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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Letter dated 17 November 1987 from the representative of the
United States of America to the United Nations addressed to
the Secretary-General

On behalf of my Government I have the honour to request that this letter and the attached enclosed document, entitled "Report of the Independent Counsel on International Human Rights on the human rights situation in Afghanistan", be circulated as a document of the General Assembly under item 12 of the agenda of its forty-second session.

(Signed) Vernon A. WALTERS

AnnexREPORT OF THE INDEPENDENT COUNSEL ON INTERNATIONAL HUMAN RIGHTS
ON THE HUMAN RIGHTS SITUATION IN AFGHANISTAN

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1. In order to assist Governments considering the question of the current state of human rights in Afghanistan, the Independent Counsel on International Human Rights presents this report on its recent inquiries in this area.

I. BACKGROUND OF THE INDEPENDENT COUNSEL ON INTERNATIONAL HUMAN RIGHTS

2. The Independent Counsel on International Human Rights is an independent ad hoc multinational panel of experts in international law. In particular, the members of the group are scholars who have special expertise in the law of international human rights, especially humanitarian law.

3. Professor Göran Melander is Assistant Professor of International Law at the University of Lund in Sweden and Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Professor Melander has written articles and books on the subject of human rights law, with particular emphasis on refugees. He has made many trips to Africa and Asia to assess conditions in refugee camps against international legal standards.

4. Professor W. Michael Reisman, another member of the Independent Counsel on International Human Rights, is Hohfeld Professor of Jurisprudence at Yale Law School in New Haven, Connecticut, United States of America. Professor Reisman has published many articles and books in the field of human rights and international law. He has also been an expert witness on international legal issues before numerous United States and international judicial bodies.

5. Professor Françoise J. Hampson is a Lecturer in Law at the Centre of International Human Rights Law at the University of Essex in the United Kingdom of Great Britain and Northern Ireland. She did her postgraduate work in international law and armed conflicts and has written on various subjects in the field, including works on mercenaries and international crimes. Professor Hampson is a country co-ordinator for Amnesty International and regularly presents cases to the European Commission of Human Rights.

6. Mark A. Miggiani is a lawyer in private practice in Malta. In addition to his post-doctoral work on the laws of booby traps and mines at the Institut de Hautes Etudes Internationales in Geneva, Mr. Miggiani was the Rapporteur of the United Nations Conference on the Removal of War Remnants from North Africa.

7. The staff of the Independent Counsel on International Human Rights consists of Charles H. Norchi and James J. Busuttil. Mr. Norchi, who directs the project, is currently Visiting Scholar in residence at Yale Law School in New Haven, Connecticut, United States of America. He has studied widely in the area of international human rights and has visited south-west Asia on many occasions. Mr. Busuttil, the rapporteur of the project, is an attorney in private practice in New York City, specializing in international matters. Two research associates, Rebecca Thompson of Canada and William R. Sims of the United States, and an Afghan interpreter, Moossa Rafey, have also assisted the Independent Counsel.

II. SCOPE AND NATURE OF INQUIRY

A. Legal terms of reference

8. It is apparent that the human rights situation in Afghanistan is a complex one. The state of armed conflict which exists in many parts of the country and the fact that the country is effectively closed to world media makes a general analysis of the status of human rights problematic. None the less, questions have been raised by international institutions, including the United Nations, and certain non-governmental organizations, such as Amnesty International, about the adequacy of the protection of fundamental human rights in Afghanistan and a number of disquieting reports concerning the situation have been published.

9. The Special Rapporteur on Afghanistan appointed by the United Nations Commission on Human Rights has provided much needed information on the situation in Afghanistan. However, his visits to the area, most recently including a stop in Afghanistan, have been brief and his access to persons limited. In its inquiry into the state of human rights in Afghanistan, the Independent Counsel has sought to provide a broader perspective than can be provided by a single individual working within certain constraints and with only limited time and resources.

10. Disagreement is possible concerning what constitutes the full spectrum of internationally protected human rights which should be available to the Afghan people. This disagreement arises in part because of the state of armed conflict which exists in Afghanistan. The scope and content of certain internationally protected human rights may be open to some legitimate debate, but it is also beyond doubt that there exists a core of rights from which no derogation is possible without censure. The Independent Counsel wished to limit itself to those fundamental rights which apply in the current Afghan context without any question. As its point of departure, and as its main reference, the Independent Counsel therefore adopted common article 3 of the Geneva Conventions of 12 August 1949, a/ the relevant text of which follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions;

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons;

- "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- "(b) taking of hostages;
- "(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- "(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for."

11. Although common article 3 of the 1949 Geneva Conventions does not need much elaboration, it is appropriate to sketch quickly its terms. The scope of application of common article 3 is to armed conflicts which are not of an international character. The fundamental safeguards which it provides and from which no derogation is possible have been accepted by the 165 States which have ratified the Geneva Conventions. The basic tenet of common article 3 is the affirmative obligation to treat humanely all persons taking no active part in hostilities. Among the outstanding features of common article 3 applicable to the Afghan situation is its prohibition of torture and extrajudicial executions.

12. In addition to common article 3, certain other provisions of international humanitarian law and of international human rights law applicable during times of armed conflict completed the legal terms of reference of the Independent Counsel. Two of the fundamental customary principles of international humanitarian law which have also been enshrined in the Regulations annexed to the 1899 Hague Convention b/ are that parties to an armed conflict do not have an unlimited choice of methods and means of warfare and that the use of weapons which are calculated to cause unnecessary suffering is prohibited. The provisions of the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare c/ especially as it relates to the use of chemical warfare against civilian populations, and Protocol II to the 1981 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, d/ which relates to the use of mines, booby traps and other devices directed against civilians, provided the Independent Counsel on International Human Rights with guidance as to what is internationally expected and demanded of belligerents in contemporary armed conflicts.

13. In addition to the foregoing rules of international humanitarian law, the non-derogable provisions of the International Covenant on Civil and Political Rights e/ were within the terms of reference of the Independent Counsel. In particular, articles 6, 7 and 18, which to some extent overlap and reinforce the humanitarian law principles already discussed, were used by the Independent Counsel. Article 6 protects the right to life, including within its terms protection from extrajudicial executions. Article 7 prohibits torture and cruel,

inhuman or degrading treatment or punishment. Article 18 protects the right to freedom of religion. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment f/ provides further guidance in this area.

