

V. Dissemination and Education

Effective implementation depends on dissemination and education in matters of IHL. These are the necessary tools to foster a greater acceptance of the principles of IHL as an achievement of the social and cultural development of humankind. Compliance with IHL can only be expected if all authorities, the German Armed Forces and the general public are made familiar with its contents. As a State Party to the GC and the AP thereto, the Federal Republic of Germany is obliged to disseminate the provisions of these treaties as widely as possible (Art. 47 GC I, Art. 48 GC II, Art. 127 para. 1 GC III, Art. 144 para. 1 GC IV, Art. 83 para. 1 AP I and Art. 19 AP II).

1. Dissemination and Education within the German Armed Forces

All German soldiers receive legal instructions, which are intended not only to disseminate knowledge, but also and primarily to develop an awareness of what is right and what is wrong in situations of armed conflict. The general principles and essential features of IHL are an integral part of the soldiers' basic training. The knowledge is deepened in a course in a yearly training programme. The instruction is given within the respective military units by senior officers and law teachers (most of them experienced former legal advisers) of the different German Armed Forces schools and academies. Finally, the Leadership Development and Civic Education Centre (*Zentrum Innere Führung*) in Koblenz offers several different specialised courses on IHL for members of the legal branch and officers.

a. Legal Advisers in the German Armed Forces

The legal advisers' role in the German Armed Forces is based in IHL. According to Art. 82 AP I, all High Contracting Parties are required to make legal advisers available when necessary in order to advise the military commanders in the competent levels of command with regard to the relevant international agreements and also with regard to the instruction of the armed forces. In Germany, this provision is supplemented by Sec. 33 of the

Legal Status of Military Personnel Act (*Soldatengesetz*), which also deals with the instruction of the armed forces.

The legal advisers are generally employed in headquarters from division level upwards. Legal advisers counsel the commanding officer on all official legal matters and in the exercise of his or her disciplinary power. They are federal civil servants who have to have a complete legal education and are qualified to hold the position of a judge. In total, about 270 legal advisers (including teachers of law) are serving in the German Armed Forces. It is the primary task of the personnel of the military legal system of the German Armed Forces to provide legal advice to military superiors – especially on matters of military law, IHL and operational law – and to administer legal instructions and leadership training.

The military legal system of the German Armed Forces is orienting its services to meet the requirements of missions abroad and to take account of the constantly changing challenges of the German Armed Forces' multinational integration. Moreover, congruity between the conduct of operations and the law demands that legal advisers be involved in the entire planning process of exercises and operations across the entire range of tasks assigned to the German Armed Forces. When deployed in operations abroad or otherwise involved in military operations in the field (e.g. in operations concerning national defence), German legal advisers switch from civilian to soldier status and then carry a military rank (major level (OF-3) and higher).

The legal advisers at divisional headquarters and above also regularly serve as Disciplinary Attorneys for the German Armed Forces (*Wehrdisziplinaranwalt*). By law, they represent the commanding officer in all proceedings at the Disciplinary and Complaints Courts, bring charges against military personnel in disciplinary proceedings and enforce the disciplinary punishments imposed by the military courts. They do not act as counsel for the defence. As the German legal system does not provide for a military criminal justice system,²⁸ they do not administer and initiate criminal proceedings as these proceedings fall within the competence of civil law enforcement authorities, the public prosecutor's offices. There is reciprocal cooperation between disciplinary attorneys and public prosecutors.

28 See VI. 2.

b. Legal Advisers as Teachers of Law

As part of the executive, the German Armed Forces are bound by law and justice (Art. 20 para. 3 Basic Law), which entails the general need to train the service members in the legal bases of their actions, especially in military law as well as in international and operational law. This also follows from Art. 33 para. 2 of the Legal Status of Military Personnel Act, which obliges the German Armed Forces to provide to all soldiers of the German Armed Forces instructions concerning their rights and duties under international law in times of peace and war (see paras. 1502–1503 in conjunction with paras. 153–155 LOAC Manual). The principles of IHL are taught to soldiers of all ranks. More detailed instructions are given to those who are going to serve in international missions abroad.

Teachers of law, just like legal advisers in the field units, support the German Armed Forces to perform their tasks in accordance with the legal system and ensure that all service members are familiar with the law and legislation. Objectives of the legal training within the German Armed Forces are the acquisition of the legal knowledge required for the performance of tasks in the German Armed Forces during operations and routine duty, to guarantee the ability to take correct decisions on legal issues related to the execution of military duty even under difficult conditions and to solve conflicts within the bounds of the legal system, and to impart and review the knowledge and skills required for access to commissioned and non-commissioned officer careers.

