

**YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011**  
**CORRESPONDENTS' REPORTS**

DENMARK<sup>1</sup>

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*Ius ad bellum — Statements on Formation of the New Danish Cabinet in October 2011*

• Denmark, *Government Platform* (2011)

<[http://www.stm.dk/multimedia/Regeringsgrundlag\\_uk\\_2011.pdf](http://www.stm.dk/multimedia/Regeringsgrundlag_uk_2011.pdf)>

Following the general election in September 2011, the former Liberal-Conservative cabinet stepped down and the Labour Party, the Socialist People's Party and the Social-Liberal Party formed a new coalition cabinet. On accession to government these parties formulated a number of statements on the policies they intended to implement, including some statements specifically formulating a government policy on promoting democracy and human rights as well as international peace and security. The following excerpts are taken from the new cabinet's 'Government Platform', which quotes directly from the Office of the Prime Minister's official translation of some of the principles specifically dealing with the access to use of force in international relations:

At the heart of the fight to protect human rights is the UN and the UN Responsibility to Protect (R2P) principle. It is the primary responsibility of the state to protect its own citizens, but the international community has a duty to react if a state cannot or will not do so. The Government will enhance efforts in the UN to operationalise the R2P principle.

The Government will enhance public diplomacy efforts with the aim of developing dialogue with other countries, for example concerning human rights and democracy. Danish ambassadors must to the widest possible extent be visible in the public debate. The Government will in particular strengthen dialogue with the Muslim world and contribute to promoting democracy, human rights, free media and gender equality.

With a point of departure in the UN Pact and the R2P principle, Denmark must contribute to end serious human rights violations such as genocide, war crimes, ethnic cleansing and crimes against humanity.

As the overriding general rule, intervention for the purposes of protecting the civilian population requires a mandate from the UN Security Council. However, if the Security Council is unable to act in a situation where a clear and urgent need for military intervention is justified on humanitarian grounds, it may in exceptional situations be necessary and in accordance with international law for Denmark to participate in the intervention in collaboration with relevant organisations, such as NATO, the EU or other regional fora.

The Government will work to ensure that the International Criminal Court (ICC) becomes a universally recognised and effective body for prosecuting individuals who have committed serious human rights violations.

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<sup>1</sup>Information provided by Peter Otken, LL.M., Senior Danish Rule of Law Advisor to the Helmand Provincial Reconstruction Team (PRT) in Lashkar Gah, Afghanistan. The views expressed are those of the correspondent only and thus cannot be attributed to the Helmand PRT or to the Danish Ministry of Foreign Affairs.

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For the Government, it is a clear principle that Danish troops may only be deployed in international military operations with the support of at least two-thirds of the Folketing [the Danish Parliament].

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The Government will set up a commission of inquiry to shed light on the background for the Danish decision to participate in the war in Iraq as well as potential problems relating to Denmark's observance of international conventions in connection with warfare in Iraq and Afghanistan.

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

- Special International Crimes Office, *Yearly Report 2010–2011* (Årsberetning 2010–2011 for Statsadvokaten for Særlige Internationale Straffesager)  
<[http://www.sico.ankl.dk/media/SAIS\\_Årsberetning\\_2010-2011.pdf](http://www.sico.ankl.dk/media/SAIS_Årsberetning_2010-2011.pdf)> (text in Danish only)
- Court of Appeal, Eastern Bench Division, 'Press Release' (26 October 2011)  
<<http://www.domstol.dk/oestrelandsret/nyheder/Pressemeddelelser/Pages/Dansk%20straffemynlighed%20i%20en%20sag%20om%20folkedrab%20i%20Rwanda%20i%201994.aspx>> (text in Danish only)

In December 2010, investigating officers from the Special International Crimes Office arrested a Rwandan national living in Denmark on suspicions of participation in the genocide committed in Rwanda in 1994. He was later detained while awaiting trial for having participated in and otherwise commanding two roadblocks which facilitated massacres on Kabuye Hill near Butare on and around 23 April 1994. Several thousand Tutsi refugees are believed to have been killed on Kabuye Hill on that day. In the indictment he is charged with genocide in accordance with the *Danish Genocide Convention Implementing Act of 1955* as well as with murder in accordance with Article 237 of the *Danish Penal Code*. The trial is expected to be heard in 2012.

The trial has raised the question whether the Danish *Genocide Convention Implementing Act of 1955* applies to genocide committed outside Denmark. During the drafting process of the Act in the 1950s, there was little debate about the possible application of this legislation to genocide committed outside Denmark. At the time, it is likely that the prevailing view was that prosecution should only take place in the country where the crime had been committed or at an international tribunal, as follows from the wording of Article VI of the *Genocide Convention*. For this reason, the counsel for the defence asked the court to make a preliminary ruling on the question whether the 1955 Act was also applicable to the crime of genocide when committed outside Denmark.

On 31 May 2011, the Town Court of Roskilde ruled that there was not a sufficient basis to assume that the Act, as enacted in 1955, was intended to cover the crime of genocide when committed in Rwanda. Furthermore, the Court found that the Act could not be interpreted to apply outside Denmark today. The Court of Appeal, Eastern Bench Division, upheld this ruling on 26 October 2011.

The Special International Crimes Offices has appealed the ruling to the Supreme Court which is expected to rule on the question in 2012. Regardless of the final decision, Danish courts continue to have jurisdiction over the crime of murder when committed abroad which means that the person indicted can still stand trial in Denmark for this crime.

PETER OTKEN