

Implementation of international humanitarian law by Denmark

Report by the International Law Committee
of the Danish Red Cross

Introduction¹

The report of the International Law Committee of the Danish Red Cross focuses on implementation of international humanitarian law by Denmark in peacetime. After a thorough investigation of the present situation, the report outlines possible improvements by putting forward 23 recommendations. The expected outcome is a broad debate which, it is hoped, will provide the impetus for improved implementation of Denmark's obligations under international humanitarian law.

The report is divided into four parts. The first part contains an historical overview of international humanitarian law and a brief examination of implementation measures taken in six different States: Sweden, Norway, Belgium, the Netherlands, Germany and the United States. The report focuses on the following five areas: the prosecution of war crimes, the definition of combatants, protection of the civilian population, methods and means of warfare and dissemination of international humanitarian law. The second part contains information on the Danish implementation process and the specific measures of implementation. The third part of the report contains the conclusions and recommendations, a summary in English and a glossary. The fourth part contains various annexes, supplementing the text of the first three parts.

The International Law Committee was established by the Danish Red Cross in the spring of 1995 for the purpose of promoting international

¹ Introduction by **Lina Bertelsen**, legal adviser of the Danish Red Cross and secretary of its International Law Committee.

humanitarian law. The Committee consists of eight members, five with a legal and three with a medical background. It is complementary to the Governmental Red Cross Committee, which is the Danish interministerial committee responsible for coordinating measures to implement international humanitarian law.

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Report on international humanitarian law in Denmark (English summary)²

Despite the intentions of conventions and resolutions aimed at protecting victims of armed conflicts, respect for human life has not increased. The need to respect international humanitarian law and meet the obligations of the 1949 Geneva Conventions must be seen as a major task for all States, individuals and organizations. In order to ensure respect for its provisions during armed conflicts, the law contains certain obligations with regard to implementation which should be fulfilled in peacetime. International humanitarian law contains, for example, an obligation to adopt effective penal sanctions for the repression of breaches and to disseminate knowledge of its rules.

It was stressed during the 26th International Conference of the Red Cross and Red Crescent (Geneva, 3-7 December 1995) that the repression of breaches of international humanitarian law is a precondition for respect for the rules. The International Law Committee of the Danish Red Cross subsequently decided to draw up the present report on the implementation of international humanitarian law in Denmark. The purpose of the report is to evaluate the degree of implementation, by Denmark, of its obligations and to put forward recommendations.

Before the ratification by Denmark in 1951 of the Geneva Conventions of 12 August 1949 a number of suggestions were made: (a) to conduct a study of the impact of the Conventions; (b) to set up a committee to coordinate measures of implementation; (c) to undertake a commentary on the Geneva Conventions; and (d) to engage in close cooperation with the other Nordic countries. Most of these suggestions were never realized.

² Edited and abridged by the *Review*.

When the 1977 Additional Protocols were ratified in 1982, the authorities concluded that Danish legislation was almost entirely consistent with the Protocols. Thus only administrative measures for their implementation were envisaged. However, a proposal was put forward to create an interministerial committee responsible for coordination of implementation measures. The Governmental Red Cross Committee was established in 1982 for this purpose.

Generally, Denmark complies with the provisions of international humanitarian law. However, the present report has revealed some problematic aspects in the above-mentioned areas which call for further improvement. In some respects the level of implementation could and should be higher.

Recommendations by the Committee

1. The *Governmental Red Cross Committee*, which was an innovation in the international context at the time, has a very broad composition, with representatives of the Ministries of Justice, Foreign Affairs, Health, Education, the Interior and Defence, the civil defence authorities, the Judge Advocate General and the Danish Red Cross. The Committee has played a coordinating role. Due to a lack of resources, however, it has been unable to take independent initiatives, such as to undertaking inquiries on the need for further measures of implementation. Government and Parliament should take steps to develop and strengthen the Committee by giving a legal basis and providing it with its own budget and secretariat.
2. Criminal prosecution of aliens for *war crimes* committed abroad is limited in terms of jurisdiction and applicable Danish criminal law.