In the *Bundeswehr*, imparting the required legal knowledge is primarily the task of the members of the military legal system. The primary focus of the teachers of law is to teach the law in career training courses and assignment qualification courses. In accordance with the statutory obligation under Sec. 33 para. 2 of the Legal Status of Military Personnel Act, this also includes imparting knowledge on civic duties and rights, as well as duties and rights under international law in peacetime and during armed conflicts. Under international law, Art. 83 para. 1 AP I obligates the Federal Republic of Germany to disseminate IHL rules, especially by including them in military training programmes. While legal training during basic military training is provided mainly by company-level commanders or leaders subordinate to them, courses of legal instruction at the central training facilities such as the Leadership Development and Civic Education Centre, the *Bundeswehr* Command and Staff College (*Führungsakademie der Bundeswehr*) and officer and non-commissioned officer schools, must, on a regular basis, be held by teachers of law holding

civil-servant status. Their tasks include teaching law in all fields required for the training of service members. The purpose of the legal training provided to military leaders is to enable them to assess the lawfulness of actions in all military decisions to be taken from matters of personnel management, e.g. extension of the military service period or dismissals of service members, the exercise of disciplinary authority and the conduct of military operations all the way to basically any order given during daily routine duties. All military superiors are responsible for ensuring the lawfulness of the orders given by them.

Therefore, the standard subjects taught by teachers of law throughout the German Armed Forces are:

- constitutional law,
- IHL in armed conflicts,
- legislation on military duties,
- legislation governing the authority to issue orders,
- German military police law,
- criminal law and military penal law,
- disciplinary and complaints legislation and
- legislation governing the conduct of operations in missions abroad.

These topics are subject to examinations. In many career training courses, law is a subject in which students are required to achieve a certain minimum grade in order to pass the course overall.

Instruction, lectures and training of IHL are also part of the different military courses that are elements of the qualification to become a military superior. They are adapted to the respective level of qualification (NCO, Officer, Staff Officer, General Staff Officer). Furthermore, additional subjects such as maritime law, law of the air, NATO and UN law are taught at schools with specific training missions or special courses, e.g. for the preparation of deployments within the Armed Force's extended spectrum of tasks.

c. LOAC Manual and Internal Service Regulations

The Federal Ministry of Defence provides its German Armed Forces with a wide range of service regulations which are updated on a regular basis. The main regulation regarding IHL is the LOAC Manual. This Manual and the Soldier's Cards are of a binding character and have to be followed completely, conscientiously and immediately. The LOAC Manual intends to provide the necessary interpretation of IHL rules.

Within the German Armed Forces, the Manual was newly issued in May 2013 and is now available to the armed forces in the 3rd version as of February 2018. The Manual was drafted in the International and Operational Law branch (R I 3) of the Federal Ministry of Defence's Directorate-General for Legal Affairs and coordinated with the Federal Foreign Office, the Federal Ministry of the Interior and the Federal Ministry of Justice and Consumer Protection. Hence it reflects the official positions agreed in the Federal Government on questions of IHL. The draft was also discussed in detail within the German Committee on International Humanitarian Law.

d. Soldier's Cards

The Soldier's Cards (or Pocket Cards) summarise the most practically relevant rules and operational guidance (such as Rules of Engagement, RoE) applicable to a specific deployment and translate these rules into easy-to-understand-language. They have a strong focus on the rules applicable to the use of force, but regularly also feature other relevant aspects of deployments. They are not only based on IHL or the applicable rules of international and national law, but also on the mandate of the *Bundestag* for the respective mission and the applicable Rules of Engagement. The Soldier's Cards are usually drawn up for each deployment in the Federal Ministry of Defence by the International and Operational Law branch (R I 3). R I 3 regularly cooperates with the *Bundeswehr* Joint Forces Operations Command. The Soldier's Card is then approved at State Secretary level. Like Rules of Engagement, the Soldier's Cards do not constitute legal regulations and can never justify unlawful conduct. They are a measure to create a basis of understanding for the applicable rules and are regularly used to guide the instructions of the teachers of law or legal advisers within the framework of pre-deployment training.

