

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 16, 2013
CORRESPONDENTS' REPORTS

DENMARK¹

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• Terms of reference for the Commission of inquiry concerning the Danish participation in armed conflict in Iraq and Afghanistan (text in Danish only)

<http://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2012/Kommissorium_Irak_Afghanistan.pdf>

Late in 2012, the Minister of Justice appointed the members of a commission of inquiry set up in accordance with the document entitled 'Government Platform'. The document was made public on the establishment of the cabinet comprising the Labour Party, the Socialist People's Party and the Social-Liberal Party, which took office in October 2011. The appointment of a judge, a solicitor and a university professor as the members of the commission of inquiry also marked the formal establishment and start of the work of the commission.

According to the commission's terms of reference, the commission shall investigate and describe the background for the Danish decision to participate in the war in Iraq and also investigate and describe what Danish authorities have done in connection with the detention of persons during the wars in Iraq and Afghanistan.

Concerning the Iraq part of the inquiry, the commission is to investigate which information the relevant Danish authorities were aware of concerning the situation in Iraq. This includes information obtained from contacts in other countries and the inquiry will investigate whether and how such information was included into the political considerations concerning Danish participation in the war in Iraq. The inquiry will also consider whether information relied on for the decision to participate in the war, which was passed on to Parliament, was true and satisfactory. The commission shall also investigate whether there was a basis for the assessment of the legality of the Danish participation according to Denmark's international obligations.

Concerning the other part of the inquiry, the commission is to investigate whether Denmark's obligations according to international law have been adhered to in connection with the detention of persons during the Danish participation in the wars in Iraq and Afghanistan. This inquiry will consider the extent to which Danish forces have detained persons and how such persons have been treated. It also includes the extent to which Danish forces have transferred detained persons to foreign forces and what knowledge relevant Danish authorities possessed about the treatment of detainees by such foreign countries.

The commission shall also report on relevant international law obligations (if any) to carry out supervision of detained persons after transfer to other countries' forces and the degree to which such supervision has been carried out by Danish authorities. The inquiry is also to investigate and describe whether Danish forces have participated in joint operations with

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other countries' forces involving the detention of persons. In these situations, the commission will consider the existence of any possible joint responsibility for the treatment of detainees under international law where applicable.

In addition to these tasks, the commission is also to carry out a legal assessment as to whether any individual should be held accountable for the breach of any law. Concerning the detention of persons, and depending on the results of the inquiry, the commission is also expected to propose the amendment of statutes, administrative regulations or state policies.

The commission of inquiry is expected to carry out its job and issue a report within five years of the formal establishment of the commission.

PETER OTKEN