B. The fact-finding trips

14. These legal terms of reference were applied by the Independent Counsel during its visits to the region. It was clear to the Independent Counsel that a short visit would not be sufficient to adequately assess the enormous amount of information available on the human rights situation in Afghanistan. A series of trips were therefore planned. A preliminary trip to establish contacts and make an initial assessment was to be followed by a trip by the full group and then another visit would be undertaken to fill in missing or incomplete information and confirm other information, all within a relatively short period of time. This would provide as complete a picture as possible and allow a full and fair analysis of the status of the protection of human rights in Afghanistan within the legal terms of reference which the Independent Counsel has adopted.

15. Because of the complexity of the situation, the staff undertook a three-week trip to Pakistan in January 1987 to establish initial contacts with those persons who would be able to assist the Independent Counsel in their fact-finding missions. The Project Director and the Rapporteur spent five days in Islamabad, meeting with diplomatic agents and United Nations officials involved in the relief operations among the Afghan refugees. They then travelled to Peshawar, North-West Frontier Province, Pakistan, and spent two weeks among the Afghans there. They visited refugee camps in Baryalai and Motta and a camp located in the immediate vicinity of the Afghan-Pakistan border, interviewing in depth over 170 persons who provided first-hand testimony concerning their experiences in Afghanistan. These refugees came from many provinces, including Balkh, Kunduz, Baghlan, Herat, Ghardiz and Nangarhar. In Peshawar, more than a dozen persons from Kabul, Paktia and Wardak provinces who claimed that they were victims of torture were interviewed. Most claimed to have been held in Pul-e-charki prison in Kabul, although other prisons were also mentioned as places where torture took place. The staff also visited a number of relief organizations, such as the Saudi Red Crescent, Aide médicale internationale, Médecins sans Frontiers, Afghan Aid, the International Committee of the Red Cross and the German-Afghan Committee. Representatives of these organizations and journalists who had spent time in Afghanistan were able to present both analytical information of patterns of activities in Afghanistan based on their organizations' many contacts with Afghans and direct evidence grounded in personal experience.

16. The Independent Counsel on International Human Rights visited Pakistan for approximately three weeks during March 1987. The panel spent three days in Islamabad meeting with officials of the Government of Pakistan and diplomatic agents. Nine days were spent in Peshawar where the Independent Counsel visited Monda and other camps. During these interviews with refugees, persons from Nangarhar, Qandahar, Farah, Parwan, Kabul, Lowgar, Laghman, Kunduz, Herat, Kapisa, Kunar, Badghis, Ghazni, Wardak, Takhar and Jowzjan provinces provided testimony. Over 40 torture victims from Kabul, Takhar, Lowgar, Parwan, Kunduz and Baghlan

provinces were interviewed by the Independent Counsel at the Psychiatric Centre for Afghans in Peshawar. These persons claimed to have been tortured in Pul-e-charki, Saddarat, Shashdarak and other prisons. In all, the Independent Counsel interviewed over 150 Afghan refugees in Peshawar. In Peshawar, the Independent Counsel also met with diplomatic personnel, the leaders of Afghan resistance groups, workers in international relief organizations and representatives of the Government of Pakistan active in Afghan refugee affairs. The Independent Counsel also spent four days in Quetta, capital of Baluchistan province. While in Quetta, the Independent Counsel visited a number of refugee camps including Pishin/Sorhab, and interviewed over 100 Afghan refugees from Badghis, Helmand, Qandamar, Zabul, Takhar, Jowzjan and Kunduz provinces. They also met with former officials of the Government of Afghanistan and representatives of international relief organizations, including the International Committee of the Red Cross.

17. Following that visit, the Independent Counsel on International Human Rights wrote to the Government of Afghanistan requesting permission to visit Afghanistan in order to continue their investigations inside the country. The Independent Counsel recognized the desirability of receiving information on the human rights situation in Afghanistan from citizens of Afghanistan who are still in their country and not yet in exile. The Independent Counsel has not yet received a response to their letter.

18. In order to confirm certain facts and update information, the Project Director and a research associate spent three weeks during August and September 1987 in Pakistan. The staff spent three days in Islamabad, speaking with officials of the Government of Pakistan and diplomatic agents. They spent four days in Chitral, visiting Orghoch, Dungshora and Goram Chasma camps. While in Chitral, they interviewed 22 persons from Kunar, Kapisa, Kunduz, Badakhshan, Laghman and Takhar provinces, who described events within Afghanistan that had occurred during 1987. The balance of the staff's time was spent in Peshawar, where they interviewed over 50 persons from Parwan, Kabul, Nangarhar, Kapisa, Badakhshan, Kunduz, Kunar, Lowgar, Paktika, Paktia, Ghazni, Balkh, Takhar and Laghman provinces. Relief workers, journalists and diplomatic personnel were also interviewed in Peshawar. Following this trip, the staff also visited the Stiftung Bibliotheca Afghanistanica Foundation in Liestal, Switzerland to continue its research.

19. In all, during 1987 members of the Independent Counsel on International Human Rights spent 177 work-days in Pakistan and uncounted days outside that country investigating the human rights situation in Afghanistan.

C. Investigative techniques

20. Aware of the gravity of the matter which they were investigating, the Independent Counsel on International Human Rights sought to use methods which would allow them to make an accurate evaluation of the information which they received. The Independent Counsel interviewed many persons, seeking in numbers to ascertain patterns of testimony that evidenced truth rather than focusing on individual events. Geographic diversity was also sought and persons from nearly every province of Afghanistan were interviewed by the Independent Counsel. Among the

Afghans in exile, there are seven major parties, and persons from all such parties were interviewed. The Independent Counsel visited camps spread along the Afghan-Pakistan border from Chitral to Quetta.

21. Many interviews took place in a random fashion, with the Independent Counsel stopping in a hut or tent and conducting interviews with the persons who inevitably gathered around. So as to further minimize the possibility of coaching of witnesses, guides were not informed of areas of interest to the Independent Counsel and questioning ranged over a number of topics. The persons interviewed included village elders, mujahedeen commanders, ordinary Afghans and children. Some witnesses were university educated, while others were peasants or artisans. All interviews were taped so that the translations could later be checked. Except for certain torture victims, no witnesses were pre-screened. Witness demeanour was very important, with some testimony being rejected because of the witness' behaviour and credibility. Arrangements were sometimes made to interview a witness again. An adversarial, probing interview technique was adopted which, because of the Afghan cultural emphasis on speaking the truth among peers, occasionally met with surprise and anger. Anything other than eyewitness testimony was discouraged and discounted. Taken together, the Independent Counsel on International Human Rights believes that these methods, applied during the lengthy period of their investigations, provide it a firm basis for the conclusions which it has reached concerning the situation of the protection of human rights in Afghanistan.