2. Dissemination and Education by the German Red Cross

a. Legal Basis

Pursuant to Sec. 2 para.1 no. 2 of the GerRC Act, which reiterates and confirms international law, the dissemination of IHL as well as the Principles and the Ideals of the International Red Cross and Red Crescent Movement

and the assistance to the German Federal Government in this field is one of the essential tasks of the GerRC.

Under Common Art. 1 GC I-IV, States Parties undertake to respect and to ensure respect for the present Conventions in all circumstances. In particular, States Parties undertake, in times of peace as in times of war, to disseminate the GC as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Moreover, the Statutes of the International Red Cross and Red Crescent Movement, adopted by the International Conference of the Red Cross and Red Crescent (and thus by the States Parties to the GC), mandate the components of the Movement, in particular National Red Cross and Red Crescent Societies, to disseminate IHL. According to Art. 3 para. 2 of the Movement's Statutes,

"National Societies (...) disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect. They disseminate the principles and ideals of the Movement and assist those governments which also disseminate them. They also cooperate with their governments to ensure respect for international humanitarian law and to protect the distinctive emblems recognized by the Geneva Conventions and their Additional Protocols."

Thus, the mandate of National Red Cross and Red Crescent Societies in the field of IHL includes

- (1) dissemination on their own initiative,
- (2) assisting their governments in disseminating IHL, and
- (3) cooperating with their governments to enforce IHL.

The GerRC Act formally confirms the mandate which the International Community has entrusted to the National Societies. Sec. 1 GerRC Act states that the GerRC is the voluntary aid society of the German authorities in the humanitarian field. It assumes the tasks that arise from the Geneva Conventions and their Additional Protocols, in particular

"the dissemination of knowledge of International Humanitarian Law as well as the Principles and Ideals of the International Red Cross and Red Crescent Movement and the assistance to the German Federal Government in this field".

b. Dissemination of the GerRC

Dissemination illustrates and is one example of the specific and distinctive partnership between the GerRC as a voluntary aid society, auxiliary to the German authorities in the humanitarian field, and public authorities.

i. Meaning of Dissemination

Dissemination means in particular:

- informing about IHL, the Fundamental Principles and the basics of the International Red Cross and Red Crescent Movement,
- teaching the significance and meaning of IHL and of the Movement's Fundamental Principles and Ideals for the Red Cross' practical work and for the personal behaviour of its staff and volunteers,
- promoting IHL, its enforcement and development,
- advocating for the most vulnerable.

ii. Federal Structure

According to the federal structure of the GerRC, each branch (federal association, regional and local branch) has its own body responsible for co-ordination and dissemination in order to facilitate and improve implementation of IHL as well as the awareness of the Fundamental Principles and the basics of the International Red Cross and Red Crescent Movement. The same applies to each level within each component association. This system comprises one volunteer legal adviser to the headquarters as National Dissemination Officer (*"Bundeskonventionsbeauftragter"*), 19 volunteer legal advisers at regional / Länder level (Regional Dissemination Officers) from the component associations (*"Landeskonventionsbeauftragte"*), and about 300 volunteer legal advisers (Local Dissemination Officers) from the local branches (*"Kreis- und Bezirkskonventionsbeauftragte"*).

iii. Dissemination Activities

The GerRC-headquarters has put in place a wide range of dissemination activities for different target groups, e.g. trainings and conferences, various

publications and a newsletter on dissemination of IHL²⁹ in which current developments are reported and analysed.

An example of dissemination activities is the annual joint conference "Tagung zum Humanitären Völkerrecht" which is organised jointly by the Federal Ministry of Defence and the GerRC in order to strengthen the dialogue between legal advisers of the *Bundeswehr* and dissemination officers of the GerRC. Moreover, IHL seminars and conferences for law students and young lawyers have been conducted by the GerRC since the 1950s. Another example is the bilingual English-German, publication "Dokumente zum humanitären Völkerrecht / Documents on International Humanitarian Law", which was reissued in its third edition in 2016 by the Federal Foreign Office, the GerRC and the Federal Ministry of Defence. It contains law-of-armed-conflict instruments that were drafted at the end of the 19th century as well as IHL treaties and documents up to 2016.