Article 8, Section 5, of the Danish Penal Code establishes the jurisdiction of Danish courts for grave breaches of the Geneva Conventions and their Additional Protocols. In this respect Denmark complies fully with international humanitarian law.

According to international law, a State has the right to punish the crime of genocide, crimes against humanity and violations of the Hague Conventions, in pursuance of the principle of universal jurisdiction. For these crimes, however, there is no obligation to prosecute. Article 8, Section 6, of the Penal Code establishes jurisdiction for these crimes, depending on three conditions: *primo*, another State must have requested the extradition of the person in question; *secundo*, extradition must have been

denied by the Danish authorities; and *tertio*, the alleged behaviour must be a crime under Danish law. It appears that the decision to assume jurisdiction could be influenced by political considerations, such as relations with other States. However, the Minister of Justice, who has to take the decision whether to prosecute or not, is bound by obligations of international law.

When the Danish Penal Code was drafted, no consideration was given to international humanitarian law. This may cause problems when the legal basis necessary for the prosecution of some types of war crimes must be established. Maximum and minimum penalties, for example, are the same in wartime as in peacetime. Furthermore, the Code has no provision for a number of war crimes, and as a result these crimes cannot be prosecuted in Denmark.

Thus it can be concluded that the obligation to adopt efficient penal sanctions for the repression of grave breaches (war crimes) is insufficiently implemented in Denmark. A study should be made to consider, *inter alia*, the possibility of adopting a specific law on war crimes, as is the case in Belgium, or whether special provisions could be added to the Penal Code, as is the case in Sweden, or whether specific maximum and minimum penalties for crimes committed during an armed conflict should be adopted. The simplest way to ensure satisfactory implementation of international humanitarian law is to incorporate the relevant provisions into domestic law, as was done with the European Convention on Human Rights.

3. The conclusions to be drawn from the new definition of who is a *combatant* have not yet been applied to the Danish context. The various groups of personnel and associated staff members within the defence forces have not yet been categorized as either combatants, civilians or civilians accompanying the armed forces. Although there is no international obligation to do so, a study on the status of the different groups should be undertaken. Furthermore, the Defence Personnel Act should be amended by incorporating a prohibition on involving anyone under the age of 18 years in armed conflict.

4. The Geneva Conventions and Additional Protocol I provide for the establishment of hospital zones and safety zones for the *protection of civilians*. Denmark has not established such zones, nor have other States mentioned in the present report done so. It could be argued that the establishment of safety zones is largely irrelevant, but the authorities must take an explicit decision on this matter.

Denmark has not established a *national information bureau*. Such a bureau could contribute to fundamental humanitarian tasks in peacetime, and should therefore be established within the Danish Red Cross and given the necessary resources.

Protection of and respect for the *Red Cross emblem* is inadequate. A legal basis should be established which would ensure proper use of the Red Cross emblem, according to the provisions of international humanitarian law.

5. As for *means and methods of warfare*, the Danish government, in a statement of 23 May 1996, has renounced the use of *anti-personnel landmines*. This commitment should be worded in an unequivocal and legally binding way.

In order to ensure that *new weapons* comply with the requirements of international humanitarian law, a specialized commission should be set up and put in charge of this assessment. This commission should be composed of persons with expertise in international humanitarian law, medicine and military equipment. The assessment of new weapons should take place prior to their purchase. Furthermore, the commission should be able to assess weapons already purchased by the Danish government, if their compatibility with international humanitarian law is doubtful.

At the international level, Denmark should promote the establishment of an international *Weapons Inspection and Screening Agency* for the monitoring of present and future prohibitions of conventional weapons and other weapons not covered by existing supervision mechanisms.

6. As for *dissemination of international humanitarian law*, many sectors of the population do not receive any kind of information. They comprise the civilian population in general, including essential groups such as teachers, journalists, doctors, nurses, politicians and the police. Although the Geneva Conventions only require States Parties to encourage the study of international humanitarian law by the civilian population, dissemination of international humanitarian law among the various sectors of the civilian population should be given a higher priority in the years to come.