III. CONCLUSIONS OF THE INDEPENDENT COUNSEL

A. Torture

22. Torture has been defined in article I of the Declaration of the United Nations General Assembly as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession ... Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment". g/ Article 7 of the International Covenant on Civil and Political Rights e/ provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 4, paragraph 2, of the International Covenant specifically precludes any derogation from article 7, even in time of war or other public emergency. Afghanistan acceded to the International Covenant in 1983 and the Union of Soviet Socialist Republics ratified the treaty in 1973. Afghanistan also signed on 4 February 1985 the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, f/ which has recently entered into force. The prohibition of torture and cruel, inhuman or degrading treatment is absolute.

23. Torture is prohibited under article 30 of the Fundamental Principles (the provisional constitution), and is punishable under article 275 of the penal code of Afghanistan and is also contrary to article 3 of the Afghan Law on the Implementation of Sentences in Prisons (1982).

24. The Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights noted that "it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime. Most States have penal provisions which are applicable to cases of torture or similar practices. Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation."

25. In July 1985, during the consideration of Afghanistan's initial report under article 40 of the International Covenant by the Human Rights Committee, reference was made to the allegations of torture cited in the February 1985 report of the United Nations Special Rapporteur on the situation of human rights in Afghanistan. The Afghan representative stated that the information in the report was "totally fallacious" but gave no information to indicate that the allegations had been investigated or that effective action had been taken against those responsible.

26. It has been alleged that Afghans captured by KHAD (Khedamat-e-Etela' at-e Dawlati, i.e. State Information Services) are routinely tortured, particularly at KHAD bases in Kabul. Soviet advisers are allegedly often present, either in the same room or in an adjacent room. In addition, there have been reports of Soviets torturing Afghan prisoners. The conditions in Pul-e-Charkhi prison are claimed to be both inhuman and degrading.

27. The Independent Counsel received the testimony of over 40 alleged torture victims. Most had been captured in their homes. In most cases, KHAD were seeking a specific individual but some were arrested as part of a general round-up of villagers. Only one person interviewed was detained immediately following a military operation. Those arrested outside Kabul were usually taken initially to the KHAD centre in the nearest city before being transferred to Kabul. Torture is reported from such centres as Jalalabad and Qandahar. Some prisoners were sent straight to Kabul. The most common pattern is for people to be taken to the KHAD headquarters at Shashdarak for initial interrogation, then transferred to the central interrogation office at Saddarat, where the interrogation may extend over a few months. Torture is reported at both these centres and also at other KHAD offices in Kabul (e.g. "No. 5") and at Khad-e Nezami, the military intelligence wing of KHAD.

28. The alleged torture was sometimes accompanied by interrogation and in other cases occurred between periods of questioning. The information sought included links with the mujahedeen and details of foreign involvement in the conflict.

29. A common pattern emerged from the testimonies. Torture begins with a "softening up" process, consisting of beating (with wire cables and/or sticks) and kicking. Several witnesses stated that they lost teeth and in some cases one or more of their nose, ribs or fingers were broken. One person reported having his hands crushed under a table leg. Torture then escalates. Several people reported

having been subjected to electric shock treatment, in some cases to the point of unconsciousness. One witness reported having to sit in a chair in a small room and being forced to put his hands on the arms of the chair, through which he received a shock of such strength as to throw him out of the chair. More commonly, an instrument resembling a telephone with a handle was used. Wires from the machine were attached to the prisoners' fingers and/or toes and the handle was turned to produce the electric shock. In some cases the wires were attached to the prisoner's tongue, testicles or penis. Another technique involved wires from sockets in the walls being attached to the prisoner. The electric shocks were usually administered from two to five times a day for around 20 minutes at a time. This continued from a few days to a few months. Torture by electric shock was most commonly reported from Shashdarak and Saddarat but was also occasionally reported from other locations.

30. Some witnesses reported that doctors were present whilst they were tortured. Their function appeared to be to say when torture could take place and when it had to stop on account of the condition of the prisoner. The torture was usually administered by Afghans. In one case, the witness reported that Doctor Najibullah, then head of the KHAD and now leader of the Afghan Communist Party, came eight times to watch. In many cases, witnesses reported that Soviet "advisers" were in an adjacent room whilst the torture and interrogation took place. They knew they were Soviets by their language and appearance. They gave instructions to the interrogators. In some cases the "advisers" were present in the room during interrogation or torture or both. The witness captured after a military engagement was allegedly interrogated and tortured at the 37th Division of Afghan troops in Kabul by Afghans during the day and by Soviets at night. One of the Soviets was a Tadjik and spoke a little Farsi. The other was a Russian. The prisoner was kicked, beaten, subjected to electric shock treatment and mock executions.

Conclusions on torture

31. There are inherent difficulties in the proof of allegations of torture. The Human Rights Committee has said that where specific allegations of torture and ill-treatment are made and the respondent Government merely dismisses them as "totally fallacious" (as did the Afghan Government) giving no specific response or any indication that it has even investigated them, "the Committee cannot but draw appropriate conclusions on the basis of the information before it". The evidence given to the Independent Counsel strongly suggests a systematic practice of torture carried out by members of KHAD in the presence sometimes of doctors and of Soviets. In addition, evidence was received in one case of torture by Soviet officials. Using the Human Rights Committee's standard of proof, the delegation concludes that Afghans who are detained are routinely subjected to torture during interrogation.

B. Targeting of civilians

32. It has been alleged that civilians have been both the victims of indiscriminate attacks and also purposefully targeted. In some instances, it has

been claimed that the latter has been by way of reprisal. Women and children, entitled to special protection under humanitarian law, have allegedly been the object of attack.

1. Indiscriminate attacks

33. It has been claimed that attacks have been launched against targets such as villages which make it impossible to distinguish between military and civilian objectives and that weapons have been used which are either indiscriminate by nature or have been used in an indiscriminate fashion.

34. One of the fundamental rules of the laws of war is the principle of distinction. Combatants are obliged to distinguish between civilians and combatants. Common article 3 of the Geneva Conventions also requires that "persons taking no active part in the hostilities ... shall in all circumstances be treated humanely". Furthermore, article 6, paragraph 1, of the International Covenant on Civil and Political Rights, to which no derogation is permitted under article 4, paragraph 2, provides that "No one shall be arbitrarily deprived of his life". Deaths resulting from indiscriminate attacks in breach of the laws of war would appear, from the very nature of the attacks, to represent an arbitrary deprivation of life.

35. As discussed in section D, subsection 1 of this chapter, the use of aerially dispersed mines is widespread in Afghanistan. Carpet bombing frequently occurs and the Independent Counsel received numerous testimonies that prolonged bombardment of villages for from three hours to five days invariably precedes a ground attack by Soviet troops.