3. German Committee on International Humanitarian Law

The German Committee on International Humanitarian Law (in short: German IHL Committee)³⁰ is the second oldest institution of its kind worldwide. Taking into account Resolution XXVIII of the XXth International Red Cross and Red Crescent Conference, it was set up as a "Technical Committee International Humanitarian Law" within the GerRC in 1973³¹. It was recognised as the German Committee on International Humanitarian Law in 1996 through an exchange of correspondence between the Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and the other International Organisations in Geneva and the ICRC. Its legal basis is anchored in Art. 22 para. 8 of the Statutes of the German Red Cross.

The Committee brings together institutional as well as individual members. Institutional members are, by virtue of their function, representatives of the Federal Foreign Office, the Federal Ministry of Defence, the Federal Ministry of the Interior, Building and Community, the Federal Ministry of

29 The current and past newsletters can be found here: www.drk.de/newsletter-va (in German) (Accessed 31 August 2020).

30 <https://www.drk.de/en/the-grc/mission-of-the-grc/national-committee-on-international-humanitarian-law/> (Accessed 31 August 2020).

31 Its creation as a "Technical Committee" within the GerRC explains the German name by which the German National IHL Committee is also known, i.e. the "Fachausschuss Humanitäres Völkerrecht".

Justice and Consumer Protection as well as the Federal Public Prosecutor General. Individual members include representatives from academia as well as other eminent persons who are appointed by the German Red Cross' Presidential Board. The Committee's secretariat is run by the GerRC.

The German IHL Committee is a forum for consultation and coordination between the Federal Government's different departments, academia and the GerRC representing the International Red Cross and Red Crescent Movement. It also provides advice to the German Red Cross' Presidential Board on issues concerning international law as it relates to the GerRC's work.

The Committee generally performs four different types of activities: analysis, consultancy, dissemination and international cooperation.

Analysis

The German IHL Committee constantly analyses and discusses developments in IHL and related areas of law as well as developments in current armed conflicts. For example, it has addressed the legal framework governing German Armed Forces' deployment abroad as well as authorities' power to detain in the context of anti-piracy operations.

Consultancy

At its origin, the German IHL Committee played an important role in shaping the German contribution to the Diplomatic Conference 1974 – 1977 and in the debate leading to the Federal Republic's ratification of the Additional Protocols adopted by the Conference. It similarly offered recommendations on the ratification of the 1997 Ottawa Convention. Moreover, it contributed to the Federal Government's work on specific issues arising in connection with the Rome Statute of the International Criminal Court and the adoption of the German CCAIL. It was also consulted and actively involved in the drafting and revision of the LOAC Manual.³²

Dissemination

The German IHL Committee is a crucial platform for the coordination of and cooperation on dissemination measures addressed to military and civilian target audiences. Initiatives that have emerged from the Committee's work include the publication of a bilingual German/English collection of relevant treaties, the training of judges and prosecutors in IHL as

32 See V. 1. c.

well as events related to the 70th anniversary of the 1949 Geneva Conventions.

International Cooperation

The German IHL Committee regularly exchanges with established as well as newly created National IHL Committees on issues related to international law, its implementation in domestic law and the role of National IHL Committees therein. In order to both support the implementation of IHL within states' domestic law and to foster exchange between National IHL Committees, it developed proposals for a monitoring and reporting system in the late 1990s, in particular a model report for an "information exchange system" on which predecessors of this implementation report were based.

4. Dissemination, Education and other Actors at the Federal Level

The Federal Foreign Office and the Federal Ministry of the Interior, Building and Community, in particular its Federal Agency for Technical Relief (*Technisches Hilfswerk*), its Federal Office of Civil Protection and Disaster Assistance (*Bundesamt für Bevölkerungsschutz und Katastrophenhilfe*) and its Academy for Crisis Management, Emergency Planning and Civil Protection (*Akademie für Krisenmanagement, Notfallplanung und Zivilschutz*), are also involved in dissemination activities. These institutions undertake certain dissemination activities, especially in the context of the protection of cultural property.

With the development of the regime of international criminal law, the establishment of the International Criminal Court in 2002 and the subsequent adoption of the CCAIL, there has been a renewed interest in and increased momentum for IHL. A growing number of experts, especially at the office of the Federal Public Prosecutor General, has been dealing with international criminal legal matters in Germany since the CCAIL entered into force. Due to the increasing importance which civil society attaches to the investigation and prosecution of grave breaches of IHL, it must be clear that this development provides an opportunity for better dissemination and, therefore, better implementation of IHL.

Lastly, universities are essential actors in the dissemination of IHL in Germany. The relevance of lectures on international law in general and specifically IHL is growing every year and the subject has gained in importance over the last years.