قبل از آن به قوای نظامی دنمارک خبر داده میشود.

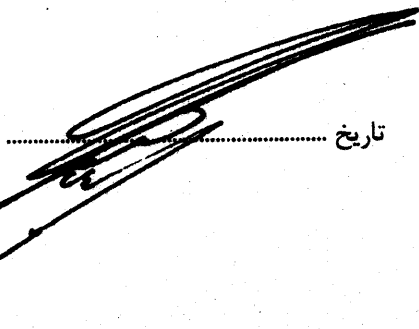
مقامات افغانی تضمین و تایید مینماید که بدون موافقتنامه کتبی قوای نظامی دنمارک شخص توقیف شده را که از طرف قوای نظامی دنمارک به مقامات افغانی تسلیم داده شده به دولت دیگر تسلیم نمیکنند، بشمول توقیف در دولت دیگر."

همچنان اگر کدام تغییرات دیگر در رابطه به اشخاصیکه از طرف قوای نظامی دنمارک به مقامات افغانی تسلیم داده شده صورت میگیرد قبل از آن به قوای نظامی دنمارک خبر داده میشود."

به نمایندگی از وزارت دفاع جمهوری اسلامی افغانستان

تاریخ 01.05.07

تاریخ



به نمایندگی از وزارت دفاع کشور شاهی دنمارک

Gen. Humko