36. The evidence received by the Independent Counsel confirms the statement in the report of the Special Rapporteur of the Commission on Human Rights that "the action taken against the opposition movements and civilian population has been intensified since last year ... The bombardment of several villages, attacks on convoys of civilians heading for Pakistan in search of refuge and regular house searches make it impossible for the civilian population to lead a normal life". h/ In the annex to that document, the Special Rapporteur lists typical examples of indiscriminate attacks resulting in high civilian casualties. The Independent Counsel received evidence that such attacks had continued even after the announcement of "National Reconciliation" by the Government of Afghanistan in January 1987.

2. Purposeful targeting of civilians

37. It is claimed that civilians have been the target of attacks. Such attacks must be distinguished from those which occur during hostilities between combatants or against military objectives. In this context, it is alleged that troops in a position to distinguish between mujahedeen and civilians, principally soldiers on foot, are not merely failing to identify civilians, but are attacking civilians, including women and children.

38. The evidence presented to the Independent Counsel suggests that there are three distinct situations in which groups of civilians find themselves the object of attack. The first seems directed to the depopulation of areas of strategic value. The second involves the killing of individual civilians as part of a general attack on the civilian population of a village. The third situation is that of attacks on individual civilians, such as village elders or religious leaders, usually as a form of punishment or warning.

39. Heavy bombardment of frontier regions close to Pakistan, the Islamic Republic of Iran and the Soviet border appears designed to prevent civilians, including the injured, from seeking refuge outside Afghanistan, as well as to protect borders from infiltration. For example, the Independent Counsel received evidence of the flattening of a village in Kunduz province by bombardment in order to clear the area and establish a Soviet post. The village was bombed and then surrounded at night by a mixed force consisting principally of Soviet troops, who attacked the next day. Many persons were killed in the bombardment and more were killed in the land-based attack. The crops were burned, livestock killed and most of the houses destroyed. This pattern is repeated in many border areas. Similarly, a 2-kilometre-wide band has apparently been cleared along the Salang Highway to protect the movement of troops and equipment from the Soviet Union to Kabul. The attacks appear designed to clear the areas in question of all persons, including civilians.

40. In addition to these strategic attacks, the Independent Counsel heard much credible testimony that villages with no connection to the resistance were attacked. In fact, a number of witnesses claimed that attacks were launched against villages in which there were no mujahedeen, the fighters being based in the countryside away from settlements precisely in order to spare civilians from attack.

41. Frequently, individual civilians are chosen for execution by Soviet troops upon their occupation of a village. In certain circumstances, persons are killed in retaliation for a mujahedeen operation nearby, especially if there have been Soviet casualties, or because they are related to a suspected mujahedeen. Just as frequently, village elders or religious leaders are rounded up and killed. Although in most cases these persons are shot, one popular technique appears to be to burn village leaders alive, with the Independent Counsel receiving a number of reports of persons being thrown while alive into a room filled with burning wood.

3. Attacks on women and children

42. The situation of women in Afghanistan deserves special note. It has been alleged that Afghan women have been raped by Soviet soldiers. There are more than the usual difficulties in investigating such claims in Afghanistan. It is not merely that Afghan women do not want to talk about such attacks, but that there is a conspiracy of silence on the part of Afghan men, who feel shamed by their inability to protect their women. Evidence which corroborates this abhorrence of rape throughout Afghan society and which helps to explain why allegations are made against Soviet and not Democratic Republic of Afghanistan troops came from one eyewitness to an attack on a village in Jowzjan province by mixed Soviet-Democratic

Republic of Afghanistan forces in January 1987. Soviet soldiers were searching house to house for draft-age men. A 12-year-old girl who ran away was caught by a Soviet soldier, who started dragging her screaming to a tank. A Democratic Republic of Afghanistan soldier shot and killed the girl while she was in the hands of the Soviet soldier. The witness was adamant that the Afghan was not trying to shoot the Soviet soldier, not least because there were many more Soviet than Afghan soldiers.

43. In addition to rape, the Independent Counsel occasionally heard testimony of other types of attacks on women. One particularly startling report was that given by a former Afghan Air Force pilot. A fellow officer's wife had been found praying. Her husband was on duty at the time. The following morning the pilots were called together and given a political lecture and told that their families should not be praying. The breasts of the pilot's wife were then dropped in front of him in a plastic bag.

44. Certain weapons which are of an indiscriminate nature appear to be particularly designed to injure children. In this category fall the various "toy bombs" and attractive booby traps which are discussed in greater detail in section D, subsection 2 of this chapter. The hospitals and streets of Peshawar and Quetta are filled with Afghan children who have lost limbs to these deadly "toys".

Conclusions on targeting of civilians

45. In a conflict being fought within one State where the non-government forces are suspected of having the support of the civilian population, it may well be difficult to distinguish between military and civilian objectives. Based upon their investigations, however, the Independent Counsel seriously questions whether any attempt is being made to distinguish between military and non-military targets by Soviet and Democratic Republic of Afghanistan forces. On the basis of the evidence received by the Independent Counsel and confirmed in general terms by the reports of the United Nations Special Rapporteur, the Independent Counsel can state that civilians have been the victims of indiscriminate attacks and attacks by means of indiscriminate weapons in violation of the laws of war and the international law of human rights.

46. The evidence presented to the Independent Counsel further suggests the regular breach of each of the prohibitions of paragraphs 1 (a), (c) and (d) of common article 3 during the course of deliberate attacks on civilians. Under the Geneva Conventions, States are obliged to seek out and bring to trial alleged perpetrators of grave breaches of the Conventions and can be held responsible for the failure to do so. The State is certainly responsible for the acts of its armed forces when those acts recur in a consistent fashion over the course of time. The evidence that massacres of civilians by Soviet troops are a not infrequent occurrence in Afghanistan suggests at least the tolerance and quite probably the encouragement of that state of affairs on the part of Soviet officers all the way up the chain of command.

C. Executions in the field of captured combatants and civilians

47. Protection against extrajudicial executions, either of civilians or of combatants, is one of the fundamental aspects of the Geneva Conventions. The "passing of sentences and the carrying out of executions [against non-combatants in a non-international armed conflict] without previous judgement pronounced by a regularly constituted court" is a violation of common article 3 of the Geneva Conventions. Before the death penalty on a prisoner of war can be executed "a period of a least six months" must pass so as to ensure against a judgement "too often affected by emotional considerations." (See Pictet's Commentary on article 101 of the Third Geneva Convention.) Further, non-derogable article 6 of the International Covenant on Civil and Political Rights protects the right to life of all persons, including within its terms protection from extrajudicial executions.