It is commendable that dissemination of international humanitarian law among the defence forces has been given higher priority in recent years. This primarily takes the form of education. It is questionable whether international humanitarian law is properly incorporated in military exercises, regulations, and instructions. It is essential that military personnel do not consider international humanitarian law to be merely

theoretical and therefore irrelevant. A practical starting point must be chosen and emphasis placed on exercises which simulate conflict situations. The preparation of military manuals should be given high priority.

It is essential that commanding officers of the armed forces receive adequate education in international humanitarian law. It should be ensured that this group receives the necessary follow-up courses on international humanitarian law.

It is acknowledged that military legal advisers have been employed by the Danish armed forces to help commanding officers take due account of international humanitarian law in the decisions they take. This need is increasing in line with the new tasks faced by the armed forces, especially when units are deployed on UN or NATO missions.

Dissemination of international humanitarian law is carried out by different military and civilian authorities, and there is no coordination of the various dissemination activities. One way to achieve such coordination would be to establish a *Centre for international humanitarian law* which could deal with documentation, research and education. The Centre could be the result of a joint effort on the part of the military authorities, the civilian authorities and the Danish Red Cross. It could also strengthen major Danish initiatives with regard to international peacekeeping.

(...)

On the basis of the present study, the International Law Committee of the Danish Red Cross presents the following *recommendations*:

1. *Governmental Red Cross Committee*

Parliament and Government are encouraged to take steps to strengthen the Governmental Red Cross Committee. The Committee should be provided with a legal basis and the necessary resources. The legal basis should specify the Committee's right of initiative and its tasks, including the obligation to present a report to the Parliament on a yearly basis.

The Danish Red Cross is encouraged to upgrade its efforts within the Governmental Red Cross Committee and to increase the resources hereof.

2. *Prosecution of war crimes*

When the legislation is revised it should be made clear that only objective considerations are relevant to the decision whether to prosecute in cases concerning breaches of international humanitarian law.

A study should be carried out on the possibilities for more efficient prosecution of breaches of international humanitarian law.

A study should be conducted on the legal position of Danish soldiers on UN or NATO missions.

Article 9 of the Military Penal Code should be rephrased so that actions contrary to international humanitarian law performed by subordinates obeying an order incur penal responsibility.

3. Definition of combatants

The status under international humanitarian law of individuals and groups within the defence forces should be clarified.

The Defence Personnel Act should be rephrased so that it is no longer possible to recruit and train anyone under the age of 18 years for service during armed conflict.

4. Protection of civilians

The necessary steps should be taken to set up a national information bureau within the Danish Red Cross.

Safety zones should be established and marked on military operational maps.

Specific legislation should be adopted concerning the use and protection of the red cross emblem.

5. Methods and means of warfare

A permanent and transparent procedure should be established, if necessary by law, to assess the compatibility of new and existing weapons with the requirements of international humanitarian law. Medical considerations should also be taken into account.

The prohibition on anti-personnel landmines should be worded in an unequivocal and legally binding way.

Studies should continue to be conducted on the projectiles used in the Danish defence forces. These studies should include the fragmenting effects of the projectiles, and should be made public.

Denmark is encouraged to promote the establishment of an international *Weapons Inspection and Screening Agency* for the enforcement of existing and future prohibitions and restrictions on conventional weapons

and other weapons not covered by existing international supervision mechanisms.

Denmark is encouraged to proceed with ratification of the Convention for the protection of cultural property in the event of armed conflict.

6. *Dissemination of international humanitarian law*

International humanitarian law should be introduced into the curriculum from the 8th to the 10th grade and at university entrance level.

International humanitarian law should be introduced into the curriculum of the Faculties of Law and Medicine and the Danish School of Journalism.

Dissemination of international humanitarian law among medical personnel should continue to be given high priority.

Dissemination of international humanitarian law among the defence forces should be given higher priority. International humanitarian law should be properly incorporated in all regulations and military exercises. The preparation of a military manual and other up-to-date educational material should continue to be given high priority.

Follow-up courses on international humanitarian law should be introduced for commanders in the Danish defence forces.

The depositary and the ICRC should be notified of the list of "qualified persons".

A centre for international humanitarian law should be established, with tasks such as documentation, research, dissemination and international cooperation.