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DATE: October 11, 2001

Number of Pages Including this Cover Page: 1

SUBJECT: Input

As requested.

Corrected

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On detention:

POWs may be detained until the close of hostilities. Civilians may be held where they pose a security risk to the operation. Thus, they may be held until they no longer pose such a risk. They must be released as soon as they no longer pose such a risk but, in any event, no later than the close of hostilities. (They may be held longer if there are pending criminal charges.)

On prosecution by new Afghan authorities:

The USG will also need to develop a view on prosecutions handled by third states, including members of the coalition, other states where Al Qaeda members may be found, and Afghanistan itself.

Prosecutions in Afghanistan may be the most pressing issue to consider. If the Northern Alliance or a new government in Afghanistan apprehends Al Qaeda members (either Afghans or non-Afghans), it may wish to prosecute under local law. The option may also exist for US forces to turn over to new Afghan authorities persons held by the United States. Would the USG be amenable to prosecutions in Afghanistan and under what circumstances? Considerations include: Whether the Afghan government can carry through on any promise to prosecute, and thus whether it has an adequately functioning criminal justice system; whether we are confident that a severe punishment will result; whether escape or early release through bribery or corruption can be prevented; whether the USG has policy reasons to prefer US-controlled prosecution.

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