48. The guarantee against extrajudicial executions contained in the laws of war and the international law of human rights appears to be completely ignored in Afghanistan by the Soviet and Democratic Republic of Afghanistan forces. Time after time the Independent Counsel heard of the execution by Soviet and Democratic Republic of Afghanistan forces of innocent civilians taking no active part in the war. The testimony demonstrates a pattern of aerial and ground bombardment of a village followed by the occupation of the village by mixed Democratic Republic of Afghanistan and Soviet forces followed by the execution of village elders or leaders, such as the mullah, as a public demonstration of power by the occupying forces.

49. On numerous occasions the Independent Counsel also received credible and confirmed testimony that mujahedeen captured on the battlefield were killed by Soviet and Democratic Republic of Afghanistan military forces. It appears that mujahedeen commanders are chosen for special treatment, i.e. they are held for later torture to extract information about contacts and supply sources, while the rank and file mujahedeen are executed on the spot, usually by automatic weapons fire. Without regard to their classification as prisoners of war in an international armed conflict or persons who have laid down their arms in an armed conflict not of an international character, such extrajudicial executions are a gross violation of the fundamental dictates of humanity and of international law.

D. Use of weapons

50. The Independent Counsel approached the issue of the weapons being utilized by the Soviet and Democratic Republic of Afghanistan armed forces from two perspectives: that of the unlawful use of lawful weapons and that of the use of unlawful weapons.

1. Unlawful use of lawful weapons

51. In this context, Protocol II to the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects d/ enlightened the

provisions of common article 3 for the Independent Counsel. The civilian population is much more likely to be injured by the dispersal of mines or other explosives by means which make it impossible to keep such explosives away from civilian populations. Those persons taking no active part in hostilities can hardly be protected from violence to life and person as required by common article 3 if explosives are dropped from high altitudes or dispersed by artillery.

52. The Independent Counsel heard countless reports of small land mines being dropped from helicopters or scattered from airplanes over fields, mountains and farm land. These bombs can readily be seen in Pakistan where a number of diffused "butterfly bombs" were shown to the Independent Counsel. While these types of mines might even be illegal weapons under the 1981 Convention when directed at combatants, they are certainly illegal when distributed in such a way as to demonstrate at a minimum a disregard for the safety of the civilian population and, more likely, given the widespread nature of their use, the deliberate targeting of civilians and their livestock.

53. Area or "carpet" bombing has been reported for many years in a number of regions of Afghanistan, including most notably the Panjsher valley of Paktika. The Independent Counsel received testimony from members of international relief organizations who personally witnessed sustained carpet bombing in the Panjsher valley and from Afghans whose villages were destroyed in this way. This type of high altitude bombing of large areas without regard to the distinction between military installations and civilian populations is inconsistent with the obligations of common article 3.

54. The disregard of accurate recordkeeping of mines vis-à-vis the civilian population is most telling when the situation of anti-personnel mines surrounding Soviet posts is considered. Afghans involved in the armed conflict report that Soviet outposts are surrounded by anti-personnel mines. Villagers living near rural outposts report that when one set of Soviet troops relieves another at a post, some Soviet soldiers are invariably killed when they venture into the minefield to plant new mines. The conclusion reached is that no records of mines are maintained even for transmittal to the next force of Soviet soldiers at a post.

2. Use of unlawful weapons

55. Throughout its investigations the Independent Counsel was presented with testimony concerning the use of booby traps by Soviet forces against the civilian population. The placing of mines, grenades and other explosives in positions where such explosives are calculated to or would reasonably be expected to cause injury to civilians and not to combatants is in violation of common article 3.

56. Dozens of witnesses told stories of returning to their villages and homes following attacks by Soviet soldiers to find bombs and grenades placed in doorways so as to explode when a door is opened, along paths to fields and by plants and bushes which will be collected for firewood and food. Therefore, in addition then to the random placing of uncharted land mines and the aerial dispersal of anti-personnel mines, the Independent Counsel received evidence of the intentional

placing of explosive material where it was calculated to cause injury to civilians when they returned to their homes following an attack.

57. Besides the classic booby traps described briefly above, it has been alleged that "toy bombs", i.e. explosive material in the form of children's toys, cassette recorders, pens, radios, watches, cigarette packets, etc. have been left scattered throughout villages and surrounding fields following armed attacks by Soviet troops. The Independent Counsel heard repeated testimony of the use of such weapons. The items included a small red doll which exploded when pushed with a stick (which was filmed and shown on national television in the United States), pens, tape-recorders, money, naswar boxes (a form of snuffbox) and cigarette packets. The accounts were consistent but not identical, which adds to their credibility. So, for example, the descriptions given of the "cassette recorders" varied but the eyewitnesses were certain that what they had seen was supposed to be such a machine. It was clear from the detailed description of the pens that they were not being confused with "time pencils". The overwhelming evidence suggests (a) the fake items are designed to be attractive to civilians; (b) not all objects are fake - some of the objects, such as pens, are real to increase the likelihood that someone will investigate and handle the objects; and (c) the items are not likely to be attractive to the mujahedeen, who know of the likely dangers.

58. The use of chemical warfare by Soviet forces was raised by certain of the testimony the Independent Counsel heard. Many persons provided evidence on the use of chemicals to poison food and water supplies. In some instances, chemical weapons were used directly against the civilian population. For example, it is known that villagers in Afghanistan hide in tunnels which branch off from water wells. One man, hiding in a house during a Soviet attack on his village, testified that he saw a Soviet tanker truck pull up to a well in the village and a person completely covered in a protective suit pour an unknown chemical into the well from a pipe attached to the tanker. After the truck left, the person in the protective suit threw a small device into the well and ran away. Shortly thereafter, a cloud of gas or smoke emerged from the well. After the Soviet troops left his village, the witness and others went to investigate and found everyone in the well, including many members of the witness' family, had died.

59. Use of chemical weapons against civilians is a serious violation of the laws of war, including the Geneva Conventions and the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases. c/ Although the Independent Counsel cannot determine what chemical weapons have been utilized, it seems clear that chemical weapons have been used by Soviet armed forces against civilians on a number of occasions in Afghanistan.

Conclusions on use of weapons

60. The Soviet armed forces engaged in the war in Afghanistan do not appear to be inhibited in their choice or use of weapons. Soviet troops continuously use potentially lawful weapons in an unlawful manner. Moreover, and more disturbing, Soviet troops use booby traps and explosive household objects as part of their ordinary arsenal in blatant violation of the most fundamental laws of war.

E. Unlawful targets

61. Both the law of The Hague and the law of Geneva regulate, restrict and, in certain instances, prohibit the choice of targets by parties to an armed conflict. Certain targets unrelated to the armed conflict are illegal. In the course of its interviews the Independent Counsel noted that, in addition to such legitimate targets as mujahedeen installations, attacks appeared to be regularly launched against a variety of targets which are entitled to protection under international law. The frequency with which such attacks were described leads the Independent Counsel to believe that the reports they received were not of isolated mistakes, but of deliberate target acquisition by Soviet and Democratic Republic of Afghanistan forces.

