DENMARK[1]

Contents

State Practice — Completion of the Copenhagen Process on the Handling of Detainees in International Military Operations

☛ Final Document, *The Copenhagen Process on the Handling of Detainees in International Military Operations,* including Principles and Guidelines with commentary <http://um.dk/en/~/media/UM/English-site/Documents/Politics-and-diplomacy/Copenhangen%20Process%20Principles%20and%20Guidelines.pdf>

In 2007, the Danish Ministry of Foreign Affairs launched a series of meetings which became known as *The Copenhagen Process on the Handling of Detainees in International Military Operations* (Copenhagen Process). Twenty-four countries from all over the world contributed to the meetings and several international organizations, including the United Nations, NATO and the ICRC, attended the meetings as observers. Representatives of civil society were also consulted at various stages. The Copenhagen Process was conducted with the desire to develop principles to guide the implementation of the already existing obligations with respect to detention in international military operations.

The Copenhagen Process was concluded on 19 October 2012 with the publication of 16 'Principles and Guidelines' which were accompanied by another 21 pages of commentary outlining the meaning and implications of each principle. The *chapeaux* to the Principles and Guidelines stress that the purpose of the Copenhagen Process was not to create new law or to address international armed conflicts. The Principles and Guidelines are intended to apply exclusively to international military operations in the context of non-international armed conflicts and peace operations. While the *chapeaux* conclude with the statement that 'participants took note of the annexed commentary on these Principles and Guidelines', they also state that the commentary 'is the sole responsibility of the Chairman of the Process'.

The 16 Principles and Guidelines consist of the following text:

1. The Copenhagen Process Principles and Guidelines apply to the detention of persons who are being deprived of their liberty for reasons related to an international military operation.
2. All persons detained or whose liberty is being restricted will in all circumstances be treated humanely and with respect for their dignity without any adverse distinction founded on race, colour, religion or faith, political or other opinion, national or social origin, sex, birth, wealth or other similar status. Torture, and other cruel, inhuman, or degrading treatment or punishment is prohibited.
3. Persons not detained will be released.

[1] Information provided by Peter Otken, LL.M., Head of the Administration Department, Danish Defence Maintenance Agency. The views expressed are those of the correspondent only and thus cannot be attributed to the Danish Armed Forces or the Ministry of Defence.

4. Detention of persons must be conducted in accordance with applicable international law. When circumstances justifying detention have ceased to exist a detainee will be released.
5. Detaining authorities should develop and implement standard operating procedures and other relevant guidance regarding the handling of detainees.
6. Physical force is not to be used against a detained person except in circumstances where such force is necessary and proportionate.
7. Persons detained are to be promptly informed of the reasons for their detention in a language that they understand.
8. Persons detained are to be promptly registered by the detaining authority.
9. Detaining authorities are responsible for providing detainees with adequate conditions of detention including food and drinking water, accommodation, access to open air, safeguards to protect health and hygiene, and protection against the rigours of the climate and the dangers of military activities. Wounded and sick detainees are to receive the medical care and attention required by their condition.
10. Persons detained are to be permitted to have appropriate contact with the outside world including family members as soon as reasonably practicable. Such contact is subject to reasonable conditions relating to maintaining security and good order in the detention facility and other security considerations. Persons detained are to be held in a designated place of detention.
11. In non-international armed conflict and where warranted in other situations, the detaining authority is to notify the ICRC or other impartial humanitarian organisation of the deprivation of liberty, release or transfer of a detainee. Where practicable, the detainee's family is to be notified of the deprivation of liberty, release or transfer of a detainee. Detaining authorities are to provide the ICRC or other relevant impartial international or national organisations with access to detainees.
12. A detainee whose liberty has been deprived for security reasons is to, in addition to a prompt initial review, have the decision to detain reconsidered periodically by an impartial and objective authority that is authorised to determine the lawfulness and appropriateness of continued detention.
13. A detainee whose liberty has been deprived on suspicion of having committed a criminal offence is to, as soon as circumstances permit, be transferred to or have proceedings initiated against him or her by an appropriate authority. Where such transfer or initiation is not possible in a reasonable period of time, the decision to detain is to be reconsidered in accordance with applicable law.
14. Detainees or their representatives are to be permitted to submit, without reprisal, oral or written complaints regarding their treatment or conditions of detention. All complaints are to be reviewed and, if based on credible information, be investigated by the detaining authority.
15. A State or international organisation will only transfer a detainee to another State or authority in compliance with the transferring State's or international organisation's international law obligations. Where the transferring State or international organisation determines it appropriate to request access to transferred detainees or to the detention facilities of the receiving State, the receiving State or authority should facilitate such access for monitoring of the detainee until such time as the detainee has been released, transferred to another detaining authority, or convicted of a crime in accordance with the applicable national law.
16. Nothing in The Copenhagen Process Principles and Guidelines affects the applicability of international law to international military operations conducted by the States or international organisations; or the obligations of their personnel to respect such law; or the applicability of international or national law to non-State actors.

Cases — Genocide — Application of the Genocide Convention and of the Genocide Convention Implementation Act of 1955 to Genocide Committed outside the Borders of Denmark

☛ Ruling by the Supreme Court, Case 2/2012, 26 April 2012 <www.domstol.dk/hojesteret/nyheder/Afgorelser/Documents/2-12.pdf> (Danish)

As reported previously in the *Yearbook*,[2] in 2011, the Court of Appeal, Eastern Bench Division, ruled that the *Danish Genocide Convention Implementation Act of 1955*, providing jurisdiction to Danish authorities to try perpetrators of the crime of genocide, did not apply to the crime of genocide if committed outside Denmark, *in casu* in Rwanda.

On 26 April 2012, the Supreme Court overturned the Court of Appeal's decision.

In its ruling, the Supreme Court first noted that the crime of genocide, as defined in the *1948 Genocide Convention*, has universal application and that Article VI of the *Convention*, relating to the geographical limitation of the duty to prosecute, does not provide a basis for a different interpretation. The Court further noted that the *1955 Danish Genocide Convention Implementation Act* contains the domestic authority for punishing the crime of genocide. Like the *Convention*, the *Implementation Act* does not contain any specific rule limiting the geographical application of the authority to punish genocide. For this reason, the Supreme Court found that the *Implementation Act* — like Article 237 of the *Danish Penal Code* on homicide — has universal application. For these reasons, the Court found the *Implementation Act* provides the authority to punish the crime genocide even if committed in Rwanda.

The Court further noted that the *Implementation Act* does not contain any specific rules concerning the authority to punish genocide and therefore, any decision to prosecute had to be made in accordance with ordinary principles of Danish penal law. The fact that Denmark has no international law obligation to prosecute genocide committed outside Danish jurisdiction could not lead to any other understanding. Since no one argued that genocide was not punishable in Rwanda, the ordinary principles for prosecuting according to the *Danish Penal Code* were thus fulfilled.

Based on this reasoning, the Supreme Court reversed the decision made in 2011 by the Court of Appeal, Eastern Bench Division to dismiss the case. The practical consequences of the ruling will be that the Danish Prosecution Authority will be allowed to proceed with the prosecution. Apparently, the Authority intends to comply with a request for extradition to Rwanda put forward by the Rwandan judicial authorities, provided that the normal legal requirements for such an extradition are fulfilled.

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[2] Peter Otken, 'Denmark', 14 *YIHL* (2011), available from <www.asser.nl/YIHL/correspondentsreports>.