62. A previous portion of this report has been devoted to a description of attacks which have taken place on civilians. The targeting of civilians is of course in direct contravention to the affirmative obligation of common article 3, which requires that persons taking no active role in hostilities be treated humanely.

63. Intimately related to the lives of the civilian population is their food and water supply. A number of international relief organizations indicated that their attention was shifting from the provision of medical care to the provision of food, usually in the form of seed for planting. The shortage of food caused by the destruction of food supplies was independently stressed by a number of Afghan village elders and resistance leaders. As part of their usual practice in the occupation of a village, Soviet troops were reported to destroy crops and kill livestock. The methods described ranged from setting food on fire with tracer bullets or flares to contaminating food by urinating and defecating on stored grains. The water supply is not neglected by the Soviet armed forces. Irrigation canals are reported to be regularly bombed and the Independent Counsel received a number of credible reports of the poisoning of wells and other water sources.

64. Medical facilities and personnel identified as such by the display of the internationally recognized symbols of the Red Cross or the Red Crescent are entitled to special protection. They certainly are not legitimate targets of attack. The Independent Counsel learned from international relief organizations which operate inside Afghanistan that such organizations are reluctant to identify their facilities by use of the Red Cross. This is because they have learned from experience that identifying such a location appears to draw attacks. For example, reports were received that in two instances buildings in Paktika identified as medical facilities were bombed, in each case by MIGs whose sole action was to attack those facilities.

65. A place of worship, such as a mosque, is not a legitimate target of attack, unless it is being used as a military installation. The Independent Counsel, during the course of its interviews, learned that following the occupation of a village or other area, Soviet forces usually use the local mosque as a latrine. To further compound the insult, pages of the Holy Koran are used as toilet paper. The fundamental role which religion plays in the life of the Afghans will be discussed in greater depth later in section G, subsection 2 of this chapter. However, from the manner in which this attack is carried out it is clear that the choice of

mosques as targets is not made out of military necessity, but as a means to degrade and humiliate the people, in violation of paragraph 1 (c) of common article 3.

66. Refugees fleeing their country or outside their country are protected against attack. Yet, a Pakistani Government official responsible for Afghan refugee affairs told the Independent Counsel that, while accompanied by the United Nations Special Rapporteur, he and the Special Rapporteur personally witnessed an attack within Pakistan on a refugee column in which a number of people were killed. It is incontestable that the number of aerial attacks on Afghan refugee camps in the border areas of Pakistan has increased dramatically in the last year. During the visit of the Independent Counsel to Pakistan, a number of such attacks took place, with many reported deaths. Attacks on refugees within Afghanistan by ambush or helicopter strafing were also reported. While in Quetta, the Independent Counsel heard extremely disquieting testimony that a group of refugees in the Rigistan desert on their way to Pakistan in 1987 were captured by Soviet troops in helicopters and thrown while alive into a bonfire made up of the possessions they had been carrying, with the result that all captured were killed.

Conclusions on unlawful targets

67. The evidence adduced by the Independent Counsel on International Human Rights indicates that little if any discrimination is made by Soviet and Democratic Republic of Afghanistan forces between legitimate and illegitimate targets of attack. Rather to the contrary, the war is being waged without restraint on the civilian population of Afghanistan and the physical and religious structure that supports it. Even those persons who have given up their country and are going or have gone into exile are not immune from attack. Unlawful attacks by Soviet and Democratic Republic of Afghanistan forces on illegitimate targets is widespread and systematic.

F. Obligation to disseminate the laws of war

68. While hardly ranking in importance with some of the other provisions of international humanitarian law which have been reviewed in this report, the obligation to disseminate the laws of war should be addressed, if only briefly. The scope and magnitude of the war crimes committed by the armed forces of the Soviet Union caused the Independent Counsel on International Human Rights to wonder whether international humanitarian law is disseminated among Soviet officers and soldiers as is required by the Geneva Conventions. a/ The Geneva Conventions unequivocally require that the parties thereto disseminate the texts of the Conventions and "include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population". See, as an example, article 127 of the Third Convention.

69. The Soviet Union is itself aware of this obligation since I. P. Blishchenko and V. A. Grin, authors of the booklet International Humanitarian Law and the Red Cross, published in Moscow in 1983 by the Executive Committee of the Order of Lenin

Alliance of Red Cross and Red Crescent Societies of the USSR, state on page 36 of that booklet, "The Geneva Conventions make it incumbent on the states to disseminate their texts as widely as possible and to include them in the programmes of military and civilian education". Later, on page 39, Blishchenko and Grin state that "[t]he members of the Soviet Armed Forces study the provisions of international humanitarian law regularly and systematically ... All members of the Armed Forces are familiarized with the texts of the Geneva Conventions ... The officer corps thoroughly study the provisions of international humanitarian law".

70. During its interviews the Independent Counsel was able to speak with a former Afghan Air Force pilot. This officer trained on a number of occasions in Soviet military academies. He described in detail the manner in which assignments were given him and others to carpet-bomb villages. When he was asked about how he was able to reconcile these blanket attacks which were likely to kill civilians with the dictates of the laws of war which prohibit attacks on non-combatants, he expressed surprise. After some questioning it became apparent that he had never heard of the concept of "the laws of war" before that interview. While this certainly speaks poorly for Afghan military training, it also indicts the Soviet Union, which had played a large role in his training. Moreover, the unremitting pattern of violations of the laws of war by Soviet forces bespeaks a complete lack of awareness of these basic international norms, which the Soviet Union has bound itself by treaty to observe.

G. Possible intentional destruction of the Afghan people

71. Allegations of genocide practised by Democratic Republic of Afghanistan and Soviet forces have been lodged frequently. A brief comment on international law in this matter is necessary before seeking to apply it to the facts which were presented to the Independent Counsel on International Human Rights.

72. Genocide has both a customary and a conventional or treaty dimension. The customary dimension derives from the aggregate of developments in the law regarding the protection of human rights. The conventional dimension is to be found in the Convention on the Prevention and Punishment of the Crime of Genocide, i/ a multilateral treaty to which Afghanistan and the USSR are parties. Article II of the Convention defines genocide to mean:

"Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group."

73. It should be noted that article II does not require that the acts in question sought the physical elimination, in whole or in part, of a national, ethnical, racial or religious group. Under subparagraphs (b) and (e), the crime of genocide is accomplished not by physical elimination but by forcible transformation of the indigenous identity of the group. In contrast, subparagraphs (a), (c) and (d) declare, as crimes of genocide, acts intended to eliminate physically all or part of the membership of the group. The contrasting language is instructive. The destruction of a targeted group within the meaning of the Convention refers both to the physical elimination of its members and the coercive transformation of the identity of group members. In the calculus of the Convention, both of those acts destroy the group and are genocidal.

74. The scope of the "intent" which must accompany the designated acts has also been the subject of extensive scholarly interpretations. The Convention does not limit itself to massive and comprehensive iniquities. Any of the designated acts in paragraphs (a) to (e) are deemed to be genocidal if they were committed with the intent to destroy, in whole or in part the targeted group as such.

75. While intent to destroy a group in whole speaks for itself, the intent requirement for efforts to destroy part of a group would appear to be fulfilled if the actor targeted whatever is the minimum quantitative requirement of group members "as such". Once again, to avoid controversy about the law to be applied the Independent Counsel has adopted a strict textual construction consistent with the leanest and most minimal interpretation of the Convention: an intention to kill many members of a particular group because they are members of that group fulfils the Convention's requirement of intent, for the act is directed to destroy part of the group.

76. With this brief clarification of the law in the matter, we may turn to the specific allegations that have been lodged with regard to the commission of genocide in the Afghan conflict. Four distinct allegations have been made: depopulation; attacks on religion; forced removal of children; and strategic attacks on society. We will treat each seriatim.

1. Depopulation

77. According to accounts the Independent Counsel received, many of which have been reported elsewhere, substantial programmes of depopulation have been conducted in the following provinces: Ghazni, Nangarhar, Laghman, Qandahar, Zabul, Badakhshan, Lowgar, Paktia, Paktika, Kunar. In addition, the Wakhan corridor bordering on China has been almost entirely depopulated and effectively annexed by the Soviet Union. The following methods were used to accomplish depopulation: repeated targeting of villages in certain areas; the commission of atrocities in villages with the predictable result of substantial flight of the civilian population; the intentional destruction of food supplies, irrigation canals and wells, making it impossible for the civilian population to survive in their villages; expropriation of property.

78. The Independent Counsel has not been able to examine documents of the Government of the Democratic Republic of Afghanistan or of the USSR, and hence cannot document whether or not these acts were conducted with specific intent. But even the most prudent and conservative of lawyers would violate professional standards and ethics if they ignored the fact that these actions have been persistently committed for eight years, with the dismaying cumulative result that one third of the Afghan population has been forced to leave its country and another third is in internal exile. These acts and the resultant exodus continue. Pakistani officials in charge of refugee influx reported to us that about 10,000 Afghans continue to cross the border monthly. International refugee officials allowed that that figure was probably conservative.

79. Where actions with predictable results are taken over an extended period of time and the consequences of these actions regularly confirm what their outcome will be, it is, to say the least, reasonable to infer that those responsible for such actions are accomplishing them with specific intent. Res ipsa loquitur, as the law says. The thing speaks for itself.

80. In the view of the Independent Counsel on International Human Rights, there is substantial evidence to support the allegation that the Democratic Republic of Afghanistan and the Soviet Union have been pursuing strategies aimed at and necessarily securing a forced depopulation of substantial areas of Afghanistan. In our view, the flight of a substantial part of the more than 5 million Afghans who would have been forced to leave their country since 1979 and the other 5 million in internal exile would appear attributable to actions undertaken by the Democratic Republic of Afghanistan and the USSR.

2. Attacks on religion

81. Even the briefest contact with Afghans drives home the extraordinary importance to them of their religion. The Independent Counsel on International Human Rights was struck, in the course of its interviews with Afghans, by the extent to which even those who were Westernized and quite wordly shared this basic view. All the Afghans who were engaged in the resistance describe themselves as mujahedeen, literally those who are engaged in a religious war. Many spoke with a calm dispassion about the probability of their becoming shahedeen or martyrs. The impression gained is confirmed in the scholarly and ethnographic literature about the Afghans. Religion is one of the basic factors which establishes their identity and binds them together. Its role in the life of an Afghan cannot be overestimated.

82. The war in Afghanistan is, in a substantial part, a result of governmental actions directed against these views in an effort to supplant them with the materialistic conceptions of Marxism-Leninism. Hence, these religious views are frequently targeted. That fact has increased popular resistance and become a basic feature of the war. The Independent Counsel gathered a great deal of evidence confirming that a standard technique of torture is the taunting of the victims about their religion. Many witnesses, after describing a variety of chilling physical tortures to which they were subjected, testified that the cruelest torture involved slurs on their faith and such taunts as "Where is your God now?" or "Why

isn't your God helping you now?". We also gathered evidence of the targeting of mosques and religious schools and, in one case, the intentional desecration of a mosque.

83. Given the values of the Afghan people, there is good reason to believe that such actions constitute genocide within the meaning of article II (b) of the Convention, in that they are acts committed with the intent to destroy a religious group by causing serious mental harm to members of the group.

3. Forced removal of children

84. The Independent Counsel collected evidence indicating a co-ordinated policy of forcibly transferring children from Afghanistan to the Soviet Union. The objective appears to be to deculturate the transferred children from the values of their parents and environment and to forcibly inculcate in them the values of the Soviet Union. The procedure, as testified by witnesses, is as follows: without warning, officials enter a classroom and, giving no explanation, choose a certain number of children, who leave with the officials. When the children do not return home that evening, no explanation is given to the parents. But several days later, the parents are told that their children have been sent to the Soviet Union. Some children who are taken are kept for one to two months, with the idea of inculcating in them favourable attitudes towards Russia. Some are kept in the USSR for several years. There is also testimony to the effect that some of the children who are taken are programmed to be saboteurs and assassins and are trained to target a particular mujahedeen commander. Accounts of the forcible transfer of Afghan children from their families to the Soviet Union have also been reported elsewhere.

85. Article II (e) of the Genocide Convention defines genocide to include acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group by "forcibly transferring children of the group to another group". The text is not explicit as to whether transfers for a period of time in order to change perspectives of identification with the targeted group's values are included in article II (e). In the view of the Independent Counsel, however, such an interpretation is consistent both with the language of article II and the obvious policy animating the provision. The anguish and despair caused to the parents of these children would certainly appear to constitute "mental harm" within the meaning of article II (b), but it is not certain, from the testimony we received, whether this obvious and foreseeable consequence was sought with the intent to destroy the older generation of the targeted group.

4. Strategic attacks on society

86. Much evidence indicates that the Democratic Republic of Afghanistan and the Soviet Union are involved in a complex and premeditated attack on a traditional society and its values and that the attack is being pressed at every level of social organization: the village and its agricultural infrastructure, the religion, education and the children, and health and life itself. Article II (c) defines genocide to include acts "deliberately inflicting on the group conditions

of life calculated to bring about its physical destruction in whole or in part". The cumulative effect of the variety of programmes which have been developed and directed against the civilian society of Afghanistan would appear to fall within the ambit of this provision.

Conclusions on genocide

87. In the view of the Independent Counsel on International Human Rights, there is considerable evidence that genocide has been committed against the Afghan people by the combined forces of the Democratic Republic of Afghanistan and the Soviet Union. The repetition of many of the acts described above and their consistency makes it difficult to avoid the conclusion that they are part of a master plan whose implementation will ineluctably precipitate consequences which are inconsistent with obligations undertaken in the Genocide Convention.

IV. THE SITUATION SINCE THE ANNOUNCEMENT OF NATIONAL RECONCILIATION

88. A prominent development in this tragic conflict has been the announcement of a policy of "National Reconciliation" at the beginning of 1987 by the Government of the Democratic Republic of Afghanistan. It has touted this policy as a step toward peace. However, an examination of the facts related to the situation in Afghanistan since the announcement of this policy which have been gathered by the Independent Counsel indicates that the Government of Afghanistan is acting inconsistently with its announced desire for peace. A short review of some of the substantive points covered in this report as related to events since the announcement of "National Reconciliation" may be enlightening.

89. Torture continues to be commonplace in Afghanistan since the announcement of "National Reconciliation". The Independent Counsel received reliable testimony alleging incidents of torture occurring as late as July 1987. One witness released from Pul-e-Charki prison during July 1987 had electric shock applied to his toes and testicles. He had been shackled to a wall while an empty, heated soda bottle was repeatedly forced in and out of his rectum. Another witness had been released from Pul-e-Charki prison in June 1987. He had been shuffled from one cell to another during the visit of an international fact-finding team and had been denied permission to meet with the group. Electric shock had been applied to his feet, toes and rectum and hot water had been poured into his ears. On one occasion, his urinary tract was tied off, he was forced to consume a large quantity of liquid and was then beaten on the stomach. These incidents occurred since the January 1987 announcement of "National Reconciliation".

90. Civilians continue to be the target of deliberate attack. One old woman testified that she lost her daughter and four grandchildren when their refugee caravan was bombed en route from Kunduz to Pakistan during June 1987. Several witnesses testified to the destruction of the village of Jamma in Kunduz province. The men of the village were assembled at a mosque on a Friday at prayer time. While they were praying, helicopters and planes arrived and bombed the mosque. The

mosque and most of the village was destroyed. Tanks were arriving as the witnesses escaped. Approximately 200 people were killed during this attack.

91. Cross-border aerial attacks on refugees in Pakistan have not merely continued but actually increased in pace since the announcement of "National Reconciliation". Such raids have killed an officially estimated 860 people from the beginning of the conflict through August 1987. In February 1987 at least 58 people were killed and 190 injured when Soviet-Afghan warplanes bombed three Pakistani border villages near Miranshah in the North Waziristan tribal agency. During a 30-minute period of that attack, 16 planes in two formations bombed the village of Moza Qilli Ghulam Khan as Afghan refugees shopped in the bazaar. In March 1987 between 15 and 20 Soviet-Afghan planes violated Pakistani airspace over the Kurrum tribal agency and bombed the village of Terri-Mangal, killing at least 51 people and injuring more than 100. The number of cross-border violations and bombing of civilian targets indicates the war is spreading into Pakistan despite the policy of "National Reconciliation".

92. Every segment of Afghan society remains under assault. It is noteworthy that of the millions of Afghans forced to flee their homeland, only a very small percentage of refugees have sought to return. Neither the incidents of civilian attacks nor the occurrence and intensity of torture seem to have subsided. The Independent Counsel has encountered no evidence to indicate a change in these patterns. When examined in its factual context it is clear that "National Reconciliation" has failed to contribute to a restoration of the minimal standards of human rights which the people of Afghanistan should enjoy pursuant to international law.

V. SEPARATE STATEMENT WITH REGARD TO THE APPLICATION OF COMMON ARTICLE 3 TO AFGHANISTAN

93. All members of the Independent Counsel on International Human Rights have agreed to the working assumption of this report, i.e. that the law to be applied is not that expressed in the totality of the Geneva Conventions of 1949 and Additional Protocol I to those Conventions of 1977, but only common article 3 of the 1949 Conventions. That working assumption is premised on the view that the conflict in Afghanistan is not international but is internal in character.

94. Professor Reisman, Professor Hampson, Messrs. Miggiani, Norchi and Busuttil have agreed to that view in the interests of a unanimous report and a desire not to divert attention from the facts of the conflict to controversy over legal issues. The working assumption of the Independent Counsel has permitted the group to move directly to an examination of the allegations made by Afghan and foreign witnesses. Common article 3 establishes sufficient basic principles to apply to most of the allegations. Nevertheless, those persons named in this paragraph wish it understood that they believe that the war in Afghanistan is an international conflict and, as such, is subject to the totality of the 1949 Geneva Conventions and, in so far as they are in effect, as conventional or customary law, the provisions of Additional Protocol I of 1977.

95. These members of the Independent Counsel believe that position is based on the factual record. On 28 December 1979, the Soviet Union intervened militarily in Afghanistan. Its forces murdered the President of the country, Hafizullah Amin, and replaced him with Babrak Karmal. The intervention was allegedly effected at the invitation of Babrak Karmal, but that alleged invitation could have neither international nor domestic legal value. At the time it was issued, Karmal had no post in the Afghan Government. He had most recently been the Afghan Ambassador to Czechoslovakia, a post from which he was dismissed. He then went to Moscow, in effect in political exile, and from the USSR issued the invitation to the USSR to intervene in his country. Since the Soviet military intervention, ample evidence indicates that the Soviet Union is conducting the war directly and using the constantly shrinking Afghan army in so far as it still has any utility. The notion that Afghan generals are ordering Soviet troops is too preposterous to merit serious examination.

Notes

- a/ United Nations, Treaty Series, vol. 75, Nos. 970-973.
- b/ James Brown Scott, ed., The Hague Conventions and Declarations of 1899 and 1907, 3rd ed. (New York, Oxford University Press, 1918).
- c/ League of Nations, Treaty Series, vol. XCIV (1929), No. 2138, p. 65.
- d/ A/CONF.95/15 and Corr.2, annex I, appendix C.
- e/ Resolution 2200 A (XXI), annex.
- f/ Resolution 39/46, annex.
- g/ Resolution 3452 (XXX), annex.
- h/ A/41/778, annex, para. 97.
- i/ Resolution 260 (III), annex.
